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Presidential Documents

Title 3—

The President

Executive Order 12904 of March 16, 1994

Commission for Environmental Cooperation, Commission for Labor Cooperation, Border Environment Cooperation Commission, and North American Development Bank

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 1 of the International Organizations Immunities Act (22 U.S.C. 288), and having found that the United States participates in the Commission for Environmental Cooperation, the Commission for Labor Cooperation, the Border Environment Cooperation Commission, and the North American Development Bank pursuant to the North American Free Trade Agreement Implementation Act, Public Law 103–182, I hereby designate the Commission for Environmental Cooperation, the Commission for Labor Cooperation, the Border Environment Cooperation Commission, and the North American Development Bank as public international organizations entitled to enjoy the privileges, exemptions, and immunities conferred by the International Organizations Immunities Act. This designation is not intended to abridge in any respect privileges, exemptions, or immunities that such organizations may have acquired or may acquire by international agreements or by congressional action.

William J. Clinton

THE WHITE HOUSE,
March 16, 1994.

[FR Doc. 94–6696
Filed 3–17–94; 3:30 pm]
Billing code 3195–01–P

Rules and Regulations

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

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AF72

Prevailing Rate Systems; Clark-Hardin-Jefferson, Kentucky, NAF Wage Area

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing a final rule to delete Clark County, Indiana, from the survey area of the Clark-Hardin-Jefferson, Kentucky, Federal Wage System (FWS) nonappropriated fund (NAF) wage area for pay-setting purposes. The wage area will be renamed Hardin-Jefferson, Kentucky. There are no longer any NAF wage employees in Clark County. Because by law FWS NAF wage areas consist only of areas having NAF employees, Clark County must be dropped from this wage area.

EFFECTIVE DATE: April 20, 1994.

FOR FURTHER INFORMATION CONTACT: Paul Shields, (202) 606–2848.

SUPPLEMENTARY INFORMATION: On December 29, 1993, OPM published an interim rule to delete Clark County, Indiana, from the survey area of the Clark-Hardin-Jefferson, Kentucky, FWS NAF wage area for pay-setting purposes and rename the wage area Hardin-Jefferson (58 FR 68716). The interim rule provided a 30-day period for public comment. OPM received no comments during the comment period. Therefore, the interim rule is being adopted as a final rule.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

Accordingly, under the authority of 5 U.S.C. 5343, the interim rule amending 5 CFR part 532 published on December 29, 1993 (58 FR 68716), is adopted as final without any changes.

U.S. Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

[FR Doc. 94–6461 Filed 3–18–94; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 301 and 319

[Docket No. 93–077–2]

Unshu Oranges From Japan

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations governing the importation and interstate movement of Unshu oranges from Japan by allowing this fruit to be moved into or through the States of Alabama, Georgia, Mississippi, Nevada, New Mexico, North Carolina, and South Carolina. These States are not commercial citrus-producing States, and, therefore, will not be threatened by the possibility of infection with citrus canker from the Japanese Unshu oranges. This action will expand the area into which Unshu oranges may be imported and moved interstate.

EFFECTIVE DATE: March 16, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. Peter Grosser, Senior Operations Officer, Port Operations, Plant Protection and Quarantine, APHIS, USDA, room 632, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–6799.

SUPPLEMENTARY INFORMATION:

Background

Citrus canker is a disease which affects citrus, and is caused by the infectious bacterium *Xanthomonas campestris* pv. *citri* (Hasse) Dye. The strain of citrus canker that occurs in Japan infects the twigs, leaves, and fruit of a wide spectrum of *Citrus* species.

The regulations in 7 CFR 301.83 and 319.28 prohibit the importation and interstate movement of Japanese Unshu oranges into or through the commercial citrus-producing States of American Samoa, Arizona, California, Florida, Louisiana, the Northern Mariana Islands, Puerto Rico, Texas, and the Virgin Islands of the United States, as well as "buffer" States near the continental commercial citrus-producing States (Alabama, Georgia, Mississippi, Nevada, New Mexico, North Carolina, and South Carolina), to help prevent the introduction and dissemination of citrus canker.

On December 20, 1993, we published in the **Federal Register** (58 FR 66304–66305, Docket No. 93–077–1) a proposal to amend the regulations by allowing Unshu oranges from Japan to be moved into or through the buffer States of Alabama, Georgia, Mississippi, Nevada, New Mexico, North Carolina, and South Carolina. In the proposal, we stated that our experience with citrus canker at this time does not convince us that the importation of Unshu oranges from Japan into commercial citrus-producing areas of the United States would be entirely without significant risk. However, we have never detected citrus canker on any shipments of Unshu oranges from Japan imported into the United States. The regulations in § 319.28 impose strict safeguards on Unshu oranges imported from Japan to prevent the dissemination of citrus canker. We proposed that, with these safeguards, it is not necessary to continue the prohibition on the importation and interstate movement of Japanese Unshu oranges into or through States that are not commercial citrus-producing States.

We solicited comments concerning our proposal for a 30-day comment period ending January 19, 1994. We received 4 comments by that date, all of which opposed the proposed rule. They were from State departments of citrus and agriculture and citrus growers associations. We carefully considered all of the issues raised. They are discussed below.

Some of the commenters expressed concern that Japan does not have in place safeguards to restrict Unshu orange movement from infected areas, and that Japan may not comply with

other safeguards required by our regulations.

The regulations in 7 CFR 319.28(b) provide for extensive safeguards on the growing, packing, and inspection of Unshu oranges for export from Japan into the United States. These regulations require that the oranges, among other things, be grown and packed in isolated, canker-free export areas where only Unshu orange trees are grown. These areas must be surrounded by a disease-free buffer zone in which only 10 varieties of citrus may be grown, which, like the Unshu, are highly resistant to citrus canker. The export areas must be kept free of all citrus other than the propagative material of Unshu oranges. The buffer zones must be kept free of all citrus other than the 10 canker-resistant varieties. Both the export areas and the buffer zones must be inspected by both Japanese and U.S. plant pathologists in the groves prior to and during harvest, and in the packinghouses during packing operations. During inspection, these areas must be found free of citrus canker and prohibited material, before export of fruit from each area is permitted.

These safeguards are designed to prevent the introduction into the United States of the citrus canker disease. We wish to emphasize that a U.S. plant pathologist must accompany the Japanese plant pathologist on inspections to ensure compliance with these regulations. These regulations have proven to be effective in preventing citrus canker from entering the United States through the importation of Japanese Unshu oranges. We wish to assure the commenters that APHIS will continue to monitor all phases of Unshu orange production and importation to ensure compliance with our regulations.

The commenters also cited as a concern the possibility of transhipment of Japanese Unshu oranges from the buffer States into commercial citrus producing States. One commenter from California was particularly concerned because there is a large Japanese population in California, which could be an incentive for transhipment of Unshu oranges from Nevada. The same commenter asserted that this rule could increase the possibility that tourists returning to California from Nevada will bring Unshu oranges with them.

This rule will remove Nevada and the other "buffer" States from the list of non-quarantined areas in 7 CFR 301.83. Therefore, it will be illegal to move Unshu oranges grown in Japan from these States into commercial citrus-producing States. Illegal transhipment of prohibited fruit has always been a possibility, and will continue to be one, even though it is a violation of Federal law. Instances of tourists carrying prohibited produce are also difficult to control. However, even if some Unshu oranges were brought into citrus-producing States, the possibility that these oranges would be the source of any citrus canker infection is negligible. First, the oranges would have to be contaminated with citrus canker bacteria. This is extremely unlikely, given the other safeguards required by our regulations, the fact that Japanese Unshu oranges are highly resistant to citrus canker, and the fact that we have never detected citrus canker on any shipments of Unshu oranges from Japan imported into the United States.

In the event, however remote, that an Unshu orange contaminated with citrus canker bacteria should reach a citrus-producing State, these bacteria could establish a new infection only under an unlikely combination of circumstances. First, the bacteria on the skin of the fruit would have to be released without coming into contact with any of the natural juice of the fruit since citrus canker bacteria are quickly killed by contact with the acidic juice. Then, the bacteria would have to settle on young, live twigs or leaves of host plants. Finally, certain conditions of temperature and humidity would have to occur for the bacteria to cause an infection in the host plant. While this combination of circumstances is theoretically possible, there is no evidence that fruit or peel of any citrus variety has ever been the cause of citrus canker infection under field conditions. Therefore, although the quarantine on Unshu oranges is a valuable safeguard against the establishment of citrus canker in the United States, a breach of the domestic quarantine, or the failure of any other single safeguard, is unlikely to result in the spread of citrus canker.

Finally, there was one comment regarding our citation of the regulations in 7 CFR 301.75, which regulate interstate movement of domestic citrus fruit. These regulations prohibit the interstate movement of citrus fruit from an area quarantined because of citrus canker into any commercial citrus-producing area; these regulations do not prohibit the movement of citrus into other areas, including the "buffer" States of Alabama, Georgia, Mississippi, Nevada, New Mexico, North Carolina, and South Carolina. The regulations in § 301.75 have been successful in preventing the dissemination of citrus canker in the United States. We asserted in the proposal that, similarly, allowing Unshu oranges grown in Japan to be moved into or through these "buffer" States should not pose a significant risk of spreading citrus canker. The commenter stated that the comparison was not appropriate because the areas currently listed in § 301.75 as quarantined areas are under an eradication treatment program. He believes that the risk presented by commodities moved under § 301.75 is substantially less than the risk presented by commodities coming from Japan, where there is no eradication program in place.

The success of the domestic quarantine in § 301.75 is by no means the basis for this rule. The basis for this rule is the existence of the safeguards in Japan and the fact that we have never detected citrus canker on any shipments of Unshu oranges from Japan imported into the United States. Our point in mentioning the regulations in § 301.75 was to show that there is no evidence that the absence of buffer States in our domestic regulations has led to the dissemination of citrus canker into non-infested areas of the United States.

Therefore, based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposal as a final rule.

Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**. Immediate implementation of this rule is necessary to provide relief to those persons who are adversely affected by restrictions we no longer find warranted. The safeguards required by our regulations for importation of Unshu oranges from Japan require some preparation, such as printing the tissue paper and boxes in which the oranges are packed with a statement specifying the States into which the Unshu oranges may be imported, and from which they are prohibited removal under a Federal plant quarantine. Making this rule effective immediately will allow interested producers and shippers time to prepare for the fall shipping season. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective upon signature.

Executive Order 12866 and Regulatory Flexibility Act

This final rule has been reviewed under Executive Order 12866.

Currently, Unshu oranges from Japan are only imported into the United States by one large Canadian company. There are no small businesses (defined as

having 100 or fewer employees by the Small Business Administration) in the United States that import Unshu oranges from Japan.

Unshu oranges are a premium product aimed at a luxury market. They are available for only a short time each year (late November into December). Their main competition in the United States is tangerines. In FY 1992, 3 million pounds of Unshu oranges were imported into the United States from Japan. In the 1991–92 growing season, close to 380 million pounds of tangerines were produced in Arizona, California, and Florida. The Unshu orange competes most directly with the domestically grown satsuma tangerine, but the number and size of satsuma producers is not known.

APHIS does not expect importation of Unshu oranges from Japan to increase significantly as a result of this rule change. Unshu oranges have not become very popular in the United States because they are not as sweet as the American counterpart, the satsuma tangerine, and they are more expensive.

Unshu oranges average $15–17 for an 8-pound box, while domestically grown satsuma tangerines average $3–5 per 8-pound box. Consequently, it is not expected that allowing Unshu oranges into seven new States will have a significant economic effect on small domestic growers of the satsuma tangerine.

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 allows Unshu oranges to be imported into additional States in the United States from Japan. State and local laws and regulations regarding Unshu oranges imported under this rule will be preempted while the fruit is in foreign commerce. Fresh Unshu oranges are generally imported for immediate distribution and sale to the consuming public, and will remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. No retroactive effect will be given to this rule; and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects

7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Incorporation by reference, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, 7 CFR parts 301 and 319 are amended as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff; 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

§ 301.83 [Amended]

2. In § 301.83, paragraph (b) is amended by removing "Alabama," "Georgia," "Mississippi, Nevada, New Mexico, North Carolina," and "South Carolina,".

PART 319—FOREIGN QUARANTINE NOTICES

3. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167, 450; 21 U.S.C. 136 and 136a; 7 CFR 2.17, 2.51, and 371.2(c).

§ 319.28 [Amended]

4. In § 319.28, paragraph (a) is amended by removing the words "*Xanthomonas citri* (Hasse) Dowson" and adding "*Xanthomonas campestris* pv. *citri* (Hasse) Dye" in their place.

5. In § 319.28, the introductory text in paragraph (b), and paragraph (b)(6) are amended by removing "Alabama," "Georgia," "Mississippi, Nevada, New Mexico, North Carolina," and "South Carolina,".

Done in Washington, DC, this 16th day of March 1994.

Patricia Jensen,

Acting Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 94–6547 Filed 3–18–94; 8:45 am]

BILLING CODE 3410–34–P

9 CFR Part 94

[Docket No. 92–007–2]

Cooked Meat From Countries Where Rinderpest or Foot-and-Mouth Disease Exists

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are revising the regulations concerning cooked meat intended for importation into the United States from countries where rinderpest or foot-and-mouth disease exists. The regulations require that this meat meet a new standard for "thoroughly cooked," and specify conditions for the cooking process. Further, the regulations establish standards for meat processing establishments in those countries, and require that cooked meat come only from establishments that meet these standards. This action ensures that the meat intended for importation into the United States from a country where rinderpest or foot-and-mouth disease exists has been cooked sufficiently to inactivate any rinderpest or foot-and-mouth disease virus and prevent the introduction of either disease into the United States.

EFFECTIVE DATE: April 20, 1994.

FOR FURTHER INFORMATION CONTACT: Dr. John H. Blackwell, Senior Staff Microbiologist, Import-Export Products Staff, National Center for Import-Export, Veterinary Services, APHIS, USDA, room 756–A, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7834.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 regulate, among other things, the importation into the United States of certain animals, meat, and animal products. These regulations are designed to prevent the introduction into the United States of certain diseases of livestock and poultry. Section 94.4 (referred to below as the regulations) restricts the importation into the United States of cured and cooked meat from countries where rinderpest or foot-and-mouth disease (FMD) exists, in order to prevent the introduction of those diseases into the United States. Cured and cooked meats that meet the conditions stipulated in the regulations are eligible for entry into the United States.

On July 16, 1993, we published in the **Federal Register** (58 FR 38316–38321, Docket No. 92–007–1) a proposal to amend the regulations by requiring that

cooked meat from countries where rinderpest or FMD exists meet a new standard for "thoroughly cooked," and specifying conditions for the cooking process. Further, we proposed standards for meat processing establishments in countries where rinderpest or FMD exists, and proposed to require that cooked meat come only from establishments that meet these standards.

We proposed that meats for which the pink juice is invalid be considered thoroughly cooked when they have been cooked in a specified way, for a specified period, at a specified temperature believed to be capable of inactivating any rinderpest or FMD virus present. For those meats, we proposed to require use of a temperature indicator device (TID), a device inserted into meat before cooking, to ensure that the meat reaches the specified temperature.

We solicited comments concerning our proposal for a 60-day comment period ending September 14, 1993. We received 8 comments by that date. They were from exporters, importers, representatives of professional and industry associations, and a representative of a foreign government. We carefully considered all of the comments we received. While all generally supported our proposal, some suggested modifications. Those suggestions are discussed below, by topic.

Temperature Indicator Device (§ 94.0)

One commenter suggested that we explicitly require that temperature indicator devices (TID's) be calibrated or certified in accordance with USDA standards, to verify their accuracy and reliability. We agree that we must verify the accuracy of TID's before use, and defined the TID as "precalibrated" for that reason. To clarify this point, we have revised the definition of Temperature Indicator Device to state that the Administrator will approve a TID for use only after determining that the chemical compound contained in the device is activated at the specific temperature required.

Ground Meat Cooked in an Oven (§ 94.4(b)(4))

Two commenters objected to the specificity of the proposed provisions for ground meat cooked in an oven, and recommended that § 94.4(b)(4) allow for variations in temperature or patty size if such variations result in the inactivation of the rinderpest or FMD virus. These commenters encouraged us to consider alteratives to the "combination of precisely defined conditions" set forth in the proposed rule. We agree that variations in the cooking process may prove effective in inactivating the rinderpest or FMD virus. However, data proving the validity of that assumption are not currently available. Should such data become available in the future, we would propose to revise the regulations accordingly. However, there is no basis for change as a result of the comments at this time.

Two commenters asked for a clarification of the meaning of "batch." We agree that the "batch" reference in proposed § 94.4(b)(4) was confusing, and have revised the last sentence in that paragraph to delete the reference to batch.

Meat Cooked in Plastic (§ 94.4(b)(5))

One commenter questioned the need for the requirement that meat cooked in plastic have a starting temperature of 25 °C or below. We have determined that cooking meat as specified in § 94.4(b)(5), for at least 1.75 hours to an internal temperature of 79.4 °C at the cold spot, will inactivate rinderpest or FMD virus, regardless of the starting temperature. Therefore, we are removing the minimum starting temperature requirement.

Two commenters questioned the requirement that meat cooked in plastic weigh no more than 5 kilograms and no less than 2.5 kilograms. One requested clarification; the other suggested that we specify neither minimum nor maximum weight allowances, arguing that weight is irrelevant if proper procedures are followed. Although it is possible that future testing will demonstrate the irrelevance of the weight of the meat in a flexible plastic cooking tube, we have no data on the efficacy of the cooking process when the weight of the meat in the tube exceeds 5 kilograms. However, we have determined that this cooking process is efficacious whenever the meat in the tube does not exceed 5 kilograms, so that the minimum weight allowance is unnecessary. Therefore, we are removing the requirement that meat cooked in plastic weigh no less than 2.5 kilograms.

One commenter stated that when the cooking process is being verified with TID's, cooking in boiling water need not be the only alternative to cooking in a steam-fed oven for at least 1.75 hours. While it is possible that future research may prove other methods to be acceptable, the Animal and Plant Health Inspection Service has no data supporting that position at this time. Therefore, we are making no change to the rule in response to this comment.

One commenter asked that we reiterate that the use of the TID is not required for meats (other than ground meat) when: (1) An indicator piece is placed as prescribed in § 94.4 paragraph (b)(5) (i), (ii), or (iii); or (2) at least 50 percent of the meat cubes or slices meet the minimum dimensions specified in § 94.4 paragraph (b)(5) (i) or (ii). This is correct.

Three commenters objected to the requirement that meat must be "loaded and sealed into a flexible nylon cooking tube," in accordance with § 94.4(b)(5). All three pointed out that meat is not literally "sealed" into the cooking tube. They also noted that "nylon" is not the only flexible plastic film commonly used for cooking tubes, and recommended that we replace the term "nylon" with "plastic." We agree on both counts, and have revised the rule to require that the meat be "loaded into a flexible cooking tube constructed of plastic film or other material approved by the Food Safety and Inspection Service, U.S. Department of Agriculture."

Inspection; Quality Control (§ 94.4(b)(6))

One commenter requested that we establish a procedure for subdividing shipment lots during the inspection process, so that if any cooked meat fails the pink juice test, only that part of the lot identified by the same production code date would be rejected as a result of that failure. Our regulations do not specify lot size. If an importer identifies lots on the basis of individual production code dates, the inspection of those lots will accord with production code dates. We are, therefore, making no change as a result of this comment.

Another commenter recommended that we develop a standardized certification statement for use on foreign health certificates accompanying the cooked meat. We are revising § 94.4(b)(6) to require that the certificate issued by an official of the National Government of the exporting country state: "This cooked meat produced for export to the United States meets the requirements of title 9, Code of Federal Regulations, § 94.4(b)."

Several commenters asked whether the TID's gauging the temperature of each batch of cooked meat would have to accompany that meat to the United States and, if so, whether they should remain in the meat, as originally inserted. We have added a new paragraph 94.4(b)(6) to make clear that each TID used in accordance with § 94.4 (b)(4) or (b)(5) must remain in the meat, as originally inserted, and must accompany the batch of cooked meat whose temperature it has gauged when

that meat is shipped to the United States.

Thermal Processing Equipment (§ 94.4(c)(2)(i))

One commenter objected to the proposed requirement that facilities used for processing cooked meat and facilities used for processing raw meat be connected only by the terminal end of the oven through which the meat product is delivered at the end of the cooking cycle. The commenter noted that such a requirement assumes that the continuous belt oven is the only thermal processing oven system with the capacity to inactivate the rinderpest or FMD virus, ignoring other through-the-wall cooking systems, such as the water-tunnel locked system. We regret our oversight, and are changing the requirement to provide that the facilities for processing cooked meat and the facilities for processing raw meat be connected by a through-the-wall cooking system.

Miscellaneous

One commenter questioned the need for port-of-entry inspection of cooked meat that has been processed in accordance with the regulations, under the supervision of a full-time salaried meat inspection official of the national government of the country of origin, and, therefore, been issued a certificate in accordance with § 94.4(b)(7) (designated as § 94.4(b)(6) in the proposed rule). The port-of-entry inspection that is conducted in accordance with newly redesignated § 94.4(b)(8) serves as insurance that the shipments meet all requirements of the regulations. Therefore, we are making no change in response to this comment.

In the proposed rule, we specified that slices of meat (including slices of anatomical cuts of meat) must be a minimum of 3.8 centimeters in two directions. We have become aware of confusion about the size of the third direction, and have therefore revised the wording of § 94.4 paragraphs (b)(5) (ii) and (iii) to clarify that a slice of meat must be at least as broad and long as it is thick. Therefore, we are specifying that a slice be a minimum of 3.8 centimeters in each direction.

Therefore, based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposal as a final rule, with the changes discussed in this document.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been determined to be not significant for purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget.

Since most of the meat processing establishments expressing interest in exporting cooked ground meat already have the capacity to meet U.S. requirements, the regulations are unlikely to increase the cost burden on foreign exporters or, indirectly, on U.S. importers. The only additional costs that the operators of the meat processing establishments will incur will be those covering the expenses for an APHIS representative to inspect the establishment at approximately 2-year intervals. Approximately $4,000 is the amount expected to cover the cost of one inspection by an APHIS veterinarian, including travel, salary, subsistence, administrative overhead, and other incidental expenses. Compared to the potential value of exports and new business, the effect of this additional cost will be minimal.

In recent years, moderate amounts of processed meat, particularly various cuts of cooked beef, have been imported into the United States from countries where rinderpest or FMD exists. In 1990, approximately 45 million pounds of cooked beef were imported from three such countries (Argentina, Brazil, and Uruguay). During the same period, approximately 621 million pounds of cooked beef and 631 million pounds of cooked ground meat were produced in the United States.

Because of the inapplicability of the pink juice test to certain meat products, there are currently no commercial importations into the United States of cooked ground meat from countries where rinderpest or FMD exists. However, several importers have advised us of their intent to import cooked ground beef after the effective date of this rule. One of these importers is considered a small entity. This importer anticipates a steady but small volume of shipments of cooked ground beef from countries where rinderpest or FMD exists.

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 final rule will be submitted for approval to the Office of Management and Budget.

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 94 is amended as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), VELOGENIC VISCEROTROPIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 continues to read as follows:

Authority: 7 U.S.C. 147a, 150ee, 161, 162, 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331, 4332; 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 94.0, the following definitions are added, in alphabetical order, and the definition of *Thoroughly cooked* is revised, to read as follows:

§ 94.0 Definitions.

* * * * *

Cold spot. The area in a flexible plastic cooking tube or other type of container loaded with meat product, or the areas at various points along the belt in an oven chamber, slowest to reach the required temperature during the cooking process. The cold spot(s) for each container is experimentally determined before the cooking process begins, and once identified, remains constant.

* * * * *

Indicator piece. A cube or slice of meat to be used for the pink juice test, required to meet minimum size specifications.

* * * * *

Temperature indicator device (TID). A precalibrated temperature-measuring instrument containing a chemical compound activated at a specific temperature (the melting point of the chemical compound) identical to the processing temperature that must be reached by the meat being cooked. The

Administrator will approve a TID for use after determining that the chemical compound in the device is activated at the specific temperature required.

Thoroughly cooked. Heated sufficiently to inactivate any pathogen that may be present, as indicated by the required TID or pink juice test.

* * * * *

§ 94.1 [Amended]

3. In § 94.1, paragraph (c)(1) is amended by removing "maat" and adding "meat" in its place.

4. In § 94.4, footnote 1 is removed; paragraphs (b) introductory text, (b)(1), and (b)(2) are revised; paragraph (b)(3) is redesignated as paragraph (b)(8); footnotes 2 and 3 are redesignated as footnotes 1 and 2; a new paragraph (b)(3) is added; paragraph (b)(4) is revised; paragraphs (b)(5), (b)(6), and (b)(7) are added; and paragraph (c) is added, to read as follows:

§ 94.4 Cured or cooked meat from countries where rinderpest or foot-and-mouth disease exists.

* * * * *

(b) The importation of cooked meat from ruminants or swine originating in any country where rinderpest or foot-and-mouth disease exists, as designated in § 94.1, is prohibited, except as provided in this section.

(1) The cooked meat must be boneless and must be thoroughly cooked.

(2) The cooked meat must have been prepared in an establishment that is eligible to have its products imported into the United States under the Federal Meat Inspection Act (21 U.S.C. 610 *et seq.*) and the regulations in 9 CFR 327.2; must meet all other applicable requirements of the Federal Meat Inspection Act and regulations thereunder (9 CFR Chapter III); and must have been approved by the Administrator in accordance with paragraph (c) of this section.

(3) Canned product (canned meat), as defined in § 318.300(d) of this chapter, is exempt from the requirements in this section.

(4) *Ground meat cooked in an oven.* Ground meat must be shaped into patties no larger than 5 inches in diameter and 1-inch thick. Each patty must weigh no more than 115 grams, with fat content no greater than 30 percent. These patties must be broiled at 210 °C for at least 133 seconds, then cooked in moist heat (steam heat) in a continuous, belt-fed oven for not less than 20 minutes, to yield an internal exit temperature of at least 99.7 °C, as measured by temperature indicator devices (TID's) placed in temperature monitor patties positioned, before the belt starts moving through the oven, on each of the predetermined cold spots along the oven belt. TID's must be used at the beginning of each processing run.

(5) *Meat cooked in plastic.* The ground meat, cubes of meat, slices of meat, or anatomical cuts of meat (cuts taken from the skeletal muscle tissue) must weigh no more than 5 kilograms, and must be loaded into a flexible cooking tube constructed of plastic film or other material approved by the Food Safety and Inspection Service, U.S. Department of Agriculture. The meat must be cooked in boiling water or in a steam-fed oven to reach a minimum internal temperature of 79.4 °C at the cold spot after cooking for at least 1.75 hours. Thoroughness of cooking must be determined by the TID registering at least 79.4 °C at the cold spot, or by the pink juice test, as follows:

(i) *Cubes of meat.* At least 50 percent of meat pieces per tube must be 3.8 centimeters or larger in each dimension after cooking or, if more than 50 percent of meat pieces per tube are smaller than 3.8 centimeters in any dimension after cooking and no TID is being used, an indicator piece of sufficient size for a pink juice test to be performed (3.8 centimeters or larger in each dimension after cooking) must have been placed at the cold spot of the tube.

(ii) *Slices of meat.* At least 50 percent of the slices of meat must be 3.8 centimeters or larger in each dimension after cooking or, if more than 50 percent of meat pieces are smaller than 3.8 centimeters in any dimension after cooking, and no TID is being used, an indicator piece of sufficient size for a pink juice test to be performed (3.8 centimeters or larger in each dimension after cooking) must be placed at the cold spot of the tube.

(iii) *Anatomical cuts of meat.* An indicator piece removed from an anatomical cut of meat after cooking must be removed from the center of the cut, farthest from all exterior points and be 3.8 centimeters or larger in each dimension for performance of the pink juice test.

(6) Any TID used in accordance with § 94.4 (b)(4) or (b)(5) must remain in the meat, as originally inserted, and must accompany the cooked meat whose temperature it has gauged when that meat is shipped to the United States.

(7) The cooked meat must be accompanied by a certificate issued by an official of the national government of the country of origin, who is authorized to issue the foreign meat inspection certificate required by § 317.4 of this title, stating: "This cooked meat produced for export to the United States meets the requirements of title 9, Code of Federal Regulations, § 94.4(b)." Upon arrival of the cooked meat in the United States, the certificate must be presented to an authorized inspector at the port of arrival.

* * * * *

(c) *Meat processing establishment; standards.* (1) Before the Administrator will approve a meat processing establishment for export shipment of cooked meat to the United States, the Administrator must determine:

(i) That the meat processing establishment has furnished APHIS with a description of the process used to inactivate rinderpest or FMD virus that may be present in meat intended for export to the United States, and with blueprints of the facilities where this meat is cooked and packaged;

(ii) That an APHIS representative has inspected the establishment and found that it meets the standards set forth in paragraph (c)(2) of this section;

(iii) That the operator of the establishment has signed a cooperative service agreement with APHIS, stating: (A) That all cooked meat processed for importation into the United States will be processed in accordance with the requirements of this part; (B) that a full-time, salaried meat inspection official of the National Government of the exporting country will supervise the processing (including certification of the cold spot) and examination of the product, and certify that it has been processed in accordance with this section; and (C) that APHIS personnel or other persons authorized by the Administrator may enter the establishment, unannounced, to inspect the establishment and its records; and

(iv) That the operator of the establishment has entered into a trust fund agreement with APHIS and is current in paying all costs for an APHIS representative to inspect the establishment for initial evaluation, and periodically thereafter, including travel, salary, subsistence, administrative overhead, and other incidental expenses (including an excess baggage provision up to 150 pounds). In accordance with the terms of the trust fund agreement, before the APHIS representative's site inspection, the operator of the processing establishment must deposit with the Administrator an amount equal to the approximate cost of one inspection by an APHIS representative, including travel, salary, subsistence, administrative overhead, and other incidental expenses (including an excess baggage provision up to 150 pounds). As funds from that amount are obligated, a bill for costs incurred based on official accounting records will be

issued, to restore the deposit to the original level, revised as necessary to allow for inflation or other changes in estimated costs. To be current, bills must be paid within 14 days of receipt.

(2) *Establishment.* An APHIS representative will conduct an on-site evaluation, and subsequent inspections, as provided in § 94.4(c)(1), to determine whether the following conditions are met:

(i) The facilities used for processing cooked meat in the meat processing establishment are separate from the facilities used for processing raw meat (precooking, boning, preparation, and curing), with only the through-the-wall cooking system through which the meat product is delivered at the end of the cooking cycle connecting them; and there is at all times a positive air flow from the cooked to the raw product side;

(ii) The cooking equipment has the capacity to cook all meat pieces in accordance with § 94.4 (b)(4) or (b)(5);

(iii) Workers who process cooked meat are at all times kept separate from workers who process raw meat, and have, for their exclusive use: A separate entrance, dining area, toilets, lavatories with cold and hot water, soap, disinfectants, paper towels, clothes hampers and waste baskets for disposal, and changing rooms stocked with the clean clothing and rubber boots into which all persons must change upon entering the establishment. Workers and all other persons entering the establishment must wash their hands and change into the clean clothing and boots provided in the changing rooms before entering the cooking facilities, and must leave this clothing for laundering and disinfecting before exiting from the establishment, regardless of the amount of time spent inside or away from the establishment;

(iv) Original records identifying the slaughtering facility from which the meat was obtained and the date the meat entered the meat processing establishment, and original certification (including temperature recording charts and graphs), must be kept for all cooked meat by the full-time salaried meat inspection official of the National Government of the exporting country assigned to the establishment, and must be retained for 2 years.

Done in Washington, DC, this 15th day of March 1994.

Patricia Jensen,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 94–6548 Filed 3–18–94; 8:45 am]

BILLING CODE 3410–34–P

FARM CREDIT ADMINISTRATION

12 CFR Part 608

RIN 3052–AB02

Collection of Claims Owed the United States

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration (FCA), by the Farm Credit Administration Board, adopts final regulations implementing the Debt Collection Act of 1982. This action provides procedures for the FCA to administer claims owed to the United States arising from activities under FCA jurisdiction. The FCA is required by law to issue these regulations.

EFFECTIVE DATE: These regulations shall become effective on the expiration of 30 days after this publication during which either or both Houses of Congress are in session. Notice of the effective date will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT:

John J. Hays, Policy Analyst, Regulation Development, Office of Examination, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498, TDD (703) 883–4444, or

Philip J. Shebest, Senior Attorney, Administrative Law and Enforcement Division, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION: These regulations implement the Federal Claims Collection Act of 1966, as amended by the Debt Collection Act of 1982 (Pub. L. 97–365, 96 Stat. 1749) (31 U.S.C. 3701–3719 and 5 U.S.C. 5514). In addition, these regulations supplement the regulations published jointly by the General Accounting Office and the Department of Justice (4 CFR parts 101–105).

The proposed regulations were published on October 29, 1993, 58 FR 58137. The FCA received no public comment. In addition, the Office of Personnel Management, on January 21, 1994, approved the proposed regulations for publication as final regulations in accordance with section 8(1) of Executive Order 11609, as redesignated by Executive Order 12107, and 5 CFR 550.1105. As a result, the proposed regulations are being adopted as final without changing the regulatory text.

List of Subjects in 12 CFR Part 608

Government, Claims, Collection.

For the reasons stated in the preamble, part 608 of chapter VI, title 12 of the Code of Federal Regulations is added to subchapter A to read as follows:

PART 608—COLLECTION OF CLAIMS OWED THE UNITED STATES

Subpart A—Administrative Collection of Claims

Sec.
608.801 Authority.
608.802 Applicability.
608.803 Definitions.
608.804 Delegation of authority.
608.805 Responsibility for collection.
608.806 Demand for payment.
608.807 Right to inspect and copy records.
608.808 Right to offer to repay claim.
608.809 Right to agency review.
608.810 Review procedures.
608.811 Special review.
608.812 Charges for interest, administrative costs, and penalties.
608.813 Contracting for collection services.
608.814 Reporting of credit information.
608.815 Credit report.

Subpart B—Administrative Offset

608.820 Applicability.
608.821 Collection by offset.
608.822 Notice requirements before offset.
608.823 Right to review of claim.
608.824 Waiver of procedural requirements.
608.825 Coordinating offset with other Federal agencies.
608.826 Stay of offset.
608.827 Offset against amounts payable from Civil Service Retirement and Disability Fund.

Subpart C—Offset Against Salary

608.835 Purpose.
608.836 Applicability of regulations.
608.837 Definitions.
608.838 Waiver requests and claims to the General Accounting Office.
608.839 Procedures for salary offset.
608.840 Refunds.
608.841 Requesting current paying agency to offset salary.
608.842 Responsibility of the FCA as the paying agency.
608.843 Nonwaiver of rights by payments.

Authority: Sec. 5.17 of the Farm Credit Act; 12 U.S.C. 2252; 31 U.S.C. 3701–3719; 5 U.S.C. 5514; 4 CFR parts 101–105; 5 CFR part 550.

Subpart A—Administrative Collection of Claims

§ 608.801 Authority.

The regulations of this part are issued under the Federal Claims Collection Act of 1966, as amended by the Debt Collection Act of 1982, 31 U.S.C. 3701–3719 and 5 U.S.C. 5514, and in conformity with the joint regulations issued under that Act by the General Accounting Office and the Department of Justice (joint regulations) prescribing standards for administrative collection, compromise, suspension, and termination of agency collection actions,

and referral to the General Accounting Office and to the Department of Justice for litigation of civil claims for money or property owed to the United States (4 CFR parts 101–105).

§ 608.802 Applicability.

This part applies to all claims of indebtedness due and owing to the United States and collectible under procedures authorized by the Federal Claims Collection Act of 1966, as amended by the Debt Collection Act of 1982. The joint regulations and this part do not apply to conduct in violation of antitrust laws, tax claims, claims between Federal agencies, or to any claim which appears to involve fraud, presentation of a false claim, or misrepresentation on the part of the debtor or any other party having an interest in the claim, unless the Justice Department authorizes the Farm Credit Administration, pursuant to 4 CFR 101.3, to handle the claim in accordance with the provisions of 4 CFR parts 101–105. Additionally, this part does not apply to Farm Credit Administration assessments under part 607 of this chapter.

§ 608.803 Definitions.

In this part (except where the term is defined elsewhere in this part), the following definitions shall apply:

(a) *Administrative offset* or *offset*, as defined in 31 U.S.C. 3701(a)(1), means withholding money payable by the United States Government to, or held by the Government for, a person to satisfy a debt the person owes the Government.

(b) *Agency* means a department, agency, or instrumentality in the executive or legislative branch of the Government.

(c) *Claim* or *debt* means money or property owed by a person or entity to an agency of the Federal Government. A "claim" or "debt" includes amounts due the Government from loans insured by or guaranteed by the United States and all other amounts due from fees, leases, rents, royalties, services, sales of real or personal property, overpayment, penalties, damages, interest, and fines.

(d) *Claim certification* means a creditor agency's written request to a paying agency to effect an administrative offset.

(e) *Creditor agency* means an agency to which a claim or debt is owed.

(f) *Debtor* means the person or entity owing money to the Federal Government.

(g) *FCA* means the Farm Credit Administration.

(h) *Hearing official* means an individual who is responsible for reviewing a claim under § 608.810 of this part.

(i) *Paying agency* means an agency of the Federal Government owing money to a debtor against which an administrative or salary offset can be effected.

(j) *Salary offset* means an administrative offset to collect a debt under 5 U.S.C. 5514 by deductions at one or more officially established pay intervals from the current pay account of a debtor

§ 608.804 Delegation of authority.

The FCA official(s) designated by the Chairman of the Farm Credit Administration are authorized to perform all duties which the Chairman is authorized to perform under these regulations, the Federal Claims Collection Act of 1966, as amended, and the joint regulations issued under that Act.

§ 608.805 Responsibility for collection.

(a) The collection of claims shall be aggressively pursued in accordance with the provisions of the Federal Claims Collection Act of 1966, as amended, the joint regulations issued under that Act, and these regulations. Debts owed to the United States, together with charges for interest, penalties, and administrative costs, should be collected in one lump sum unless otherwise provided by law. If a debtor requests installment payments, the debtor, as requested by the FCA, shall provide sufficient information to demonstrate that the debtor is unable to pay the debt in one lump sum. When appropriate, the FCA shall arrange an installment payment schedule. Claims which cannot be collected directly or by administrative offset shall be either written off as administratively uncollectible or referred to the General Counsel for further consideration.

(b) The Chairman, or designee of the Chairman, may compromise claims for money or property arising out of the activities of the FCA, where the claim (exclusive of charges for interest, penalties, and administrative costs) does not exceed $100,000. When the claim exceeds $100,000 (exclusive of charges for interest, penalties, and administrative costs), the authority to accept a compromise rests solely with the Department of Justice. The standards governing the compromise of claims are set forth in 4 CFR part 103.

(c) The Chairman, or designee of the Chairman, may suspend or terminate the collection of claims which do not exceed $100,000 (exclusive of charges for interest, penalties, and administrative costs) after deducting the amount of any partial payments or collections. If, after deducting the amount of any partial payments or collections, a claim exceeds $100,000 (exclusive of charges for interest, penalties, and administrative costs), the authority to suspend or terminate rests solely with the Department of Justice. The standards governing the suspension or termination of claim collections are set forth in 4 CFR part 104.

(d) The FCA shall refer claims to the Department of Justice for litigation or to the General Accounting Office (GAO) for claims arising from audit exceptions taken by the GAO to payments made by the FCA in accordance with 4 CFR part 105.

§ 608.806 Demand for payment.

(a) A total of three progressively stronger written demands at not more than 30-day intervals should normally be made upon a debtor, unless a response or other information indicates that additional written demands would either be unnecessary or futile. When necessary to protect the Government's interest, written demands may be preceded by other appropriate actions under Federal law, including immediate referral for litigation and/or administrative offset.

(b) The initial demand for payment shall be in writing and shall inform the debtor of the following:

(1) The amount of the debt, the date it was incurred, and the facts upon which the determination of indebtedness was made;

(2) The payment due date, which shall be 30 calendar days from the date of mailing or hand delivery of the initial demand for payment;

(3) The right of the debtor to inspect and copy the records of the agency related to the claim or to receive copies if personal inspection is impractical. The debtor shall be informed that the debtor may be assessed for the cost of copying the documents in accordance with § 608.807;

(4) The right of the debtor to obtain a review of the FCA's determination of indebtedness;

(5) The right of the debtor to offer to enter into a written agreement with the agency to repay the amount of the claim. The debtor shall be informed that the acceptance of such an agreement is discretionary with the agency;

(6) That charges for interest, penalties, and administrative costs will be assessed against the debtor, in accordance with 31 U.S.C. 3717, if payment is not received by the payment due date;

(7) That if the debtor has not entered into an agreement with the FCA to pay

the debt, has not requested the FCA to review the debt, or has not paid the debt by the payment due date, the FCA intends to collect the debt by all legally available means, which may include initiating legal action against the debtor, referring the debt to a collection agency for collection, collecting the debt by offset, or asking other Federal agencies for assistance in collecting the debt by offset;

(8) The name and address of the FCA official to whom the debtor shall send all correspondence relating to the debt; and

(9) Other information, as may be appropriate.

(c) If, prior to, during, or after completion of the demand cycle, the FCA determines to collect the debt by either administrative or salary offset, the FCA shall follow, as applicable, the requirements for a Notice of Intent to Collect by Administrative Offset or a Notice of Intent to Collect by Salary Offset set forth in § 608.822.

(d) If no response to the initial demand for payment is received by the payment due date, the FCA shall take further action under this part, under the Federal Claims Collection Act of 1966, as amended, under the joint regulations (4 CFR parts 101–105), or under any other applicable State or Federal law. These actions may include reports to credit bureaus, referrals to collection agencies, termination of contracts, debarment, and salary or administrative offset.

§ 608.807 Right to inspect and copy records.

The debtor may inspect and copy the FCA records related to the claim. The debtor shall give the FCA reasonable advance notice that it intends to inspect and copy the records involved. The debtor shall pay copying costs unless they are waived by the FCA. Copying costs shall be assessed pursuant to § 602.267 of this chapter.

§ 608.808 Right to offer to repay claim.

(a) The debtor may offer to enter into a written agreement with the FCA to repay the amount of the claim. The acceptance of such an offer and the decision to enter into such a written agreement is at the discretion of the FCA.

(b) If the debtor requests a repayment arrangement because payment of the amount due would create a financial hardship, the FCA shall analyze the debtor's financial condition. The FCA may enter into a written agreement with the debtor permitting the debtor to repay the debt in installments if the FCA determines, in its sole discretion, that payment of the amount due would create an undue financial hardship for the debtor. The written agreement shall set forth the amount and frequency of installment payments and shall, in accordance with § 608.812, provide for the imposition of charges for interest, penalties, and administrative costs unless waived by the FCA.

(c) The written agreement may require the debtor to execute a confess-judgment note when the total amount of the deferred installments will exceed $750. The FCA shall provide the debtor with a written explanation of the consequences of signing a confess-judgment note. The debtor shall sign a statement acknowledging receipt of the written explanation. The statement shall recite that the written explanation was read and understood before execution of the note and that the debtor signed the note knowingly and voluntarily. Documentation of these procedures will be maintained in the FCA's file on the debtor.

§ 608.809 Right to agency review.

(a) If the debtor disputes the claim, the debtor may request a review of the FCA's determination of the existence of the debt or of the amount of the debt. If only part of the claim is disputed, the undisputed portion should be paid by the payment due date.

(b) To obtain a review, the debtor shall submit a written request for review to the FCA official named in the initial demand letter, within 15 calendar days after receipt of the letter. The debtor's request for review shall state the basis on which the claim is disputed.

(c) The FCA shall promptly notify the debtor, in writing, that the FCA has received the request for review. The FCA shall conduct its review of the claim in accordance with § 608.810.

(d) Upon completion of its review of the claim, the FCA shall notify the debtor whether the FCA's determination of the existence or amount of the debt has been sustained, amended, or canceled. The notification shall include a copy of the written decision issued by the hearing official pursuant to § 608.810(e). If the FCA's determination is sustained, this notification shall contain a provision which states that the FCA intends to collect the debt by all legally available means, which may include initiating legal action against the debtor, referring the debt to a collection agency for collection, collecting the debt by offset, or asking other Federal agencies for assistance in collecting the debt by offset.

§ 608.810 Review procedures.

(a) Unless an oral hearing is required by § 608.823(d), the FCA's review shall be a review of the written record of the claim.

(b) If an oral hearing is required under § 608.823(d), the FCA shall provide the debtor with a reasonable opportunity for such a hearing. The oral hearing, however, shall not be an adversarial adjudication and need not take the form of a formal evidentiary hearing. All significant matters discussed at the hearing, however, will be carefully documented.

(c) Any review required by this part, whether a review of the written record or an oral hearing, shall be conducted by a hearing official. In the case of a salary offset, the hearing official shall not be under the supervision or control of the Chairman of the Farm Credit Administration.

(d) The FCA may be represented by legal counsel. The debtor may represent himself or herself or may be represented by an individual of the debtor's choice and at the debtor's expense.

(e) The hearing official shall issue a final written decision based on documentary evidence and, if applicable, information developed at an oral hearing. The written decision shall be issued as soon as practicable after the review but not later than 60 days after the date on which the request for review was received by the FCA, unless the debtor requests a delay in the proceedings. A delay in the proceedings shall be granted if the hearing official determines, in his or her sole discretion, that there is good cause to grant the delay. If a delay is granted, the 60-day decision period shall be extended by the number of days by which the review was postponed.

(f) Upon issuance of the written opinion, the FCA shall promptly notify the debtor of the hearing official's decision. Said notification shall include a copy of the written decision issued by the hearing official pursuant to paragraph (e) of this section.

§ 608.811 Special review.

(a) An employee subject to salary offset, under subpart C of this part, or a voluntary repayment agreement, may, at any time, request a special review by the FCA of the amount of the salary offset or voluntary repayment, based on materially changed circumstances such as, but not limited to, catastrophic illness, divorce, death, or disability.

(b) To determine whether an offset would prevent the employee from meeting essential subsistence expenses (costs incurred for food, housing, clothing, transportation, and medical

care), the employee shall submit a detailed statement and supporting documents for the employee, his or her spouse, and dependents indicating:

(1) Income from all sources;

(2) Assets;

(3) Liabilities;

(4) Number of dependents;

(5) Expenses for food, housing, clothing, and transportation;

(6) Medical expenses; and

(7) Exceptional expenses, if any.

(c) If the employee requests a special review under this section, the employee shall file an alternative proposed offset or payment schedule and a statement, with supporting documents, showing why the current salary offset or payments result in an extreme financial hardship to the employee.

(d) The FCA shall evaluate the statement and supporting documents, and determine whether the original offset or repayment schedule imposes an undue financial hardship on the employee. The FCA shall notify the employee in writing of such determination, including, if appropriate, a revised offset or payment schedule.

§ 608.812 Charges for interest, administrative costs, and penalties.

(a) Except as provided in paragraph (d) of this section, the FCA shall:

(1) Assess interest on unpaid claims;

(2) Assess administrative costs incurred in processing and handling overdue claims; and

(3) Assess penalty charges not to exceed 6 percent a year on any part of a debt more than 90 days past due. The imposition of charges for interest, administrative costs, and penalties shall be made in accordance with 31 U.S.C. 3717.

(b)(1) Interest shall accrue from the date of mailing or hand delivery of the initial demand for payment or the Notice of Intent to Collect by either Administrative or Salary Offset if the amount of the claim is not paid within 30 days from the date of mailing or hand delivery of the initial demand or notice.

(2) The 30-day period may be extended on a case-by-case basis if the FCA reasonably determines that such action is appropriate. Interest shall only accrue on the principal of the claim and the interest rate shall remain fixed for the duration of the indebtedness, except, as provided in paragraph (c) of this section, in cases where a debtor has defaulted on a repayment agreement and seeks to enter into a new agreement, or if the FCA reasonably determines that a higher rate is necessary to protect the interests of the United States.

(c) If a debtor defaults on a repayment agreement and seeks to enter into a new agreement, the FCA may assess a new interest rate on the unpaid claim. In addition, charges for interest, administrative costs, and penalties which accrued but were not collected under the original repayment agreement shall be added to the principal of the claim to be paid under the new repayment agreement. Interest shall accrue on the entire principal balance of the claim, as adjusted to reflect any increase resulting from the addition of these charges.

(d) The FCA may waive charges for interest, administrative costs, and/or penalties if it determines that:

(1) The debtor is unable to pay any significant sum toward the claim within a reasonable period of time;

(2) Collection of charges for interest, administrative costs, and/or penalties would jeopardize collection of the principal of the claim;

(3) Collection of charges for interest, administrative costs, or penalties would be against equity and good conscience; or

(4) It is otherwise in the best interest of the United States, including the situation where an installment payment agreement or offset is in effect.

§ 608.813 Contracting for collection services.

The Chairman, or designee of the Chairman, may contract for collection services in accordance with 31 U.S.C. 3718 and 4 CFR 102.6 to recover debts.

§ 608.814 Reporting of credit information.

The Chairman, or designee of the Chairman, may disclose to a consumer reporting agency information that an individual is responsible for a debt owed to the United States. Information will be disclosed to reporting agencies in accordance with the terms and conditions of agreements entered into between the FCA and the reporting agencies. The terms and conditions of such agreements shall specify that all of the rights and protection afforded to the debtor under 31 U.S.C. 3711(f) have been fulfilled. The FCA shall notify each consumer reporting agency, to which a claim was disclosed, when the debt has been satisfied.

§ 608.815 Credit report.

In order to aid the FCA in making appropriate determinations regarding the collection and compromise of claims; the collection of charges for interest, administrative costs, and penalties; the use of administrative offset; the use of other collection methods; and the likelihood of collecting the claim, the FCA may institute, consistent with the provisions of the Fair Credit Reporting Act (15 U.S.C. 1681, *et seq.*), a credit investigation of the debtor immediately following a determination that the claim exists.

Subpart B—Administrative Offset

§ 608.820 Applicability.

(a) The provisions of this subpart shall apply to the collection of debts by administrative [or salary] offset under 31 U.S.C. 3716, 5 U.S.C. 5514, or other statutory or common law.

(b) Offset shall not be used to collect a debt more than 10 years after the Government's right to collect the debt first accrued, unless facts material to the Government's right to collect the debt were not known and could not reasonably have been known by the official or officials of the Government who were charged with the responsibility of discovering and collecting such debt.

(c) Offset shall not be used with respect to:

(1) Debts owed by other agencies of the United States or by any State or local government;

(2) Debts arising under or payments made under the Social Security Act, the Internal Revenue Code of 1986, as amended, or tariff laws of the United States; or

(3) Any case in which collection by offset of the type of debt involved is explicitly provided for or prohibited by another statute.

(d) Unless otherwise provided by contract or law, debts or payments which are not subject to offset under 31 U.S.C. 3716 or 5 U.S.C. 5514 may be collected by offset if such collection is authorized under common law or other applicable statutory authority.

§ 608.821 Collection by offset.

(a) Collection of a debt by administrative [or salary] offset shall be accomplished in accordance with the provisions of these regulations, of 4 CFR 102.3, and 5 CFR part 550, subpart K. It is not necessary for the debt to be reduced to judgment or to be undisputed for offset to be used.

(b) The Chairman, or designee of the Chairman, may determine that it is feasible to collect a debt to the United States by offset against funds payable to the debtor.

(c) The feasibility of collecting a debt by offset will be determined on a case-by-case basis. This determination shall be made by considering all relevant factors, including the following:

(1) The degree to which the offset can be accomplished in accordance with law. This determination should take

into consideration relevant statutory, regulatory, and contractual requirements;

(2) The degree to which the FCA is certain that its determination of the existence and amount of the debt is correct;

(3) The practicality of collecting the debt by offset. The cost, in time and money, of collecting the debt by offset and the amount of money which can reasonably be expected to be recovered through offset will be relevant to this determination; and

(4) Whether the use of offset will substantially interfere with or defeat the purpose of a program authorizing payments against which the offset is contemplated. For example, under a grant program in which payments are made in advance of the grantee's performance, the imposition of offset against such a payment may be inappropriate.

(d) The collection of a debt by offset may not be feasible when there are circumstances which would indicate that the likelihood of collection by offset is less than probable.

(e) The offset will be effected 31 days after the debtor receives a Notice of Intent to Collect by Administrative Offset (or Notice of Intent to Collect by Salary Offset if the offset is a salary offset), or upon the expiration of a stay of offset, unless the FCA determines under § 608.824 that immediate action is necessary.

(f) If the debtor owes more than one debt, amounts recovered through offset may be applied to them in any order. Applicable statutes of limitation would be considered before applying the amounts recovered to any debts owed.

§ 608.822 Notice requirements before offset.

(a) Except as provided in § 608.824, the FCA will provide the debtor with 30 calendar days' written notice that unpaid debt amounts shall be collected by administrative [or salary] offset (Notice of Intent to Collect by Administrative [or Salary] Offset) before the FCA imposes offset against any money that is to be paid to the debtor.

(b) The Notice of Intent to Collect by Administrative [or Salary] Offset shall be delivered to the debtor by hand or by mail and shall provide the following information:

(1) The amount of the debt, the date it was incurred, and the facts upon which the determination of indebtedness was made;

(2) In the case of an administrative offset, the payment due date, which shall be 30 calendar days from the date of mailing or hand delivery of the Notice;

(3) In the case of a salary offset: (i) The FCA's intention to collect the debt by means of deduction from the employee's current disposable pay account until the debt and all accumulated interest is paid in full; and

(ii) The amount, frequency, proposed beginning date, and duration of the intended deductions;

(4) The right of the debtor to inspect and copy the records of the FCA related to the claim or to receive copies if personal inspection is impractical. The debtor shall be informed that the debtor shall be assessed for the cost of copying the documents in accordance with § 608.807;

(5) The right of the debtor to obtain a review of, and to request a hearing, on the FCA's determination of indebtedness, the propriety of collecting the debt by offset, and, in the case of salary offset, the propriety of the proposed repayment schedule (i.e., the percentage of disposable pay to be deducted each pay period). The debtor shall be informed that to obtain a review, the debtor shall deliver a written request for a review to the FCA official named in the Notice, within 15 calendar days after the debtor's receipt of the Notice. In the case of a salary offset, the debtor shall also be informed that the review shall be conducted by an official arranged for by the FCA who shall be a hearing official not under the control of the Chairman of the Farm Credit Administration, or an administrative law judge;

(6) That the filing of a petition for hearing within 15 calendar days after receipt of the Notice will stay the commencement of collection proceedings;

(7) That a final decision on the hearing (if one is requested) will be issued at the earliest practical date, but not later than 60 days after the filing of the written request for review unless the employee requests, and the hearing official grants, a delay in the proceedings;

(8) The right of the debtor to offer to enter into a written agreement with the FCA to repay the amount of the claim. The debtor shall be informed that the acceptance of such an agreement is discretionary with the FCA;

(9) That charges for interest, penalties, and administrative costs shall be assessed against the debtor, in accordance with 31 U.S.C. 3717, if payment is not received by the payment due date. The debtor shall be informed that such assessments must be made unless excused in accordance with the Federal Claims Collection Standards (4 CFR parts 103 and 104);

(10) The amount of accrued interest and the amount of any other penalties or administrative costs which may have been added to the principal debt;

(11) That if the debtor has not entered into an agreement with the FCA to pay the debt, has not requested the FCA to review the debt, or has not paid the debt prior to the date on which the offset is to be imposed, the FCA intends to collect the debt by administrative [or salary] offset or by requesting other Federal agencies for assistance in collecting the debt by offset. The debtor shall be informed that the offset shall be imposed against any funds that might become available to the debtor, until the principal debt and all accumulated interest and other charges are paid in full;

(12) The date on which the offset will be imposed, which shall be 31 calendar days from the date of mailing or hand delivery of the Notice. The debtor shall be informed that the FCA reserves the right to impose an offset prior to this date if the FCA determines that immediate action is necessary;

(13) That any knowingly false or frivolous statements, representations, or evidence may subject the debtor to:

(i) Penalties under the False Claims Act, sections 3729 through 3731 of title 31, United States Code, or any other applicable statutory authority;

(ii) Criminal penalties under sections 286, 287, 1001, and 1002 of title 18, United States Code, or any other applicable statutory authority; and, with regard to employees,

(iii) Disciplinary procedures appropriate under chapter 75 of title 5, United States Code; part 752 of title 5, Code of Federal Regulations, or any other applicable statute or regulation;

(14) The name and address of the FCA official to whom the debtor shall send all correspondence relating to the debt or the offset;

(15) Any other rights and remedies available to the debtor under statutes or regulations governing the program for which the collection is being made;

(16) That unless there are applicable contractual or statutory provisions to the contrary, amounts paid on or deducted for the debt, which are later waived or found not owed to the United States, will be promptly refunded to the employee; and

(17) Other information, as may be appropriate.

(c) When the procedural requirements of this section have been provided to the debtor in connection with the same debt or under some other statutory or regulatory authority, the FCA is not

required to duplicate those requirements before effecting offset.

§ 608.823 Right to review of claim.

(a) If the debtor disputes the claim, the debtor may request a review of the FCA's determination of the existence of the debt, the amount of the debt, the propriety of collecting the debt by offset, and in the case of salary offset, the propriety of the proposed repayment schedule. If only part of the claim is disputed, the undisputed portion should be paid by the payment due date.

(b) To obtain a review, the debtor shall submit a written request for review to the FCA official named in the Notice of Intent to Collect by Administrative [or Salary] Offset within 15 calendar days after receipt of the notice. The debtor's written request for review shall state the basis on which the claim is disputed and shall specify whether the debtor requests an oral hearing or a review of the written record of the claim. If an oral hearing is requested, the debtor shall explain in the request why the matter cannot be resolved by a review of the documentary evidence alone.

(c) The FCA shall promptly notify the debtor, in writing, that the FCA has received the request for review. The FCA shall conduct its review of the claim in accordance with § 608.810.

(d) The FCA's review of the claim, under this section, shall include providing the debtor with a reasonable opportunity for an oral hearing if:

(1) An applicable statute authorizes or requires the FCA to consider waiver of the indebtedness, the debtor requests waiver of the indebtedness, and the waiver determination turns on an issue of credibility or veracity; or

(2) The debtor requests reconsideration of the debt and the FCA determines that the question of the indebtedness cannot be resolved by reviewing the documentary evidence; for example, when the validity of the debt turns on an issue of credibility or veracity.

(e) A debtor waives the right to a hearing and will have his or her debt offset in accordance with the proposed offset schedule if the debtor:

(1) Fails to file a written request for review within the timeframe set forth in paragraph (b) of this section, unless the FCA determines that the delay was the result of circumstances beyond his or her control; or

(2) Fails to appear at an oral hearing of which he or she was notified unless the hearing official determines that the failure to appear was due to circumstances beyond the employee's control.

(f) Upon completion of its review of the claim, the FCA shall notify the debtor whether the FCA's determination of the existence or amount of the debt has been sustained, amended, or canceled. The notification shall include a copy of the written decision issued by the hearing official, pursuant to § 608.810(e). If the FCA's determination is sustained, this notification shall contain a provision which states that the FCA intends to collect the debt by offset or by requesting other Federal agencies for assistance in collecting the debt.

(g) When the procedural requirements of this section have been provided to the debtor in connection with the same debt or under some other statutory or regulatory authority, the FCA is not required to duplicate those requirements before effecting offset.

§ 608.824 Waiver of procedural requirements.

(a) The FCA may impose offset against a payment to be made to a debtor prior to the completion of the procedures required by this part, if:

(1) Failure to impose the offset would substantially prejudice the Government's ability to collect the debt; and

(2) The timing of the payment against which the offset will be imposed does not reasonably permit the completion of those procedures.

(b) The procedures required by this part shall be complied with promptly after the offset is imposed. Amounts recovered by offset, which are later found not to be owed to the Government, shall be promptly refunded to the debtor.

§ 608.825 Coordinating offset with other Federal agencies.

(a)(1) Any creditor agency which requests the FCA to impose an offset against amounts owed to the debtor shall submit to the FCA a claim certification which meets the requirements of this paragraph. The FCA shall submit the same certification to any agency that the FCA requests to effect an offset.

(2) The claim certification shall be in writing. It shall certify the debtor owes the debt and that all of the applicable requirements of 31 U.S.C. 3716 and 4 CFR part 102 have been met. If the intended offset is to be a salary offset, a claim certification shall instead certify that the debtor owes the debt and that the applicable requirements of 5 U.S.C. 5514 and 5 CFR part 550, subpart K, have been met.

(3) A certification that the debtor owes the debt shall state the amount of the debt, the factual basis supporting the determination of indebtedness, and the date on which payment of the debt was due. A certification that the requirements of 31 U.S.C. 3716 and 4 CFR part 102 have been met shall include a statement that the debtor has been sent a notice of Intent to Collect by Administrative Offset at least 31 calendar days prior to the date of the intended offset or a statement that pursuant to 4 CFR 102.3(b)(5) said Notice was not required to be sent. A certification that the requirements of 5 U.S.C. 5514 and 5 CFR part 550, subpart K, have been met shall include a statement that the debtor has been sent a Notice of Intent to Collect by Salary Offset at least 31 calendar days prior to the date of the intended offset or a statement that pursuant to 4 CFR 102.3(b)(5) said Notice was not required to be sent.

(b)(1) The FCA shall not effect an offset requested by another Federal agency without first obtaining the claim certification required by paragraph (a) of this section. If the FCA receives an incomplete claim certification, the FCA shall return the claim certification with notice that a claim certification which complies with the requirements of paragraph (a) of this section must be submitted to the FCA before the FCA will consider effecting an offset.

(2) The FCA may rely on the information contained in the claim certification provided by a requesting creditor agency. The FCA is not authorized to review a creditor agency's determination of indebtedness.

(c) Only the creditor agency may agree to enter into an agreement with the debtor for the repayment of the claim. Only the creditor agency may agree to compromise, suspend, or terminate collection of the claim.

(d) The FCA may decline, for good cause, a request by another agency to effect an offset. Good cause includes that the offset might disrupt, directly or indirectly, essential FCA operations. The refusal and the reasons shall be sent in writing to the creditor agency

§ 608.826 Stay of offset.

(a)(1) When a creditor agency receives a debtor's request for inspection of agency records, the offset is stayed for 10 calendar days beyond the date set for the record inspection.

(2) When a creditor agency receives a debtor's offer to enter into a repayment agreement, the offset is stayed until the debtor is notified as to whether the proposed agreement is acceptable.

(3) When a review is conducted, the offset is stayed until the creditor agency issues a final written decision.

(b) When offset is stayed, the amount of the debt and the amount of any accrued interest or other charges will be withheld from payments to the debtor. The withheld amounts shall not be applied against the debt until the stay expires. If withheld funds are later determined not to be subject to offset, they will be promptly refunded to the debtor.

(c) If the FCA is the creditor agency and the offset is stayed, the FCA will immediately notify an offsetting agency to withhold the payment pending termination of the stay.

§ 608.827 Offset against amounts payable from Civil Service Retirement and Disability Fund.

The FCA may request that monies payable to a debtor from the Civil Service Retirement and Disability Fund be administratively offset to collect debts owed to the FCA by the debtor. The FCA must certify that the debtor owes the debt, the amount of the debt, and that the FCA has complied with the requirements set forth in this part, 4 CFR 102.3, and the Office of Personnel Management regulations. The request shall be submitted to the official designated in the Office of Personnel Management regulations to receive the request.

Subpart C—Offset Against Salary

§ 608.835 Purpose.

The purpose of this subpart is to implement section 5 of the Debt Collection Act of 1982 (Pub. L. 97–365)(5 U.S.C. 5514), which authorizes the collection of debts owed by Federal employees to the Federal Government by means of salary offsets. These regulations provide procedures for the collection of a debt owed to the Government by the imposition of a salary offset against amounts payable to a Federal employee as salary. These regulations are consistent with the regulations on salary offset published by the Office of Personnel Management, codified in 5 CFR part 550, subpart K. Since salary offset is a type of administrative offset, this subpart supplements subpart B.

§ 608.836 Applicability of regulations.

(a) These regulations apply to the following cases:

(1) Where the FCA is owed a debt by an individual currently employed by another agency;

(2) Where the FCA is owed a debt by an individual who is currently employed by the FCA; or

(3) Where the FCA currently employs an individual who owes a debt to another Federal agency. Upon receipt of proper certification from the creditor agency, the FCA will offset the debtor-employee's salary in accordance with these regulations.

(b) These regulations do not apply to the following:

(1) Debts or claims rising under the Internal Revenue Code of 1986, as amended (26 U.S.C. 1 *et seq.*); the Social Security Act (42 U.S.C. 301 *et seq.*); the tariff laws of the United States; or to any case where collection of a debt by salary offset is explicitly provided for or prohibited by another statute (e.g., travel advances in 5 U.S.C. 5705 and employee training expenses in 5 U.S.C. 4108).

(2) Any adjustment to pay arising from an employee's election of coverage or a change in coverage under a Federal benefits program requiring periodic deductions from pay if the amount to be recovered was accumulated over four pay periods or less.

(3) A claim which has been outstanding for more than 10 years after the creditor agency's right to collect the debt first accrued, unless facts material to the Government's right to collect were not known and could not reasonably have been known by the official or officials charged with the responsibility for discovery and collection of such debts.

§ 608.837 Definitions.

In this subpart, the following definitions shall apply:

(a) *Agency* means:

(1) An executive agency as defined by 5 U.S.C. 105, including the United States Postal Service and the United States Postal Rate Commission,

(2) A military department as defined in 5 U.S.C. 102;

(3) An agency or court of the judicial branch, including a court as defined in 28 U.S.C. 610, the District Court for the Northern Mariana Islands, and the Judicial Panel on Multi-district Litigation;

(4) An agency of the legislative branch, including the United States Senate and the United States House of Representatives; or

(5) Other independent establishments that are entities of the Federal Government.

(b) *Disposable pay* means, for an officially established pay interval, that part of current basic pay, special pay, incentive pay, retired pay, retainer pay, or, in the case of an employee not entitled to basic pay, other authorized pay, remaining after the deduction of any amount required by law to be withheld. The FCA shall allow the deductions described in 5 CFR 581.105 (b) through (f).

(c) *Employee* means a current employee of the FCA or other agency, including a current member of the Armed Forces or Reserve of the Armed Forces of the United States.

(d) *Waiver* means the cancellation, remission, forgiveness, or nonrecovery of a debt allegedly owed by an employee to the FCA or another agency as permitted or required by 5 U.S.C. 5584 or 8346(b), 10 U.S.C. 2774, 32 U.S.C. 716, or any other law.

§ 608.838 Waiver requests and claims to the General Accounting Office.

(a) The regulations contained in this subpart do not preclude an employee from requesting a waiver of an overpayment under 5 U.S.C. 5584 or 8346(b), 10 U.S.C. 2774, 32 U.S.C. 716, or in any way questioning the amount or validity of a debt by submitting a subsequent claim to the General Accounting Office in accordance with the procedures prescribed by the General Accounting Office.

(b) These regulations also do not preclude an employee from requesting a waiver pursuant to other statutory provisions pertaining to the particular debts being collected.

§ 608.839 Procedures for salary offset.

(a) The Chairman, or designee of the Chairman, shall determine the amount of an employee's disposable pay and the amount to be deducted from the employee's disposable pay at regular pay intervals.

(b) Deductions shall begin within three official pay periods following the date of mailing or delivery of the Notice of Intent to Collect by Salary Offset.

(c)(1) If the amount of the debt is equal to or is less than 15 percent of the employee's disposable pay, such debt should be collected in one lump-sum deduction.

(2) If the amount of the debt is not collected in one lump-sum deduction, the debt shall be collected in installment deductions over a period of time not greater than the anticipated period of employment. The size and frequency of installment deductions will bear a reasonable relation to the size of the debt and the employee's ability to pay. However, the amount deducted from any pay period will not exceed 15 percent of the employee's disposable pay for that period, unless the employee has agreed in writing to the deduction of a greater amount.

(3) A deduction exceeding the 15-percent disposable pay limitation may be made from any final salary payment pursuant to 31 U.S.C. 3716 in order to liquidate the debt, whether the employee is being separated voluntarily or involuntarily.

(4) Whenever an employee subject to salary offset is separated from the FCA

and the balance of the debt cannot be liquidated by offset of the final salary check pursuant to 31 U.S.C. 3716, the FCA may offset any later payments of any kind against the balance of the debt.

(d) In instances where two or more creditor agencies are seeking salary offsets against current employees of the FCA or where two or more debts are owed to a single creditor agency, the FCA, at its discretion, may determine whether one or more debts should be offset simultaneously within the 15-percent limitation. Debts owed to the FCA should generally take precedence over debts owed to other agencies.

§ 608.840 Refunds.

(a) In instances where the FCA is the creditor agency, it shall promptly refund any amounts deducted under the authority of 5 U.S.C. 5514 when:

(1) The debt is waived or otherwise found not to be owed to the United States (unless expressly prohibited by statute or regulations); or

(2) An administrative or judicial order directs the FCA to make a refund.

(b) Unless required or permitted by law or contract, refunds under this section shall not bear interest.

§ 608.841 Requesting current paying agency to offset salary.

(a) To request a paying agency to impose a salary offset against amounts owed to the debtor, the FCA shall provide the paying agency with a claim certification which meets the requirements set forth in § 608.825(a). The FCA shall also provide the paying agency with a repayment schedule determined under the provisions of § 608.839 or in accordance with a repayment agreement entered into with the debtor.

(b) If the employee separates from the paying agency before the debt is paid in full, the paying agency shall certify the total amount collected on the debt. A copy of this certification shall be sent to the employee and a copy shall be sent to the FCA. If the paying agency is aware that the employee is entitled to payments from the Civil Service Retirement and Disability Fund, or other similar payments, it must provide written notification to the agency responsible for making such payments that the debtor owes a debt (including the amount) and that the provisions of this section have been fully complied with However, the FCA must submit a properly certified claim to the agency responsible for making such payments before the collection can be made.

(c) When an employee transfers to another paying agency, the FCA is not required to repeat the due process procedures set forth in 5 U.S.C. 5514 and this part to resume the collection. The FCA shall, however, review the debt upon receiving the former paying agency's notice of the employee's transfer to make sure the collection is resumed by the new paying agency.

(d) If a special review is conducted pursuant to § 608.811 and results in a revised offset or repayment schedule, the FCA shall provide a new claim certification to the paying agency.

§ 608.842 Responsibility of the FCA as the paying agency.

(a) When the FCA receives a claim certification from a creditor agency, deductions should be scheduled to begin at the next officially established pay interval. The FCA shall send the debtor written notice which provides:

(1) That the FCA has received a valid claim certification from the creditor agency;

(2) The date on which salary offset will begin;

(3) The amount of the debt; and

(4) The amount of such deductions.

(b) If, after the creditor agency has submitted the claim certification to the FCA, the employee transfers to a different agency before the debt is collected in full, the FCA must certify the total amount collected on the debt. The FCA shall send a copy of this certification to the creditor agency and a copy to the employee. If the FCA is aware that the employee is entitled to payments from the Civil Service Retirement Fund and Disability Fund, or other similar payments, it shall provide written notification to the agency responsible for making such payments that the debtor owes a debt (including the amount).

§ 608.843 Nonwaiver of rights by payments.

An employee's involuntary payment of all or any portion of a debt being collected under this subpart shall not be construed as a waiver of any rights the employee may have under 5 U.S.C. 5514 or any other provisions of a written contract or law unless there are statutory or contractual provisions to the contrary.

Dated: March 10, 1994.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 94–6562 Filed 3–18–94; 8:45 am]

BILLING CODE 6705–01–P

DEPARMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 93–AWP–22]

Revocation of Class D Airspace; Fritzsche Army Air Field (AAF), Ft. Ord., CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revokes the Fritzsche AAF Class D Airspace. Fritzsche AAF has closed and therefore, the Class D airspace at Fritzsche AAF is revoked. The Salinas, California Class D airspace designation will also be revised to reflect the action.

EFFECTIVE DATE: 0901 u.t.c., April 28, 1994.

FOR FURTHER INFORMATION CONTACT: Gene Enstad, Airspace Specialist, System Management Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261; telephone (310) 297–0010.

SUPPLEMENTARY INFORMATION:

History

On December 17, 1993, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by revoking the Class D airspace at Fritzsche AAF, Ft. Ord, California. As a result of the Base Realignment and Closure (BRAC) Committee recommendations, Fritzsche AAF has closed and the associated weather reporting has been discontinued. Therefore, the FAA is revoking the Fritzsche AAF Class D airspace. The Salinas, CA Class D airspace designation will also be revised to reflect this action.

Interested parties were invited to participate in the rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments were received.

Class D airspace designations 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; June 6, 1993). The Class D airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations revokes the Fritzsche AAF Class D airspace. The

Salinas CA Class D airspace designation will also be revised to reflect this action.

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 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 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 5000—Subpart D—Class D Airspace

* * * * *

AWP CA D Fort Ord, Fritzsche AAF, California [Revoked]

* * * * *

AWP CA D Salinas, CA [Revised]

Salinas Municipal Airport, CA
(Lat. 36°39′48″ N, long. 121°36′23″ W)

That airspace extending upward from the surface to but not including 2,500 feet MSL within a 4.3-mile radius of the Salinas Municipal Airport.

* * * * *

Issued in Los Angles, California, on March 9, 1994.

Richard R. Lien,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 94–6524 Filed 3–18–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 93–ANM–17]

Proposed Amendment to Class E2 Airspace; Oak Harbor, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Oak Harbor, Washington, Class E2 airspace. This action is necessary to correct an error in the airspace description inadvertently committed during the airspace reclassification process. This action will reduce the size of the Oak Harbor, Washington, Class E2 airspace. Airspace reclassification, in effect as of September 16, 1993, has discontinued the use of the term "control zone," replacing it with the designation "Class E2 airspace." The area will be depicted on aeronautical charts for pilot reference.

EFFECTIVE DATE: 0901 UTC, April 28, 1994.

FOR FURTHER INFORMATION CONTACT: Bob Brown, ANM–535, Federal Aviation Administration, Docket No. 93–ANM–17, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone number: (206) 227–2535.

SUPPLEMENTARY INFORMATION:

History

On January 12, 1994, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by amending the Oak Harbor, WA, Class E2 airspace (59 FR 1684). 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.

Airspace reclassification, in effect as of September 16, 1993, has discontinued the use of the term "control zone," and airspace areas designated as a surface area for an airport is now Class E2 airspace. Class E2 airspace designations for airspace areas designated as a surface area for an airport 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 E2 airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations amends the Class E2 airspace at Oak Harbor, WA, to correct an error in the Class E2 airspace description. During the airspace reclassification process, the E2 airspace for Oak Harbor Airpark was miscalculated resulting in the designation of more controlled airspace than necessary. This action corrects that error. The coordinates for this airspace docket are based on North American Datum 83.

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 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 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 6002 Class E Airspace Areas Designated as a Surface Area for an Airport

* * * * *

ANM WA E2 Oak Harbor, WA [Revised]

Oak Harbor Airpark WA
(Lat. 48°15'05" N, long. 122°40'25" N)

Within a 2.6 mile radius of Oak Harbor Airpark, WA, excluding the portion within the Whidbey Island NAS, WA, Class C airspace area; within 2.2 miles each side of the 091° bearing from the airport extending from the 2.6 mile radius to 4.4 miles east of the airport. This Class E 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 Seattle, Washington, on March 9, 1994.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 94–6525 Filed 3–18–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 93–ASO–23]

Amendment of Offshore Airspace Area; San Juan, PR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment will delete the exclusionary language from the legal description. The action will not change the dimensions of the airspace but will simplify the airspace and associated legal description.

EFFECTIVE DATE: 0901 UTC, June 23, 1994.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Patterson, Airspace Section, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5585.

SUPPLEMENTARY INFORMATION:

History

On November 19, 1993, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend the Offshore Airspace Area at Puerto Rico. The intended effect of this action is to eliminate the exclusionary language in the legal description (58 FR 64525). 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 coordinates for this airspace docket are based on North American Datum 83. This amendment is the same as that proposed in the notice. Designations for Offshore Airspace Areas are published in Paragraph 6007 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993. The offshore airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations amends the Offshore Airspace Area at Puerto Rico to remove the exclusionary language from the legal description.

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 71

Aviation safety, 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 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 6007 Offshore Airspace Areas

* * * * *

San Juan Low, PR [Amended]

Fernando Luis Ribas Dominicci Airport, PR
(Lat. 18°27'25" N, long. 66°05'53" W)

That airspace extending upward from 5,500 feet MSL within a 100-mile radius of the Fernando Luis Ribas Dominicci Airport.

* * * * *

Issued in East Point, Georgia, on March 1, 1994.

Michael J. Powderly,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 94–6522 Filed 3–18–94; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 770, 771, 773, and 774

[Docket No. 940256–4056]

RIN 0694–AA76

Exports to the Republic of Korea (South Korea): General License GCT, Permissive Reexports From the Republic of Korea to the People's Republic of China, Permissive Reexports From COCOM Participating and Fully Cooperating Countries, Permissive Reexports to COCOM Participating Countries, and Higher Level Computers Under the Distribution License Procedure

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: As part of the Department of Commerce initiative to streamline export licensing requirements for exports to countries that are demonstrating increased ability to safeguard reexports of U.S.-origin strategic goods and technology, the Bureau of Export Administration (BXA) is extending to the Republic of Korea (South Korea) additional export licensing benefits available under the provisions of section 5(k) of the Export Administration Act of 1979, as amended (EAA). The Republic of Korea currently enjoys General License GCG and shorter processing times for license applications. This action will lessen the administrative burden on U.S. exporters and their foreign customers.

EFFECTIVE DATE: This rule is effective March 21, 1994.

FOR FURTHER INFORMATION CONTACT: Rod Joseph, Office of Technology and Policy Analysis, Bureau of Export Administration, U.S. Department of Commerce, Telephone: (202) 482–4253.

SUPPLEMENTARY INFORMATION:

Specifically, BXA is:

• Amending section 770.2 of the Export Administration Regulations (EAR) to identify the Republic of Korea as a "cooperating country";

• Amending General License GCT to authorize certain shipments of U.S.-origin commodities to the Republic of Korea;

• Removing the requirement for specific U.S. reexport authorization for reexports from the Republic of Korea to the People's Republic of China of commodities described in Advisory Notes for the People's Republic of China or for Country Groups QWY;

• Amending the permissive reexport provisions of EAR sections 774.2(i) and 774.2(k) to include the Republic of Korea; and

• Amending the Distribution License procedure to authorize exports to the Republic of Korea of computers up to but not including the supercomputer level.

Rulemaking Requirements

1. This rule was not subject to review by the Office of Management and Budget under Executive Order 12866.

2. This rule involves a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection has been approved by the Office of Management and Budget under control numbers 0694–0005, 0694–0007, 0695–0010, and 0694–0015. Licensing requirements will be reduced as a result of this rule, thereby reducing the paperwork burden on the public.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553) or by any other law, under section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

5. The provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a foreign and military affairs function of the United States. This rule does not impose a new control. No other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

Accordingly, it is issued in final form. However, comments from the public are always welcome. Comments should be submitted to Patricia Muldonian, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects

15 CFR Part 770

Administrative practice and procedure, Exports

15 CFR Parts 771, 773, and 774

Exports, Reporting and recordkeeping requirements.

Accordingly, parts 770, 771, 773, and 774 of the Export Administration Regulations are amended as follows:

1. The authority citations for 15 CFR parts 770, 771, and 774 continue to read as follows:

Authority: Pub. L. 90–351, 82 Stat. 197 (18 U.S.C. 2510 *et seq.*), as amended; sec. 101, Pub. L. 93–153, 87 Stat. 576 (30 U.S.C. 185), as amended; sec. 103, Pub. L. 94–163, 89 Stat. 877 (42 U.S.C. 6212, as amended; secs. 210 and 201(11)(e), Pub. L. 94–258, 90 Stat. 309 (10 U.S.C. 7420 and 7430(e)), as amended; Pub. L. 95–223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Pub. L. 95–242, 92 Stat. 120 (22 U.S.C. 3201 *et seq.* and 42 U.S.C. 2139a); sec. 208, Pub. L. 95–372, 92 Stat. 668 (43 U.S.C. 1354); Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended (extended by Pub. L. 103–10, 107 Stat. 40); sec. 125, Pub. L. 99–64, 99 Stat. 156 (46 U.S.C. 466c); E.O. 11912 of April 13, 1976 (41 FR 15825, April 15, 1976); E.O. 12002 of July 7, 1977 (42 FR 35623, July 7, 1977), as amended; E.O. 12058 of May 11, 1978 (43 FR 20947, May 16, 1978); E.O. 12214 of May 2, 1980 (45 FR 29783, May 6, 1980); E.O. 12735 of November 16, 1990 (55 FR 48587, November 20, 1990) as continued by Notice of November 12, 1993 (58 FR 60361, November 15, 1993); E.O. 12867 of September 30, 1993 (58 FR 51749, October 4, 1993); and E.O. 12868 of September 30, 1993 (58 FR 51749, October 4, 1993).

2. The authority citation for 15 CFR part 773 continues to read as follows:

Authority: Pub. L. 90–351, 82 Stat. 197 (18 U.S.C. 2510 *et seq.*), as amended; Pub. L. 95–223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Pub. L. 95–242, 92 Stat. 120 (22 U.S.C. 3201 *et seq.* and 42 U.S.C. 2139a); Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended (extended by Pub. L. 103–10, 107 Stat. 40); E.O. 12002 of July 7, 1977 (42 FR 35623, July 7, 1977), as amended; E.O. 12058 of May 11, 1978 (43 FR 20947, May 16, 1978); E.O. 12214 of May 2, 1980 (45 FR 29783, May 6, 1980); E.O. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990), as continued by Notice of November 12, 1993 (58 FR 60361, November 15, 1993); (57 FR 53979, November 13, 1992); E.O. 12867 of September 30, 1993 (58 FR 51749, October 4, 1993); and E.O. 12868 of September 30, 1993 (58 FR 51749, October 4, 1993).

PART 770—[AMENDED]

3. Section 770.2 is amended by revising the definition for "Cooperating country" to read as follows:

§ 770.2 Definition of terms.

* * * * *

Cooperating country. A country that cooperates fully with the COCOM member countries in restricting strategic exports to controlled countries in accordance with COCOM standards. The "Cooperating Countries" are: Austria, Finland, Hong Kong, Ireland, Korea (Republic of), New Zealand, Sweden, and Switzerland.

* * * * *

PART 771—[AMENDED]

4. In § 771.25 is amended:

a. By revising the phrase "Japan, Luxembourg," to read "Japan, Korea (Republic of), Luxembourg," in paragraph (b); and

b. By revising the phrase "Ireland, New Zealand," to read "Ireland, Korea (Republic of), New Zealand," in paragraph (f)(2) everywhere it appears.

PART 773—[AMENDED]

Supplement 8 to Part 773 [Amended]

5. In part 773, Supplement No. 8 is amended by adding in alphabetical order "Korea (Republic of)" to the list of countries.

PART 774—[AMENDED]

§ 774.2 [Amended]

6. In § 774.2, paragraph (i)(1) is amended by adding the word "Korea (Republic of)," immediately after the word "Japan,".

7. In § 774.2, paragraph (j) introductory text is amended by adding the word "Korea (Republic of)," immediately after the word "Ireland,".

8. In § 774.2, paragraph (k) introductory text is amended by adding the word "Korea (Republic of)," immediately after the word "Ireland,".

9. In § 774.2, paragraph (k)(2) is amended by adding the word "Korea (Republic of)," immediately after the word "Ireland,".

Dated: March 15, 1994.

Sue E. Eckert,

Assistant Secretary for Export Administration.

[FR Doc. 94–6416 Filed 3–18–94; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 4, 123, 141 and 173

[T.D. 94-24]

RIN 1515-AB36

Technical Corrections to the Customs Regulations Relating to Customs Modernization

AGENCY: Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations by making certain technical corrections necessitated by the Customs Modernization provisions of the North American Free-Trade Agreement Implementation Act (the NAFTA Act), which went into effect when signed on December 8, 1993. All corrections are to legal authority citations, which do not involve changes in substantive legal requirements. All vessel and entry clearance regulatory provisions remain in effect.

EFFECTIVE DATE: March 21, 1994.

FOR FURTHER INFORMATION CONTACT: Gregory R. Vilders, Regulations Branch (202) 482-6930.

SUPPLEMENTARY INFORMATION:

Background

The Customs Modernization provisions contained in Title VI of the North American Free-Trade Agreement Implementation Act of 1993, Public Law 103-182, 107 Stat. 2057 (the NAFTA Act), went into effect when the NAFTA Act was signed on December 8, 1993 (Section 692 of the NAFTA Act). Two provisions of the NAFTA Act require that technical corrections be made to the Customs Regulations immediately: Sections 618 and 690. Sections 618 and 690 repeal more than 50 provisions in titles 19, 26, and 46 of the United States Code and the Revised Statutes of the United States to streamline and allow for the automation of Customs commercial operations; however, it should be noted that the legal requirements pertaining to vessel entry and clearance remain in effect under other statutory provisions.

Repealed Provisions

In title 19 of the U.S. Code, 22 sections were repealed: Sections 432, 435, 437, 439, 440, 443, 444, 445, 465, 482, 521, 583, and 585 of the Tariff Act of 1930 (19 U.S.C. 1432, 1435, 1437, 1439, 1440, 1443, 1444, 1445, 1465, 1482, 1521, 1583, and 1585), and sections 3111, 3118, 3119, 3122, 3124, 3125 of the Revised Statutes of the United States (19 U.S.C. 282, 286, 287, 290, 291, 292), the last undesignated paragraph of Section 201 of the Act of August 5, 1935 (19 U.S.C. 1432a), the Act of June 16, 1937 (19 U.S.C. 1435b), and so much of Section 2792 of the Revised Statutes of the United States as was codified at 19 U.S.C. 289 and 46 U.S.C. app. 110 and 112 on December 8, 1993 (the date this Act was enacted).

In title 26 of the U.S. Code, a note to Section 4461, relating to Section 1403(b) of the Water Resources Development Act of 1986 (Public Law 99-662, 26 U.S.C. 4461 note), was repealed.

In title 46 of the U.S. Code, more than 20 sections were repealed: Sections 4198, 4199, 4201, 4208, 4213, 4222, 4306, 4307, 4308, 4332, 4348, 4358, 4361, 4362 through 4369, 4573 through 4576 of the Revised Statutes of the United States (46 U.S.C. app. 94, 93, 96, 102, 101, 126, 351 through 353, 274, 293, 306, 307, 308 through 315, 674 through 677), and Section 4207 of the Revised Statutes of the United States, Section 1 of the Act of February 10, 1900 (46 U.S.C. app. 131), Section 2 of the Act of April 29, 1908 (46 U.S.C. app. 127), Section 1 of the Act of July 1, 1916 (46 U.S.C. app. 130) Sections 1 and 2 of the Act of July 3, 1926 (46 U.S.C. app. 293a and 293b), the Act of May 4, 1934 (46 U.S.C. app. 91a), and so much of Section 4221 as was codified at 46 U.S.C. app. 113 on December 8, 1993 (the date this Act was enacted).

Continued Authority for Regulatory Requirements and Regulatory Changes

Repeal of these statutory provisions affects the following four parts of the Customs Regulations: Parts 4, 123, 141, and 173 (19 CFR parts 4, 123, 141, and 173). However, continued legal authority for existing vessel entry and clearance regulatory provisions is found at 19 U.S.C. 1431, 1433, 1434, 1436 and/or 46 U.S.C. app. 91, as amended. (See, Section 611 of the NAFTA Act, which amends 19 U.S.C. 1436, and Section 686 of the NAFTA Act, which amends Section 4197 of the Revised Statutes, as amended (46 U.S.C. app. 91) and deletes certain obsolete language from other provisions, to consolidate vessel clearance requirements, establish the basic requirements for clearance, and specify circumstances when all requirements need not be met. Further, Section 686 amends 46 U.S.C. app. 91 to give the Secretary authority to prescribe by regulation the manner in which clearance is to be obtained, including the documents, data, or information which must be submitted or electronically transmitted to obtain clearance).

In part 4, the legal authority references for the following 14 sections are amended: Sections 4.3, 4.6, 4.7, 4.7a, 4.9, 4.12, 4.15, 4.16, 4.39, 4.81, 4.84, 4.85, 4.86, 4.94 (19 CFR Sections 4.3, 4.6, 4.7, 4.7a, 4.9, 4.12, 4.15, 4.16, 4.39, 4.81, 4.84, 4.85, 4.86, 4.94). The general authority citation for part 4 is also amended.

In part 123, the legal authority reference for Section 123.11 (19 CFR 123.11) is amended.

In part 141, a legal reference cited in Section 141.83 (19 CFR 141.83) is amended.

In part 173, the general legal authority for the part is amended.

These various sections are amended to correct the legal authority citations by deleting references to those provisions repealed by the NAFTA Act wherever they are cited as an underlying statutory authority for the regulatory provision. It should also be noted that further amendments to the Customs Regulations will be made in the near future to conform them to other changes mandated by the Customs Modernization provisions of the NAFTA Act.

Following is a summary of the present regulatory changes:

Discussion of Changes

Part 4

1. The specific authority citations for §§ 4.6, 4.15, and 4.16 are deleted because they reference 19 U.S.C. 1585, 46 U.S.C. app. 310, and 19 U.S.C. 1435b, respectively, as the only other authority for their provisions, and these provisions were repealed by section 690 of the NAFTA Act. While continued authority for these regulatory provisions is found at 19 U.S.C. 1433, 1434, and 46 U.S.C. app. 91, the reference to this continued authority is carried under the general authority citation for part 4, which is revised to include sections 1433 and 1434 of title 19, and section 91 of title 46.

2. The specific authority citations for §§ 4.3, 4.7, 4.7a, 4.9, 4.12, 4.39, 4.81, 4.84, 4.85, 4.86, and 4.94 are revised because they variously reference sections in title 19—section 1432, 1435, 1437, 1439, 1440, 1443, 1444, 1465, 1583—and/or sections in title 46—313, 314, 674—that were repealed by section 690 of the NAFTA Act. Accordingly, the repealed statute is deleted from the specific authority citation. While continued authority for these regulatory provisions is found at 19 U.S.C. 1431, 1433, 1434, and/or 46 U.S.C. app. 91, the reference to this continued authority is carried under the general authority citation to part 4, which is further

revised to include section 1431 of title 19.

3. In § 4.3(a), footnote 10 is deleted because it carries text of 46 U.S.C. app. 91a, which was repealed by section 690 of the NAFTA Act. While continued authority for this regulatory provision is found at 19 U.S.C. 1434 and/or 46 U.S.C. app. 91, for the reason given at 1 above, such reference is carried under the general authority citation to part 4.

4. In § 4.9, the reference to 19 U.S.C. 1435 is deleted from paragraphs (a) and (c) because section 1435 was repealed by section 690 of the NAFTA Act. As the entry and certification requirements are now consolidated under the provisions of 19 U.S.C. 1434, paragraphs (a) and (c) are revised to reference section 1434.

5. In § 4.15(a), the first and second paragraphs of footnote 28 are deleted because they carry text of 46 U.S.C. app. 310 and text of 46 U.S.C. app. 311, respectively, both of which were repealed by section 690 of the NAFTA Act. Although continued authority for this regulatory provision is found at 19 U.S.C. 1433 and/or 46 U.S.C. app. 91, for the reason given at 1 above, such reference is carried under the general authority citation to part 4.

6. In § 4.60(a), the second paragraph of footnote 90 is deleted because it carries text of 46 U.S.C. app. 91a, which was repealed by section 690 of the NAFTA Act. However, because the second paragraph of footnote 90 also carries a cross-reference to § 4.87 of the Customs Regulations (19 CFR 4.87), the cross-reference is maintained. Continued authority for this regulatory provision is found at 46 U.S.C. app. 91.

7. In § 4.85, footnotes 116 and 117 are deleted because they carry text of 19 U.S.C. 1443 and 1445 (in paragraphs (a) and (b)), and text of 19 U.S.C. 1444 (in paragraph (c)), respectively, which were repealed by section 690 of the NAFTA Act. Although continued authority for this regulatory provision is found at 19 U.S.C. 1433 and 1436 and/or 46 U.S.C. app. 91, for the reason given at 1 above, such reference is carried under the general authority citation to part 4.

8. In § 4.94, the parenthetical legal authority citations at the end of the section are removed because they are duplicative; the legal authority for this section is already enumerated under the specific authority citation section at the beginning of the part (recall the revision of this specific authority section discussed under paragraph 2 above).

Part 123

9. The specific authority citation for § 123.11 is deleted because it references 19 U.S.C. section 1465 as the only other authority for its provision, and this provision was repealed by section 690 of the NAFTA Act. While continued authority for this regulatory provision is found at 19 U.S.C. 1431, the reference to this continued authority is carried under the general authority citation for part 123, which is revised to include § 1431

Part 141

10. In § 141.83, the reference to 19 U.S.C. 1465 in paragraph (d)(11) is deleted because section 1465 was repealed by section 690 of the NAFTA Act.

Part 173

11. In the general authority citation for part 173, the reference to 19 U.S.C. 1521 is deleted because section 1521 was repealed by 618 of the NAFTA Act.

Inapplicability of Public Notice and Comment Requirements, Delayed Effective Date Requirements, the Regulatory Flexibility Act, and Executive Order 12866

Inasmuch as these amendments merely conform the Customs Regulations to existing law, pursuant to 5 U.S.C. 553(a)(2) and (b)(B), good cause exists for dispensing with notice and public procedure thereon as unnecessary. For the same reason, good cause exists for dispensing with the requirement for a delayed effective date, under 5 U.S.C. 553(a)(2) and (d)(3). Since this document is not subject to the notice and public procedure requirements of 5 U.S.C. 553, it is not subject to provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This amendment does not meet the criteria for a "significant regulatory action" as specified in Executive Order 12866.

Drafting Information

The principal author of this document was Gregory R. Vilders, Regulations Branch. However, personnel from other offices participated in its development.

List of Subjects

19 CFR Part 4

Bonds, Cargo vessels, Customs duties and inspection, Fishing vessels, Imports, Maritime carriers, Merchandise, Passenger vessels, Reporting and recordkeeping requirements, Vessels, Yachts.

19 CFR Part 123

Administrative practice and procedure, Bonds, Canada, Customs duties and inspection, Freight, Imports, Mexico, Railroads, Reporting and recordkeeping requirements, Vehicles, Vessels.

19 CFR Part 141

Customs duties and inspection, Entry procedures, Invoices, Reporting and recordkeeping requirements.

19 CFR Part 173

Administrative practice and procedure, Customs duties and inspection.

Amendments to the Regulations

Parts 4, 123, 141, and 173 of the Customs Regulations (19 CFR parts 4, 123, 141, and 173) are amended as set forth below:

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

1. The general authority citation for part 4 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1431, 1433, 1434, 1624; 46 U.S.C.App. 3, 91;

2. The specific authority references for §§ 4.6, 4.15, and 4.16 are removed, and the specific authority citations for §§ 4.3, 4.7, 4.7a, 4.9, 4.12, 4.39, 4.81, 4.84, 4.85, 4.86, and 4.94 are revised to read as follows:

* * * * *

Section 4.3 also issued under 19 U.S.C. 288, 1441; 46 U.S.C.app. 111;

* * * * *

Section 4.7 also issued under 19 U.S.C. 1581(a); 46 U.S.C.app. 883a, 883b;

Section 4.7a also issued under 19 U.S.C. 1498, 1584;

* * * * *

Section 4.9 also issued under 42 U.S.C. 269; 46 U.S.C.app. 677;

* * * * *

Section 4.12 also issued under 19 U.S.C. 1584;

* * * * *

Section 4.39 also issued under 19 U.S.C. 1446;

* * * * *

Section 4.81 also issued under 19 U.S.C. 1442, 1486; 46 U.S.C. 251, 883;

* * * * *

Section 4.84 also issued under 46 U.S.C.app. 883–1;

Section 4.85 also issued under 19 U.S.C. 1442, 1623;

Section 4.86 also issued under 19 U.S.C. 1442;

* * * * *

Section 4.94 also issued under 19 U.S.C. 1441; 46 U.S.C.app. 104;

* * * * *

§ 4.3 [Amended]

3. In § 4.3, paragraph (a) is amended by removing and reserving footnote 10.

§ 4.9 [Amended]

4. In § 4.9, paragraph (a) is amended by removing the reference "section 435, Tariff Act of 1930 (19 U.S.C. 1435)" in the fourth sentence and adding, in its place, the reference "section 434, Tariff Act of 1930 (19 U.S.C. 1434)"; and paragraph (c) is amended by removing the reference "section 435, Tariff Act of 1930 (19 U.S.C. 1435)" and adding, in its place, the reference "section 434, Tariff Act of 1930 (19 U.S.C. 1434)".

§ 4.15 [Amended]

5. In § 4.15, paragraph (a) is amended by removing the first two paragraphs of footnote 28.

§ 4.60 [Amended]

6. In § 4.60, paragraph (a) is amended by removing the last paragraph in footnote 90 and adding, in its place, the reference "(For clearance via domestic ports, see § 4.87).".

§ 4.85 [Amended]

7. In § 4.85, footnote 116 and footnote 117 are removed and reserved.

§ 4.94 [Amended]

8. In § 4.94 the parenthetical legal authority citations at the end of the section are removed.

PART 123—CUSTOMS RELATIONS WITH CANADA AND MEXICO

1. The general authority citation for part 123 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States (HTSUS)), 1431, 1624;

* * * * *

PART 141—ENTRY OF MERCHANDISE

1. The general authority citation for part 141 continues to read as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1624;

* * * * *

§ 141.83 [Amended]

2. In § 141.83, paragraph (d)(11) is amended by removing the words "465 or" and "1465 or".

PART 173—ADMINISTRATIVE REVIEW IN GENERAL

1. The general authority citation for part 173 is revised to read as follows:

Authority: 19 U.S.C. 66, 1501, 1520, 1624.

Samuel H. Banks,

Acting Commissioner of Customs.

Approved: March 1, 1994.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 94–6531 Filed 3–18–94; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 58 and 314

Food and Drugs; Technical Amendments

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations for good laboratory practice for nonclinical laboratory studies and its regulations on applications for FDA approval to market a new drug or an antibiotic drug to correct certain inadvertent errors, as well as to reflect a recodification of the Federal Food, Drug, and Cosmetic Act (the act). This action is editorial in nature and does not change the substance of any of the regulations in question.

EFFECTIVE DATE: March 21, 1994.

FOR FURTHER INFORMATION CONTACT: Lola E. Batson, Center for Drug Evaluation and Research (HFD–360), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1038.

SUPPLEMENTARY INFORMATION: FDA has discovered that certain typographical errors have been incorporated into the agency's regulations for good laboratory practice for nonclinical laboratory studies and its regulations for FDA approval to market a new drug or an antibiotic drug. Accordingly, §§ 58.210(a) and 314.50 (d)(5)(vi)(a) are amended as set forth below. In addition, sections 106 and 107 of the Prescription Drug User Fee Act of 1992 (Pub. L. 102–571) recodified section 706 of the act (21 U.S.C 376) as section 721 of the act (21 U.S.C. 379e). Accordingly, the citations of authority for 21 CFR parts 58 and 314 are revised as set forth below. Notice and public procedure are unnecessary under the Administrative Procedure Act (5 U.S.C. 553), because FDA is merely correcting nonsubstantive, inadvertent errors and a statutory recodification.

List of Subjects

21 CFR Part 58

Laboratories, Reporting and recordkeeping requirements.

21 CFR Part 314

Administrative practice and procedure, Confidential business information, Drugs, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 58 and 314 are amended as follows:

PART 58—GOOD LABORATORY PRACTICE FOR NONCLINICAL LABORATORY STUDIES

1. The authority citation for 21 CFR part 58 is revised to read as follows:

Authority: Secs. 402, 406, 408, 409, 501, 502, 503, 505, 506, 507, 510, 512–516, 518–520, 701, 721, 801 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 342, 346, 346a, 348, 351, 352, 353, 355, 356, 357, 360, 360b–360f, 360h–360j, 371, 379e, 381); secs. 215, 351, 354–360F of the Public Health Service Act (42 U.S.C. 216, 262, 263b–263n).

§ 58.210 [Amended]

2. Section 58.210 *Actions upon disqualification* is amended in the fourth sentence of paragraph (a) by removing the words "such data such" and adding in their place "such data will".

PART 314—APPLICATIONS FOR FDA APPROVAL TO MARKET A NEW DRUG OR AN ANTIBIOTIC DRUG

3. The authority citation for 21 CFR part 314 is revised to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 505, 506, 507, 701, 704, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 371, 374, 379e).

§ 314.50 [Amended]

4. Section 314.50 *Content and format of an application* is amended in paragraph (d)(5)(vi)(a) by removing "(a)(5)(ii)" and adding in its place "(d)(5)(ii)".

Dated: March 15, 1994.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 94–6510 Filed 3–18–94; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 943

Texas Permanent Regulatory Program

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

ACTION: Final rule; approval of proposed amendment.

SUMMARY: OSM is announcing its decision to approve, with certain exceptions and additional requirements, a proposed amendment to the Texas

permanent regulatory program (hereinafter, the Texas program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consisted of changes to Texas' existing regulations pertaining to identification of interests and compliance information, review of permit applications, conditions of permits, Railroad Commission of Texas (Commission) review of outstanding permits, and cessation orders. The amendment was intended to revise the Texas program to be consistent with the corresponding Federal standards.

EFFECTIVE DATE: March 21, 1994.

FOR FURTHER INFORMATION CONTACT: James H. Moncrief, telephone: (918) 581–6430.

SUPPLEMENTARY INFORMATION:

I. Background on the Texas Program.
II. Proposed Amendment.
III. Director's Findings.
IV. Summary and Disposition of Comments.
V. Director's Decision
VI. Procedural Determinations.

I. Background on the Texas Program

On February 16, 1980, the Secretary of the Interior conditionally approved the Texas program. General background information on the Texas program including the Secretary's findings, the disposition of comments, and the conditions of approval of the Texas program can be found in the February 27, 1980, **Federal Register** (45 FR 12998). Subsequent actions concerning the Texas program and program amendments are codified at 30 CFR 943.15 and 943.16.

II. Proposed Amendment

By letter dated February 8, 1993 (Administrative Record No. TX–542), Texas submitted to OSM a proposed amendment to its program pursuant to SMCRA. Texas submitted the proposed amendment in response to the required amendments codified at 30 CFR 943.16(b), (c), (d)(1), (2) and (3), (e), (f), (g), (h)(1) and (2), (i)(1) and (2), and (j)(1), (2), and (3) (57 FR 21600, May 21, 1992). The provisions of the Texas Coal Mining Regulations (TCMR) at 16 Texas Administrative Code (TAC) 11.221 that Texas proposed to revise were the identification of interests and compliance information at TCMR 778.116(1) and (m), review of permit applications at TCMR 786.215(e)(1) and (2), (f), and (g), and Commission review of outstanding permits at TCMR 788.225(f), (f)(1)(A), (g) and (g)(3).

OSM published a notice in the March 30, 1993, **Federal Register** (58 FR 16834) announcing receipt of the amendment and inviting public comment on the adequacy of the proposed amendment (Administrative Record No. TX–550). The public comment period closed April 29, 1993.

During its review of the amendment, OSM identified concerns relating to the provisions of TCMR 778.116(m), identification of interests and compliance information: Violation information; TCMR 786.215(e)(1), review of permit applications: Review of violations; TCMR 786.215(f), review of permit applications: Pattern of willful violations; TCMR 786.215(g), review of permit applications: Final compliance review; TCMR 788.225(e), Commission review of outstanding permits: Improvidently issued permits; TCMR 788.225(f), Commission review of outstanding permits: Review criteria; and TCMR 788.225(g), Commission review of outstanding permits: Remedial measures. OSM also noted that the proposed amendment did not contain revisions to the Texas program adopting procedural requirements no less effective than the Federal regulation at 30 CFR 843.11(g), which requires that, within 60 days of the issuance of a cessation order, the regulatory authority must notify all owners and controllers identified as owning or controlling the permittee.

OSM notified Texas of these concerns by letter dated June 8, 1993 (Administrative Record No. TX–565). Texas responded in a letter dated July 7, 1993, by submitting additional explanatory information and a revised amendment (Administrative Record No. TX–562). The regulations that Texas proposed to further revise were TCMR 778.116(m), identification of interests and compliance information: Violation information; TCMR 786.215(e)(1), review of permit applications: Review of violations; TCMR 786.215(f), review of permit applications: Pattern of willful violations; TCMR 786.215(g), review of permit applications: Final compliance review; TCMR 788. 225(e), Commission review of outstanding permits: Review criteria; TCMR 788.225(f), Commission review of outstanding permits: Remedial measures; and TCMR 788.225(g), Commission review of outstanding permits: Right of appeal. In this revised amendment, Texas also submitted for the first time proposed revisions to TCMR 843.680(c), cessation orders.

OSM published a notice in the August 12, 1993, **Federal Register** (58 FR 42901) announcing receipt of the amendment and inviting public comment on the adequacy of the proposed amendment (Administrative Record No. TX–567). The public comment period closed August 27, 1993.

III. Director's Findings

After a thorough review, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, the Director finds, with certain exceptions and additional requirements discussed herein, that the proposed amendment as submitted by Texas on February 8, 1993, and subsequently revised on July 7, 1993, is no less stringent than SMCRA and no less effective than the corresponding Federal regulations in meeting SMCRA's requirements.

1. Revisions to Texas' Regulations That Are Substantively Identical to the Corresponding Federal Regulations

Texas proposed revisions to the following regulations that are substantive in nature and contain language that is substantively identical to the corresponding Federal regulations (listed in parentheses): TCMR 778.116(1) (30 CFR 778.14(b)), identification of interests and compliance information; TCMR 786.215(e)(2) (30 CFR 773.15(b)(2)), review of permit applications; and TCMR 788.225(g) (30 CFR 773.21(c)), right of appeal.

Because these proposed Texas regulations are substantively identical to the corresponding Federal regulations, the Director finds that they are no less effective than the corresponding Federal regulations and approves them. Accordingly, the Director removes the required amendments at 30 CFR 943.16(b) and (e).

2. TCMR 778.116(m), Identification of Interests and Compliance Information

Proposed TCMR 778.116(m) requires that an application for a permit to conduct surface coal mining and reclamation operations (a permit application) include, among other things,

> [f]or any violations of a provision of the Act, Federal Act, or of any law, rule or regulation of the United States, or of any State law, rule or regulation enacted pursuant to Federal law, rule or regulation pertaining to air or water environmental protection incurred in connection with any surface coal mining operation, a list of all violation notices received by the applicant during the three year period preceding the application date, and a list of all unabated cessation orders and unabated air and water quality violation notices received prior to the date of the application by any surface coal mining and reclamation operation owned or controlled by either the applicant or by any person who owns or controls the applicant.

Proposed TCMR 778.116(m) is similar to the corresponding Federal regulation at 30 CFR 778.14(c). In fact, the proposed Texas provision follows the

language of the Federal counterpart regulation almost verbatim, with the exception that Texas has added the term "Federal Act." However, as discussed below, the requirements of the proposed TCMR 778.116(m) differ substantively from the Federal requirements, and the Director has two specific concerns with Texas' proposal.

The Director's first concern relates to Texas' use of the terms "Act" and "Federal Act." At TCMR 700.003(1), Texas defines the term "Act" to mean the "Texas Surface Coal Mining Control and Reclamation Act" (TSCMRA) and at TCMR 700.003(10) defines the term "Federal Act" to mean the "Surface Mining Control and Reclamation Act of 1977 (Pub. L. 95–87)." Therefore, when Texas requires at proposed TCMR 778.116(m) information "for any violations of a provision of the Act, [or the] Federal Act," it requires a permit application to include information regarding violations of TSCMRA and SMCRA.

In contrast, the term "Act" as used in 30 CFR 778.14(c) and section 510(c) of SMCRA, includes not only SMCRA, but also its implementing Federal regulations, and all Federal and State programs approved under SMCRA (53 FR 38868, 38882–38883, October 3, 1988; and 48 FR 44344, 44389, September 28, 1983). Therefore, the corresponding Federal regulation at 30 CFR 778.14(c) requires permit applications to include information regarding violations received pursuant to SMCRA, SMCRA's implementing Federal regulations (e.g., 30 CFR part 865), all SMCRA-approved Federal programs (OSM-administered Indian lands programs (30 CFR part 750) and Federal programs for States (various sections of 30 CFR part 900; e.g. 30 CFR part 942)), and all SMCRA-approved State programs.

Although Texas, by adding the term "Federal Act," requires permit applications to include information regarding violations of SMCRA, it is not clear that this term, as used in the Texas proposal, includes SMCRA's implementing Federal regulations, SMCRA-approved Federal programs, and all SMCRA-approved State programs, not just the Texas program. In its June 8, 1993 letter to Texas, OSM requested Texas to clarify whether the term "Federal Act" included SMCRA's implementing Federal regulations, SMCRA-approved Federal programs, and all SMCRA-approved State programs. In its submittal of July 8, 1993, Texas responded that inclusion of information on such violations in permit applications is not necessary because section 21(b) of TSCMRA and TCMR 786.215 (e)(1) and (g) allow the regulatory authority to consider other available information in making its decision regarding a permit application.

The Federal regulation at 30 CFR 778.14(c) does not provide any exception to the requirement that violations of the specified laws rules and regulations be included in a permit application. In addition, section 510(c) of SMCRA requires that "any and all" such violations be listed. There is no exception for information that may be available to the regulatory authority from other sources.

The Director's second concern with proposed TCMR 778.116(m) relates to the phrase "of any law, rule or regulation of the United States, or of any State law, rule or regulation enacted pursuant to Federal law, rule or regulation pertaining to air or water environmental protection" (emphasis added). In its June 8, 1993 letter to Texas, OSM observed that, in its proposals, Texas sometimes capitalizes the word "State." OSM requested Texas to clarify whether or not the State intended the word "State" to have different meanings, depending upon whether or not it was capitalized in any particular proposed provision. In its submittal of July 8, 1993, Texas responded that the word "State," when capitalized, refers to Texas and, when uncapitalized, refers to all States within the United States of America. Therefore, the word "State" in the phrase "of any law, rule or regulation of the United States, or of any State law, rule or regulation enacted pursuant to Federal law, rule or regulation pertaining to air or water environmental protection" limits the applicable violations that must be included in a permit application to those incurred in Texas.

In its July 8, 1993 submittal, Texas indicated that its proposed regulation at TCMR 778.116(m) limited the information regarding violations that must be included in a permit application to violations incurred within the State of Texas because section 21(c) of TSCMRA is similarly limited in scope. Section 21(c) of TSCMRA requires a permit application to include a listing of "notices of violations of this Act and any law, rule, or regulation of the United States, or the State of Texas, or of any department or agency in the United States pertaining to air or water environmental protection incurred by the applicant in connection with any surface coal mining operation *within the state* * * *" (emphasis added).

This limitation of section 21(c) of TSCMRA is inconsistent with section 510(c) of SMCRA and OSM's interpretation of the phrase "any department or agency in the United States" included in that section of SMCRA. The preamble to the Federal regulations at 30 CFR 778.14 states that

> [t]he phrase "in the United States" is construed by courts to mean physically located within the United States * * *. Therefore, the preferred way to read section 510(c) is to construe "department or agency in the United States" to mean any governmental department or agency" physically located in the United States, which would include State and local governmental entities

(44 FR 14902, 15023, March 13, 1979). This includes the State and local governmental entities of all States, not just those within the State in which the permit application is submitted.

In conclusion, the Director finds that Texas' proposed regulation at TCMR 778.116(m) is less effective than the corresponding regulation at 30 CFR 778.14(c) in meeting SMCRA's requirements and less stringent than section 510(c) of SMCRA because it does not require permit applications to include information regarding (1) violations received pursuant to SMCRA's implementing Federal regulations, SMCRA-approved Federal programs, and SMCRA-approved State programs, other than the Texas program, and (2) air or water environmental protection violations received pursuant to State laws, rules or regulations enacted pursuant to Federal laws, rules, or regulations and incurred by the applicant outside of the State of Texas. The Director approves proposed TCMR 778.116(m) but requires Texas to revise it or otherwise modify its program to provide that a permit application must include information on (1) violations received pursuant to SMCRA's implementing Federal regulations, SMCRA-approved Federal programs, and all SMCRA-approved State programs, not just the Texas program and (2) air or water environmental protection violations received pursuant to State laws, rules or regulations enacted pursuant to Federal laws, rules, or regulations and incurred by the applicant in any State, not just Texas.

The Director also finds that section 21(c) TSCMRA is less stringent than section 510(c) of SMCRA because it limits the information regarding violations that must be included in a permit application to those that occur in Texas. Therefore, the Director requires Texas to revise section 21(c) of TSCMRA to remove the words "within the state" from the phrase "in connection with any surface coal mining operation within the state

during the three-year period" in the first sentence of section 21(c).

3. TCMR 786.215(e)(1), (f), and (g), and 786.216(i), Review of Permit Applications

(a) TCMR 786.215(e)(1)

Proposed TCMR 786.215(e)(1) provides, in part, that,

[i]f the Commission determines from either the schedule submitted as part of an application * * * or from other available information concerning Federal and *State* failure-to-abate cessation orders, unabated Federal and *State* imminent harm cessation orders, delinquent civil penalties issued pursuant to the Act or Federal Act or Federally-approved coal regulatory program, bond forfeitures where violations upon which the forfeitures were based have not been corrected, delinquent abandoned mine reclamation fees, and unabated violations of Federal and any state laws, rules, and regulations pertaining to air or water environmental protection incurred in connection with any surface coal mining and reclamation operation owned or controlled by either the applicant or by any person who owns or controls the applicant is currently in violation of the Act or any other law, rule, or regulation referred to in this paragraph

(emphasis added).

Proposed TCMR 786.215(e)(1) differs from the corresponding Federal requirements at 30 CFR 773.15(b)(1) in three ways. First, as discussed in finding No. 2, Texas has stated that the word "State," when capitalized, refers to the State of Texas and, when uncapitalized, refers to all States within the United States of America. Thus, the reference in Texas' proposal to "Federal and State failure-to-abate cessation orders [and] unabated Federal and State imminent harm cessation orders" is limited to cessation orders incurred in Texas. Therefore, Texas' proposal is inconsistent with the Federal requirements at 30 CFR 773.15(b)(1), which require the regulatory authority to consider information on cessation orders incurred in all States, not just Texas.

Second, proposed TCMR 786.215(e)(1) requires the Commission to consider, as a basis for permit denial, information on "delinquent civil penalties issued pursuant to the Act or Federal Act or federally-approved coal regulatory program." The corresponding Federal regulation at 30 CFR 773.15(b)(1) requires the regulatory authority to consider, as a basis for permit denial, among other things, information concerning delinquent civil penalties issued pursuant to "the Act," meaning SMCRA. The preamble to 30 CFR 778.14(c) (53 FR 38868, 38882–38883, October 3, 1988; also 48 FR 44344, 44389, September 28, 1983) explains that the reference to the "Act" in section 510(c) of SMCRA, on which the Federal regulation is based, includes, in addition to SMCRA, SMCRA's implementing Federal regulations and all Federal and State programs approved under SMCRA (53 FR 38868, 38882–38883, October 3, 1988).

As discussed in finding No. 2, Texas defines the term "Act" to mean Texas Surface Coal Mining Control and Reclamation Act and defines the term "Federal Act" to mean the Surface Mining Control and Reclamation Act of 1977 (SMCRA, Pub. L. 95–87). In its submittal dated February 8, 1993, Texas stated that it interprets the phrase "the Federal Act or federally-approved coal regulatory program" in TCMR 786.215(e)(1) to include available information concerning delinquent civil penalties issued pursuant to any OSM Federal programs, or any SMCRA-approved State programs other than the Texas program, as a basis for permit denial.

On the basis of this interpretation, proposed TCMR 786.215(e)(1) is no less effective than 30 CFR 773.15(b)(1) because it requires that the Commission consider, as a basis for permit denial, information concerning delinquent civil penalties issued pursuant to the Texas program, SMCRA, SMCRA's implementing Federal regulations, SMCRA-approved Federal programs, and all SMCRA-approved State programs, not just the Texas program.

Third, proposed TCMR 786.215(e)(1) also provides, in part, that "[i]n the absence of a failure-to-abate cessation order, the Commission may presume that a notice of violation issued pursuant to Section .681 or under a Federal or State program has been or is being corrected to the satisfaction of the agency with jurisdiction over the violation * * *." This proposed language includes the same requirements as the Federal provisions at 30 CFR 773.15(b)(1). However, on May 21, 1992 (57 FR 21600, 21602), the Director deferred decision on this provision of TCMR 786.215(e)(1) because the Secretary of the Interior, in *National Wildlife Federation* v. *Lujan*, Civ. Nos. 88–3117, *et seq.* (Consolidated, D.D.C. filed October 27, 1988), had expressed an intention to reconsider the issue of whether, in the absence of a failure-to-abate cessation order, the regulatory authority may presume that a notice of violation has been or is being corrected, as set forth in the Federal regulation (Memorandum of Points and Authorities In Support of the Federal Defendants' Cross-Motion For Summary Judgment and In Opposition to Plaintiffs' Motions For Summary Judgment, pp. 89–90). The final resolution of this reconsideration is pending.

In conclusion, the Director finds that proposed TCMR 786.215(e)(1) is less stringent than section 510(c) of SMCRA and less effective in meeting SMCRA's requirements than the corresponding Federal regulation at 30 CFR 773.15(b)(1) to the extent that it does not require the Commission to consider information on cessation orders incurred in States other than Texas. The Director requires Texas to revise TCMR 786.215(e)(1) to require the Commission to additionally consider, as a basis for permit denial, information on cessation orders issued by States other than Texas. With the exception of the part of proposed TCMR 786.215(e)(1) that addresses the presumption that, in the absence of a failure-to-abate cessation order, a notice of violation has been or is being corrected, the Director approves proposed TCMR 786.215(e)(1). On the part of TCMR 786.215(e)(1) that addresses this presumption, the Director continues to defer decision.

(b) TCMR 786.215(f) and 786.216(i)

Proposed TCMR 786.215(f) provides, in part, that,

[b]efore any final determination by the Commission that the applicant, anyone who owns or controls the applicant, or the operator specified in the application, controls or has controlled mining operations with a demonstrated pattern of willful violation of the Act or Federal or State laws as used in 30 CFR 773.15(b) of such nature, duration, and with such resulting irreparable damage to the environment that indicates an intent not to comply with the provisions of the Act or Federal or State laws as used in 30 CFR 773.15(b), no permit shall be issued and a hearing shall be held.

The proposed regulation further provides that the applicant or operator shall be afforded the opportunity for an adjudicatory hearing in accordance with TCMR 787.222.

Section 510(c) of SMCRA and the Federal regulation at 30 CFR 773.15(b)(3) prohibit issuance of a permit when the regulatory authority makes a finding that the applicant, anyone who owns or controls the applicant, or the operator specified in the application, controls or has controlled surface coal mining and reclamation operations with a demonstrated pattern of willful violations of the Act of such nature and duration, and with resulting irreparable damage to the environment, as to indicate an intent not to comply with the Act. The term "Act," as used in section 510(c) of SMCRA and 30 CFR

773.15(b)(3), includes SMCRA, its implementing Federal regulations, and all Federal and State programs approved under SMCRA (48 FR 44344, 44389, September 28, 1983). This Federal regulation also requires that the applicant or operator be given an opportunity for an adjudicatory hearing on the determination, as provided for at 30 CFR 775.11, before such a finding becomes final.

The Director has three concerns with proposed TCMR 786.215(f). First, as discussed in finding No. 2, Texas stated in its submittal of July 7, 1993, that the word "State," when capitalized, means the State of Texas and, when uncapitalized, means all States within the United States of America. Because proposed TCMR 786.215(f) uses the term "State laws" in the phrase "Federal or State laws as used in 30 CFR 773.15(b)," the Commission would be required to consider violations of the applicable laws, rules, and regulations of Texas, but not of other States. This is inconsistent with the corresponding Federal regulation at 30 CFR 773.15(b)(3) that requires consideration of the specified violations incurred in all States.

Second, the proposed regulation does not explicitly require denial of a permit once the Commission makes a determination that a pattern of willful violations exists. Instead, the proposed rule only requires that a permit not be issued and a hearing held "before any final determination by the Commission." Accordingly, the State proposal is less effective than the Federal regulation at 30 CFR 773.15(b)(3), which does explicitly require denial of a permit once the regulatory authority makes a finding that a pattern of willful violation exists.

Third, another Texas regulation directly related to proposed TCMR 786.215(f) is inconsistent with proposed TCMR 786.215(f) and the Federal requirements at 30 CFR 773.15(b)(3). TCMR 786.216(i), like proposed TCMR 786.215(f), addresses permit denial based upon the existence of a pattern of willful violations. However, the scope of TCMR 786.215(i) is more limited than the scope of proposed TCMR 786.215(f).

TCMR 786.216(i) prohibits Commission approval of a permit only if the applicant or the operator, if other than the applicant, controls or has controlled operations with a pattern of willful violations. By comparison, proposed TCMR 786.215(f) and the Federal regulations at 30 CFR 773.15(b)(3) encompass, in addition to the applicant and the operator, anyone who owns or controls the applicant. In addition, TCMR 786.216(i) only addresses violations of TSCMRA. It does not encompass violations of SMCRA, SMCRA's implementing Federal regulations, SMCRA-approved Federal programs, and SMCRA-approved State programs. Therefore, existing TCMR 786.216(i) is inconsistent with proposed TCMR 786.215(f) and is less effective than the Federal regulations at 30 CFR 773.15(b)(3).

In conclusion, the Director finds that proposed TCMR 786.215(f) is less stringent than section 510(c) of SMCRA and less effective than the corresponding Federal regulation at 30 CFR 773.15(b)(3) in meeting SMCRA's requirements because the proposed provision (1) does not specifically require denial of a permit when the Commission determines that a pattern of willful violations exists and (2) does not require the Commission to consider violations of the applicable laws, rules, and regulations of States other than Texas. The Director does not approve proposed TCMR 786.215(f) and requires Texas to revise it to prohibit issuance of a permit whenever the Commission makes a determination that the applicant, anyone who owns or controls the applicant, or the operator specified in the application controls or has controlled surface coal mining and reclamation operations with a demonstrated pattern of willful violations of TSCMRA, SMCRA, SMCRA's implementing Federal regulations, SMCRA-approved Federal programs, and all SMCRA-approved State programs, not just the Texas program, of such nature, duration, and with such resulting irreparable damage to the environment, as to indicate an intent not to comply with these laws, rules, and regulations.

In addition, because TCMR 786.216(i) creates internal inconsistencies in the Texas program and it is less effective than the Federal regulations at 30 CFR 773.15(b)(3) in meeting SMCRA's requirements, the Director requires Texas to delete TCMR 786.216(i) or revise it to be no less effective than the Federal requirements in meeting SMCRA's requirements.

(c) TCMR 786.215(g)

Proposed TCMR 786.215(g) requires the Commission, prior to issuing a permit, to review and consider, under the criteria of TCMR 786.215(e)(1), any new compliance information submitted pursuant to TCMR 778.116 (i) and (n). If the applicant fails or refuses to respond as required, or if the new information shows that the applicant, anyone who owns or controls the applicant, or the operator is in violation, the Commission must deny the permit.

Under the Federal regulation at 30 CFR 773.15(b)(1), the regulatory authority cannot issue a permit if any surface coal mining and reclamation operation owned or controlled by either the applicant or by any person who owns or controls the applicant is currently in violation of SMCRA or certain other laws and regulations. The Federal regulation at 30 CFR 773.15(e), which corresponds to proposed TCMR 786.215(g), requires that after an application is approved, but before a permit is issued, the regulatory authority must reconsider its decision to approve the application, based upon the compliance review required by 30 CFR 773.15(b)(1), in light of any new information submitted pursuant to 30 CFR 778.13(i) and 778.14(d).

Because proposed TCMR 786.215(g) requires the Commission, after an application is approved but before the permit is issued, to conduct a final compliance review in accordance with TCMR 786.215(e)(1), the Director finds that proposed TCMR 786.215(g) is no less effective than the corresponding Federal regulation at 30 CFR 773.15(e). The Director approves TCMR 786.215(g) and removes the required amendment at 30 CFR 943.16(g).

4. TCMR 788.225 (e) and (f), Commission Review of Outstanding Permits

(a) TCMR 788.225(e)

Proposed TCMR 788.225(e) requires the Commission to review a permit under the authority of section 22(c) of TSCMRA when it has reason to believe that the permit was improvidently issued. The Commission must find, after notice and opportunity for a hearing, that the permit was improvidently issued if the conditions set forth at TCMR 788.225(e) (1) through (3) are met.

The corresponding Federal regulation at 30 CFR 773.20(a) provides, in part, that a regulatory authority that has reason to believe that it improvidently issued a surface coal mining and reclamation permit must review the circumstances under which the permit was issued, using the criteria at 30 CFR 773.20(b). The Federal regulations at 30 CFR 773.20(b) require the regulatory authority to make a finding that a permit was improvidently issued when the conditions specified at 30 CFR 773.20(b) (1) through (3) are met.

Proposed TCMR 788.225(e) includes the phrase "under the authority of Section 22(c) of the Act." In its June 8, 1993, letter to Texas, OSM requested that Texas clarify the meaning of this phrase. In its July 8, 1993, submittal,

Texas responded that the phrase merely cited the section of TSCMRA that provides the basis for Commission review of a final order which issued a permit. Section 22(c) of TSCMRA requires the Commission to review outstanding permits and allows it to require reasonable revisions or modifications of the permit provisions. On the basis of this explanation, this part of proposed TCMR 788.225(e) is no less effective than the Federal regulations at 30 CFR 773.20(a) and (b) because it requires a review of an outstanding permit any time the Commission has reason to believe that the permit was improvidently issued.

Proposed TCMR 788.225(e) does not specifically identify the violations review criteria that the Commission will use to determine whether a permit was improvidently issued. In its June 8, 1993, letter to Texas, OSM requested that Texas identify the permit review criteria that would be used. As OSM noted, the Federal regulations contain only the procedures the regulatory authority must employ to determine whether a surface coal mining and reclamation permit was improvidently issued. The preamble to the Federal regulation at 30 CFR 773.20 specifies certain review and decision criteria (including effective dates relative to various types of violations, penalties, and fees) that apply in all Federal and State cases (54 FR 18438, 18440–18441, April 28, 1989). Texas responded in its July 8, 1993, submittal that it intends to apply the same permit review criteria that are applied by the Federal rules. Thus, Texas has adopted the minimum violation review criteria specified by the Federal regulations. Texas has not specified the actual calendar dates on which each of the criteria became or will become effective. Therefore, at the time a review is conducted, Texas must specify criteria and effective dates corresponding with those of the Federal regulations. On this basis, this part of proposed TCMR 788.225(e) is no less effective than the Federal regulations at 30 CFR 773.20(a) and (b) in meeting SMCRA's requirements.

Proposed TCMR 788.225(e)(1)(B) provides that the Commission shall review a permit if "[t]he permit was issued on the information that a notice of violation was in the process of being corrected to the satisfaction of the agency with jurisdiction over the violation * * *." This proposed language is substantively identical to the corresponding Federal regulation at 30 CFR 773.20(b)(1)(ii). However, this subsection relates to the same presumption issue discussed in finding No. 3(a). On May 21, 1992 (57 FR 21600, 21602), the Director deferred decision on this provision of TCMR 788.225(e) because the Secretary had indicated an intention to reconsider the corresponding Federal regulation at 30 CFR 773.20(b)(1)(ii) in addition to 30 CFR 773.15(b)(1)(i) (Memorandum of Points and Authorities, p. 124). The final resolution of this reconsideration is pending.

For the aforementioned reasons, and with the exception of subsection TCMR 788.225(e)(1)(B) which allows the Commission to presume that a notice of violation has been or is being corrected in the absence of a failure-to-abate cessation order, the Director finds that proposed TCMR 788.225(e) is no less effective than 30 CFR 773.20(a) and (b), approves it, and removes the required amendments at 30 CFR 943.16(h)(1), (i)(1) and (i)(2). The Director continues to defer decision on proposed TCMR 788.225(e)(1)(B).

(b) TCMR 788.225(f)

Proposed TCMR 788.225(f) requires that if the Commission, under TCMR 788.225(e), finds that a permit was improvidently issued, it shall use one or more of the following three remedial measures specified at TCMR 788.225(f)(1) through (3):

(1) Implement, with the cooperation of the permittee or other person responsible, and of the responsible agency, a plan for abatement of the violation or a schedule for payment of the penalty or fee;

(2) Require revision of the permit to impose a condition that in a reasonable period of time the permittee abate the violation or pay the penalty or fee;

(3) Issue a show cause order to suspend or revoke the permit based upon its improvident issuance in accordance with [the Administrative Procedures and Texas Register Act (APTRA)]. A decision on suspension shall be made within ninety days and a decision on rescission shall be made within a further ninety days.

The corresponding Federal regulation at 30 CFR 773.20(c) requires a regulatory authority, when it finds that a permit was improvidently issued, to use one or more of the four remedial measures specified at 30 CFR 773.20(c)(1) through (4).

The remedial measure proposed by Texas at TCMR 778.225(f)(1) and (2) are almost identical to the counterpart Federal provisions at 30 CFR 773.20(c)(1) and (2). They differ only in that under TCMR 778.225(f)(2) the Commission can impose a condition on a permit that, in a reasonable amount of time, the "permittee" abate the violation or pay the penalty or fee, whereas the Federal regulation at 30 CFR 773.20(c)(2) allows the same permit condition for the "permittee or other persons responsible" to abate the violations or pay the penalty or fee. Texas' proposal to make the permittee solely responsible for the violation abatement or payment is no less effective than the Federal regulations at 30 CFR 773.20(c)(2).

The Director has two concerns with the remainder of proposed TCMR 778.225(f). First, proposed TCMR 788.225(f) does not include provisions corresponding to the Federal remedial measures at 30 CFR 773.20(c)(3). This remedial measure allows the regulatory authority to suspend the permit until the violation is abated or the penalty or fee is paid. This possible remedial measure is separate and distinct from the one at 30 CFR 773.20(c)(4) that allows the regulatory authority to rescind the permit in accordance with 30 CFR 773.21. The Federal regulation at 30 CFR 773.21 provides for permit suspension in connection with the rescission process provided for by that regulation.

The preamble to the Federally regulations makes clear that the suspension referred to in 30 CFR 773.21 is separate and distinct from the suspension revered to in 30 CFR 773.20(c)(3). The suspension referred to at 30 CFR 773.21 is merely a preliminary step in the permit rescission process; OSM stated that it was providing for the permit suspension at 30 CFR 773.20(c)(3) as a separate possible remedial action "to give a regulatory authority discretion to tailor a suspension to the unique circumstances involving a particular permit * * *" (54 FR 18438, 18450; April 28, 1989). OSM also stated that

Section 773.20(c)(3) does not set out specific suspension procedures, but allows the regulatory authority to use any appropriate procedures that are consistent with the regulatory program, including a reasonable period of time between notifying a permittee of a suspension and when the suspension becomes effective

(54 FR 18438, 18450, April 28, 1989).

Proposed TCMR 788.225(f)(3) appears to be a counterpart provision to the Federal regulations at 30 CFR 773.20(c)(4) and 773.21. That is, Texas' proposed possible remedially measure involving a show cause order to suspend or revoke a permit seems to corespond to the Federal provisions at 30 CFR 773.20(c)(4) and 773.21 for permit rescission. Texas has not proposed any counterpart provision to the Federal regulation at 30 CFR 773.20(c)(3) for permit suspension as a possible remedial measure. The preamble to 30 CFR 773.20(c) explains that four alternative remedial measures are provided "because of the diversity of

circumstances under which a regulatory authority might find that a permit was improvidently issued, and the resulting need to apply a remedy that not only is administratively appropriate, but also is fair and equitable to the permitted" (54 FR 18438, 18447, April 28, 1989).

Since the availability of various possible remedial measures is a matter bearing upon procedural rights and remedies, the State proposal must be evaluated from the point of view of is similarity to the Federal rules in affording rights and remedies to persons (46 FR 53376, 53377, October 28, 1981). To the extent Texas' proposal does not provide any counterpart provision to 30 CFR 773.20(c)(3), it fails to afford rights and remedies to persons similar to those afforded under the Federal regulations. Accordingly, the Director finds that proposed TCMR 788.225(f) is less effective than the Federal regulations in meeting SMCRA's requirements insofar as the State proposal fails to provide a counterpart provision to 30 CFR 773.20(c)(3).

Second, proposed TCMR 788.225(f)(3) differs considerably from and is less effective in meeting SMCRA's requirements than the Federal counterpart provisions at 30 CFR 773.20(c)(4) and 773.21. While the Federal regulation at 30 CFR 773.21 sets forth detailed procedures governing rescission of a permit pursuant to 30 CFR 773.20(c)(4), proposed TCMR 788.225(f)(3) merely states that a possible remedial measure is to

> [i]ssue a show cause order to suspend or revoke the permit based upon its improvident issuance in accordance with APTRA. A decision on suspension shall be made within ninety days and a decision on rescission shall be made within a further ninety days.

In its letter to the State dated June 8, 1993, OSM notified Texas that its provision appeared to provide for rescission only through formal adjudicative proceedings, as compared to the automatic suspension and rescission process provided for in the Federal regulations at 30 CFR 773.21(a). Texas explained, in its letter of July 7, 1993, that because section 13(a) of APTRA, which is part of the approved Texas program, requires that all parties in a contested case have the opportunity for an adjudicative hearing before legal rights, duties or privileges are determined, the suspension or revocation of permits cannot be automatic. Texas further explained that proposed TCMR 788.225(f)(3) provides that decisions on suspension and rescission of permits must be made within the same time periods as required by the Federal provisions.

Although the concept of providing for a formal adjudicative proceeding in connection with permit suspension and revocation proceedings does not, by itself, render proposed TCMR 788.225(f)(3) less effective than the Federal regulations at 30 CFR 773.21(a) in meeting SMCRA's requirements, there are ambiguities and deficiencies with the State proposal that do render it less effective than the Federal counterpart regulations.

First, although Texas states that its proposal provides for the same time periods as the corresponding Federal provisions, it is not clear that the Texas proposal does so. The Texas proposal only states when a "decision" regarding permit suspension and revocation will be made. It does not discuss when such a decision will become effective and the permit will actually be suspended or rescinded. Although the proposal would require Texas to make a "decision" on permit suspension and rescission within the specified time periods, the effective date of the suspension and rescission could occur beyond the specified time periods. By comparison, the Federal regulation at 30 CFR 773.21(a) provides for the suspension of a permit to become effective on a specified date not to exceed 90 days after notice is served on the permittee and for the rescission of the permit to become effective within a specified period not to exceed 90 days after the suspension is effective.

It also is not clear that the specified time periods in the State proposal are the same as those in the Federal regulations. The Federal regulation at 30 CFR 773.21(a) requires that "[a]fter a specified period of time *not to exceed 90 days* [after service of the notice of permit suspension and rescission] the permit automatically will become suspended, and *not to exceed 90 days thereafter* rescinded" (emphasis added) unless, within those time frames, the permittee submits proof and the regulatory authority makes findings on certain matters specified at 30 CFR 773.21(a)(1) through (4). By comparison, the State proposal merely states that a decision on suspension will be made "within ninety days" and a decision on rescission will be made "within a further ninety days."

Under the Federal regulations, the regulatory authority has the ability to specify any particular period of time in its notice of permit suspension and rescission, as long as the specified time period does not exceed 90 days. That is, the regulatory authority has the flexibility and discretion to suspend and rescind the permit very rapidly if deemed appropriate. Because Texas has indicated that it must follow its adjudicative procedures for permit suspension and rescission under this State rule but has not indicated the time periods associated with those procedures, it is not clear that Texas retains similar flexibility and discretion under its proposal.

In addition, the Federal regulations explicitly detail at 30 CFR 773.21(a)(1) through (4) the matters upon which the permittee must submit proof, and the findings the regulatory authority must make, in order to prevent permit suspension and rescission. If the permittee fails to submit proof or the regulatory authority fails to make findings on such specified matters, the permit must be suspended and rescinded. Moreover, the Federal regulations explicitly require that the permittee be given advance notice of those necessary matters of proof and required findings. The Texas proposal contains no such requirements.

Similarly, proposed TCMR 788.225(f) does not address the cessation of operations once a permit is suspended or rescinded. By comparison, the Federal regulation at 30 CFR 773.21(b) explicitly requires that after a permit is suspended or rescinded, all surface coal mining and reclamation operations being conducted under that permit must cease, except for violation abatement and for reclamation and other environmental protection measures as required by the regulatory authority. Permit suspension or rescission must not preclude the operator from completing such required operations. Again, Texas' proposal contains no counterpart provision.

In conclusion, the Director finds that proposed TCMR 788.225(f) is less effective than the corresponding Federal regulations at 30 CFR 773.20(c) and 773.21 (a) and (b) because it does not (1) include, as a counterpart to 30 CFR 773.20(c)(3), another possible remedial measure for improvidently issued permits that allows suspension of the improvidently issued permit until the violation is abated or the penalty or fee is paid, (2) specify the conditions no less effective than those at 30 CFR 773.21(a) (1) through (4) that must be met in order to prevent suspension or rescission an improvidently issued permit, (3) require that after a permit is suspended or rescinded, the only surface coal mining and reclamation operations that may continue to be conducted are those required for violation abatement and those required for completion of reclamation and other environmental protection measures as specified by the Commission, and (4) provide for the same time periods as those specified in the Federal

regulations at 30 CFR 773.21, require that a decision to suspend or rescind an improvidently issued permit must become effective within these specified time periods, or allow the Commission sufficient flexibility and discretion to suspend and rescind a permit rapidly when it is appropriate. Accordingly, the Director does not approve proposed subparagraph TCMR 788.225(f)(3).

With the exception of subparagraph (f)(3), the Director approves proposed TCMR 788.225(f). The Director requires Texas to further revise TCMR 788.225(f) to (1) include, as a counterpart to 30 CFR 773.20(c)(3), another possible remedial measure for improvidently issued permits that allows suspension of the improvidently issued permit until the violation is abated or the penalty or fee is paid, (2) specify the conditions no less effective than those at 30 CFR 773.21(a) (1) through (4) that must be met in order to prevent suspension or rescission an improvidently issued permit, (3) require that, after a permit is suspended or rescinded, the only surface coal mining and reclamation operations that may continue to be conducted under that permit are those required by the Commission for violation abatement and for completion of reclamation and other environmental protection measures, and (4) provide for the same time periods as those specified in the Federal regulations at 30 CFR 773.21, require that a decision to suspend or rescind an improvidently issued permit must become effective within these specified time periods, and allow the Commission sufficient flexibility and discretion to suspend and rescind a permit rapidly when it is appropriate. Because the Director is revising 30 CFR 943.16(j) to require that TCMR 788.225(f) be revised as discussed above, the Director removes the required amendment to 30 CFR 943.16(h)(2).

5. TCMR 843.680(c), Cessation Orders

Proposed TCMR 843.680(c) sets forth the minimum information that must be specified in a cessation order issued under the provisions of TCMR 843.680 (a) or (b), including (1) the nature of the violation, (2) the remedial action or affirmative obligation required, if any, including interim steps, if appropriate, (3) the time established for abatement, if appropriate, including the time for meeting any interim steps, and (4) a reasonable description of the portion of the coal exploration or surface coal mining and reclamation operation to which it applies.

Proposed TCMR 843.680(c) also requires that (1) a cessation order shall remain in effect until the condition, practice, or violation has been abated or until vacated, modified or terminated in writing by an authorized representative of the Commission, and (2) the Commission, within 60 days after issuing a cessation order, shall notify in writing any person who has been identified as owning or controlling the permittee that the cessation order was issued and that the person has been identified as an owner or controller.

The provisions of proposed TCMR 843.680(c) are similar to the corresponding Federal provisions at 30 CFR 843.11 (c) and (g), with three exceptions. Proposed TCMR 843.680(c) requires a cessation order to set forth, among other things, "the nature of the violation." The corresponding Federal regulations at 30 CFR 843.11(c) require a cessation order to set forth "the nature of the conditions, practice or violation." This difference in wording is not substantive. Section 521(a)(5) of SMCRA requires a cessation order to set forth "the nature of the violation" and OSM's original program at 30 CFR 843.11(c) had the same requirement (44 FR 14902, 15458, March 13, 1979). Subsequently, the words "condition, practice or" were added to the phrase "the nature of the violation" (47 FR 35620, 35630, August 16, 1982). The preamble to that rulemaking states that, except for paragraph (a)(2), section 843.11 was promulgated as proposed, and further indicates that the promulgated changes were made to more closely reflect the provisions for cessation orders contained in section 521 of SMCRA (47 FR 35620, 35630, August 16, 1982). OSM stated in the proposed rule that it was proposing various language changes throughout 30 CFR 843.11(c) for clarity and that no changes in effect were intended (46 FR 58464, 58467, December 1, 1981).

The requirements of SMCRA at section 521(a)(5) to set forth in a cessation order "the nature of the violation" and of the Federal regulations at 30 CFR 843.11(c) to set forth "the nature of the condition, practice or violation" are both, in effect, requirements to explain to the permittee, in writing, why cessation of operations is being ordered. The omission of the words "condition, practice or" from the requirements at TCMR 843.680(c) does not relieve the Commission or its representatives from including in the cessation order the reason for the order, regardless of whether the reason is a condition, practice, violation, or a combination of thereof. Therefore, to the extent that it requires a cessation order to include the reasons for the order, whether the reason is a condition, practice, violation, proposed TCMR 843.680(c) is no less effective than the requirements of the corresponding Federal regulations at 30 CFR 843.11(c) in meeting SMCRA's requirements.

In addition, proposed TCMR 843.680(c) does not require, as do 30 CFR 843.11(c), section 521(a)(5) of SMCRA, and 30 CFR 843.15, that a cessation order expire within 30 days after it is served unless an informal public hearing has been held within that time. Texas' regulations at TCMR 843.684(a) provide that a cessation order must be reviewed at a public hearing within 30 days after it is served, but there is no provision for terminating the order if such hearing is not held within 30 days. However, consistent with section 521(a)(5) of SMCRA, section 32(e) of TSCMRA provides that a cessation order shall expire within 30 days of notice unless a public hearing is held. Therefore, proposed TCMR 843.680(c), in conjunction with section 32(e) of TSCMRA, is no less effective than the Federal regulations at 30 CFR 843.11(c) and is no less stringent than section 521(a)(5) of SMCRA with regard to the expiration of cessation orders.

The additional requirements that Texas proposed to add at TCMR 843.680(c), concerning notification of persons identified as owning or controlling the permittee, differ from the Federal requirements to 30 CFR 843.11(g) only to the extent that they do not reference the specific Texas regulations that require identification of all persons that own or control the permittee. The proposed regulations, instead, require notification of "any person who has been identified as owning or controlling a permittee." The requirements for identification of such persons are found in the Texas program at TCMR 786.221(d) and 778.116 (c) and (d). These regulations correspond, respectively, to the Federal regulations at 30 CFR 773.17(i) and 778.13 (c) and (d).

Although proposed TCMR 843.680(c) does not specifically reference Texas' regulations at TCMR 786.221(d) and 778.116 (c) and (d), which provide for the identification of all persons that own or control the permittee, it does require notification of "any person who has been identified as owning or controlling a permittee." Because the only regulations in the Texas program that address the identification of persons who own or control the permittee, are TCMR 786.221(d) and 778.116 (c) and (d), there should be no confusion as to who must be notified. Therefore, to the extent that Texas' use of the phrase "any person who has been identified as owning or controlling the

permittee" at proposed TCMR 843.680(c) means the persons identified pursuant to the requirements at TCMR 786.221(d) and 778.116 (c) and (d), Texas' proposed rule is consistent with the Federal regulations at 30 CFR 843.11(g).

For the aforementioned reasons, the Director finds that proposed TCMR 843.680(c) is no less effective than the corresponding Federal regulations at 30 CFR 843.11 (c) and (g) in meeting SMCRA's requirements and approves it.

IV. Summary and Disposition of Comments

1. Public Comments

OSM solicited public comments and provided opportunity for a public hearing on the proposed amendment. No comments were received from the public. Because no one requested an opportunity to testify at a public hearing, no hearing was held.

2. Agency Comments

Pursuant to section 503(b)(1) of SMCRA and 30 CFR 732.17(h)(11)(i), OSM solicited comments from the Administrator of the Environmental Protection Agency (EPA) and various other Federal agencies with an actual or potential interest in the Texas program.

The Soil Conservation Service, Forest Service, Bureau of Mines, and National Park Service responded that they had no comments concerning the proposed amendment (Administrative Record Nos. TX–544, TX–545, TX–546 and TX–571, and TX–549).

The U.S. Army Corps of Engineers responded that it found the amendment satisfactory to that agency (Administrative Record No. TX–548).

The Bureau of Land Management responded that it could suggest no additional improvements to the ownership and control rules (Administrative Record No. TX–547).

3. State Historic Preservation Officer (SHPO) and Advisory Council on Historic Preservation (ACHP) Comments

Pursuant to 30 CFR 732.17(h)(4), OSM is required to solicit comments from the SHPO and ACHP for all amendments that may have an effect on historic properties. The Director solicited comments from these offices (Administrative Record No. TX–543). Neither the SHPO nor ACHP responded.

4. EPA Concurrence

Under 30 CFR 732.17(h)(11)(ii), OSM is required to obtain the written concurrence of the Administrator of the EPA with respect to any provisions of a State program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*)

None of the regulation changes that Texas proposed pertain to air or water quality standards. Nevertheless, OSM requested EPA's concurrence. On October 25, 1993, EPA give its concurrence (Administrative Record No. TX–573).

V. Director's Decision

Based on the above findings, the Director approves, with certain exceptions and additional requirements, the proposed amendment as submitted by Texas on February 8, 1993, and as revised by it on July 7, 1993.

As discussed in finding Nos. 1, 3(c), 4(a), and (5), the Director approves (1) TCMR 778.116(l), identification of interests and compliance information; (2) TCMR 786.215(e)(2), review of permit applications; (3) TCMR 786.215(g), review of permit applications: Final compliance review; (4) TCMR 788.225(e), review criteria, except for subparagraph TCMR 788.225(e)(1)(B) that allows the Commission to presume that a notice of violation has or is being corrected; (5) TCMR 788.225(g), right of appeal, and (6) TCMR 843.680(c), cessation orders.

As discussed in finding Nos. 2, 3(a), and 4(b), the Director approves but requires Texas to submit further regulatory program amendments regarding (1) TCMR 778.116(m), violation information; (2) TCMR 786.215(e)(1), review of violations; and (3) TCMR 788.225(f), (f)(1), and (f)(2), remedial measures.

As discussed in finding Nos. 3(b), and 4(b), the Director does not approve and requires Texas to submit further regulatory program amendments regarding (1) TCMR 786.215(f), permit denial for pattern of violations and (2) TCMR 788.225(f)(3), remedial measures.

As discussed in finding Nos. 2 and 3(b), the Director requires Texas to (1) revise section 21(c) of TSCMRA to remove the words "within the state" from the phrase "in connection with any surface coal mining operation within the state during the three-year period" in the first sentence of section 21(c) and (2) either delete TCMR 786.216(i) or revise it to be no less effective than the Federal requirements at 30 CFR 773.15(b)(3).

As discussed in finding Nos. 3(a) and 4(a), the Director defers decision on proposed TCMR 786.215(e)(1) and 788.225(e)(1)(B) to the extent that these subsections allow the Commission to presume that a notice of violation has been or is being corrected in the absence of a failure-to-abate cessation order. In response to litigation, the Secretary has indicated an intention to reconsider this presumption issue in the corresponding Federal regulations.

In accordance with 30 CFR 732.17(f)(1), The Director is also taking this opportunity to clarify in the required amendment section at 30 CFR 943.16 that, within 60 days of the publishing of this notice, Texas must either submit a proposed written amendment, or a description of an amendment to be proposed that meets the requirements of SMCRA and 30 CFR Chapter VII and a timetable for enactment that is consistent with Texas' established administrative or legislative procedures.

To implement this decision, the Director is amending the Federal regulations at 30 CFR part 943 that codify all decisions concerning the Texas program. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. Thus, any changes to the State program are not enforceable until approved by OSM. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. In the oversight of the Texas program, the Director will recognize only the statutes, regulations and other materials approved by OSM, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Texas of only such provisions.

VI. Procedural Determinations

1. Executive Order 12866

This final rule is exempted from review by the Office of Management and Budget 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 1255) and 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 effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) The State submittal that 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. Hence, 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 data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 943

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 14, 1994.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T, of the Code of Federal Regulations is amended as set forth below:

PART 943—TEXAS

1. The authority citation for Part 943 continues to read as follows:

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

2. Section 943.15 is amended by adding paragraph (i) to read as follows:

943.15 Approval of regulatory program amendments.

* * * * *

(i) With the exceptions of TCMR 786.215(e)(1), review of violations, to the extent that it allows the Commission to presume that a notice of violation has been or is being corrected; TCMR 786.215(f), permit denial for pattern of violations; TCMR 788.225(e)(1)(B), review criteria, to the extent that it allows the Commission to presume that a notice of violation has been or is being corrected; and TCMR 788.225(f)(3), remedial measures, the revisions to 16 Texas Administrative Code 11.221, the Coal Mining Regulations of the Railroad Commission of Texas, as submitted on February 8, 1993, and as revised on July 7, 1993, are approved effective March 21, 1994. Revisions to the following regulations are approved:

TCMR 778.116(l) and (m), identification of interests and compliance information.

TCMR 786.215(e)(1) and (2), review of permit applications.

TCMR 786.215(g), final compliance review.

TCMR 788.225(e), (e)(1)(A), (e)(2), and (e)(3), commission review of outstanding permits: review criteria.

TCMR 788.225(f), (f)(1) and (f)(2), commission review of outstanding permits: remedial measures.

TCMR 788.225(g), right of appeal.

TCMR 843.680(c), cessation orders.

3. Section 943.16 is amended by revising the introductory paragraph, removing and reserving paragraphs (b), (e), (g), (h), and (i), revising paragraphs (c), (d), (f), and (j), and adding paragraphs (r) and (s), to read as follows:

943.16 Required program amendments.

Pursuant to 30 CFR 732.17(f)(1), Texas is required to submit to OSM by the specified date the following written, proposed program amendment, or a description of an amendment to be proposed that meets the requirements of SMCRA and 30 CFR Chapter VII and a timetable for enactment that is consistent with Texas' established administrative or legislative procedures.

* * * * *

(b) [Reserved]

(c) By May 20, 1994, Texas shall formally propose an amendment to OSM for TCMR 778.116(m) or otherwise modify its program to require a permit application to also include information on

(1) Violations received pursuant to SMCRA's implementing Federal regulations, all SMCRA-approved Federal programs (OSM-administered Indian lands program and Federal programs for States), and all SMCRA-approved State programs, not just the Texas program, and

(2) Air or water environmental protection violations received pursuant to any State laws, rules or regulations enacted pursuant to Federal laws, rules, or regulations and incurred by the applicant in any State, not just Texas.

(d) By May 20, 1994, Texas shall formally propose an amendment to OSM for TCMR 786.215(e)(1) to require the Commission to consider, as a basis for permit denial, information on cessation orders issued by States other than Texas.

(e) [Reserved]

(f) By May 20, 1994, Texas shall formally propose an amendment to OSM for TCMR 786.215(f) addressing the review of permit applications to require that issuance of permits is specifically prohibited whenever the Commission makes a determination that the applicant, anyone who owns or controls the applicant, or the operator specified in the application controls or has controlled surface coal mining and reclamation operations with a demonstrated pattern of willful violations of TSCMRA, SMCRA, SMCRA's implementing Federal regulations, SMCRA-approved Federal programs, and all SMCRA-approved State programs, not just the Texas program, of such nature, duration, and with such resulting irreparable damage to the environment, as to indicate an intent not to comply with these laws, rules, and regulations.

(g) [Reserved]

(h) [Reserved]

(i) [Reserved]

(j) By May 20, 1994, Texas shall formally purpose an amendment to OSM for TCMR 788.225(f), concerning remedial measures for improvidently issued permits, or otherwise revise its program to

(1) Provide, as a counterpart to 30 CFR 773.20(c)(3), another possible remedial measure for improvidently

issued permits that allows suspension of the improvidently issued permit until the violation is abated or the penalty or fee is paid,

(2) Specify the conditions no less effective than those at 30 CFR 773.21(a)(1) through (4) that must be met in order to prevent suspension or rescission of an improvidently issued permit.

(3) Require that after a permit is suspended or rescinded all surface coal mining and reclamation operations being conducted under that permit must cease, except for violation abatement and for reclamation and other environmental protection measures as required by the regulatory authority.

(4) Provide for the same time periods as those specified in the Federal regulations at 30 CFR 773.21, require that a decision to suspend or rescind an improvidently issued permit must become effective within these specified time periods, and allow the Commission sufficient flexibility and discretion to suspend and rescind a permit rapidly when it is appropriate.

* * * * *

(r) By May 20, 1994, Texas shall formally propose to OSM an amendment revising section 21(c) of the Texas Surface Coal Mining and Reclamation Act to remove the words "within the state" from the phrase "inconnection with any surface coal mining operation within the state during the three-year period" in the first sentence of section 21(c).

(s) By May 20, 1994, Texas shall formally propose an amendment to OSM for TCMR 786.216(i) to either

(1) Delete TCMR 786.216(i) or

(2) revise it to specifically prohibit issuance of permits in all situations where it is determined that the applicant, anyone who owns or controls the applicant, or the operator specified in the application controls or has controlled surface coal mining and reclamation operations with a demonstrated pattern of willful violation of TSCMRA, SMCRA, SMCRA's implementing Federal regulations, SMCRA-approved Federal programs, and the SMCRA-approved programs of all States, of such nature, duration, and with such resulting irreparable damage to the environment that indicates an intent not to comply with these laws, rules, and regulations.

[FR Doc. 94–6495 Filed 3–18–94; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 550

Libyan Sanctions Regulations; Specially Designated Nationals List

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule; amendments.

SUMMARY: The Office of Foreign Assets Control is amending the Libyan Sanctions Regulations to add North Africa International Bank to appendix A ("Organizations Determined to be Within the Term 'Government of Libya' (Specially Designated Nationals of Libya)"), to provide new listings for four banks previously listed in appendix A, and to add three Libyan banking officials to appendix B ("Individuals Determined to be Specially Designated Nationals of the Government of Libya").

EFFECTIVE DATE: March 21, 1994.

ADDRESSES: Copies of the list of persons whose property is blocked pursuant to the Libyan Sanctions Regulations are available upon request at the following location: Office of Foreign Assets Control, U.S. Department of the Treasury, Annex, 1500 Pennsylvania Avenue, N.W., Washington, D.C. 20220. The full list of persons blocked pursuant to economic sanctions programs administered by the Office of Foreign Assets Control is available electronically on *The Federal Bulletin Board* (see Supplementary Information).

FOR FURTHER INFORMATION CONTACT: J. Robert McBrien, Chief, International Programs Division, Office of Foreign Assets Control, tel.: 202/622–2420.

SUPPLEMENTARY INFORMATION:

Electronic Availability

This document is available as an electronic file on *The Federal Bulletin Board* the day of publication in the **Federal Register**. By modem dial 202/512–1387 or call 202/512–1530 for disks or paper copies. This file is available in Postscript, WordPerfect 5.1 and ASCII.

Background

The Office of Foreign Assets Control ("FAC") is amending the Libyan Sanctions Regulations, 31 CFR part 550 (the "Regulations"), to add new entries to appendices A and B. Appendix A ("Organizations Determined to be Within the Term 'Government of Libya' (Specially Designated Nationals of Libya)") is a list of organizations determined by the Director of FAC to be within the definition of the term "Government of Libya" as set forth in § 550.304(a) of the Regulations, because they are owned or controlled by, or act or purport to act directly or indirectly on behalf of, the Government of Libya. Appendix B ("Individuals Determined to be Specially Designated Nationals of the Government of Libya") lists individuals determined by the Director of FAC to be acting or purporting to act directly or indirectly on behalf of the Government of Libya, and thus to fall within the definition of the term "Government of Libya" in § 550.304(a).

Appendix A to part 550 is amended to provide public notice of the designation of North Africa International Bank as a Specially Designated National of Libya. Appendix A is further amended to add new entries for four banks presently listed in appendix A under other names. These banks are Banque Commerciale du Niger (formerly Banque Arabe Libyenne Nigerienne pour le Commerce Exterieur et le Developpement), Banque Commerciale du Sahel (formerly Banque Arabe Libyenne Malienne pour le Commerce Exterieur et le Developpement), Chinguetty Bank (formerly Banque Arabe Libyenne Mauritanienne pour le Commerce Exterieur et le Developpement), and Societe Interaffricaine du Banque (formerly Banque Arabe Libyenne Togolaise du Commerce Exterieur). These banks remain listed in appendix A under their former names as well.

Appendix B to part 550 is amended to provide public notice of three individuals determined to be Specially Designated Nationals of the Government of Libya: Seddigh Al Kabir, Mustafa Saleh Gibril, and Farag Al Amin Shallouf. Each of these individuals is a Libyan national who occupies a central management position in a Libyan SDN financial institution.

All prohibitions in the Regulations pertaining to the Government of Libya apply to the entities and individuals identified in appendices A and B. All unlicensed transactions with such entities or persons, or transactions in property in which they have an interest, are prohibited unless otherwise exempted or generally licensed in the Regulations.

Determinations that persons fall within the definition of the term "Government of Libya" and are thus Specially Designated Nationals of Libya are effective upon the date of determination by the Director of FAC, acting under authority delegated by the Secretary of the Treasury. Public notice is effective upon the date of publication or upon actual notice, whichever is sooner.

The list of Specially Designated Nationals in appendices A and B is a partial one, since FAC may not be aware of all agencies and officers of the Government of Libya, or of all persons that might be owned or controlled by, or acting on behalf of the Government of Libya within the meaning of § 550.304(a). Therefore, one may not rely on the fact that a person is not listed in appendix A or B as a Specially Designated National as evidence that it is not owned or controlled by, or acting or purporting to act directly or indirectly on behalf of, the Government of Libya. The Treasury Department regards it as incumbent upon all persons governed by the Regulations to take reasonable steps to ascertain for themselves whether persons with whom they deal are owned or controlled by, or acting or purporting to act on behalf of, the Government of Libya, or on behalf of other countries subject to blocking or transactional restrictions administered by FAC (at present, Cuba, Haiti, Iraq, North Korea, the UNITA rebels in Angola, Vietnam, and the Federal Republic of Yugoslavia (Serbia and Montenegro)).

Section 206 of the International Emergency Economic Powers Act, 50 U.S.C. 1705, provides for civil penalties not to exceed $10,000 per count for violation of the Regulations. These civil penalties are subject to increase pursuant to Public Law 101–410, 101 Stat. 890 (28 U.S.C. 2461 note). Criminal violations of the Regulations are punishable by fines of up to $250,000 or imprisonment for up to 10 years per count, or both, for individuals, and criminal fines of up to $500,000 per count for organizations. See 50 U.S.C. 1705; 18 U.S.C. 3571.

Because the Regulations involve a foreign affairs function, Executive Order 12866 and the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act, 5 U.S.C. 601–612, does not apply.

List of Subjects in 31 CFR Part 550

Administrative practice and procedure, Banks, Banking, Blocking of assets, Exports, Foreign investment, Foreign trade, Government of Libya, Imports, Libya, Loans, Penalties, Reporting and recordkeeping requirements, Securities, Services, Specially designated nationals, Travel restrictions.

PART 550—LIBYAN SANCTIONS REGULATIONS

For the reasons set forth in the preamble, 31 CFR part 550 is amended as set forth below:

1. The authority citation for part 550 continues to read as follows:

Authority: 50 U.S.C. 1701–1706; 50 U.S.C. 1601–1651; 22 U.S.C. 287c; 49 U.S.C. App. 1514; 22 U.S.C. 2349aa–8 and 2349aa–9; 3 U.S.C. 301; E.O. 12543, 3 CFR, 1986 Comp., p. 181; E.O. 12544, 3 CFR, 1986 Comp., p. 183; E.O. 12801, 3 CFR, 1992 Comp., p. 294.

2. Appendix A to part 550 is amended by adding the following entries in alphabetical order, to read as follows:

APPENDIX A TO PART 550—ORGANIZATIONS DETERMINED TO BE WITHIN THE TERM "GOVERNMENT OF LIBYA" (SPECIALLY DESIGNATED NATIONALS OF LIBYA)

* * * * *

BANQUE COMMERCIALE DU NIGER,
(a.k.a. BCN),
(f.k.a. BANQUE ARABE LIBYENNE NIGERIENNE POUR LE COMMERCE EXTERIEUR ET LE DEVELOPPEMENT),
(f.k.a. BALINEX),
P.O. Box 11363, Niamey, Niger.

* * * * *

BANQUE COMMERCIALE DU SAHEL
(f.k.a. BANQUE ARABE LIBYENNE MALIENNE POUR LE COMMERCE EXTERIEUR ET LE DEVELOPPEMENT),
(f.k.a. BALIMA),
P.O. Box 2372, Bamako, Mali.

* * * * *

CHINGUETTY BANK,
(f.k.a. BANQUE ARABE LIBYENNE MAURITANIENNE POUR LE COMMERCE EXTERIEUR ET LE DEVELOPPEMENT),
(f.k.a. BALM),
Jamal Abdulnasser Street, P.O. Box 262, Nouakchott, Mauritania.

* * * * *

NORTH AFRICA INTERNATIONAL BANK,
(a.k.a. NORTH AFRICAN INTERNATIONAL BANK),
(a.k.a. BANQUE ARABE DU NORD—BAAN),
(a.k.a. BANQUE ARABE D'AFRIQUE DU NORD (BAAN)),
(a.k.a. NAIB),
P.O. Box 485, 1080 Tunis Cedex, 742 Tunisia;
Avenue Kheireddine Pacha 25, Tunis, Tunisia;
P.O. Box 102, Le Belvedere, 1002 Tunis, 25 Avenue Kheriddine Pacha, Tunis, Tunisia.

* * * * *

SOCIETE INTERAFFRICAINE DU BANQUE,
(f.k.a. BANQUE ARABE LIBYENNE TOGOLAISE DU COMMERCE EXTERIEUR),
(f.k.a. BALTEX),
P.O. Box 4874, Lome, Togo.

* * * * *

3. Appendix B to part 550 is amended by adding the following entries in alphabetical order, to read as follows:

APPENDIX B TO PART 550—INDIVIDUALS DETERMINED TO BE SPECIALLY DESIGNATED NATIONALS OF THE GOVERNMENT OF LIBYA

* * * * *

AL KABIR, Seddigh,
1 Giaddet Omar Mokhtar, P.O. Box 685, Tripoli, Libya.

* * * * *

GIBRIL, Mustafa Saleh,
P.O. Box 3224, Martyr Street, Megrief, Tripoli, Libya.

* * * * *

SHALLOUF, Farag Al Amin,
P.O. Box 9575/11, 1st Floor, Piccadily Centre, Hamra Street, Beirut, Lebanon;
Vali Conagi Cad. No. 10, 80200 Nisantasi, P.O. Box No. 380, 80223 Sisli, Istanbul, Turkey.

* * * * *

Dated: January 10, 1994.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: January 26, 1994.

John P. Simpson,

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

[FR Doc. 94–6620 Filed 3–17–94; 10:42 am]

BILLING CODE 4810–25–F

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Parts 83 and 91

[DoD Directive 5500.7]

Standards of Conduct

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Final rule and request for comments.

SUMMARY: This part authorizes the publication of the Joint Ethics Regulation, 32 CFR part 84, which shall be the single source of standards of ethical conduct and ethics guidance for all personnel of the Department of Defense. A single source of rules is necessary to implement and augment standards promulgated by the U.S. Office of Government Ethics for the entire Executive Branch. A single source of rules will simplify application of ethics standards and guidance to the performance of official duties by DoD personnel. This document also removes 32 CFR part 91.

DATES: This part is effective August 30, 1993. Comments must be received by May 20, 1994.

ADDRESSES: Forward comments to DoD Standards of Conduct Office, Office of General Counsel, 1600 Defense Pentagon, Washington, DC 20301–1600.

FOR FURTHER INFORMATION CONTACT: Randi Elizabeth DuFresne, DoD Standards of Conduct Office, (703) 697–5305, FAX (703) 697–1640.

SUPPLEMENTARY INFORMATION: On August 7, 1992, the U.S. Office of Government Ethics (OGE) published a final rule entitled "Standards of Ethical Conduct for Employees of the Executive Branch" (Standards). See 57 35006–35067, as corrected at 57 FR 48557 and 52583. The Standards, codified at 5 CFR part 2635, establish uniform standards of ethical conduct that are applicable to all executive branch personnel. With the concurrence of OGE, DoD published an interim rule entitled "Supplemental Standards of Ethical Conduct for Employees of the Department of Defense" (Supplement). See 58 FR 47619–47624. The DoD Supplement appears at 5 CFR chapter XXVI. In addition to the Standards and the Supplement, there are ethics statutes applicable only to DoD employees and former employees, matters such as political activities, activities with non-Federal entities, enforcement, and ethical conduct which are not addressed by the Standards or the Supplement, and procedural concerns that require publication of a uniform, comprehensive DoD regulation. The "18 U.S.C. 208(b) Waiver" section of 32 CFR part 40 has been retained at 32 CFR 40.1 and cross-referenced in Appendix B of 32 CFR part 84. Other Standards of Conduct rules are replaced by this part.

Executive Order 12866

It has been determined that this is not a significant rule as defined under sections 3(f)(1) through 3(f)(4) of Executive Order 12866.

Regulatory Flexibility Act

It has been determined under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this rule will not have a significant economic impact on a substantial number of small entities because it affects only DoD employees and certain former DoD employees.

Paperwork Reduction Act

It has been determined that the Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this rule does not contain any information collection requirements that require the approval of the Office of Management and Budget.

List of Subjects

32 CFR Part 83

Conflict of interests, Government procurement.

32 CFR Part 91

Armed Forces, Conflict of interests, Government employees.

Accordingly under authority of 10 U.S.C. 301, Title 32, Chapter I, Subchapter A of the Code of Federal Regulations is amended by removing part 91 and adding part 83 to read as follows:

PART 83—STANDARDS OF CONDUCT

Sec.
83.1 Purpose.
83.2 Applicability and scope.
83.3 Definitions.
83.4 Policy.
83.5 Responsibilities.
83.6 Procedures.

Authority: 5 U.S.C. 301, 7301, 7351, 7353; 5 U.S.C. App. (Ethics in Government Act of 1978); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215 as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306; 5 CFR part 2635.

§ 83.1 Purposes.

This part:

(a) Replaces DoD Directive 5120.47 [1] and implements E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215; 5 U.S.C. App. (Ethics in Government Act of 1978); 5 U.S.C. 4111; 10 U.S.C. 801–940, 2397, 2397a, and 2397b; 18 U.S.C. 203, 205, 207, 208, 209 and 218; 31 U.S.C. 1353; 41 U.S.C. 423; 48 CFR 3.104–6; 5 CFR parts 733, 2634, 2635, 2636, 2637, 2638, and 2641. The "18 U.S.C. 208(b) Waiver" section of 32 CFR part 40 has been retained at 32 CFR 40.1 and cross-referenced in Appendix B of 32 CFR part 84.

(b) Cancels DD Form 1357, "Statement of Employment—Regular Retired Officers," March 1987, and DD Form 1555, "Confidential Statement of Affiliations and Financial Interests," March 1987. The Office of Government Ethics' (OGE) SF 450, "Confidential Financial Disclosure Report," July 1992, replaces DD Form 1555.

(c) Authorizes the publication of DoD 5500.7–R [2] in accordance with DoD 5025.1–M [3] which prescribes standards of conduct required of all DoD employees; establishes criteria and procedures for filing DD Form 1787, "Report of DoD and Defense Related Employment," August 1989, SF 450, and SF 278, "Public Financial Disclosure Report," January 1991, required of certain present and former DoD employees; provides ethics training guidance; and sets general responsibilities and enforcement procedures.

§ 83.2 Applicability and scope.

(a) This part and 32 CFR part 84 apply to the Office of the Secretary of Defense; the Military Departments; the Chairman of the Joint Chiefs of Staff and the Joint Staff; the Unified and Specified Commands; the Office of the Inspector General of the Department of Defense; the Uniformed Services University of the Health Sciences; the Defense Agencies; the DoD Field Activities; the Combined Commands and Agencies; and the Special Activities, including non-appropriated fund instrumentalities (hereafter referred to collectively as the "DoD Components"). The sections of 32 CFR part 84 entitled "Financial and Employment Disclosure," "Post-Government Service Employment," and "Seeking Other Employment" also apply, as specified, to certain former employees of DoD Components in accordance with specified statutes. The section of 32 CFR part 84 entitled "Financial and Employment Disclosure" has provisions that apply to individuals who are not DoD employees such as detailees and nominees to DoD positions.

(1) Although OGE regulations, cross-referenced in 32 CFR part 84, do not apply to enlisted members of the Department of Defense, the provisions of 5 CFR parts 2634, 2635, 2638, and 2641 are determined to be appropriate for enlisted members and are hereby made applicable to enlisted members as if the terms "employee" and "special Government employee," as used in those OGE regulations, include enlisted members to the same extent that military officers are included within the meaning of those terms.

(2) Certain criminal statutes referenced in 32 CFR part 84 and 18 U.S.C. 203, 205, 207, 208, 209, and 218 do not apply to enlisted members; however, provisions similar to those of 18 U.S.C. 208 and 209 apply to enlisted members. See § 84.3(a)(1)(i) of 32 CFR part 84.

(b) Penalties for violation of the standards and rules of conduct prescribed in 32 CFR part 84 include the full range of statutory and regulatory sanctions for DoD employees.

(1) The prohibitions and requirements printed in 32 CFR part 84 that are

[1] Copies of the replaced directive are available from the Directives Division, room 2A286, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

[2] Copies of the publication are available, at cost, from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161.

[3] See footnote 2 to § 83.1(c).

marked as general orders apply to all military members without further implementation. Violations may result in prosecution under the Uniform Code of Military Justice (UCMJ) (10 U.S.C. 801–940), as well as adverse administrative action and other adverse action authorized by the United States Code or Federal regulations.

(2) DoD employees on assignment to another Executive Agency for more than 30 days are subject to 5 CFR part 2635 and the regulations of that agency that supplement 5 CFR part 2635 and have been approved by OGE.

(3) In addition to details within the Federal Government, details of civilian DoD employees (except temporary or non-career employees who may not be so detailed) may be made to State and local governments, institutions of higher education, and certain other agencies. Civilian DoD employees detailed outside the Federal Government remain subject to 32 CFR part 84.

(4) In matters of ethics and standards of conduct, any inconsistencies among applicable regulations shall be resolved by the DoD Component Designated Agency Ethics Official (DAEO).

§ 83.3 Definitions.

Terms used in this part are defined in 32 CFR part 84.

§ 83.4 Policy.

(a) The Department of Defense shall have a single source of standards of ethical conduct and ethics guidance, including direction in the areas of financial and employment disclosure systems, post-employment rules, enforcement, and training embodied in 32 CFR part 84.

(b) A violation of this part and 32 CFR part 84 does not create any right or benefit, substantive or procedural, enforceable at law by any person against the United States, its agencies, its officers or employees, or any other person.

§ 83.5 Responsibilities.

(a) The General Counsel of the Department of Defense shall:

(1) Ensure that appropriate updates, modifications, additions and deletions are made to 32 CFR part 84.

(2) Have approval authority for DoD Component documents supplementing or implementing 32 CFR part 84.

(b) The Heads of the DoD Components shall ensure that:

(1) 32 CFR part 84 is followed within their DoD Components.

(2) No DoD Component documents supplementing or implementing 32 CFR part 84 are issued without the approval of the General Counsel of the Department of Defense.

(3) The DoD Component DAEO or designee distributes copies of 32 CFR part 84 throughout the DoD Component and makes such copies available for review by DoD employees in the offices of each local Ethics Counselor.

(4) The DoD Component DAEO or designee distributes updates, modifications, additions, and deletions for insertion in copies of 32 CFR part 84 throughout the DoD Component.

(5) The DoD Component DAEO resolves inconsistencies among the regulations of applicable Executive Agencies, as appropriate, for DoD employees of the DoD Component.

(6) The DoD Component representative to the Ethics Oversight Committee assists in the development and upkeep of 32 CFR part 84, as needed, through the operation of that committee as a working group.

§ 83.6 Procedures.

32 CFR part 84 shall be a product of a coordinated effort by the General Counsel of the Department of Defense and the DoD Component DAEOs and designees through the Ethics Oversight Committee.

Dated: March 10, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–5978 Filed 3–18–94; 8:45 am]

BILLING CODE 5000–04–M

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32 CFR Part 84

[DoD 5500.7–R]

Joint Ethics Regulation

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Final rule and request for comments.

SUMMARY: This part is designed to prescribe standards of ethical conduct required of all DoD personnel and certain former DoD officers and employees, regardless of assignment. It also provides guidance and procedures to implement the regulations promulgated by the U.S. Office of Government Ethics for the entire Executive Branch, especially concerning gifts and conflict of interest. It covers matters related to activities with non-Federal entities, travel benefits, political activities, financial and employment disclosure procedures, post-Government service employment issues, enforcement of ethics rules, ethics training, and ethical conduct. It will serve as the single, uniform publication of rules and guidance for ethics and standards of conduct in DoD with no implementations by DoD components.

DATES: This part is effective August 30, 1993. Comments must be received by May 20, 1994.

ADDRESSES: Forward comments to DoD Standards of Conduct Office, Office of General Counsel, 1600 Defense Pentagon, Washington, DC 20301–1600.

FOR FURTHER INFORMATION CONTACT: Randi Elizabeth DuFresne, DoD Standards of Conduct Office, (703) 697–5305, FAX (703) 697–1640.

SUPPLEMENTARY INFORMATION: On August 7, 1992, the U.S. Office of Government Ethics (OGE) published a final rule entitled "Standards of Ethical Conduct for Employees of the Executive Branch" (Standards). See 57 FR 35006–35067, as corrected at 57 FR 48557 and 52583. The Standards, codified at 5 CFR part 2635, establish uniform standards of ethical conduct that are applicable to all Executive Branch personnel. With the concurrence of OGE, DoD published an interim rule entitled "Supplemental Standards of Ethical Conduct for Employees of the Department of Defense" (Supplement). See 58 FR 47619–47624. The DoD Supplement appears at 5 CFR chapter XXVI. In addition the Standards and the Supplement, there are ethics statutes applicable only to 2635 DoD employees and former employees, matters such as political activities, activities with non-Federal entities, enforcement, and ethical conduct which are not addressed by the Standards or the Supplement, and procedural concerns that require publication of a uniform, comprehensive DoD regulation.

Certain portions of this part that are marked "general orders" apply to all military members without further implementation. Violations may result in prosecution under the Uniform Code of Military Justice (UCMJ), as well as adverse administrative action and other adverse action authorized by the United States Code and Federal regulations.

Executive Order 12866

It has been determined that this is not a significant rule as defined under section 3(f)(1) through 3(f)(4) of Executive Order 12866.

Regulatory Flexibility Act

It has been determined under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this rule will not have a significant economic impact on a substantial number of small entities because it affects only DoD employees and certain former DoD employees.

Paperwork Reduction Act

It has been certified that information collection associated with 32 CFR part 84 has been submitted to the Office of Management and Budget and is currently under review.

List of Subjects in 32 CFR Part 84

Conflict of interests, Government procurement.

Accordingly, Title 32, Chapter I, Subchapter A is amended to add part 84 to read as follows:

PART 84—JOINT ETHICS REGULATION

Subpart A—General Information

Sec.
84.1 Purpose.
84.2 Definitions.
84.3 General policy
84.4 General responsibilities.

Subpart B—Standards of Ethical Conduct

84.5 Office of Government Ethics regulation.
84.6 DoD supplement to 5 CFR part 2635.
84.7 DoD guidance.

Subpart C—Activities with Non-Federal Entities

84.8 Office of Government Ethics regulation.
84.9 Official participation in non-Federal entities.
84.10 Personal participation in non-Federal entities.

Subpart D—Travel Benefits

84.11 Acceptance of official travel benefits in kind or payment for official travel expenses.
84.12 DoD guidance.
84.13 Procedures and responsibilities.

Subpart E—Conflict of Interest

84.14 Office of Government Ethics regulation.
84.15 Guidance on 18 U.S.C. 208.
84.16 Other conflict of interest laws.

Subpart F—Political Activities

84.17 Office of Personnel Management regulation.
84.18 Political activities of civilian DoD employees.
84.19 Political activities of military members.

Subpart G—Financial and Employment Disclosure

84.20 Office of Government Ethics regulation.
84.21 Public financial disclosure report (SF 278).
84.22 Confidential financial disclosure report (SF 450).
84.23 Report of DoD and defense related employment (DD form 1787).

Subpart H—Seeking Other Employment

84.24 General rules.
84.25 Conflict of interest (18 U.S.C. 208).
84.26 Procurement integrity (41 U.S.C. 423(b)).
84.27 Reporting employment contacts (10 U.S.C. 2397a).
84.28 DoD guidance.

Subpart I—Post-Government Service Employment

84.29 Office of Government Ethics regulation.
84.30 Guidance on 18 U.S.C. 207.
84.31 Post-employment counseling and advice.
84.32 Restrictions resulting from procurement activities.
84.33 Restrictions on retired military members.
84.34 Restrictions on former senior appointees.
84.35 Restrictions on dealing with current or former DoD employees.
84.36 Report of DoD and defense related employment (DD form 1787).

Subpart J—Enforcement

84.37 Enforcement of the provisions of the Joint Ethics Regulation.
84.38 Reporting procedures.
84.39 Administrative enforcement procedures.

Subpart K—Training

84.40 Office of Government Ethics regulation.
84.41 DoD guidance.
84.42 Procedures.
84.43 Responsibilities.

Subpart L—Ethical Conduct

84.44 Executive orders.
84.45 Code of ethics for Government service.
84.46 DoD human goals.
84.47 Ethical values.
84.48 Ethical decisionmaking.

Appendix A to Part 84—Digest of Laws

Appendix B to Part 84—Excerpts From DoD Publications

Appendix C to Part 84—DoD Human Goals

Authority: 5 U.S.C. 301, 7301, 7351, 7353; 5 U.S.C. App. (Ethics in Government Act of 1978); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215 as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306; 5 CFR part 2635.

Subpart A—General Information

§ 84.1 Purpose.

(a) *Single source of guidance.* This part provides a single source of standards of ethical conduct and ethics guidance, including direction in the areas of financial and employment disclosure systems, post-employment rules, enforcement, and training.

(b) *Disclaimer.* A violation of this part does not create any right or benefit, substantive or procedural, enforceable at law by any person against the U.S., its agencies, its officers or employees, or any other person.

§ 84.2 Definitions.

(a) *Administrative officer.* The individual responsible for the administrative control of personnel within a unit or office, including assistance with training, travel, or personnel actions for individuals of the unit or office.

(b) *Agency.* A DoD component as follows: Department of the Army; Department of the Navy; Department of the Air Force; Defense Commissary Agency; Defense Contract Audit Agency; Defense Finance and Accounting Service; Defense Intelligence Agency; Defense Investigative Service; Defense Logistics Agency; Defense Mapping Agency; Defense Nuclear Agency; Defense Information Systems Agency; National Security Agency; Office of the Inspector General of the Department of Defense (IG, DoD); and the Uniformed Services University of the Health Sciences. Employees of DoD components not designated as separate agencies, including employees of the Office of the Secretary of Defense (OSD), shall be treated as employees of DoD which shall be treated as a separate agency.

(c) *Agency designee.* The first supervisor who is a commissioned military officer or a civilian above GS/GM–11 in the chain of command or supervision of the DoD employee concerned. Except in remote locations, the agency designee may act only after consultation with his local Ethics Counselor. For any military officer in grade 0–7 or above who is in command and any civilian Presidential appointee confirmed by the Senate, the agency designee is his Ethics Counselor.

(d) *Alternate Designated Agency Ethics Official (Alternate DAEO).* An employee of a DoD agency who has been appointed by the DoD component Head to serve in the absence of the DoD component Designated Agency Ethics Official (DAEO).

(e) *Competing defense contractor.* See Federal Acquisition Regulation,[1] 48 CFR 3.104–4(b) or 41 U.S.C. 423(p)(2).

(f) *Conduct of a procurement.* See 48 CFR 3.104–4(c) or 41 U.S.C. 423(p)(1).

(g) *DAEO or designee.* This phrase refers to the Designated Agency Ethics Official, or to the Alternate Designated Agency Ethics Official, Deputy Designated Agency Ethics Official, or Ethics Counselor who has been delegated specific written authority by the DoD component DAEO to perform specific functions on behalf of the DoD component DAEO.

[1] For purchase of this Department of Defense document contact Superintendent of Documents, Congressional Sales Office, U.S. Government Printing Office, Washington, DC 20402.

(h) *Defense contractor.* For purposes of 10 U.S.C. 2397, 2397a, and 2397b, any individual, firm, corporation, partnership, association, or other legal non-Federal entity that enters into a contract directly with DoD or a DoD component to furnish services, supplies, or both, including construction. Subcontractors are excluded unless they are separate legal non-Federal entities that contract directly with DoD or a DoD component in their own names. Foreign governments or representatives of foreign governments that are engaged in selling to DoD or a DoD component are defense contractors when acting in that context.

(i) *Deputy Designated Agency Ethics Official (Deputy DAEO).* An employee of a DoD agency who has been appointed, in writing, by the DoD component DAEO and who has been delegated written authority by that DoD component DAEO to act on his behalf.

(j) *Designated Agency Ethics Official (DAEO).* A DoD employee appointed, in writing, by the Head of the DoD agency to administer the provisions of the Ethics in Government Act of 1978, Public Law 95–521 (5 U.S.C. App.), and this part.

(k) *DoD component.* OSD; the Military Departments; the Chairman of the Joint Chiefs of Staff and the Joint Staff; the Unified and Specified Commands; IG, DoD; the Uniformed Services University of the Health Sciences; the Defense Agencies; the DoD Field Activities; the Combined Commands and Agencies; and the Special Activities, including non-appropriated fund instrumentalities. See paragraph (b) of this section for those DoD components that are agencies.

(l) *DoD employee.* (1) Any DoD civilian officer or employee (including special Government employees) of any DoD component (including any non-appropriated fund activity).

(2) Any active duty regular or reserve military officer, including warrant officers.

(3) Any active duty enlisted member of the Army, Navy, Air Force, or Marine Corps.

(4) Any reserve or National Guard member on active duty under orders issued pursuant to title 10, United States Code.

(5) Any reserve or National Guard member performing official duties, including while on inactive duty for training or while earning retirement points, pursuant to title 10, United States Code, or while engaged in any activity related to the performance of a Federal duty or function.

(6) Any faculty member in a civil service position or hired pursuant to title 10, United States Code, and any student (including a cadet or midshipman) of an academy, college, university, or school of DoD.

(7) Consistent with labor agreements and international treaties and agreements, and host country laws, any foreign national working for a DoD component except those hired pursuant to a defense contract.

(m) *DoD supplement.* Section 84.6 contains the cross-reference to the DoD Supplement of 5 CFR part 2635.

(n) *Employment.* See 5 CFR 2635.603(a).

(o) *Ethics Counselor.* The DoD component DAEO, Alternate DAEO, Deputy DAEO, or a DoD employee appointed in writing by the DoD component DAEO or designee to generally assist in implementing and administering the DoD component command's or organization's ethics program and to provide ethics advice to DoD employees of the DoD component command or organization in accordance with this part. Except for a DoD component DAEO, Alternate DAEO, or Deputy DAEO, a DoD employee appointed as an Ethics Counselor shall only serve as a "DAEO or designee" when he has been delegated specific written authority by the DoD component DAEO to perform specific functions on behalf of the DoD component DAEO. Except for a DoD component DAEO, Alternate DAEO, or Deputy DAEO, a DoD employee appointed as an Ethics Counselor shall be an attorney. Legal assistance officers (or equivalent) who also serve as Ethics Counselors must clearly separate these roles. Communications received in an Ethics Counselor capacity are not protected by the attorney-client privilege while communications received in a legal assistance capacity may be. Attorneys who serve as Ethics Counselors must advise individuals being counseled as to the status of that privilege prior to any communications. The term "Ethics Counselor" includes "agency ethics official" as used by the Office of Government Ethics (OGE). See 5 CFR 2635.102.(c).

(p) *Ethics Oversight Committee (EOC).* A working group composed of the DoD component DAEO, or their representatives, and representatives of the Chairman of the Joint Chiefs of Staff, and the Judge Advocates General of the Military Departments.

(q) *Former DoD employee.* Any individual defined in § 84.2(l), after termination of active duty or termination of DoD service, including reserve military officers who served on active duty for more than 130 days and who are no longer on active duty, or who are in an inactive or retired status.

(r) *Gratuity.* Gifts as defined in 5 CFR 2635.203(b)

(s) *He, his, him, himself.* These pronouns include she, hers, her and herself.

(t) *Head of DoD component command or organization.* A commander, commanding officer, or other military or civilian DoD employee who exercises command authority within a DoD component.

(u) *Major defense contractor* Any non-Federal entity which, during the preceding fiscal year, received defense contracts in a total amount equal to or greater than $10 million.

(v) *Major defense system* For purposes of 10 U.S.C. 2397b, a combination of elements that will function together to produce the capability required to fulfill a mission need. Elements may include hardware, equipment, software, or any combination thereof, but excludes construction or other improvements to real property. A list is published in the **Federal Register**. See 10 U.S.C. 2302. A system shall be considered a major defense system if:

(1) DoD is responsible for the system and the total expenditures, for research, development, test, and evaluation for the system, are estimated to exceed $75 million (based on fiscal year 1980 constant dollars) or the eventual total expenditure for procurement exceeds $300 million (based on fiscal year 1980 constant dollars); or

(2) The system is designated a "major system" by the Head of the DoD agency responsible for the system.

(w) *Majority of working days.* More than 50% of days actually worked, excluding holidays, weekends, sick days, and leave days of the two-year period in question.

(x) *Negotiation.* For purposes of 10 U.S.C. 2397b only, the exchange of views between Federal Government and defense contractor representatives regarding respective entitlements, liabilities and responsibilities on a particular defense contract, modification, or claim over $10 million, including deliberations regarding contract specifications, terms of delivery, allowability of costs, and pricing of change orders. Other statutes using this term may define it differently.

(y) *Non-Federal entity.* A non-Federal entity is generally a self-sustaining, non-Federal person or organization, established, operated and controlled by any individual(s) acting outside the scope of any official capacity as officers, employees or agents of the Federal Government. A non-Federal entity may

operate on DoD installations if approved by the installation commander or higher authority under applicable regulations. See 32 CFR part 212.

(z) *Non-public information.* Information generally not available to the public, obtained in the course of one's official DoD duties or position which would normally not be releasable under the Freedom of Information Act, 5 U.S.C. 552. The term "non-public information" includes "inside information," "proprietary information," and "source selection information." See 5 CFR 2635.703, 32 CFR part 285, and 48 CFR 3.104–4(j) and (k) and 3.104–5.

(aa) *Office of Government Ethics.* The Federal Government agency responsible for overall direction and leadership concerning Executive Branch policies related to ethics in the Federal Government. See 5 CFR part 2638.

(bb) *Personal and substantial.* See 5 CFR 2635.402(b)(4).

(cc) *Personal commercial solicitation.* Any effort to contact an individual to conduct or transact matters involving unofficial business, finance, or commerce. This does not include off-duty employment of DoD employees employed in retail establishments. See 32 CFR part 43.

(dd) *Primary Government representative.* For purposes of 10 U.S.C. 2397b, acting as a "representative" requires personal and substantial participation in the matter by personal presence, telephone conversation, or similar involvement with representatives of a defense contractor. At any time, more than one individual may act as a primary representative for a single matter.

(ee) *Procurement official.* See 48 CFR 3.104–4(h).

(ff) *Procurement function.* For purposes of 10 U.S.C. 2397b, any function relating to:

(1) The negotiation, award, administration, or approval of a contract;

(2) The selection of a defense contractor;

(3) The approval of a change in a contract;

(4) The performance of quality assurance, operational and developmental testing, the approval of payment, or auditing under a contract; or

(5) The management of a procurement program.

(gg) *Prohibited source.* See 5 CFR 2635.203(d).

(hh) *Qualified individual.* See 5 CFR 2638.702(a)(2).

(ii) *Reserve military officer.* An individual who currently holds an appointment in the reserve of a Military Department, or is a military officer of the National Guard with Federal Government recognition.

(jj) *Retired military officer.* Any military officer entitled to receive military retired pay, even though such pay may be waived or pending.

(kk) *Senior DoD official.* For purposes of 18 U.S.C. 207, a DoD employee is defined as stated in 10 U.S.C. 207(c)(2).

(ll) *Special Government employee.* An individual who is retained, designated, appointed, or employed to perform, with or without compensation, for a period not to exceed 130 days during any period of 365 consecutive days, temporary duties either on a full-time or intermittent basis. The term also includes a reserve military officer who is serving on active duty involuntarily or for training for any length of time, and one who is serving voluntarily on active duty for training for 130 days or less. It does not include enlisted members; however, for the purposes of this part, enlisted members shall be considered special Government employees to the same extent that military officers are included in the meaning of the term.

(mm) *Travel benefits.* Travel related gifts, including in kind subsistence and accommodations and payments or reimbursements of expenses, from non-Federal sources.

§ 84.3. General policy.

DoD policy. It is DoD policy that:

(a) A single, uniform source of standards of ethical conduct and ethics guidance shall be maintained within DoD, and each DoD agency shall implement and administer a comprehensive ethics program to ensure compliance with such standards and guidance;

(b) Although OGE regulations, cross-referenced in this part, do not apply to enlisted members of DoD, the provisions of 5 CFR parts 2634, 2635, 2638, 2639, 2640, and 2641, are determined to be appropriate for enlisted members and are hereby made applicable to enlisted members as if the terms "employee," and "special Government employee," as used in those OGE regulations, include enlisted members to the same extent that military officers are included within the meaning of those terms. The following exception applies to certain criminal statutes, 18 U.S.C. 203, 205, 207, 208, 209 and 218, and related provisions of OGE regulations, do not apply to enlisted members. Provisions similar to those of 18 U.S.C. 208 and 209 apply to enlisted members as follows:

(1) Except as approved by the DoD component DAEO or designee, an enlisted member, including an enlisted special Government employee, shall not participate personally and substantially as part of his official DoD duties, in any particular matter in which he, his spouse, minor child, partner, entity in which he is serving as officer, director, trustee, partner, or employee, or any entity with which he is negotiating or has an arrangement concerning prospective employment, has a financial interest;

(2) An enlisted member, except an enlisted special Government employee, shall not receive any salary or supplementation of his Federal Government salary, from any entity other than the Federal Government or as may be contributed out of the treasury of any State, county, or municipality, for his services to the Federal Government.

(c) DoD employees shall become familiar with all ethics provisions, including the standards set out in Executive Order 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215–218, and comply with them;

(d) DoD employees shall become familiar with the scope of and authority for the official activities for which they are responsible. Sound judgment must be exercised. All DoD employees must be prepared to account fully for the matter in which that judgment has been exercised;

(e) If the propriety of a proposed action or decision is in question for any reason, DoD employees shall seek guidance from a DoD component legal counsel, the DoD component DAEO or designee, or Ethics Counselor, as appropriate;

(f) Individual conduct, official programs and daily activities within DoD shall be accomplished lawfully and ethically;

(g) DoD employees shall adhere strictly to DoD policy of equal opportunity, regardless of race, color, religion, gender, age, national origin, or handicap, in accordance with applicable laws and regulations.

§ 84.4 General responsibilities.

(a) The Head of each DoD component shall:

(1) Exercise personal leadership and take personal responsibility through the DoD component DAEO for establishing and maintaining the DoD component's ethics program and be personally accountable for the DoD component's compliance with every requirement of this part, including the ethics and procurement integrity training requirements;

(2) When authorized, appoint a DoD component DAEO, through a formal written delegation of authority, who is qualified to oversee and supervise the DoD component's ethics programs for DoD employees, both civilian and military (the GC, DoD, may serve as the DAEO for several DoD components);

(3) When authorized, appoint a DoD component Atlernate DAEO who shall serve in the absence of the DoD component DAEO;

(4) Provide sufficient resources (including funding and investigative, audit, legal, training and administrative staff) to enable the DoD component DAEO to implement and administer the DoD component's ethics programs in a positive and effective manner.

(b) Each DoD component Designated Agency Ethics Official (DAEO) shall:

(1) Be responsible for the implementation and administration of all aspects of the DoD component ethics program and manage and oversee local implementation and administration of all matters relating to ethics covered by this part.

(2) Appoint DoD component Deputy DAEOs and Ethics Counselors and delegate to them written authority to act on behalf of the DoD component DAEO;

(3) Ensure that ethics advice (and facts relied upon for such advice) is in writing, when practicable;

(4) Ensure that written opinions regarding the applicability of 10 U.S.C. 2397b and 41 U.S.C. 423 are provided within 30 days of request by any DoD employee provided that the requests is accompanied by complete and full information necessary to render an opinion;

(5) Ensure that proper collection, review, and handling of the DoD component's financial and employment disclosure reports, including those submitted by Presidential appointees for confirmation purposes;

(6) Be responsible for the implementation and administration of ethics and procurement integrity training and ensure that necessary resources are available to accomplish such training;

(7) Provide periodic ethics and procurement integrity training for Ethics Counselors;

(8) Certify Qualified Individuals to conduct ethics training;

(9) Assist agency designees, through the chain of command or supervision, in initiating prompt, effective action to evaluate and process violations, potential violations, and appearances of violations of ethics laws or regulations, in accordance with applicable procedures as discussed in subpart J of this part;

(10) Provide advice and assistance to DoD employees of the DoD component not otherwise served by a local Ethics Counselor;

(11) Oversee and coordinate local ethics programs through a system for periodic evaluation and ensure that the DoD component provides and maintains sufficient funding, staff, space and resources to administer the DoD component's ethics programs;

(12) Maintain liaison with the DoD EOC, OGE, and the DoD Standards of Condut Office (SOCO), and provide to SOCO and OGE all information required by law or regulation;

(13) Represent the DoD component to OGE, Congress, the Executive Branch and the public on matters relating to ethics and standards of conduct.

(c) Each DoD component Alternate Designated Agency Ethics Official (Alternate DAEO) shall serve in the absence of the DoD component DAEO and, when so serving, is authorized to take any action this part indicates may be taken only by the DoD component DAEO.

(d) Each DoD component Deputy Designated Agency Ethics Official (Deputy DAEO) shall serve on behalf of the DoD component DAEO consistent with written delegation of authority from the DoD component DAEO.

(e) The head of each DoD component command or organization shall:

(1) Exercise personal leadership and take personal responsibility for establishing and maintaining the command's or organization's ethics program in coordination with the command's or organization's Ethics Counselors;

(2) Be personally accountable for the command's or organization's ethics program, including its ethics and procurement integrity training program, and the command's or organization's compliance with every requirement of this part;

(3) Provide sufficient resources to enable the command's organization's Ethics Counselors to implement and administer the local aspects of the command's or organization's ethics program in a positive and effective manner;

(4) Ensure the prompt resolution of any actual or apparent conflict of interest involving a DoD employee of the command or organization;

(5) Direct administrative officers (or equivalent) of the command or organization to ensure that the position descriptions of the DoD component command or organization indicate if financial disclosure report filing, annual ethics training or procurement integrity training is required and ensure the accuracy of personnel data provided by the director of the DoD component personnel office (or equivalent) on DoD employees of the command or organization;

(6) Direct administrative officers (or equivalent) of the command or organization to coordinate with the DoD component DAEO or designee to develop lists of all DoD employees of the command or organization who are required to receive ethics and procurement integrity training, schedule such training, annotate such lists to indicate when required training was accomplished and retain annotated lists for three years;

(7) Ensure that DoD employees of the command or organization who are in positions requiring the filing of SF 450,[2] "Confidential Financial Disclosure Report," July 1992, do so in a timely manner;

(8) Ensure that DoD employees of the command or organization attend required ethics and procurement integrity training.

(f) The General Counsel of each DoD component shall:

(1) Serve as the DAEO for the DoD component unless otherwise delegated;

(2) Support all aspects of the ethics program of the DoD component;

(3) Provide legal guidance and assistance to the DoD component DAEO or designee.

(g) The Judge Advocate General of each Military Department shall:

(1) Provide legal guidance and assistance to Ethics Counselors under his supervision;

(2) Support all aspects of the ethics program of the Military Department.

(h) The General Counsel, DoD (GC, DoD) shall:

(1) Maintain the DoD SOCO and provide sufficient resources to enable SOCO to oversee and coordinate DoD component ethics programs, to produce reports required by Congress and maintain report data, and to manage the DoD EOC;

(2) Represent DoD as a whole to OGE, Congress, the Executive Branch, and the public when called upon to do so on matters relating to ethics policy;

(3) Have the authority to incorporate changes to Government-wide regulations that are reprinted in this part without formal coordination.

(i) Each agency designee shall:

(1) In accordance with § 84.10(g), provide prior approval or disapproval of outside activities by DoD employees under his responsibility;

[2] Copies are available from U.S. Office of Government Ethics, 1201 New York Avenue, NW., suite 500, Washington, DC 20005–3917

(2) Receive and appropriately process reports of suspected violations of ethics statutes or regulations and possible conflicts of interest;

(3) Receive and appropriately process reports of non-compliance with the filing requirements of subpart G of this part;

(4) Perform all the other duties of an agency designee established in this part and in 5 CFR part 2635;

(5) Annually determine those positions under his responsibility that require the filing of SF 450s, and annual ethics and procurement integrity training.

(j) The DoD Standards of Conduct Office (SOCO) shall:

(1) Manage the DoD EOC and call periodic meetings to consider current issues in ethics and standards of conduct;

(2) Coordinate DoD component ethics programs, including providing uniform guidance and training material;

(3) Collect and publish important written opinions from DoD components, when practicable, to promote uniformity of ethics opinion throughout DoD;

(4) Monitor and assist DoD component DAEOs in ensuring effective corrective action is taken to remedy violations, potential violations and the appearance of violations of ethics laws or this part;

(5) Certify Qualified Individuals to conduct ethics training who may be used by DoD components;

(6) Make ethics and procurement integrity training for ethics trainers available on an ongoing basis to ensure that Qualified Individuals are uniformly prepared to provide such training;

(7) Distribute ethics and procurement integrity training material to all DoD component DAEOs for use in all types of ethics and procurement integrity training;

(8) In the interest of Federal Government efficiency and economy, establish and maintain a resource center of ethics and procurement integrity materials (including training materials) developed by DoD components.

(k) The DoD Ethics Oversight Committee (EOC) shall:

(1) Meet periodically, as necessary;

(2) Consider general ethics issues or current issues and make recommendations to promote uniformity of ethics opinions throughout DoD;

(3) Provide recommendations to DoD component DAEOs on particular ethics matters in accordance with this part;

(4) Provide recommendations for DoD input on proposed ethics legislation and regulations.

(l) The Director, Washington Headquarters Services shall:

(1) Prepare an annual report listing all the defense contractors that have been awarded $10 million or more in defense contracts during the fiscal year and publish the report in the **Federal Register** not later than December 15 following the end of the fiscal year;

(2) Prepare an annual report listing all the defense contractors that have been awarded $25,000 or more in defense contracts during the fiscal year and distribute to the DoD component DAEOs not later than December 31 following the end of the fiscal year.

(m) The Under Secretary of Defense for Acquisition shall prepare an annual report listing all the major defense systems as defined by 10 U.S.C. 2302(5), and the prime defense contractors responsible for each, that were in progress during the fiscal year and provide the report to the DoD SOCO for publication in the **Federal Register** not later than December 31 following the end of the fiscal year;

(n) Each Ethics Counselor shall:

(1) Provide written and oral advice, counseling, and assistance to his DoD component command or organization and to the DoD employees of his DoD component command or organization, on all ethics matters, particularly areas covered by this part and related statutes and regulations;

(2) Request assistance, through appropriate channels, from the DoD component DAEO or designee on any matter than cannot be resolved locally;

(3) Maintain a current copy of this part, and all changes, for review by any DoD employee;

(4) Maintain a thorough understanding of current DoD ethics policy through contact with the DoD component DAEO, attendance at periodic ethics training courses, and other appropriate methods;

(5) Promptly provide a copy to the DoD component DAEO of precedental written decisions to assist uniformity throughout the DoD components;

(6) Perform other duties as assigned by written delegation from the DoD component DAEO;

(7) Review financial disclosure reports in accordance with subpart G of this part.

(o) The Inspector General of each DoD component shall:

(1) Investigate ethics matters arising in the DoD component, and refer any such matters that involve suspected criminal violations to the appropriate criminal investigative office of the DoD component;

(2) Report to the DoD component DAEO or designee on investigations that result in referrals to the Department of Justice (DoJ) and on disciplinary actions that must be reported in response to the OGE annual ethics survey;

(3) Ensure inspectors and agents are educated in ethics matters to ensure appropriate handling of ethics related cases and calls;

(p) The director of each DoD component personnel office (or equivalent) shall:

(1) Provide the DoD component DAEO or designee such personnel data on DoD employees, both civilian and military, as may be required by the DoD component DAEO or designee;

(2) Assign personnel action officers the responsibility of providing the required information at local levels;

(3) In coordination with the DoD component DAEO or designee, establish procedures to inform new DoD employees of their obligation to receive ethics and procurement integrity training as required;

(4) In coordination with the DoD component DAEO or designee, establish out-processing procedures and records to advise DoD employees of available counseling regarding post-employment and procurement integrity restrictions prior to departure from DoD;

(5) In coordination with the DoD component DAEO or designee, establish procedures to advise incoming and outgoing DoD employees of their financial and employment disclosure reporting obligations.

(q) The administrative officer (or equivalent) of each DoD component command and organization shall:

(1) Ensure that each position description of the DoD component command or organization indicates if an SF 278,[3] "Public Financial Disclosure Report," January 1991, or SF 450, and annual ethics and procurement integrity training are required so prospective or new DoD employees are on notice of such requirements prior to employment;

(2) Upon the request of the DAEO or designee, ensure the accuracy of personnel data provided by the Director of the DoD component personnel office on DoD employees of the DoD component command or organization;

(3) In coordination with the DoD component DAEO or designee, develop a list of all DoD employees within the DoD component command or organization who are required to receive ethics and procurement integrity training;

(4) In coordination with the DoD component DAEO or designee, ensure that DoD employees of the DoD component command or organization

[3] Copies are available from U.S. Office of Government Ethics, 1201 New York Avenue, NW., suite 500, Washington, DC 20005–3917.

are scheduled to receive required ethics and procurement integrity training;

(5) Annotate such list to indicate when required training was accomplished and retain annotated list for three years.

(r) Each DoD employee shall:

(1) Abide by the ethical principles established by Executive Order 12674, ethics statutes, and the ethics regulations promulgated by OGE and the DoD thereunder;

(2) Set a personal example for fellow DoD employees in performing official duties within the highest ethical standards;

(3) Report suspected violations of ethics regulations in accordance with § 84.38(a);

(4) Perform all official duties so as to facilitate Federal Government efficiency and economy;

(5) Attend ethics and procurement integrity training as required;

(6) File financial and employment disclosure reports as required.

Subpart B—Standards of Ethical Conduct

§ 84.5 Office of Government Ethics regulation.

See 5 CFR part 2635, "Standards of Ethical Conduct for Employees of the Executive Branch." The following sections of 5 CFR part 2635 are military general orders: § 2635.202(a); § 2635.202(c)(1),(2),(3),(4), and (5) (excluding example and paragraphs (c)(4) (i) through (iii)); § 2635.302; § 2635.402(a) (excluding note); § 2635.502(a) (excluding paragraphs (a)(1) and(2)); § 2635.503(a) (excluding examples); § 2635.604(a) (excluding the last sentence and examples); § 2635.606(a) (excluding the last sentence and example); the first sentence of § 2635.702; § 2635.702(a) (excluding examples); § 2635.702(b) (excluding examples); § 2635.702(c) (excluding examples); § 2635.703(a); § 2635.704(a); § 2635.705(b) (excluding examples); the first paragraph of § 2635.802; § 2635.802(a); § 2635.802(b) (excluding sentence beginning "Employees are cautioned * * *" and excluding examples); § 2635.805(a); § 2635.807(a) (excluding paragraphs (a)(1) and (2)); the first sentence of § 2635.808; § 2635.808(b) (excluding example); and § 2635.808(c) (excluding paragraph (c)(3) and examples).

§ 84.6 DoD supplement to 5 CFR part 2635.

See 5 CFR 3601.101–3601.108, "Supplemental Standards of Conduct for Employees of the Department of Defense." The following sections of 5 CFR 3601.101–3601.108 are military general orders: § 3601.104(a) (excluding paragraphs (a)(1) and (2)); § 3601.104(b); § 3601.105(a); § 3601.105(b); § 3601.105(c); § 3601.106; and § 3601.108 (excluding paragraphs (a) through (c)).

§ 84.7 DoD guidance.

(a) *Gifts*—(1) *Procurement officials.* In addition to the restrictions on gifts in 5 CFR part 2635, subpart B, procurement officials are subject to the gift acceptance restrictions of the procurement integrity statute. See 41 U.S.C. 423 and 48 CFR 3.104.

(2) *Gifts from foreign governments.* There are special DoD rules governing gifts from foreign governments. See 5 U.S.C. 7342 and 32 CFR part 95.

(3) *Ship launch and similar ceremonies.* A DoD employee may not accept gifts in connection with a ceremony to mark the completion of a milestone in shipbuilding, aircraft completion, or similar vehicle launch or roll-out unless attendance is official and is approved by the head of the DoD component command or organization and the gifts are limited to the following (see 5 U.S.C. 7301 note):

(i) Attendance at appropriate functions incident to the ceremony, such as a dinner preceding the ceremony and reception following it, and related food, hospitality and entertainment, as long as the function and related benefits are not lavish, excessive, or extravagant;

(ii) Tangible gifts or mementos in connection with the ceremony to DoD employees, their spouses, and their dependent children, who are official participants in the ceremony, as long as the aggregate retail value does not exceed $100 per family and the cost is not borne by the Federal Government. When such gifts exceed the $100 limit, the recipient shall pursue one of the following alternatives:

(A) Return the gift to the donor;

(B) Retain the gift after reimbursing the donor the full value of the gift; or

(C) Forward the gift to the appropriate DoD component official for disposition as a gift to the Federal Government in accordance with statute. See 10 U.S.C. 2601.

(b) *Use of Federal Goverment telephone systems.* See GSA regulation 41 CFR part 201–21, subpart 201–21.6, on manangement of Federal Government telecommunications resources.

(1) The use of Federal Government telephone systems (including calls over commercial systems which will be paid for by the Federal Government), except as provided in paragraph (b)(2) of this section shall be limited to the conduct of official business. Such official business calls may include emergency calls and calls that the DoD components determine are necessary in the interest of the Federal Government.

(2) Personal calls (such as calls to speak to spouse/minor children or to arrange for emergency repairs to residence or automobile) that must be made during working hours over the commercial local/long distance network may properly be authorized as being in the best interest of the Federal Government if the call is consistent with the following criteria:

(i) It does not adversely affect the performance of official duties by the DoD employee or the DoD employee's organization;

(ii) It is of reasonable duration and frequency; and

(iii) It could not reasonably have been made at another time;

(iv) And, in the case of long distance calls, is:

(A) Charged to the employee's home telephone number or other non-Federal Government number (third number call);

(B) Made to an 800 toll-free number;

(C) Charged to the called party if a non-Federal Government number (collect call);

(D) Charged to a personal telephone credit card; or

(E) When traveling for more than one night on Federal Government business in the United States, a brief call to his residence to notify family of a schedule change.

(c) *Gambling.* (1) [The following is a General Order] A DoD employee shall not participate while on Federally-owned or leased property or while on duty (for military members, this means, in this context, present for duty) for the Federal Government in any gambling activity prohibited by 5 CFR 735.208 except:

(i) Activities necessitated by a DoD employee's law enforcement duties;

(ii) Activities by organizations composed of DoD employees or their dependents when transacted entirely among their own members and approved by the Head of the DoD component or designee; or

(iii) Private wagers among DoD employees if based on a personal relationship and transacted entirely within assigned Federal Government living quarters and within the limitations of local laws [end of General Order].

(2) Gambling with a subordinate may be a violation of Articles 133 and 134 of the Uniform Code of Military Justice (UCMJ) (10 U.S.C. 801–940).

(3) Gambling may be prohibited by Federal Government building and

grounds regulations, such as 32 CFR part 406 which prohibits gambling in the Pentagon.

(d) *Outside employment and activity.* In addition to 5 CFR 3601.107 except to the extent that when procedures have been established by higher authority for any class of DoD employees (e.g., DoD Directive 6025.7 [4]), agency designees may require DoD employees under their jurisdiction to report any outside employment or activity prior to engaging in the employment or activity. See § 84.10(g).

(1) The commander, head of the organization, or supervisor may prohibit the employment or activity if he believes that the proposed outside activity will detract from readiness or pose a security risk.

(2) If action is not taken to prohibit the employment or activity, the DoD employee is free to engage in the employment or activity in keeping with other restrictions of this part.

(e) *Use of military title by retirees or reserves.* Retired military members and members of reserve components, not on active duty, may use military titles in connection with commercial enterprises, provided they clearly indicate their retired or inactive reserve status. However, any use of military titles is prohibited if it in any way casts discredit on DoD or gives the appearance of sponsorship, sanction, endorsement, or approval by DoD. In addition, in overseas areas, commanders may further restrict the use of titles by retired military members and members of reserve components.

Subpart C—Activities With Non-Federal Entities

§ 84.8 Office of Government Ethics regulation.

See 5 CFR part 2636, "Limitations on Outside Employment and Prohibition of Honoraria; Confidential Reporting of Payments of Charities in Lieu of Honoraria."

§ 84.9 Official participation in non-Federal entities.

(a) *Attendance.* (1) Agency designees may permit their DoD employees to attend meetings, conferences, seminars or similar events sponsored by non-Federal entities in their official DoD capacities at Federal Government expense if there is a legitimate Federal Government purpose in accordance with 5 U.S.C. 4101 *et seq.* and 37 U.S.C. 412, such as training a DoD employee beyond maintaining professional credentials or gathering information of value to the DoD.

(2) DoD employees are prohibited from attending events in their official DoD capacities at Federal Government expense in order to acquire or maintain professional credentials that are a minimum requirement to hold the DoD position. See 5 U.S.C. 5946 and 31 U.S.C. 1345.

(b) *Membership.* DoD employees may serve as DoD liaisons to non-Federal entities where there is a significant and continuing DoD interest to be served by such representation. Liaisons serve as part of their official DoD duties and under DoD component memberships. DoD employees may not accept DoD component membership in a non-Federal entity on behalf of DoD except as provided by statute or regulation. DoD may pay for DoD component memberships in accordance with opinions of the Comptroller General, such as 24 Comp. Gen. 814 (which may be purchased from the U.S. Government Printing Office, Washington, DC 20402). DoD is prohibited from paying for individual memberships by 5 U.S.C. 5946. See also 10 U.S.C. 2601.

(c) *Management.* DoD employees may not participate in their official DoD capacities in the management of non-Federal entities without authorization from the Head of the DoD component. However, authorized DoD employees may officially represent DoD in discussions of matters of mutual interest with non-Federal entities, may participate in the determinations and conclusions of non-Federal entities, and may cast a vote on issues within the scope of the DoD employees' official responsibilities.

(d) *Impartiality of agency designee and travel-approving Authority.* When a DoD employee requests permission to travel to or participate in activities of a non-Federal entity and the agency designee or travel approving authority is an active participant in the non-Federal entity, that agency designee or travel approving authority may not act on the DoD employee's request but shall defer such action to the next higher superior or another independent DoD authority. See 5 CFR 2635.402 and 2635.502 and 18 U.S.C. 208.

(e) *Impartiality of DoD employees.* DoD employees are generally prohibited from engaging in any official activities in which a non-Federal entity is a party or has a financial interest if the DoD employee is an active participant in the non-Federal entity or has been an officer in the non-Federal entity within the last year. See 5 CFR 2635.402 and 2635.502 and 18 U.S.C. 208.

(f) *Endorsement.* [The following is a General Order] Endorsement of a non-Federal entity may be neither stated nor implied by DoD or DoD employees and DoD employees may not use their titles or positions to suggest official endorsement or preferential treatment of any non-Federal entity except those listed in § 84.9(k) [end of General Order]. Use of military grade as part of an individual's name in relationship to membership in private organizations is permissible. See 5 CFR 2635.702(c).

(g) *Distributing information.* In accordance with public affairs regulations, official channels may be used to notify DoD employees of events sponsored by non-Federal entities.

(h) *Remuneration.* DoD employees may not receive any salary or salary supplement from a non-Federal entity for performance of DoD duties.

(i) *Co-sponsorship.* A DoD component is a sponsor or co-sponsor of an event when that DoD component is one of the organizations holding the event or in whose name the event is held. Co-sponsorship of events with a non-Federal entity is prohibited except as follows:

(1) A DoD component may co-sponsor a civic or community activity where the head of the DoD component command or organization determines that the activity is unrelated to the purpose or business of the co-sponsoring, non-Federal entity or the purpose or business of any of its members. See DoD Instruction 5410.20 [5];

(2) A DoD component may co-sponsor a conference, seminar, or similar event with a non-Federal entity when all of the following requirements are met:

(i) The head of the DoD component command or organization finds that the subject matter of the conference (or co-sponsored portion) is scientific, technical or professional issues that are relevant to the DoD component's mission;

(ii) The head of the DoD component command or organization finds that the purpose of co-sponsorship is to transfer federally developed technology or to stimulate wider interest and inquiry into the scientific, technical or professional issues previously identified;

(iii) The non-Federal entity is a recognized scientific, technical or professional organization approved by the DoD component DAEO for this purpose; and

(iv) The DoD component accomplishes the co-sponsorship through a contract, grant or cooperative agreement as identified in 31 U.S.C.

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

[5] See footnote 4 to § 84.7(d).

6303 through 6306; or a Cooperative Research and Development Agreement (CRDA) as defined in 15 U.S.C. 3710a; or a cooperative agreement or other transaction identified in 10 U.S.C. 2371.

(3) If the DoD component desires to sponsor an event, but requires assistance in making the arrangements, the DoD component may arrange, through normal acquisition procedures, to have a non-Federal entity provide whatever assistance is necessary. If the event is open to individuals outside the Federal Government, attendance may not be limited to members of the supporting non-Federal entity. The supporting non-Federal entity may be permitted to mention its support in conference materials, but not in terms which imply that it is sponsoring or co-sponsoring the event.

(j) *Participation in conferences and similar events.* Subject to the provisions of paragraph (l) of this section and in accordance with public affairs regulations and 31 U.S.C. 1345, DoD employees may participate in their official DoD capacities as speakers or panel members at conferences, seminars, or similar events sponsored by non-Federal entities.

(k) *Fundraising and membership drives.* (1) [The following is a General Order] Except as provided in paragraph (l) of this section, DoD components shall not officially support and DoD employees shall not officially endorse or officially participate in membership drives or fundraising for any non-Federal entity except the following organizations which are not subject to the provisions of paragraph (l) of this section:

(i) The Combined Federal Campaign (CFC);

(ii) Emergency and disaster appeals approved by the Office of Personnel Management (OPM);

(iii) Army Emergency Relief;

(iv) Navy-Marine Corps Relief Society;

(v) Air Force Assistance Fund, including:

(A) Air Force Enlisted Men's Widows and Dependents Home Foundation, Inc.;

(B) Air Force Village;

(C) Air Force Aid Society;

(D) General and Mrs. Curtis E. LeMay Foundation.

(vi) Other organizations composed of DoD employees or their dependents when fundraising among their own members for the benefit of welfare funds for their own members when approved by the head of the DoD component command or organization [end of General Order].

(2) Fundraising by DoD employees is strictly regulated by Executive Order 12353, 47 FR 12785, 3 CFR, 1982 Comp., p. 139, 5 CFR part 950, DoD Directive 5035.1 [6], DoD Instruction 5035.5 [7], DoD Directive 5410.18 [8], 5 CFR 2635.808 and by the prohibition against preferential treatment established in paragraph (d) of this section.

(1) *Support of non-Federal entity events.* (1) The head of a DoD component command or organization may provide DoD employees in their official capacities as speakers, panel members or other participants, or, on a limited basis, the use of DoD equipment (and the services of DoD employees necessary to make proper use of the equipment), in support of an event sponsored by a non-Federal entity when the head of the DoD command or organization determines all of the following:

(i) The support does not interfere with the performance of official duties and would in no way detract from readiness;

(ii) The sponsoring, non-Federal entity is not affiliated with the CFC (including local CFC) or, if affiliated with the CFC, the Director, OPM or designee has no objection to DoD support of the event;

(iii) The community relations with the immediate community and/or other legitimate DoD interests are served by the support;

(iv) It is appropriate to associate DoD, including the concerned Military Department, with the event;

(v) The event is of interest and benefit to the local civilian or military community as a whole;

(vi) The DoD component command or organization is able and willing to provide similar support to similar events that meet the criteria sponsored by other non-Federal entities;

(vii) The use is not restricted by other statutes or regulations; and

(viii) Except for a fundraising event that meets all other criteria for DoD participation, no admission fee beyond reasonable costs is charged for the event, no admission fee beyond reasonable costs is charged for the portion of the event supported by DoD, or DoD support to the event is incidental to the entire event in accordance with public affairs guidance.

(2) Involvement of DoD resources in air shows sponsored by non-Federal entities is approved or disapproved by the Office of the Assistant Secretary of Defense (Public Affairs).

(3) Speeches by DoD employees at events sponsored by non-Federal entities are not precluded when the speech expresses an official DoD position in a public forum in accordance with public affairs guidance.

(m) *Relationships governed by other authorities.* The provisions of this Chapter do not restrict activities involving certain organizations which have a special relationship with DoD or its employees specifically recognized by law or by other directives. Other restrictions may apply. These organizations include:

(1) Certain banks and credit unions (32 CFR part 231);

(2) United Service Organization (DoD Directive 1330.12 [9]);

(3) Labor organizations (5 U.S.C. Chapter 71; DoD 1400.25–M [10], Chapter 711);

(4) Combined Federal Campaign (Executive Order 10927, 26 FR 2383, 3 CFR, 1959–1963 Comp., p. 508) DoD Directive 5035.1;

(5) Association of Management Officials and Supervisors (DoD Instruction 5010.30 [11]);

(6) American Registry of Pathology (10 U.S.C. 177); Henry M. Jackson Foundation for the Advancement of Military Medicine (10 U.S.C. 178); American National Red Cross (10 U.S.C. 2542); Boy Scouts Jamborees (10 U.S.C. 2544); Girl Scouts International Events (10 U.S.C. 2545); Shelter for Homeless (10 U.S.C. 2546); National Military Associations; Assistance at National Conventions (10 U.S.C. 2548); Assistance from American National Red Cross (10 U.S.C. 2602); United Seaman's Service Organization (10 U.S.C. 2604); Scouting: Cooperation and Assistance in Foreign Areas (10 U.S.C. 2606); and Civil Air Patrol (10 U.S.C. 9441–9442).

§ 84.10 Personal participation in non-Federal entities.

(a) *Participation*—(1) *Fundraising and other activities.* Subject to other provisions of this part, DoD employees may voluntarily participate in activities of non-Federal entities as individuals in their personal capacities provided they act exclusively outside the scope of their official position. Purely personal, unofficial, volunteer efforts to support fundraising are not prohibited where the efforts do not imply DoD endorsement. The head of the DoD component command or organization may authorize such activities outside the Federal Government workplace, such as at public entrances, in community support facilities and in personal quarters. See 5 CFR part 950 and Executive Order 12353. These activities may be further

[6] See footnote 4 to § 84.7(d).

[7] See footnote 4 to § 84.7(d).

[8] See footnote 4 to § 84.7(d).

[9] See footnote 4 to § 84.7(d).

[10] Written request should be forwarded to: OASD(P&R)/CPP/EEO, room 3D269, Pentagon, Washington, DC 20301.

[11] See footnote 4 to § 84.7(d).

limited by Federal Government building and grounds regulations.

(2) *Professional associations and learned societies.* Agency designees may permit their DoD employees to voluntarily participate in the activities of non-profit professional associations and learned societies without being charged leave and to use Federal Government equipment or administrative support services to prepare papers to be presented at such association or society events or to be published in professional journals, in accordance with FPM 252 and 630 [12] and related DoD regulations, when:

(i) The participation or paper is related to the DoD employee's official position or to DoD functions, management or mission; and

(ii) The participation or preparation of the paper does not interfere with the performance of official DoD duties.

(3) *Community support activities.* Agency designees may permit their DoD employees to voluntarily participate in community support activities that promote civic awareness and uncompensated public service such as disaster relief events, without being charged leave in accordance with FPM 630 and related DoD regulations.

(4) *Impartiality of agency designee and travel approving authority.* When a DoD employee requests permission to travel to or participate in activities of a non-Federal entity and the agency designee or travel approving authority is an active participant in the non-Federal entity, that agency designee or travel approving authority may not act on the DoD employee's request but shall defer such action to the next higher superior or another independent DoD authority. See 5 CFR 2635.402 and 2635.502 and 18 U.S.C. 208.

(b) *Membership and management.* DoD employees may become members and may participate in the management of non-Federal entities as individuals in a personal capacity provided they act exclusively outside the scope of their official position. A DoD employee may not serve in a personal capacity as an officer, member of the Board of Directors, or in any other similar position in any non-Federal entity offered because of their DoD assignment or position.

(c) *Impartiality of DoD Employees.* DoD employees are generally prohibited from engaging in any official activities in which a non-Federal entity is a party or has a financial interest if the DoD employee is an active participant in the non-Federal entity or has been an officer in the non-Federal entity within the last year. See 5 CFR 2635.402 and 2635.502 and 18 U.S.C. 208.

(d) *Interference with employment of local civilians.* Enlisted members on active duty may not be ordered or authorized to leave their post to engage in a civilian pursuit, business, or professional activity if it interferes with the customary or regular employment of local civilians in their art, trade, or profession. See 10 U.S.C. 974.

(e) *Competition with civilian musicians.* Members of military bands are very restricted in the degree to which they may compete off base with civilian musicians. See 10 U.S.C. 3634, 6223 and 8634.

(f) *Use of Federal Government resources—(1) Authorized uses.* Other than Federal Government time authorized in paragraphs (a)(2) and (a)(3) of this section, Federal Government assets, employees, or property may not be used in support of personal participation in non-Federal entities, except as follows:

(i) Agency designees may permit occasional use of Federal Government telephone systems in keeping with GSA rules on personal calls, provided that such use does not interfere with the performance of official duties. See § 84.7(b) and 41 CFR 201–21.6;

(ii) Because the cost to the Federal Government is minimal, the use of office telecommunications equipment for local calls, word processing equipment, libraries and similar resources and facilities whose use would not affect Federal Government costs significantly, may be permitted by the agency designee if:

(A) The non-Federal entity is not a prohibited source;

(B) The agency designee determines that:

(*1*) A legitimate public interest is served by the use; or

(*2*) The use would enhance the professional development or skills of the DoD employee in his current position.

(C) The use of such resources is made only during personal time, such as excused absence, lunch period, or after duty hours; and

(D) The use does not interfere with the performance of official duties.

(2) *Prohibited uses.* (i) [The following is a General Order] Because of the potential for significant cost to the Federal Government, and the potential for abuse, DoD employees, such as secretaries, clerks, and military aides, may not be used to support the unofficial activity of another DoD employee in support of non-Federal entities except as provided in paragraph (a)(1) of this section [end of General Order].

(ii) [The following is a General Order] For the same reasons, copiers and other duplicating equipment may not be used for unofficial activity in support of non-Federal entities [end of General Order].

(g) *Prior approval of outside employment and business activities.* (1) A DoD employee, other than a special Government employee, who is required to file a financial disclosure report, SF 450 or SF 278, shall obtain written approval from the agency designee before engaging in a business activity or compensated outside employment with a prohibited source, unless general approval has been given in accordance with paragraph (g)(2) of this section. Approval shall be granted unless a determination is made that the business activity or compensated outside employment is expected to involve conduct prohibited by statute or regulation.

(i) Business activity means any business, contractual or other financial relationship not involving the provision of personal services by the DoD employee. It does not include a routine commercial transaction or the purchase of an asset or interest, such as common stock, that is available to the general public.

(ii) Employment means any form of non-Federal Government employment or business relationship involving the provision of personal services by the DoD employee. It includes, but is not limited to, personal services as an officer, director, employee, agent, attorney, consultant, contractor, general partner or trustee.

(iii) Prohibited source has the meaning set forth in 5 CFR 2635.203(d), as modified by the separate agency designations in 5 CFR 3601.102.

(2) The DoD component DAEO or designee may, by a written notice, exempt categories of business activities or employment from the requirement of paragraph (g)(1) of this section for prior approval based on a determination that business activities or employment within those categories would generally be approved and are not likely to involve conduct prohibited by statute or regulation.

(3) A copy of the request for prior approval and the written approval shall be kept with the filed copy of the DoD employee's financial disclosure report, SF 450 or SF 278, or with the local Ethics Counselor.

(4) Such DoD employees who have not obtained prior approval and who are, on the effective date of this supplemental rule, already engaged in

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an outside activity that requires prior approval shall have 90 days from that date to obtain such approval.

(5) Except to the extent that when procedures have been established by higher authority for any class of DoD employee (e.g., DoD Directive 6025.7 [13], agency designees may require DoD employees under their jurisdiction to report any outside employment or activity prior to engaging in the employment or activity.

(i) The commander, head of the organization, or supervisor may prohibit the employment or activity if he believes that the proposed outside activity will detract from readiness or pose a security risk.

(ii) If action is not taken to prohibit the employment or activity, the DoD employee is free to engage in the employment or activity in keeping with other restrictions of this part.

(h) *Teaching, speaking and writing*—(1) *Disclaimer for speeches and writings devoted to agency matters.* [The following is a General Order] A DoD employee who uses or permits the use of his military grade or who includes or permits the inclusion of his title or position as one of several biographical details given to identify himself in connection with teaching, speaking or writing, in accordance with 5 CFR 2635.807(b)(1), shall make a disclaimer if the subject of the teaching, speaking or writing deals in significant part with any ongoing or announced policy, program or operation of the DoD employee's agency, as defined in 5 CFR 3601.102(a), and the DoD employee has not been authorized by appropriate agency authority to present that material as the agency's position.

(i) The required disclaimer shall expressly state that the views presented are those of the speaker or author and do not necessarily represent the views of DoD or its components.

(ii) Where a disclaimer is required for an article, book or other writing, the disclaimer shall be printed in a reasonably prominent position in the writing itself. Where a disclaimer is required for a speech or other oral presentation, the disclaimer may be given orally provided it is given at the beginning of the oral presentation [end of General Order].

(2) *Security clearance.* A lecture, speech, or writing that pertains to military matters, national security issues, or subjects of significant concern to DoD shall be reviewed for clearance by appropriate security and public affairs offices prior to delivery or publication.

[13] See footnote 4 to § 84.7(d).

(3) *Honoraria.* Compensation for a lecture, speech or writing may be restricted by the honoraria prohibition of the Ethics in Government Act (5 U.S.C. App.), 5 CFR part 2636, and by 5 CFR 2635.807.

Subpart D—Travel Benefits

§ 84.11 Acceptance of official travel benefits in kind or payment for official travel expenses.

(a) *Acceptance from non-Federal sources*—(1) *Official travel.* Official travel by DoD employees shall be funded by the Federal Government except that DoD components may accept official travel benefits, including in kind subsistence and accommodations and payments or reimbursements of expenses, from non-Federal sources as provided in this subpart of this part.

(2) *Personal travel.* This subpart does not apply to travel benefits provided to DoD employees in their personal capacities. However, DoD employees must report such travel expenses when appropriate in accordance with subpart G of this part. There may be limitations on acceptance of travel benefits in a personal capacity, including limitations on acceptance from prohibited sources, because of official position, and under 41 U.S.C. 423.

(3) *Acceptance procedures.* Any official travel benefits from non-Federal sources accepted by the travel approving authority must be:

(i) Approved in writing by the travel approving authority with the advice of the DoD employee's Ethics Counselor;

(ii) If accepted under the authority granted by 31 U.S.C. 1353, approved in advance of travel.

(4) *Spousal travel.* The travel approving authorities for travel of a spouse accompanying a DoD employee on official travel that is paid for or provided in kind by a non-Federal source are as follows:

(i) For DoD employees of OSD, Defense Agencies and OSD Field Activities, the Executive Secretary, OSD;

(ii) For DoD employees of Military Departments, the Secretaries concerned or their designees;

(iii) For DoD employees of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the United or Specified Commands, and the Combined Commands and agencies, the Chairman of the Joint Chiefs of Staff, or his designee.

(b) *Acceptance of travel and related expenses by a DoD component from non-Federal sources*—(1) *Attendance at a meeting or similar function (31 U.S.C. 1353).*

(i) In accordance with 31 U.S.C. 1353 and GSA travel regulations, 41 CFR 301–1.2 and part 304, Heads of DoD components may accept travel benefits from a non-Federal source incurred by DoD employees in connection with their attendance in an official capacity at a meeting or similar function. The Joint Federal Travel Regulations [14] (JFTR), Chapter 7, part W, Paragraphs U7900–7908 (DoD Uniformed Services) and Joint Travel Regulations [15] (JTR), Chapter 4, part Q, Paragraphs C4900–4908 (DoD Civilian Personnel) implement 41 CFR 301–1.2 and part 304. For detailed guidance as to the applicability and application of specific authority, these regulations should be consulted directly.

(ii) Where the GSA travel regulations, 41 CFR 301–1.2 and part 304, are inconsistent with the JFTR and JTR, 41 CFR 301–1.2 and part 304 are the controlling authorities.

(iii) A DoD component may not accept travel benefits from non-Federal sources under any other gift acceptance authority if 31 U.S.C. 1353 applies.

(iv) *Payment guidelines.* DoD employees (or their spouses) shall not accept cash payments on behalf of the Federal Government.

(A) When travel benefits are paid for rather than provided in kind, payments from the non-Federal source will be by check or similar instrument made payable to the United States Treasury. Any such payment received by the DoD employee (or spouse) shall be submitted with his travel voucher as soon as practicable.

(B) The DoD employee shall exclude from his travel voucher any request for reimbursement for travel benefits furnished in kind by a non-Federal source on the travel voucher to ensure that appropriate deductions are made in the travel, per diem, or other allowances payable by the United States.

(v) *Reporting.* Each travel-approving authority designated by the DoD component Head to accept travel benefits from non-Federal sources shall submit a report to the DoD component DAEO or designee semiannually on April 30 and October 31 to accommodate the required reporting to OGE on May 31 and November 30 each year. See JFTR, Paragraph U7908 and JTR, Paragraph C4908 for details on what to report.

(2) *DoD component gift acceptance statutes.* In accordance with procedures established by those DoD components with gift acceptance authority under 10 U.S.C. 2601, travel benefits may be

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[15] See footnote 14 to § 84.11(b)

accepted by such DoD component Heads or their designees.

(i) This authority may not be used to accept travel benefits covered by 31 U.S.C. 1353.

(ii) This authority may be used to accept, for example, reimbursement for travel benefits of flight crew members that accompany Federal Government aircraft to international air shows or the expenses incurred by the attendance of DoD employees at ceremonial events in order to enhance a DoD component's public relations. This authority may also be used to accept travel benefits offered after travel has begun or has been completed.

(3) *DoD component DAEO or designee approval.* Acceptance of official travel benefits from non-Federal sources described in § 84.11(b)(1) and (2) requires the concurrence of the DoD component DAEO or designee.

(c) *Acceptance of contributions, awards and other payments by DoD employees from tax-exempt organizations (5 U.S.C. 4111)*—(1) *Applicability.* Military members are permitted to accept contributions, awards and other payments the same as civilian DoD employees in accordance with the requirements of this section.

(2) *Conditions for acceptance.* Except when acceptance is permitted under 5 CFR 2635.204(d), DoD employees are permitted to accept contributions, awards and other payments directly from non-Federal sources only when all of the following conditions are met:

(i) The source is tax-exempt organization described by 26 U.S.C. 501(c)(3) or a State or local government (see 5 CFR part 410, subpart G);

(ii) The contribution, award, or payment of travel benefits is incidental to training in non-Federal Government facilities or attendance at a meeting;

(iii) An appropriate deduction is made from any payment by the Federal Government to the DoD employee for their official travel entitlement;

(iv) The contribution, award, or payment is not a reward for services to the non-Federal source;

(v) Acceptance of the contribution, award or payment would not reflect unfavorably on the DoD employee's ability to perform his duties in a fair and objective manner, nor otherwise compromise the integrity of any Federal Government action; and

(vi) The travel approving authority approves the acceptance of the contribution, award or payment in writing.

(3) *Payments from multiple sources.* When more than one organization participates in making a single contribution, award, or payment, only the organization that selects the recipient and administers the funds from which the contribution, award, or payment is made will be considered the source.

(4) *Reporting.* (i) Financial disclosure reporting individuals must report acceptance of these travel benefits if the fair market value of those benefits reaches the reportable amount.

(ii) Travel benefits accepted under 5 U.S.C. 4111 shall be reported by the travel-approving authority directly to the DoD component DAEO or designee within 30 days after completion of travel. These reports shall include, at a minimum, the information required for the semiannual reports by the JFTR, Paragraph U7908 and JTR, Paragraph C4908.

(d) *Receipt and disposition of foreign gifts and decorations (5 U.S.C. 7342).* DoD employees may accept travel and travel-related expenses from a foreign government in accordance with 32 CFR part 95.

§ 84.12 DoD guidance.

(a) *Acceptance of incidental benefits.* There are two basic principles DoD employees must consider in determining whether they may accept benefits offered incident to their official travel. See DoD travel rules (e.g., DoD Directive 4500.9 [16]).

(1) *Federal Government property.* Anything that does not fall within a gift exception or exclusion under 5 CFR part 2635, subpart B, or 5 CFR 3601.101–3601.108, which is received by a DoD employee as a result of official travel, belongs to the Federal Government, regardless of the source of the funding.

(i) Travel coupons, tickets, promotional items of more than nominal value, frequent flyer mileage credits, and most other benefits received by DoD employees from non-Federal sources (e.g., airlines, rental car companies, hotels) incident to their official travel belong to the Federal Government. They may not be used for personal purposes.

(ii) If possible, such benefits will be turned over to the appropriate official. See JFTR, Paragraph U2010B, JTR, Paragraph C1200, 41 CFR part 301 and 41 CFR 101–25.103.

(2) *Gifts from outside sources.* Benefits offered to a DoD employee from a non-Federal source incident to official travel that cannot be used for official purposes must be treated as gifts to the DoD employee. DoD employees may not accept such gifts if acceptance would violate 5 CFR part 2635, subpart B.

(b) *Examples of benefits considered Federal Government property*—(1) *Frequent flying mileage credits.* Frequent flyer mileage credits earned as a result of official travel are the property of the Federal Government. They shall not be used except in connection with official travel. Credits are used in connection with official travel either by redeeming them for airline tickets which are used for official travel or by using them for travel upgrades while on official travel (e.g., airline seat upgrades, rental car upgrades, hotel upgrades). First consideration should be given to the former. When mileage credits for official and personal travel have been commingled in the same account, only those credits or points that clearly can be shown to have been derived from personal travel may be used for future personal travel. All other points in the account belong to the Federal Government.

(2) *Other awards to users of travel services.* Travel companies sometimes give away merchandise, or award points toward merchandise or other prizes, to users of their services. If the travel services used are paid for by the Federal Government, any resulting award belongs to the Federal Government (e.g., if a DoD employee renting a car for official business is offered either a calculator or points toward a larger prize, both would belong to the Federal Government).

(c) *Examples of benefits treated as gifts to an individual*—(1) *Travel upgrades.* Travel upgrades are commonly offered for such travel accommodations as airline seats, rental cars, and hotel rooms. Some travel upgrades are given on the spot without any prearranged entitlement. Others are provided pursuant to some prearranged entitlement, such as a coupon. DoD employees on official travel may accept benefits such as an airline seat upgrade to first class, a luxury rental car in place of a compact, or a hotel room with a view instead of an interior room, for official use as long as there is no extra charge to the Federal Government to obtain the upgrade (see 5 CFR 2635.204(c)), subject to the following:

(i) *On the spot upgrades.* DoD employees may accept an upgrade offered on the spot under circumstances in which such upgrades are generally available to the public or at least to all Federal Government employees or all military members. For example, a travel company may provide upgrades to remedy overbooking or overcrowding, due to a shortage of smaller cars, or simply for customer relation purposes; or upgrades may be offered to all military members in uniform. No upgrade may be accepted, however, if it is provided on the basis of the DoD

[16] See footnote 4 to § 84.7(d).

employee's grade or position. Upgrades resulting from involuntary "bumping" while on official travel may not be used for personal travel. See 5 CFR 2635.202(a)(2);

(ii) *Use of upgrade certificates (other than those obtained for frequent flyer miles).* Some travel companies distribute coupons for free travel upgrades as a promotional offer. DoD employees may accept and use such coupons if they are realistically available to the general public (e.g., widely available coupons usable by bearer) or to all Federal Government employees or all military members (e.g., coupons available to any Federal Government employee for official travel). DoD employees may not use coupons provided on the basis of their grade or position.

(2) *"Gold card" and similar memberships.* Certain airlines offer special benefits, including free upgrades, to members of their traveler incentive programs (e.g., Gold card, Key Club, etc.). Membership in these programs ordinarily is earned by accumulating a large number of travel miles during the current calendar year, or in some cases, memberships may be purchased. DoD employees who obtain eligibility under these circumstances (i.e., by purchasing a membership with their personal funds or by accumulating the necessary miles, even by official travel) may accept the membership and resulting benefits, including travel upgrades. If membership in the program is offered to DoD employees who have not met the usual requirements for membership, however, primarily because of the DoD employee's grade or position, neither the membership nor its benefits may be accepted.

(3) *Prizes in "open" and "closed" contest.* When travel companies and related organizations offer prizes in a competition that is open to the general public, so that no one must perform official travel to win, a DoD employee may keep any prize he wins, even if he happened to enter the contest only because of official travel (e.g., a DoD employee flying on official business receives the winning entry blank in an airline's contest while on the flight, but individuals not using the airline will be given the entry blank on request). Some travel companies and related organizations offer prizes in connection with official travel. The prize usually is given as a result of a drawing or some kind of contest. If competition for a prize is limited to individuals using a certain kind of travel accommodation, which in the case of the DoD employee is paid for by the Federal Government, any prize won belongs to the Federal Government (e.g., an airline provides contest entry blanks only to passengers on its planes, and the DoD employee receives the winning entry blank while flying on official travel).

(4) *Incentives for voluntary surrender of flight reservations.* DoD employees may keep payments or free tickets received from a carrier for voluntarily giving up a seat on an overbooked flight. DoD employees on official travel may not voluntarily surrender their seats if the resulting delay would interfere with the performance of duties. The delay may not increase the cost to the Federal Government. Therefore, travel vouchers should disclose the voluntary surrender and resulting delays and leave must be taken as appropriate.

§ 84.13 Procedures and responsibilities.

(a) The *travel-approving authority* shall:

(1) Approve or disapprove acceptance of travel benefits in kind or payments of travel expenses from non-Federal sources in accordance with § 84.11 (c) and (d);

(2) Acquire the concurrence of the DoD component DAEO or designee when approving travel benefits in accordance with the conflict of interest analysis required by 41 CFR 304–1.5;

(3) Prepare and submit a report to the DoD component DAEO or designee reporting all travel benefits over $250 accepted in accordance with the authority granted under 31 U.S.C. 1353 as implemented in § 84.11(b);

(4) Prepare and submit a report to the DoD component DAEO or designee within 30 days after completion of travel during which travel benefits have been paid by non-Federal sources under 5 U.S.C. 4111. See § 84.11(c)(3).

(b) Each *DoD component DAEO or designee* shall:

(1) Prepare and submit semiannual reports to OGE on acceptance of payments under 31 U.S.C. 1353 due May 31 and November 30 each year. See § 84.11(b)(1)(v);

(2) Retain reports from the travel-approving authority under 5 U.S.C. 4111 for two years. See § 84.11(c)(4);

(3) Provide written concurrence for the approval of travel benefits in accordance with the conflict of interest analysis required by 41 CFR 304–1.5.

(c) Each *traveling DoD employee* shall:

(1) Provide all necessary information to the travel approving authority for a semiannual report to the DoD component DAEO;

(2) Turn in any merchandise, frequent flyer miles or other benefits as required under § 84.12(a).

Subpart E—Conflicts of Interest

§ 84.14 Office of Government Ethics Regulation.

(a) See 5 CFR part 2639, "Interpretation of 18 U.S.C. 209"

(b) See 5 CFR part 2640, "Interpretation of 18 U.S.C. 208"

§ 84.15 Guidance on 18 U.S.C. 208.

(a) *Conflicts and appearance of conflicts under 18 U.S.C. 208.* See 5 CFR part 2635, subpart D and subpart E, OGE opinions (which are available for purchase from the U.S. Office of Government Ethics, 1201 New York Avenue, NW., suite 500, Washington, DC 20005–3917), and 5 CFR 3601.105 for provisions on conflicts of interest under 18 U.S.C. 208.

(b) *Applicability to enlistees.* The provisions of 18 U.S.C. 208 and related provisions of OGE regulations do not apply to enlisted members. However, provisions similar to 18 U.S.C. 208 do apply to enlisted members as follows: [The following is a General Order] except as approved by the DoD component DAEO or designee, an enlisted member, including an enlisted special Government employee, shall not participate personally and substantially as part of his official DoD duties, in any particular matter in which he, his spouse, minor child, partner, entity in which he is serving as officer, director, trustee, partner or employee or any entity with which he is negotiating or has an arrangement concerning prospective employment, has a financial interest [end of General Order].

(c) *Waiver of 18 U.S.C. 208(a).* Pursuant to 18 U.S.C. 208(b), application of 18 U.S.C. 208(a) may be waived.

(1) The regulatory waivers for DoD under 18 U.S.C. 208(b)(2) have been preserved and are reprinted as follows (see 5 CFR 2635.402(d)):

(i) For civilian DoD components, such waivers appear in Appendix B to this part;

(ii) For the Department of the Army, such waivers appear in Appendix B to this part;

(iii) For the Department of the Air Force, such waivers appear in Appendix B to this part;

(iv) For the Department of the Navy, such waivers appear in Appendix B to this part.

(2) Application of 18 U.S.C. 208(a) may be waived for individuals when a financial interest is not so substantial as to be likely to affect the integrity of the services that the Federal Government may expect from the DoD employee. Considerations in determining whether the interest is not so substantial as to be

deemed likely to affect the integrity of the services that the Federal Government may expect from the DoD employee include:

(i) The extent to which the DoD employee's exercise of authority and responsibility can affect his interest;

(ii) The relative importance of the interest in the DoD employee's life or finances;

(iii) The potential for harm to the Federal Government and to the DoD employee if the DoD employee's interests influence his decision-making;

(iv) How the situation would appear to an informed public;

(v) The nature of the relationship between the DoD employee and the individual who has the interest concerned.

(3) In order to pursue an individual waiver under 18 U.S.C. 208(b)(1) the following steps are mandatory:

(i) Before a waiver is requested, consideration should first be given to alternative resolutions, such as disqualification, divestiture, reassignment, or rearrangement of duties. Individual waivers are to be considered only when all alternatives have been exhausted. The supervisor should also consider, with the advice of the Ethics Counselor, whether a potential violation of 18 U.S.C. 208(a) exists. See paragraph (d) of this section. Even if the interests are insubstantial, consideration should be given to whether the particular matter will have a direct and predictable effect on the financial interest. See 5 CFR 2635.402(b)(1);

(ii) A request for a waiver shall be forwarded through the chain of command or supervision to the DoD component DAEO. The DoD component DAEO shall consult, if practicable, on the action with OGE;

(iii) Pending the approval of the waiver, the DoD employee shall be disqualified from participation in the particular matter that will have an effect on the financial interest;

(iv) The waiver request shall include the Ethics Counselor's findings of fact on the following:

(A) The manner in which the financial interest was acquired;

(B) The purpose behind the DoD employee's acquisition of the interest;

(C) The dollar value of the interest;

(D) The potential amount by which the DoD employee's official actions may affect the financial interest;

(E) The degree to which the DoD employee has control over official actions which may affect the non-Federal entity;

(F) The size of the non-Federal entity and the degree to which official actions may affect the non-Federal entity;

(G) The value of the financial interest in relation to the DoD employee's net worth and income from other sources;

(H) The degree to which the DoD employee has control over the financial interest, and whether it is capable of being divested.

(4) By statute, authority to grant 18 U.S.C. 208(b)(1) waivers rests with the DoD official responsible for the DoD employee's appointment. By Executive Order 12674, that authority shall not be exercised without prior consultation, if practicable, with OGE. The DoD component DAEO shall consult with OGE regarding the waiver on behalf of the DoD official responsible for the DoD employee's appointment.

(d) *Resolution of conflicts.* Resolution of actual or apparent conflicts of interest is the responsibility of the head of the DoD component command or organization. An Ethics Counselor should be consulted about alternatives for resolution. See subpart J of this part for enforcement information.

§ 84.16 Other conflict of interest laws.

(a) *Bribery and graft.* (1) [The following is a General Order] All DoD employees are prohibited from, directly or indirectly, giving, offering, promising, demanding, seeking, receiving, accepting, or agreeing to receive anything of value to influence any official act, to influence commission of fraud on the United States, to induce committing or omitting any act in violation of a lawful duty, or to influence testimony given before an individual or non-Federal entity authorized to hear evidence or take testimony [end of General Order]. See 18 U.S.C. 201(b).

(2) [The following is a General Order] DoD employees are also prohibited, except as provided by law for the proper discharge of official duties, from, directly or indirectly, giving, offering, promising, demanding, seeking, receiving, accepting, or agreeing to accept anything of value for or because of any official act performed or to be performed, or for or because of any testimony given or to be given before an individual or non-Federal entity authorized to hear evidence or take testimony [end of General Order]. See 18 U.S.C. 201(c).

(3) These prohibitions do not apply to the payment or receipt of witness fees authorized by law, certain travel and subsistence expenses to appear as a witness and value of time lost in attendance at a trial, hearing, or proceeding. Other prohibitions may apply. See 18 U.S.C. 201(d); 5 U.S.C. 5515 and 5751 and paragraph 66 of part IV, MCM, 1984 (10 U.S.C. 801–940).

(b) *Compensation related to matters pending Government decision.* OGE interpretation of prohibitions under 18 U.S.C. 203 appear in 5 CFR 2635.801(d)(3). These prohibitions do not apply to enlisted members. A DoD employee whose salary is not tied to the profitability of the non-Federal entity's Federal Government contracts does not violate this statute. See OGE opinion 86x9 [17] (informal). This statute prohibits receiving compensation for any representation, including those where there is no intent to be corrupted or to provide preferential treatment. Representations can be either oral or written.

(1) The prohibition does not apply to a DoD employee's representation of himself, but this exception does not extend to the representation of a distinct, legal, non-Federal entity as a corporation, a partnership, or even a sole proprietorship. 18 U.S.C. 203(a)(2) prohibits an offer or payment of compensation, the solicitation or receipt of which is otherwise barred.

(2) The prohibitions apply to special Government employees but only in relation to a particular matter involving a specific party or parties in which the special Government employee participated personally and substantially or, absent such participation, if he served more than a total of 60 days in the preceding 365 days, in relation to any particular matter pending in the DoD agency.

(3) 18 U.S.C. 203 does not prohibit giving testimony under oath or making statements required to be made under penalty of perjury.

(4) 18 U.S.C. 203 does not prohibit representation, with or without compensation, of one's parents, spouse, child, or any person or estate the DoD employee serves as administrator, guardian or other personal fiduciary. This exemption is permitted only if approved by the DoD official responsible for appointing the DoD employee to his DoD position. The exemption may not be extended to the DoD employee's representation of any such person in matters in which the DoD employee has officially participated personally and substantially or in matters which, even absent such participation, are the subject of his official responsibility.

(5) The head of a department or agency may authorize a special Government employee to represent his regular employer or other outside organization in the performance of work

[17] Copies are available from Office of Government Ethics, 1201 New York Avenue, NW., suite 500, Washington, DC 20005–3917

under a Federal Government grant or contract if the department or agency head certifies and publishes the certification in the **Federal Register** that the national interest requires such representation.

(c) *Contracts with DoD employees.* Contracts for the procurement of goods and services between the Federal Government and its employees are prohibited unless the needs of the Federal Government cannot otherwise be met. See 48 CFR 3.601 and 3.602.

(d) *Representation of others*—(1) *Prohibition under 18 U.S.C. 205.* 18 U.S.C. 205 prohibits DoD employees, other than enlisted members, whether or not they are employed for compensation, from personally acting as an agent or attorney for anyone else before a department, agency, or court in connection with any covered matter in which the United States is a party or has a direct and substantial interest or from prosecuting any claim against the Federal Government or receiving any gratuity or interest in such claim for assistance in prosecuting the claim. Covered matter means any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter.

(2) *Exceptions.* The following are excluded from the scope of 18 U.S.C. 205:

(i) Giving testimony under oath or making statements required to be made under penalty of perjury or representing another person, with or without compensation, in a disciplinary, loyalty, or other personnel administration proceeding;

(ii) Representing, with or without compensation, one's parents, spouse, child, or a person estate the DoD employee serves as a fiduciary, but only if approved by the DoD official responsible for appointing the DoD employee to this DoD position. This exception does not apply to matters in which the DoD employee has participated personally and substantially or which, in the absence of such participation, are the subject of his official DoD responsibility;

(iii) The head of a department or agency may allow a special Governmental employee to represent his regular employer or other outside organization in the performance of work under a Federal Government grant or contract if the department or agency head certifies and publishes the certification in the **Federal Register** that the national interest requires such representation;

(iv) For special Government employees, the prohibitions apply only to covered matters in which they participated personally and substantially as a special Government employee. Absent such participation, the prohibitions apply only if he served more than a total of 60 days during the preceding 365 days and the covered matter was pending in the DoD agency during that period.

(e) *Compensation from other sources.* (1) The provisions of 18 U.S.C. 209 and related provisions of OGE regulations do not apply to enlisted members. However, provisions similar to 18 U.S.C. 209 do apply to enlisted members as follows: [The following is a General Order] an enlisted member, except an enlisted special Government employee, shall not receive any salary or supplementation of his Federal Government salary, from any entity other than the Federal Government or as may be contributed out of the treasury of any State, county, or municipality, for his services to the Federal Government [end of General Order].

(2) 18 U.S.C. 209 prohibits DoD employees from receiving pay or allowances or supplements of pay or benefits from any source other than the United States for the performance of official service or duties unless specifically authorized by law. Note that a task or job that is performed outside normal working hours does not necessarily allow acceptance of payment for performing it. If the undertaking is part of one's official duties, pay for its performance may not be accepted from any source other than the United States regardless of when it was performed.

(3) A DoD employee may continue to participate in bona fide pension, retirement, insurance, bonus, or other employee welfare or benefit plan maintained by his former employer. See 18 U.S.C. 209(b).

(4) Reserve military officers and certain temporarily commissioned military officers who are ordered to active duty may continue to receive compensation from individuals who furnished compensation to them prior to being ordered to active duty. See 10 U.S.C. 1033 and 50 U.S.C. App. 454(f).

(f) *Additional pay or allowances.* [The following is a General Order] DoD employees may not receive additional pay or allowances for disbursement of public money or for the performance of any other service or duty unless specifically authorized by law. See 5 U.S.C. 5536 [end of General Order].

(1) 5 U.S.C. 5536 precludes extra pay from the Federal Government for the performance of official duties. Subject to certain limitations, civilian DoD employees may hold two distinctly different Federal Government positions and receive the salaries of both if the duties of each are performed. Absent specific authority, however, military member may not do so because any arrangement by a military member for rendering services to the Federal Government in another position is incompatible with the military member's actual or potential military duties. That a military member may have leisure hours during which no official duty is performed does not alter the result. See 52 Comp. Gen. 471 and 22 Comp. Gen. 127, 149.

(2) 5 U.S.C. 5536 applies to enlisted members and precludes enlisted members from supplementing their official salaries from outside sources for performing their official duties.

(g) *Interference with military duties.* Military officers on active duty (except while on terminal leave) may not accept employment if it requires separation from their organization, branch, or unit, or interferes with the performance of military duties. See 10 U.S.C. 973(a).

(h) *Civil office prohibition.* Regular military officers on the active duty list and retired regular military officers on active duty from more than 180 days may not hold civil office, unless expressly authorized by law. See 10 U.S.C. 973(b).

(i) *Assignment of reserves for training.* (1) Personnel who assign reserves for training shall not assign them to duties in which they will obtain information that they or their private employers may use to gain unfair advantage over competitors. Reservists must disclose to superiors and assignment personnel information necessary to ensure that no conflict exists between their duty assignment and their private interests.

(2) Commanders, or their designees, shall screen Reservists performing training to ensure that no actual or apparent conflict exists between their private interests and their duty assignment. While Reservists have an affirmative obligation under this rule to disclose material facts in this regard, receiving commands cannot assume compliance and shall independently screen incoming personnel to avoid conflicts of interests.

(j) *Commercial dealings involving DoD employees.* [The following is a General Order] A DoD employee shall not knowingly solicit or make solicited sales to DoD personnel who are junior in rank, grade or position, or to the family members of such personnel, on or off duty. In the absence of coercion or intimidation, this does not prohibit the sale or lease of a DoD employee's

non-commercial personal or real property or commercial sales solicited and made in a retail establishment during off-duty employment. The posting of an advertisement in accordance with Federal Government building management policies does not constitute solicitation for purposes of this section [end of General Order].

(1) [The following is a General Order] In the absence of coercion or intimidation, this does not prohibit the sale or lease by an individual of one's non-commercial personal property or real estate, and commercial sales made in a retail establishment during off-duty employment. Solicitation does not include advertisements posted in accordance with Federal Government building management policies [end of General Order].

(2) [The following is a General Order] This prohibition includes the solicited sale of insurance, stocks, mutual funds, real estate, cosmetics, household supplies, vitamins, and other goods or services [end of General Order].

(3) [The following is a General Order] Both the act of soliciting and the act of selling as a result of soliciting are prohibited. In both cases, however, a solicitation is necessary for a violation to occur. While the standard prohibits a senior from making a solicited sale to a junior or to the junior's family, sales made because a junior approaches the senior and requests the sale to be made are not prohibited, absent coercion or intimidation by the senior [end of General Order].

(4) Personal commercial solicitations by the spouse or other household member of a DoD employee to those who are junior in rank, grade, or position to the DoD employee, may give rise to the appearance that the DoD employee himself is using his public office for personal gain. When a spouse or household member of a DoD employee engages in such activity, the supervisor of the DoD employee must consult an Ethics Counselor, and counsel the DoD employee that such activity should be avoided where it may:

(i) Cause actual or perceived partiality or unfairness;

(ii) Involve the actual or apparent use of rank or position for personal gain; or

(iii) Otherwise undermine discipline, morale, or authority.

(k) *Related rules.* (1) There is a prohibition on holding conflicting financial interests. See 5 CFR 2635.403, 18 U.S.C. 208, and 5 CFR part 2640.

(2) There are requirements regarding seeking outside employment. See 5 CFR 2635.601–2635.606 and subpart H of this part.

(3) There is a prohibition on engaging in outside employment or activities that conflict with official duties. See 5 CFR 2635.802.

(4) There are limitations on certain outside activities such as receipt of outside earned income by certain DoD Presidential appointees or non-career DoD employees, service as an expert witness, participation in professional associations, teaching, writing, speaking, or fundraising. See 5 CFR 2635.804–2635.808.

(5) There is a prohibition on the receipt of honoraria. See 5 CFR part 2636.

(6) There are prohibitions on the misuse of official position such as improper endorsements or improper use of non-public information. See 5 CFR 2635.701–2635.705.

(7) There are prohibitions on certain post-Government service employment. See subpart I of this part.

Subpart F—Political Activities

§ 84.17 Office of Personnel Management regulation.

See 5 CFR part 733, "Political Activities of Federal Employees."

§ 84.18 Political activities of civilian DoD employees.

(a) *Policy.* (1) The policy governing the political activities of civilian DoD employees is derived from the Hatch Act, 5 U.S.C. 7321 through 7327, and 5 CFR part 733.

(2) Primary enforcement responsibility under the Hatch Act lies with the Office of Special Counsel; however, DoD components have responsibility to investigate allegations of prohibited political activity by excepted service employees of the DoD component.

(3) It is DoD policy to encourage civilian DoD employees and members of the Armed Forces to carry out the obligations of citizenship to the maximum extent possible consistent with the restrictions imposed by law and by this part.

(b) *Applicability*—(1) *Covered DoD employees.* Sections 84.17 and 84.18 apply to DoD employees who are:

(i) Competitive service employees;

(ii) Excepted service employees;

(iii) Non-appropriated fund employees as specified in the FPM, Chapter 334, and DoD 1401.1–M.[18]

(2) *DoD Employees not covered.* The provisions of the Hatch Act and of this subpart of this part do not apply to civilian DoD employees appointed to their office by the President, by and with the advice and consent of the Senate (e.g., Secretary of Defense, Secretaries of the Military Departments, etc.). Nevertheless, as a matter of longstanding DoD policy, such DoD employees may not engage in activities that could be interpreted as associating DoD with any partisan political cause or issue. Military members are covered by § 84.19.

(c) *Permissible activities.* Subject to paragraphs (d) and (e) of this section, civilian DoD employees are free to:

(1) Register and vote in any election;

(2) Express an opinion as an individual privately and publicly on political subjects and candidates;

(3) Display a political picture, sticker, badge, or button;

(4) Participate in a personal capacity in the non-partisan activities of civic, community, social, labor, professional, or similar organizations except as proscribed in § 84.10 (a) through (g);

(5) Be a member of a political party or other political organization and participate in its activities to the extent consistent with law;

(6) Attend, in an individual capacity, a political convention, rally, fundraising function or other political gathering;

(7) Sign a political petition as an individual;

(8) Make a financial contribution to a political party or organization, except as proscribed in § 84.18(e)(3);

(9) Take an active part, as an independent candidate or in support of an independent candidate, in a partisan election covered by 5 CFR 733.124;

(10) Take an active part, as a candidate or in support of a candidate, in a non-partisan election;

(11) Participate in an individual capacity in connection with a question which is not specifically identified with a political party, such as a constitutional amendment, referendum, approval of a municipal ordinance or any other question or issue of similar character;

(12) Serve as an election judge or clerk, or in a similar position to perform non-partisan duties as prescribed by State or local law;

(13) Otherwise participate fully in public affairs, except as prohibited by law, in a manner which does not materially compromise the efficiency or integrity as a DoD employee or the neutrality, efficiency, or integrity of DoD or other Federal Government agency; and

(14) Participate in non-partisan voter registration drives.

(d) *Limitations.* Paragraph (e) of this section does not authorize a DoD employee to engage in political activities in violation of law, while on duty, or while wearing anything that identifies him as a DoD employee. The

[18] See footnote 4 to § 84.7(d)

Head of a DoD component may, in appropriate cases, prohibit or limit participation in the permitted activity of a DoD employee or class of DoD employees if participation in the activity would interfere with the efficient performance of official duties, or create a conflict or apparent conflict of interest.

(e) *Prohibited activities.* Civilian DoD employees may not:

(1) Use official authority or influence for the purpose of interfering with or affecting the result of an election; or

(2) Except as specified in 5 CFR 733.124, take an active part in political management or in a political campaign, including but not limited to:

(i) Serving as an officer of a political party, a member of a national, State, or local committee of a political party, an officer or member of a committee of a partisan political club, or being a candidate for any of these positions;

(ii) Organizing or reorganizing a political party organization or political club;

(iii) Directly or indirectly soliciting, receiving, collecting, handling, disbursing, or accounting for assessments, contributions, or other funds for a partisan political purpose;

(iv) Organizing, publicizing, selling tickets to, promoting, or actively participating in a fundraising activity of a candidate in a partisan election or of a political party, or political club;

(v) Taking an active part in managing the political campaign of a candidate for public office in a partisan election or a candidate for political party office;

(vi) Becoming a candidate for, or campaigning for, an elective public office in a partisan election;

(vii) Soliciting votes in support of, or in opposition to, a candidate for public office in a partisan election or a candidate for political party office;

(viii) Acting as recorder, watcher, challenger, or similar officer at the polls on behalf of a political party or a candidate in a partisan election;

(ix) Driving voters to the polls on behalf of a political party or a candidate in a partisan election;

(x) Endorsing or opposing a candidate for public office in a partisan election or a candidate for political party office in a political advertisement, broadcast, campaign, literature, or similar material;

(xi) Serving as a delegate, alternate, or proxy to a political party convention;

(xii) Addressing a convention, caucus, rally, or similar gathering of a political party in support of, or in opposition to, a partisan candidate for public office or political party office;

(xiii) Initiating or circulating a partisan nominating petition;

(xiv) Soliciting, paying, collecting, or receiving a contribution in the Federal Government workplace for any political party, political fund, or other partisan recipient;

(xv) Paying a contribution in the Federal Government workplace to any political party, political fund, or other partisan recipient.

(3) Contribute to the political campaign of another Federal Government employee who is in his chain of command or supervision or who is his employing authority, including the political campaign to re-elect the President or Vice President.

(f) *Exemptions.* (1) The Hatch Act does not prohibit all activities associated with a partisan election. The restrictions only apply where the DoD employee's activity involves active participation in organized activities where the organizing group is partisan. For example, writing letters in support of a particular candidate for publication or contributing to a newsletter with editorials or columns opposing one candidate and supporting another does not violate the Act. See *Blaylock* v. *MSPB*, 851 F.2d 1348. The activities must be in coordination with the partisan activity. Even fundraising for political action does not violate the activity if the fundraising organization is not associated with a partisan group. See *Biller* v. *MSPB*, 863 F.2d 1079.

(2) DoD employees who reside in municipalities or other political subdivisions designated by OPM in 5 CFR 733.124 are partially exempt from the above restrictions.

(3) DoD employees in some areas of high Federal Government employment are excepted from certain aspects of the Hatch Act as to local elections. OPM regulations, 5 CFR part 733 should be consulted for a list of the areas for which these exceptions apply. However, the District Court for the District of Columbia has ruled that the exception granted by the regulations for the District of Columbia is incorrect and the Office of Special Counsel has chosen to support this ruling. See *Ward Three Democratic Committee* v. *U.S.*, 609 F.2d 10 and Memorandum Opinion No. 78–853. Therefore, District of Columbia residents are subject to the provisions of the Hatch Act without exception.

(4) A DoD employee who works on an irregular or occasional basis is exempt from the above restrictions on the days that he performs no services.

§ 84.19 Political activities of military members.

See DoD Directive 1344.10[19], "Political Activities by Members of the Armed Forces on Active Duty," June 15, 1990.

Subpart G—Financial and Employment Disclosure

§ 84.20 Office of Government Ethics regulation.

See 5 CFR part 2634, "Financial Disclosures, Qualified Trusts, and Certificates of Divestiture for Executive Branch Employees".

§ 84.21 Public financial disclosure report (SF–278).

(a) *Individuals required to file*—(1) *Covered positions.* For purposes of this section, the following individuals are in "covered positions" and are required by the Ethics in Government Act of 1978, Public Law 95–521 (5 U.S.C. App.) to file an SF 278, with their DoD component DAEO or designee as set out in paragraph (f) of this section:

(i) Civilian Presidential appointees;

(ii) Regular and reserve military officers whose pay grade is 0–7 or above;

(iii) Members of the Senior Executive Service;

(iv) Other civilian DoD employees, including special Government employees, whose positions are classified above GS/GM–15 prescribed by 5 U.S.C. 5332 or whose rate of basic pay is fixed at or above 120% of the minimum rate of basic pay for a GS/GM–15;

(v) DoD employees in the excepted service in positions that are of a confidential or policy-making character unless they have been excluded by the Director, OGE. See paragraph (a)(4) of this section;

(vi) Individuals serving by appointment under the Intergovernmental Personnel Act, from State or local governments, institutions of higher education or other eligible organizations. See 5 U.S.C. 3371–3376;

(vii) Civilian individuals who are detailed to positions described in paragraphs (a)(1)(iii) through (a)(1)(v) of this section;

(viii) DoD component DAEOs.

(2) *Waiver.* An individual otherwise required to file an SF 278 but who now is expected to perform the duties of a covered position for less than 130 days in a calendar year, may request a waiver of any or all reporting requirements from the Director, OGE, in accordance with 5 CFR part 2634.

[19] See footnote 4 to § 84.7(d)

(3) *Exception.* An individual who is nominated to or assumes a covered position is not required to file an SF 278 if the Secretary concerned or the DoD component DAEO determines that the individual is not reasonably expected to perform the duties of the position for more than 60 days in a calendar year. If such individual performs the duties of the position for more than 60 days in a calendar year, an SF 278 shall be filed within 15 days after the 61st day of duty.

(4) *Exclusion.* The Director, OGE, may exclude an individual who is in a covered position under paragraph (a)(1)(v) of this section from the requirement to file an SF 278 in accordance with 5 CFR 2634.203.

(b) *Information on covered positions.* The directors of DoD component personnel offices are responsible for providing the following information to their DoD component DAEOs or designees:

(1) The name, position, grade, organization and entrance-on duty or termination date of each individual assigned to the DoD component who is required to file a new entrant or termination SF 278 immediately upon the appointment of the individual to a position requiring filing, or upon receipt of an SF 52, "Request for Personnel Action," August 1988, requesting approval of the retirement, resignation, or removal of the individual from such a position;

(2) By January 10 of each year, the name, position, grade, and organization of each individual assigned to the DoD component who is required to file an annual SF 278.

(c) *Notification of requirement to file.* Each DoD component DAEO or designee shall provide appropriate notices and instructions to all reporting individuals to ensure the timely preparation of the reports and submission to supervisors and Ethics Counselors for review and filing.

(d) *Time of filing*—(1) *Nomination reports.* (i) Any time after public announcement but within five days after transmittal by the President to the Senate of the nomination of an individual to a civilian DoD position that requires the advice and consent of the Senate, the DoD component DAEO shall ensure the nominee's SF 278 is filed with the appropriate authorities.

(ii) The report shall contain the information prescribed in the "Instructions for Completing SF 278" attached to the SF 278. These reports shall be certified by the DoD component DAEO, and processed as prescribed by OGE regulation, 5 CFR part 2634.

(iii) Unless otherwise required by the Senate, nomination reports are not required of individuals nominated to positions as military officers. Such individuals must file new entrant reports as prescribed in the following.

(2) *New entrant reports.* (i) Within 30 days of assuming a covered position, a reporting individual shall submit an SF 278.

(ii) The report shall contain the information prescribed for new entrant reports in the "Instructions for Completing SF 278" attached to the SF 278.

(iii) No new entrant report is necessary if the reporting individual has, within 30 days prior to assuming a new position, left another covered position for which the reporting individual filed an SF 278.

(iv) Notwithstanding paragraph (a)(3) of this section, reserve military officers shall file a new entrant report within 30 days of promotion to grade O–7, regardless of whether they are expected to perform active duty for more than 60 days.

(3) *Annual reports.* Any time after January 1 but not later than May 15, a reporting individual who served in a covered position for more than 60 days during the preceding calendar year shall file an annual SF 278. For reserve military officers, only service pursuant to orders issued under title 10, United States Code, is counted.

(4) *Termination reports.* Not sooner than 15 days before but not later than 30 days after termination from a covered position, a reporting individual shall submit an SF 278. A termination report is not required of a reporting individual who, within 30 days of such termination, assumes another covered position. A termination report is not required of a reserve military officer in the grade of O–7 or above who did not serve more than 60 days on active duty during the calendar year in which the military officer is transferred to the Retired reserve.

(5) *Extension of filing deadlines.* The DoD component DAEO, in the case of civilian Presidential appointees, and the DoD component DAEO or designee in other cases, may grant, for good cause, a filing extension up to 45 days. All requests for extensions shall be provided, in writing, by the reporting individual to the DoD component DAEO or designee. The request shall contain a clear statement of the reasons for the request and shall be submitted in advance of the original filing deadline. Requests for additional time beyond the initial 45 day extension shall be forwarded by the appropriate DoD component DAEO or designee with his comments to the Director, OGE, who may grant an additional 45 days extension. The reporting individual shall notify his supervisor of any extension granted.

(6) *Combined annual and termination reports.* Reporting individuals who anticipate terminating their DoD employment before June 30 may request an extension from the appropriate DoD component DAEO or designee of up to 45 days in order to file one consolidated annual and termination report. Combined annual and termination reports must be filed within 30 days after termination of employment or service but not later than July 15.

(7) *Late filing fee.* (i) Any reporting individual who is required to file an SF 278 and does so more than 30 days after the date the report is required to be filed, or, if an extension is granted, more than 30 days after the last day of the filing extension period, shall be subject to a $200 late filing fee. See 5 CFR part 2634. Such fee shall be collected by the DoD component DAEO or designee for deposit with the U.S. Treasury.

(ii) If the reporting individual fails to remit the $200 fee within 90 days, the fee shall be subject to DoD component debt collection procedures.

(iii) If extraordinary circumstances existed that caused the late submission of the report, a request for a waiver of the fee may be submitted by the reporting individual with supporting documentation to the DoD component DAEO or designee. The DoD component DAEO or designee shall review the request and forward it with a recommendation for approval or denial to OGE. OGE will grant or deny the waiver.

(e) *Content of report.* (1) Instructions for completing the SF 278 are attached to the form. See detailed instructions at 5 CFR 2634.301 through 2634.408, for additional guidance or contact the local Ethics Counselor.

(2) A complete report is required even if no changes have occurred since the last submission.

(3) Termination reports shall contain information covering the preceding calendar year, if an annual report was not filed for that year, and that portion of the present calendar year up to the date of termination from the covered position.

(4) A reporting individual shall request required information known only to another person to be submitted by that person to appropriate reviewing authorities. Such a submission may be made with a request for confidentiality which shall be honored by DoD reviewing authorities when appropriate

even if it limits disclosure to the reporting individual.

(f) *Chain of submission.* A reporting individual shall submit his SF 278 as follows:

(1) A civilian Presidential appointee shall file directly with his DoD component DAEO or designee;

(2) Any other reporting individual shall submit his SF 278 through his supervisor and through his Ethics Counselor to the DoD component DAEO or designee. In some cases, the Ethics Counselor and the DoD component DAEO or designee are the same person;

(i) A military officer serving in a DoD component or in the Central Intelligence agency shall submit his report through his supervisor directly with the DAEOs or designees of those agencies;

(ii) A military officer serving in OSD or for the Chairman of the Joint Chiefs of Staff and Joint Staff, shall submit his report, through his supervisor, to the GC, DoD, as the DoD component DAEO;

(iii) A military officer serving in a joint, Unified, Specified or Combined Commands, other than a Commander in Chief, shall file through his supervisor directly with his DoD component DAEO or designee. A Commander in Chief of such command shall file with the Legal Advisor to the Chairman of the Joint Chiefs of Staff.

(3) A reporting individual who has more than one immediate supervisor shall submit his report through both supervisors prior to submitting it to the DoD component DAEO or designee. Such a reporting individual may submit a copy of his report to one supervisor and the original to the other in order to expedite processing;

(4) Reporting individuals on detail to other Executive or Legislative Branch agencies shall follow the filing requirements and procedures of those agencies.

(g) *Review*—(1) *Initial supervisor review.* Upon receipt of an SF 278, the supervisor of the reporting individual shall review the report to determine if any of the reported financial interests reveal a conflict of interest with the reporting individual's current and future official duties. See 5 CFR 2634.605(b). The supervisor shall supplement the report with any required information or data, including comments on the existence of actual or apparent conflicts of interest, and forward the report with all attachments to the Ethics Counselor. If any review reveals a conflict or apparent conflict, the supervisor shall ensure that the matter is resolved in accordance with paragraph (g)(2)(vii) of this section.

(2) *Ethics Counselor review.* (i) When applicable, the Ethics Counselor shall review each report to determine that:

(A) Each item is completed; and

(B) No interest or position disclosed on the report violates or appears to violate;

(*1*) Any applicable provision of Chapter 11 of title 18, United States Code;

(*2*) The Ethics in Government Act of 1978, Public Law 95–521 (5 U.S.C. App.), and implementing regulations;

(*3*) Executive Order 12674 and implementing regulations; or

(*4*) Any other related laws or regulations applicable to DoD employees.

(ii) The reports are to be taken at "face value" unless there is a patent omission or ambiguity or the official has independent knowledge of matters outside the report. However, to ensure that there are no omissions, the previous report of each reporting individual, if applicable, shall be compared to the current submission.

(iii) If the Ethics Counselor believes that additional information is required, the reporting individual shall be notified of the additional information required and the date by which it must be submitted. The reporting individual shall submit the required information directly to the Ethics Counselor.

(A) When the Ethics Counselor amends or revises a report based on additional information obtained from the reporting individual, he shall initial the amendment or revision and make a note of the source of the information in the comment section of the report. For example, if the Ethics Counselor adds to a report that a certain fund is an excepted investment fund based on a telephone conversation with the reporting individual, he shall number and initial the change on Schedule A and add a notation in the comment section of the report, such as "1. per telecon with Mr. Doe on June 16, 1992" and initial the comment.

(B) When a substantial amount of information is missing from the report, it shall be returned to the supervisor for evaluation in accordance with the standards set forth in paragraph (g)(2)(i) of this section, with instructions to return it to the Ethics Counselor with any additional comments or supplementary information.

(iv) If the Ethics Counselor agrees with the supervisor's evaluation that no item violates, or appears to violate, applicable laws or regulations, then he shall annotate the report or attach an endorsement stating that no conflicts of interest under applicable laws or regulations exist, and forward it to the appropriate DoD component DAEO or designee.

(v) If the Ethics Counselor disagrees with the supervisor's evaluation, and concludes that the report does not comply with applicable laws and regulations, he shall do the following:

(A) Notify the reporting individual in writing of the preliminary determination;

(B) Afford the reporting individual a reasonable opportunity for an oral or written response; and

(C) Determine, after considering any response, whether or not the reporting individual is in compliance with applicable laws and regulations. If the Ethics Counselor concludes that the report does fulfill the requirements, he shall annotate the report or attach an endorsement stating that no conflicts of interest under applicable laws or regulations exist and dispose of the report in accordance with paragraph (g)(2)(iv) of this section. If the Ethics Counselor determines that it does not, he shall:

(*1*) Notify the reporting individual of the conclusion;

(*2*) Afford the reporting individual an opportunity for personal consultation, if practicable;

(*3*) Determine what remedial action should be taken to bring the reporting individual into compliance;

(*4*) Notify the reporting individual, in writing, of the remedial action required, indicating a date by which that action must be taken; and

(*5*) Ensure that the supervisor of the reporting individual is notified of the required remedial action and date by which that action must be taken.

(vi) Except in unusual situations, which must be documented fully to the satisfaction of the Ethics Counselor, remedial action shall be completed within three months from the date the reporting individual was notified that the action is required.

(vii) Remedial steps, in accordance with 5 CFR 2634.605–2634.607, may include the following measures:

(A) Divestiture:

(*1*) Any reporting individual or the spouse, minor or dependent child of a reporting individual, may be issued a Certificate of Divestiture by the Director, OGE, upon a determination that such divestiture is reasonably necessary to comply with 18 U.S.C. 208, or any other Federal Government conflict of interest statute, regulation, rule, or Executive Order, or pursuant to the request of the Senate as a condition of confirmation;

(*2*) If obtained before the sale, the Certificate of Divestiture allows for the non-recognition of capital gains that result upon the sale of property to

comply with conflict of interest requirements if the property is rolled over into property permitted by OGE. See 5 CFR 2634.1001;

(*3*) The following items must be submitted to the Director, OGE, by the DoD component DAEO:

(*i*) A copy of the written request from the reporting individual to the DoD component DAEO to seek certification in the case of the property to be divested;

(*ii*) A copy of the latest SF 278 or SF 450;

(*iii*) A detailed description of the specific property for which divestiture is contemplated;

(*iv*) A complete statement by the DoD component DAEO or designee of the facts and circumstances relevant to the requirement for divestiture and an explanation of the rules that apply to the requirement for divestiture;

(*v*) An analysis and recommendation as to whether the certificate should be granted.

(*4*) The Director, OGE, will issue a Certificate of Divestiture when divestiture is a condition for Senate confirmation or is reasonably necessary to comply with conflict of interest requirements.

(B) Disqualification in accordance with 5 CFR 3601.105;

(C) Limitation of duties;

(D) Transfer or reassignment;

(E) Resignation;

(F) Exemption under 18 U.S.C. 208 (b)(1) or (b)(3);

(G) Establishment of a qualified blind trust.

(viii) When the Ethics Counselor determines that a reporting individual has complied fully with the remedial measures, a notation to that effect shall be made in the comment section of the SF 278. The Ethics Counselor shall then follow the procedures set forth in paragraph (g)(2)(iv) of this section.

(ix) If steps ensuring compliance with applicable laws and regulations are not taken by the date established, the Ethics Counselor shall report the matter to the agency designee for appropriate action, with an information copy to the DoD component DAEO.

(3) *DoD component DAEO review.* (i) The DoD component DAEO or designee shall review the report in accordance with the standards set forth in paragraphs (g)(2)(i) and (g)(2)(ii) of this section.

(ii) Additional information required by the DoD component DAEO or designee shall be collected in accordance with paragraph (g)(2)(ii) of this section.

(iii) The DoD component DAEO or designee shall notify the reporting individual of any necessary remedial action in accordance with procedures set forth in paragraph (g)(2)(v) of this section.

(iv) When the DoD component DAEO or designee determines that no item violates, or appears to violate, any applicable law or regulation, or when the DoD component DAEO or designee determines that a reporting individual has complied fully with the remedial measures, the DoD component DAEO or designee shall sign and date the report.

(v) If steps ensuring compliance with applicable laws or regulations are not taken by the date established, the DoD component DAEO or designee shall report the matter to the Head of the DoD component for remedial action, with an information copy to the Director, OGE.

(vi) If the DoD component or designee concludes that no item violates, or appears to violate, any applicable law or regulation, but that there are financial interests in non-Federal entities doing or seeking business with DoD, then the DoD component DAEO or designee may issue a memorandum of caution to the reporting individual.

(vii) All reports shall be reviewed within 60 days after the date of filing. The DoD component DAEO or designee shall record the date of the review and ensure that all reports are reviewed within the 60 day period. After review, the DoD component DAEO or designee may proceed to obtain addition information, seek remedial action, or sign and date the report.

(4) *Special reviewing requirements of O–9 and O–10 Flag and General Officer nominees.* (i) As part of the process for approving nominees for appointment to O–9 and O–10 Flag or General officer positions, the Secretaries of the Military Departments shall ensure that the nominee has a current SF 278 on file and that the report has been reviewed by the appropriate DoD component DAEO or designee in relation to the position for which he is being considered.

(ii) Secretaries of Military Departments shall cause a review of all relevant systems of records maintained by their departments, including investigative files, to determine if there is any evidence that the nominee has violated the rules or standards of conduct.

(iii) Each nomination forwarded to the Secretary of Defense shall be accompanied by a certification by the Secretary of the Military Department concerned that the required review has been conducted and has or has not disclosed a violation of the rules or standards of conduct.

(h) *Disposition*—(1) *Designation of certifying official.* Only the Head of the DoD component or the DoD component DAEO may certify nomination reports required to be filed by a reporting individual who is nominated by the President to a position requiring the advice and consent of the Senate. For all other reports, the DoD component DAEO may delegate this responsibility to other officials within the DoD component.

(2) *Disposition.* The SF 278 and a complete record of all action taken thereon shall be retained for a period of six years by the DoD component DAEO or designee, and a copy of the report shall be forwarded to OGE, when required. After the six-year period, the report shall be destroyed, unless needed in an ongoing investigation. In the case of a reporting individual who filed a report as a nominee and was not subsequently confirmed by the Senate, the report shall be destroyed one year after the reporting individual is no longer under consideration by the Senate.

(i) *Public availability of reports.* SF 278s must be made available for public inspection 30 days after the reports are filed unless otherwise exempted under law. OGE Form 201, "Request to Inspect or Receive Copies of SF 278, Financial Disclosure Report," shall be filed by a requestor before inspecting an SF 278.

(j) *Penalties*—(1) *Action within a DoD component.* The Head of the DoD component may take appropriate action, including adverse action, in accordance with applicable laws or regulations, against any reporting individual who fails to file an SF 278 or who falsifies or fails to report required information.

(2) *Action by the U.S. Attorney General.* The U.S. Attorney General may bring a civil action in the U.S. District Court against any individual who knowingly and willfully falsifies or fails to file or report information required to be reported. The court may assess a civil penalty. Knowing and willful falsification of information required to be filed may also result in criminal prosecution under 18 U.S.C. 1001, leading to a fine or imprisonment of not more than five years, or both.

(3) *Misuse of reports.* (i) The U.S. Attorney General may bring a civil action against an individual who obtains or uses an SF 278 filed under the Ethics in Government Act, Public Law 95–521 (5 U.S.C. App.), for the following reasons:

(A) Any unlawful purpose;

(B) Any commercial purpose other than by news and communications media for dissemination to the general public;

(C) Determining or establishing the credit rating of any individual;

(D) Directly or indirectly, for the solicitation of money for any political, charitable or other purpose.

(ii) The court in which the action is brought may assess a penalty against a person in any amount, not to exceed $10,000. This shall be in addition to any other remedy available under statutory or common law.

§ 84.22 Confidential financial disclosure report (SF 450).

(a) *Individuals required to file.* (1) *Covered positions.* For purposes of this section, unless required to file an SF 278 or unless expressly exempted, the following individuals are in "covered positions" and are required by 5 CFR part 2634 to file initial and annual SF 450 through their supervisor to their Ethics Counselor as set out in paragraph (f) of this section:

(i) Commanding officers, heads and deputy heads, and executive officers of:

(A) Navy shore installations with 500 or more military and civilian DoD employees (including foreign nationals and indirect personnel regularly attached but excluding personnel attached for temporary duty); and

(B) All Army, Air Force, and Marine Corps installations, bases, air stations or activities.

(ii) Special Government employees, except the following categories of DoD employees who are required to file reports only when specifically requested to do so by their supervisor:

(A) Physicians, dentists, and allied medical specialists engaged only in providing services to patients;

(B) Veterinarians providing only veterinary services;

(C) Lecturers participating only in educational activities;

(D) Chaplains performing only religious services;

(E) Individuals in the motion picture or television fields who are utilized only as narrators or actors in DoD productions;

(F) Reservists on active duty for less than 30 consecutive days during a calendar year; and

(G) Members of selection panels for ROTC candidates.

(iii) DoD employees classified at GS/GM–15 or below under 5 U.S.C. 5332 or a comparable pay level under other authority, and members of the military below the grade of O–7 as follows:

(A) When the official responsibilities of such DoD employees require them to participate personally and substantially through decision or exercise of significant judgment in taking an official action for contracting or procurement, administering or monitoring grants, subsidies, licenses or other Federally conferred financial or operational benefits, regulating or auditing any non-Federal entity, or other activities in which the final decision or action may have a direct and substantial economic impact on the interests of any non-Federal entity;

(B) Any DoD employee serving in a position in which his supervisor determines that the duties and responsibilities of the position require the DoD employee to file such a report to avoid an actual or apparent conflict of interest and to carry out the purpose of any statute, Executive Order, or regulation applicable to or administered by that reporting individual;

(iv) Individuals who are detailed to positions described in paragraph (a)(1)(iii) of this section.

(v) Individuals serving on detail under the Intergovernmental Personnel Act, from State or local governments, institutions of higher education or other eligible organizations. See 5 U.S.C. 3371–3376.

(2) *Exclusion.* Any DoD employee or group of DoD employees may be excluded from all or a portion of the reporting requirements when the DoD component Head or designee determines that a report is unnecessary because of the remoteness of any impairment to the integrity of the Federal Government, because of the degree of supervision and review of the DoD employee's work, or because the use of an alternative procedure is adequate to prevent possible conflicts of interest. Any alternative procedure must be approved in writing by OGE.

(b) *Information on covered positions.* (1) The directors of personnel offices are responsible for providing the following information to their DoD component DAEOs or designees they service:

(i) Immediately upon the appointment of covered DoD employees, the name, position, organization and entrance-on-duty date of DoD employees required by their supervisor to file a new entrant SF 450.

(ii) By October 3 of each year, a list of the names, positions and organizations, when applicable, of DoD employees who are required to file an annual SF 450.

(2) Coordination is required as follows:

(i) Administrative officers (or equivalent) of each organization shall coordinate with the supervisors within their organization, in consultation with the DoD component DAEO or designee, to update the list of annual reporting individuals in their organization and report any additions or deletions to the concerned Ethics Counselor by October 31 of each year. In addition, it is the administrative officers' responsibility to ensure that any new positions are evaluated to determine whether such reports are required; or

(ii) The directors of personnel offices shall coordinate with Ethics Counselors and supervisors to ensure that position or billet descriptions of reporting individuals described in paragraph (a) of this section contain a statement that an SF 450 must be filed. All new or revised position or billet descriptions shall be reviewed to determine whether such reports are required.

(c) *Notification of requirement to file.* DoD component DAEOs or designees shall provide appropriate notices and instructions to ensure the timely preparation of the reports and submission to their supervisors and their Ethics Counselors for review and filing.

(d) *Time of filing*—(1) *New entrant reports.* (i) Except for a special Government employee, a reporting individual shall submit an SF 450 with information current as of the filing date for the preceding 12 months, through his supervisor to his Ethics Counselor not later than 30 days after assuming duties in a covered position. Upon transfer or reassignment from one covered position to another, a reporting individual shall submit a copy of his previous report to the appropriate supervisor of the new position.

(ii) A special Government employee shall submit an SF 450 with information current as of the filing date for the preceding 12 months, through his supervisor to his Ethics Counselor before assuming duties in a covered position. A special Government employee whose appointment is renewed shall file a new entrant report for the preceding 12 months prior to his reappointment. A special Government employee whose appointment exceeds one year shall file a new entrant report on the anniversary of his appointment.

(2) *Annual reports.* A reporting individual (except a special Government employee) who was employed at least 61 days during the preceding reporting period must submit an SF 450 to his Ethics Counselor by November 30 of each year covering the preceding 12 months (or any portion thereof not covered by a new entrant report), with information current as of September 30 of that year. A reporting individual who is reassigned or transferred from one covered position to another during the reporting period shall file an annual report whether or not he was employed in that position for 61 days.

(3) *Extension of filing deadline.* (i) When required by reason of duty assignment, infirmity, or other good cause affecting a reporting individual, the DoD component DAEO or designee may grant an extension of the filing deadline, not to exceed 60 days for annual reports or 90 days for new entrant reports.

(ii) Requests for extensions shall be submitted in writing.

(iii) Each annual reporting individual is automatically granted a 30 day extension by this part to make the reporting deadline November 30 as stated in paragraph (d)(2) of this section. This automatic extension need not be annotated on an individual report. Any other extension shall be noted.

(e) *Content of report.* (1) Instructions for completing the SF 450 are included on the report. See instructions at 5 CFR 2634.907 and 2634.908 for additional guidance or contact the local Ethics Counselor.

(2) A complete report is required even though no changes have occurred since the last submission.

(3) A reporting individual shall request required information known only to another person to be submitted by that person to appropriate reviewing authorities. Such a submission may be made with a request for confidentiality which shall be honored by DoD reviewing authorities when appropriate, even if it limits disclosure to the reporting individual.

(f) *Chain of submission.* A reporting individual shall submit his SF 450 through his supervisor to his Ethics Counselor. It is the responsibility of the reporting individual to ensure that an annual report is filed by November 30.

(g) *Review.* (1) Upon receipt of an SF 450, the supervisor of the reporting individual shall provide an initial review of the report using the criteria set forth in paragraph (g)(2) of this section and forward it with any comments to the local Ethics Counselor for further review.

(2) The Ethics Counselor shall review each report to determine that:

(i) Each item is completed; and

(ii) No interest or position disclosed on the report violates or appears to violate:

(A) Any applicable provision of Chapter 11 of title 18, United States Code;

(B) The Ethics in Government Act of 1978, Public Law 95–521 (5 U.S.C. App.), and implementing regulations;

(C) Executive Order 12674 and implementing regulations; or

(D) Any other related laws or regulations applicable to DoD employees of the agency.

(3) The Ethics Counselor shall not sign and date the report until the determinations described in paragraph (g)(2) of this section are made. The reports are to be taken at "face value" unless there is a patent omission or ambiguity or the official has independent knowledge of matters outside the report.

(4) If the Ethics Counselor believes that additional information is required, the reporting individual shall be notified of the additional information required and the date by which it must be submitted. The reporting individual shall submit the required information directly to the Ethics Counselor.

(i) When the Ethics Counselor amends or revises a report based on additional information obtained from the reporting individual, he shall initial the amendment or revision and make a note of the source of the information in the comment section of the report. For example, if the Ethics Counselor adds to a report that a certain fund is an excepted investment fund based on a telephone conversation with the reporting individual, he shall number and initial the change on Schedule A and add a notation in the comment section of the report such as, "1. per telecon with Mr. Doe on June 16, 1992" and initial the comment.

(ii) When a substantial amount of information is missing from the report, it shall be returned to the supervisor for his evaluation in accordance with the standards set forth in paragraph (g)(2) of this section with instructions to return it to the Ethics Counselor with any additional comments or supplementary information.

(5) If the Ethics Counselor agrees with the supervisor's evaluation that no item violates, or appears to violate, applicable laws or regulations, then the Ethics Counselor shall sign and date the report.

(6) If the Ethics Counselor agrees with the supervisor's evaluation that no item violates, or appears to violate, applicable laws or regulations, but that there are financial interests in non-Federal entities doing or seeking business with DoD, then the Ethics Counselor may issue a memorandum of caution to the reporting individual and shall sign and date the report.

(7) If the Ethics Counselor disagrees with the supervisor's evaluation that no item violates or appears to violate applicable laws or regulations, then the Ethics Counselor shall do the following:

(i) Notify the reporting individual, in writing, of the preliminary determination;

(ii) Afford the reporting individual a reasonable opportunity for an oral or written response; and

(ii) Determine, after considering any response, whether or not the reporting individual is in compliance with applicable laws and regulations. If the Ethics Counselor concludes that the report does fulfill the requirements, he shall sign and date the report. If the Ethics Counselor determines that it does not, he shall:

(A) Notify the reporting individual of the conclusion;

(B) Afford the reporting individual an opportunity for personal consultation, if practicable;

(C) Determine what remedial action shall be taken to bring the reporting individual into compliance; and

(D) Notify the reporting individual, in writing, of the remedial action required, indicating a date by which that action must be taken;

(3) Ensure that the supervisor of the reporting individual is notified of the required remedial action and date by which that action must be taken.

(8) Except in unusual situations, which must be documented fully to the satisfaction of the Ethics Counselor, remedial action shall be completed within 90 days from the date the reporting individual was notified that the action is required.

(9) Remedial steps, in accordance with 5 CFR 2634.605–2635.607 may include the following measures:

(i) Divestiture:

(A) Any DoD employee or the spouse, minor or dependent child of a DoD employee may be issued a Certificate of Divestiture by the Director, OGE, upon a determination that such divestiture is reasonably necessary to comply with 18 U.S.C. 208 or any other Federal Government conflict of interest statute, regulation, rule, or Executive order;

(B) If obtained before the sale, the Certificate of Divestiture allows for the non-recognition of capital gains that result upon the sale of property to comply with conflict of interest requirements if the property is rolled over into property permitted by OGE. See 5 CFR 2634.1001 for additional guidance;

(C) The following items must be submitted to the Director, OGE, by the DoD component DAEO:

(*1*) A copy of the written request from the individual to the DoD component DAEO to seek certification in the case of the property to be divested;

(*2*) A copy of the latest SF 278 or SF 450;

(*3*) A detailed description of the specific property in which divestiture is contemplated;

(4) A complete statement by the DoD component DAEO or designee of the facts and circumstances relevant to the requirement for divestiture and an explanation of the rules that apply to the requirement for divestiture;

(5) An analysis and recommendation as to whether the certificate should be granted.

(D) The Director, OGE, will issue a Certificate of Divestiture when divestiture is reasonably necessary to comply with conflict of interest requirements.

(ii) Disqualification in accordance with 5 CFR 3601.105;

(iii) Limitation of duties;

(iv) Transfer or reassignment;

(v) Resignation;

(vi) Exemption under 18 U.S.C. 208(b)(1) or (b)(3);

(vii) Establishment of a qualified blind trust

(10) When the Ethics Counselor determines that a reporting individual has complied fully with the remedial measures, a notation to that effect shall be made on the SF 450. The Ethics Counselor shall then sign and date the SF 450 and dispose of it in accordance with paragraph (h) of this section.

(11) If steps ensuring compliance with applicable laws and regulations are not taken by the date established, the Ethics Counselor shall report the matter to the agency designee for appropriate action, with an information copy to the DoD component DAEO.

(12) All reports shall be reviewed within 60 days after the date of filing and the Ethics Counselor shall record the date of the initial review. After the initial review, the Ethics Counselor shall obtain additional information, as necessary, seek remedial action, or sign and date the report.

(h) *Disposition.* The SF 450 and a complete record of all action taken thereon shall be retained for a period of six years in a central location within the agency, command or activity to which the reporting individual was assigned at the time of filing, after which they shall be destroyed, unless needed in an ongoing investigation.

(i) *Privacy Act.* The SF 450 is a confidential report. Accordingly, the reports are protected by the Privacy Act, 5 U.S.C. 552 and are exempt from being released to the public under the Freedom of Information Act, 5 U.S.C. 552(b)(3)(A) and (B), (b)(4) and (b)(6).

(j) *Status reports.* (1) Not later than December 15 of each year, Ethics Counselors shall prepare a consolidated status report concerning the annual filing of the SF 450. The status report shall be sent through the head of the DoD component command or organization to the respective DoD component DAEO or designee and shall contain the following information:

(i) The number of individuals required to file an annual SF 450; and

(ii) The number of individuals who have not filed an SF 450 as of November 30.

(2) Subsequent to December 15, monthly reports may be required by the DoD component DAEO to be filed for those organizations which have not received an SF 450 from all reporting individuals required to file, until 100% compliance has been achieved. These monthly reports shall be forwarded as described in paragraph (j)(1) of this section.

(k) *Penalties.*—(1) *Administrative penalties.* Anyone failing to file a report, or falsifying or failing to file required information, may be subject to disciplinary action by the employing organization, including such measures as suspension of consideration for appointment, reassignment of duties and termination of employment.

(2) *Criminal liability.* Anyone who knowingly or willfully falsifies information on a report may be subject to criminal prosecution under 18 U.S.C. 1001.

§ 84.23 Report of DoD and defense related employment (DD form 1787).

(a) *Individuals required to file.* Each civilian DoD employee of a DoD component who meets the statutory criteria is required by 10 U.S.C. 2397 to file a DD Form 1787,[20] "Report of DoD and Defense Related Employment," August 1989, with his Ethics Counselor. A DoD employee meets the criteria if he:

(1) Is employed at a pay rate equal to or greater than the minimum rate for a GS/GM–13;

(2) Within the two-year period prior to the effective date of service or employment with the DoD component, was employed by a defense contractor who, during the preceding one-year period, was awarded $10 million or more in defense contracts; and

(3) Was employed by or performed services for the defense contractor and at any time during that year received compensation of or was salaried at a rate of $25,000 per year or more at any time during employment.

(i) Compensation is received by an individual if it is paid to a business entity with which the person is affiliated in exchange for services rendered by that individual.

(ii) A rate of $25,000 per year equates to $12 per hour.

[20] Copies are available for DoD Standards of Conduct Office, Office of General Counsel, 1600 Defense Pentagon, Washington, DC 20301–1600.

(b) *Time of filing.* DoD employees shall file a DD Form 1787 with their local Ethics Counselors within 30 days of entering on duty with the DoD component.

(c) *Review.* (1) When a report is filed, the Ethics Counselor shall review the DD Form 1787 to determine whether:

(i) Each item is completed and sufficient information is provided; and

(ii) Whether the information indicates any violation or apparent violation of any of the conflicts of interest, standards of conduct, procurement integrity, or related laws and regulations.

(2) The Ethics Counselor need not audit the report. Disclosures are to be taken at "face value" unless there is a patent omission or ambiguity or the official has independent knowledge of matters outside the report. However, it its expected that the Ethics Counselor will resolve any apparent violations to ensure there are no actual violations.

(3) If the Ethics Counselor believes that additional information is required, the reporting individual shall be notified of the additional information required and the date by which it must be submitted. The reporting individual shall submit the required information directly to the Ethics Counselor.

(4) When the Ethics Counselor has completed the review and accomplished any necessary remedial action, the Ethics Counselor shall sign and date the report and dispose of it in accordance with § 84.23(d).

(5) If the Ethics Counselor concludes that the reporting individual is not in compliance with applicable laws or regulations, the Ethics Counselor shall:

(i) Notify the reporting individual, in writing, of the preliminary determination;

(ii) Afford the reporting individual an opportunity for personal consultation, if practicable;

(iii) Determine what remedial action should be taken to bring the reporting individual into compliance; and

(iv) Notify the reporting individual of the remedial action required, indicating a date by which that action must be taken, normally within 90 days.

(6) When the Ethics Counselor determines that a reporting individual has complied fully with the remedial measures, a notation to that effect shall be made in the comment section of the report. The Ethics Counselor shall sign and date the report as the reviewing official and dispose of it in accordance with paragraph (d) of this section.

(d) *Disposition.* (1) After the Ethics Counselor signs and dates the report, the Ethics Counselor shall send the original to the DoD component DAEO or

designee, who shall forward it to SOCO not later than March 15.

(2) The DoD component DAEO or designee shall ensure that appropriate data from each DD Form 1787 is extracted and sent to the Defense Manpower Data Center where a consolidated report to Congress is compiled.

(3) If steps ensuring compliance with applicable laws and regulations are not taken by the date established, the Ethics Counselor shall report the matter to the DoD component DAEO and take whatever other action might be required in accordance with subpart J of this part.

(4) DD Forms 1787 shall be retained by SOCO for six years from the date of filing with SOCO.

(e) *Public availability of reports.* DD Forms 1787 must be available for public examination upon request after the report is filed with SOCO, unless exempted pursuant to law. Reporting individuals are personally responsible for ensuring that their reports are accurate, complete, and timely.

(f) *Penalties*—(1) *Administrative penalties.* Anyone failing to file a report, or falsifying or failing to file required information, may be subject to any applicable personnel or other action in accordance with applicable law or regulation, including adverse action. An administrative penalty of up to $10,000 may be imposed in accordance with 10 U.S.C. 2397.

(2) *Criminal liability.* Any individual who knowingly or willfully falsifies information on a report may be subject to criminal prosecution under 18 U.S.C. 1001.

Subpart H—Seeking Other Employment

§ 84.24 General rules.

Office of Government Ethics Regulation. 5 CFR part 2635, subpart F provides rules on seeking other employment that apply to all DoD employees.

§ 84.25 Conflict of interest (18 U.S.C. 208).

(a) *Negotiating for employment.* See 5 CFR 2635.603 for provisions on conflicts of interest in employment negotiations under 18 U.S.C. 208. The provisions of 18 U.S.C. 208 and related provisions of OGE regulations do not apply to enlisted members. However, provisions similar to 18 U.S.C. 208 do apply to enlisted members as follows: [The following is a General Order] except as approved by the DoD component DAEO or designee, an enlisted member, including an enlisted special Government employee, shall not participate personally and substantially as part of his official DoD duties, in any particular matter in which he, his spouse, minor child, partner, entity in which he is serving as officer, director, trustee, partner or employee or any entity with which he is negotiating or has an arrangement concerning prospective employment, has a financial interest [end of General Order]. See 18 U.S.C. 208, § 84.3(a)(2)(i)(A) and § 84.15(b), and 5 CFR 2635.603.

(b) *Penalties.* Violation of 18 U.S.C. 208 is punishable by a fine and imprisonment. The full range of administrative sanctions may also be imposed.

§ 84.26 Procurement integrity (41 U.S.C. 423(b)).

(a) *Soliciting, accepting, or discussing employment.* (1) [The following is a General Order] During the conduct of a procurement, a procurement official may not knowingly, directly or indirectly, solicit or accept from, or discuss with, any officer, employee, representative, agent, or consultant of a competing contractor, any future employment or business opportunity [end of General Order]. See 48 CFR 3.104–6.

(2) This prohibition does not apply to a procurement official:

(i) After he leaves Federal Government service;

(ii) Who is employed by a contractor, subcontractor, consultant, expert, or advisor after he ceases to act on behalf of, or provide advice to, the procuring agency concerning the procurement;

(iii) Who has been granted recusal, in writing, in accordance with the provisions of 48 CFR 3.104–6 and paragraph (a)(4) of this action and who has in fact discontinued participation in the procurement;

(iv) Whose only communication with a competing contractor is to reject an unsolicited offer of employment or business opportunity or advise the competing contractor that he must seek recusal prior to any discussion regarding the unsolicited offer;

(v) Who has made inquiry in good faith of the potential contractor and been advised that the contractor is not or will not become a competing contractor on a procurement on which the individual is a procurement official; or

(vi) Where the procurement official engages in conduct in good faith reliance upon a written ethics advisory opinion;

(vii) After the procurement has been concluded by the award or modification of a contract or the cancellation of the procurement.

(3) A procurement official may discuss employment or business opportunities with a competing contractor only if a written recusal request was submitted and approved in accordance with the policy and procedures contained in 48 CFR 3.104–6 (c) through (h). The head of the contracting activity has the authority to approve or disapprove a request for recusal; however, he may not approve recusal for a procurement official who has participated personally and substantially in certain evaluation functions listed in 48 CFR 3.104–6(c).

(4) Any DoD procurement official or former DoD procurement official may, by written request, seek advice from his DoD component DAEO or designee regarding whether he may be precluded by the procurement integrity rules from engaging in a specified activity. See 48 CFR 3.104–8.

(i) The request must provide the DoD component DAEO or designee with sufficient information to make a determination.

(ii) The DoD component DAEO shall make his determination, in writing, within 30 days, or as soon thereafter as practicable.

(iii) A copy of the request and the ethics advisory opinion shall be retained for six years, in accordance with DoD component procedures.

(b) *Penalties.* Violation of the provisions of 41 U.S.C. 423 is punishable by the full range of sanctions, including the following:

(1) *Civil penalties.* Individual violators may be subject to a civil fine not to exceed $100,000. Violators, other than individuals, may be subject to a civil fine not to exceed $1 million.

(2) *Administrative sanctions.* See § 84.39.

§ 84.27 Reporting employment contacts (10 U.S.C. 2397a).

(a) *Individuals required to file.* The following DoD employees are required by this part and by 10 U.S.C. 2397a to report, in writing, their employment contacts to their supervisor and DoD component DAEO or designee:

(1) Any military officer in grade O–4 or above, or any civilian DoD employee serving in a position for which the rate of pay is equal to or greater than the minimum rate of pay for GS/GM–11 who;

(2) At any time during his DoD service, performed a "procurement function" involving a defense contractor which received at least $25,000 a year in DoD business; and

(3) Who contacts or is contacted by that defense contractor regarding future employment.

(b) *Content of report.* Reports of employment contacts shall include:

(1) The name, title, agency address, and telephone number of the reporting individual;

(2) The name of the defense contractor concerned;

(3) The date of each contact covered by the report; and

(4) A brief description of the substance of each contact.

(c) *Disqualification statement*—(1) *Individuals required to file disqualification.*

(i) Any DoD employee required to submit a report of an employment contact shall submit to his supervisor a written statement disqualifying himself from participating in any "procurement function" involving the defense contractor until such time as the possibility of future employment with that defense contractor has been rejected by either party.

(ii) Procurement officials may be required to request recusal through formal procedures requiring written approval by the head of the contracting agency. See § 84.26(a).

(2) *Distribution of disqualification.* The disqualification statement shall be given to the DoD employee's supervisor and the Ethics Counselor. It also should be provided to others who might contact the DoD employee regarding the defense contractor which is the subject of the disqualification.

(3) *Contents of disqualification.* The disqualification statement shall contain:

(i) The name, title, agency address, and telephone number of the DoD employee submitting the report;

(ii) The extent of disqualification (i.e., a description of duties affecting the defense contractor the DoD employee may not perform as a result of the disqualification);

(iii) Identification of the DoD employee or office that will handle duties during the disqualification period; and

(iv) An explanation of any other steps required to avoid potential conflicts of interests;

(v) If the statement is necessary only because of a second contact which was rejected, information in accordance with paragraphs (c)(3)(iii) and (c)(3)(iv) of this section.

(4) *Withdrawal of disqualification.* A DoD employee may withdraw a disqualification if employment discussions conclude with no arrangement regarding future employment, or if such an arrangement is ended, by notifying, in writing, the same individuals who received copies of his disqualification statement.

(5) *Review and retention of disqualification.* The supervisor, with the assistance of the Ethics Counselor, shall review the disqualification statement to make sure it will prevent any conflict of interest and to determine whether the DoD employee can still carry out his responsibilities adequately. Both the supervisor and the Ethics Counselor shall retain a copy of the disqualification statement for three years.

(d) *Exception.* A DoD employee need not report the contact or disqualify himself from officially participating in a particular matter involving the defense contractor if the first contact was initiated by the defense contractor and the DoD employee immediately terminates the discussion and unequivocally rejects consideration of employment opportunities. If the contact is renewed by either the defense contractor or the DoD employee, all contacts must be reported.

(e) *Penalties.* An individual who fails to report an employment contact or to disqualify himself as required by paragraphs (a) through (c) of this section may be subject to the following administrative penalties:

(1) Prohibition of employment with the defense contractor concerned for up to ten years from the date of separation from DoD; and

(2) An administrative penalty not to exceed $10,000.

§ 84.28 DoD guidance.

(a) *Appearances.* DoD employees shall:

(1) Ensure that the prospect of employment does not affect the performance or non-performance of their official duties;

(2) Ensure that they do not communicate inside information to a prospective employer; and

(3) Avoid any activity that would affect the public's confidence in the integrity of the Federal Government, even if it is not an actual violation of the law.

(b) *Written guidance.* DoD employees may obtain counseling and written advice concerning restrictions on seeking other employment from their Ethics Counselor:

(1) Although the counseling and advice are given by DoD attorneys and involve the interpretation of law and regulation and rendering of legal opinion, no attorney-client or other confidential relationship is created. Communications made to an Ethics Counselor in seeking such advice are not privileged.

(2) This counseling and advice is personal to the current or former DoD employee. It does not extend to the individual's business, employer, or prospective employer.

Subpart I—Post-Government Service Employment

§ 84.29 Office of Government Ethics regulation.

(a) See 5 CFR part 2637, "Regulations Concerning Post-Employment Conflict of Interest".

[5 CFR part 2637 applies only to DoD employees who left Federal Government service before 1991]

(b) See 5 CFR part 2641, "Post-Employment Conflict of Interest Restrictions".

[5 CFR part 2641 applies to DoD employees who left Federal Government service on or after January 1, 1991]

§ 84.30 Guidance on 18 U.S.C. 207.

(a) *OGE guidance.* See Office of Government Ethics memorandum,[21] "Revised Materials Relating to 18 U.S.C. 207," November 5, 1992.

(b) *DoD guidance.* The restrictions imposed by 18 U.S.C. 207(a), (c) and (d) do not apply to communications made solely to furnish scientific and technical information that are authorized by the Head of the DoD component.

(1) To obtain such an authorization in the case of former DoD employees:

(i) The head of the DoD component command or organization involved shall submit, in writing, to the Head of the DoD component a request that the former DoD employee be permitted to participate in a particular matter from which he would ordinarily be barred under 18 U.S.C. 207;

(ii) The Head of the DoD component or designee may determine in writing that such participation is appropriate if:

(A) The former DoD employee has outstanding scientific or technological qualifications;

(B) The national interest of the United States would be served by such participation;

(C) The former DoD employee has qualifications that are otherwise unavailable; and

(D) The Head of the DoD component or designee has consulted with the DoD component DAEO.

(2) In cases involving former Federal Government employees other than former DoD employees, authorization may be obtained in accordance with procedures in 18 U.S.C. 207(j)(5).

§ 84.31 Post-employment counseling and advice.

(a) *Written advice.* Current and former DoD employees may obtain counseling

[21] Copies are available from U.S. Office of Government Ethics, 1201 New York Avenue, NW., suite 500, Washington, DC 20005–3917.

and written advice concerning post-employment restrictions from the Ethics Counselor of the DoD component command or organization from which they are leaving, or have left, Federal Government service. Current and former DoD employees are, by statute, entitled to written advice from the DoD component DAEO or designee under 10 U.S.C. 2397b and 41 U.S.C. 423. See § 84.32 (a)(3) and (b)(3).

(1) Although ethics counseling and advice are given by DoD attorneys and involve interpretation of law and regulation and rendering of legal opinion, no attorney-client or other confidential relationship is created. Communications made to an Ethics Counselor in seeking such advice are not privileged.

(2) Ethics counseling and advice are personal to the current or former DoD employee. They do not extend to anyone else, including his business, employer, or prospective employer.

(b) *Delegation of authority.* The DoD component DAEO may specifically delegate authority in writing for Ethics Counselors within the DoD component to provide written advice under 10 U.S.C. 2397b and 41 U.S.C. 423. In any case where the local Ethics Counselor does not have the authority by written delegation, he shall provide the counseling and obtain the request for advice and necessary supporting information from the DoD employee and forward it to the DoD component DAEO or designee who has been specifically delegated the authority in writing to issue the written advice.

§ 84.32 Restrictions resulting from procurement activities.

(a) *10 U.S.C. 2397b*—(1) *Restrictions.* This statute prohibits the following three categories of former DoD employees from accepting compensation from the concerned defense contractor during the two-year period after separation from DoD:

(i) 0–4s and above, and civilians serving in positions for which the rate of pay was equal to or higher than the minimum rate of a GS/GM–13, who:

(A) On a majority of their working days during a two-year period prior to separation;

(B) Performed a procurement function relating to a defense contract;

(C) At a site or plant owned or operated by the defense contractor and which was the DoD employee's principal work location.

(ii) 0–4s and above, and civilians serving in positions for which the rate of pay was equal to or higher than the minimum rate of pay for a GS/GM–13, who:

(A) On a majority of their working days during the two-year period prior to separation;

(B) Performed a procurement function related to a major defense system and;

(C) In the performance of the procurement function, participated personally and substantially on any occasion and in a manner involving decision-making responsibilities with respect to a contract for the system;

(D) Through contact with the defense contractor; and

(iii) 0–7s and above, and civilians serving in positions for which the rate of pay was equal to or higher than the minimum rate of pay for a Senior Executive Service position, who during the two-year period prior to separation, acted as a "primary representative of the United States" in negotiation of a defense contract in an amount in excess of $10 million or settlement of an unresolved claim exceeding $10 million. An unresolved claim is valued by the greater of the amount of the claim or the amount of the settlement.

(2) *Penalties and effective dates.* Former DoD employees who knowingly violate this statute are subject to a civil fine up to $250,000. Defense contractors who knowingly offer or provide any compensation to individuals in violation of this statute are subject to a civil fine up to $500,000.

(i) The effective date of this law was April 16, 1987. The law does not prohibit the continuation of defense contractor employment begun or compensation accepted before then. If an employee separated from DoD prior to April 16, 1987, the statute does not apply. However, former DoD employees who were still employed or on active duty on or after April 16, 1987 must comply fully with its provisions, if within its scope.

(ii) For the period of December 1, 1989 until May 31, 1991, the statute was suspended and employment or acceptance of compensation during that period could not violate the statute. Questions about the effect of the suspension should be referred to the local Ethics Counselor.

(3) *Written opinion.* (i) Before accepting compensation from a defense contractor, a DoD employee or former DoD employee is, by statute, entitled to a written opinion regarding the applicability of this statute to his specific circumstances. A request for such written opinion shall be submitted in writing to the Ethics Counselor serving the DoD component command or organization the DoD employee is leaving or from which he has separated. The request shall set forth all information relevant to the request.

(ii) Ethics Counselors who have not been delegated authority in writing to issue 10 U.S.C. 2397b written opinions shall promptly forward the request to the DoD component DAEO or designee who has such authority.

(iii) Written opinions shall be issued within 30 days of receiving the request together with all necessary information.

(iv) A written opinion that this statute is not applicable to a specific situation, if based on a complete disclosure of all relevant information, creates a conclusive presumption that the receipt of compensation from a particular defense contractor is not a violation of the law.

(v) A copy of each 10 U.S.C. 2397b written opinion shall be retained by the DoD component DAEO or designee for three years.

(4) *DoD interpretation of 10 U.S.C. 2397b.* (i) If a DoD employee had been conducting all negotiations with a $10 million defense contractor on a major defense contract action of $10 million or more, but a superior DoD employee intervened directly in the negotiating process, both DoD employees would be considered "primary" representatives for that defense contract action.

(ii) 10 U.S.C. 2397b does not prohibit any former DoD employee from accepting compensation from any defense contractor that, during the fiscal year preceding the fiscal year in which compensation is accepted, was not a defense contractor or was a defense contractor whose contracts totalled less than $10 million.

(iii) 10 U.S.C. 2397b prohibits employment with particular defense contractors, not subcontractors, but former DoD employees cannot avoid its consequences merely by forming their own company and then "subcontracting" themselves to otherwise prohibited defense contractors.

(b) *41 U.S.C. 423*—(1) *Restrictions.* This statute restricts a former DoD employee who was a procurement official with respect to a particular procurement from knowingly:

(i) Participating in any manner on behalf of a competing contractor in any negotiations leading to the award or modification of a defense contract for such procurement; or

(ii) Participating personally and substantially on behalf of the competing contractor in the performance of such defense contract.

(2) *Period of restrictions.* Both restrictions apply for a period of two years from the date of the former DoD employee's last personal and substantial participation in the procurement on behalf of the Federal Government.

Neither applies unless the individual was a DoD employee of the Federal Government at the time he served as a procurement official.

(3) *Written opinion.* (i) A DoD employee or former DoD employee who is or was a procurement official is, by statute, entitled to a written opinion regarding the applicability of this statute to his specific circumstances. A request for such an opinion shall be submitted in writing to the Ethics Counselor serving the DoD component command or organization the DoD employee is leaving or from which he has separated. The request shall set forth all information relevant to the request. See 48 CFR 3.104–8(e).

(ii) Ethics Counselors who have not been delegated specific authority in writing to issue 41 U.S.C. 423 written opinions shall promptly forward the request to the DoD component DAEO or designee who has such authority.

(iii) Written opinions shall be issued within 30 days of receiving the request, together with all necessary information.

(iv) Where the DoD employee or former DoD employee relies in good faith on a written opinion that this statute is not applicable to a specific situation, the DoD employee or former DoD employee shall not be found to have knowingly violated the restrictions of the statute.

(v) A copy of each 41 U.S.C. 423 opinion shall be retained by the DoD component DAEO or designee for three years.

§ 84.33 Restrictions on retired military members.

(a) *18 U.S.C. 281(a) and 37 U.S.C. 801.* Two statutes restrict the selling activities of retired officers, 18 U.S. 281(a) and 37 U.S.C. 801.

(1) *Restrictions.* (i) A criminal statute, 18 U.S.C. 281(a), provides that for a period of two years after retiring, no retired military officer may receive compensation for representing any other individual in the sale of anything to the Federal Government through the department in which he holds a retired status.

(A) The term "department" refers to individual DoD components, not DoD as a whole, insofar as it concerns retired military officers. For example, this statute does not prohibit retired Navy and Marine Corps officers from selling to the Departments of the Army or Air Force.

(B) The term "anything" in the phrase "sale of anything" has been construed by DoJ to encompass both goods and services.

(C) DoD has determined that this statute does not prohibit the sale of personal services when the retiree is only representing himself. However, sale of personal services may not include the work product of a closely held corporation where individuals other than the retiree contribute to the services provided.

(ii) A civil statute, 37 U.S.C. 801, provides for a loss of entitlement to retired pay by retired regular military officers if they engage in certain employment activities involving sales of supplies and war materials (tangible property) to DoD, the Coast Guard, the National Oceanic and Atmospheric Administration, or the Public Health Service during the three years immediately following retirement.

(A) This does not prohibit employment with a particular employer but does affect a retired regular military officer's direct and personal involvement in sales to the agencies previously listed.

(B) The prohibition is against engaging, personally or for others, in selling, or contracting or negotiating to sell, supplies or war materials.

(C) Unlike the criminal selling statute, however, the sale of services is not prohibited.

(2) *Definition of "selling."* (i) For the purpose of these two statutes, "selling" means:

(A) Signing a bid, proposal, or contract;

(B) Negotiating a contract;

(C) Contacting a DoD employee to obtain or negotiate defense contracts, negotiate or discuss changes in specifications, price, cost allowances, or other terms of a defense contract, or settle disputes concerning performance of a defense contract; or

(D) Any other liaison activity with a view toward the ultimate consummation of a sale although the actual defense contract is negotiated subsequently by another person.

(ii) Activities which are not considered "selling" include:

(A) Purely social contacts, as long as there is an independent basis for the social relationship and no promotion of a product or attempt to influence a procurement;

(B) Technical contacts for the purpose of conferring with non-contracting technical specialists to acquire information this is available to all prospective defense contractors, provided that these contacts do not otherwise involve "selling" as discussed in paragraph (a)(2)(i) of this section. See 42 Comp. Gen. 236.241;

(C) Contacts subsequent to the execution of a defense contract relating to performance or progress, if they do not include modification of the defense contract or "selling" as discussed in paragraph (a)(2)(i) of this section.

(3) *Sale of services.* (i) The Comptroller General has ruled that the sale of services does not require the withholding of retired pay pursuant to 37 U.S.C. 801 and that the sale of services may include tangible goods if the primary purpose of the sale is to provide services. See 42 Comp. Gen. 87,92 (contract to provide television service where parts and supplies were incidental to the contract does not run afoul of 37 U.S.C. 801).

(ii) When the restrictions of 18 U.S.C. 281(a) are combined with those of 37 U.S.C. 801, the one significant area of selling activity which remains open to military retirees is the sale of services and other non-tangibles to uniformed services, other than the DoD component from which the individual retired, for the first two years after retirement.

(b) *18 U.S.C. 281(b).* For a period of two years after terminating service with the Federal Government, a retired military officer may not act as an agent or attorney for the prosecution or assist in the prosecution of any claim against the United States involving the department in which he holds a retired status or which concerns a subject with which the military officer was directly connected while on active duty. A violation on this statute is punishable by a $10,000 fine and one year imprisonment.

(c) *Restrictions on Federal Government employment*—(1) *Dual compensation laws.* A retired member of any uniformed service who holds a civilian position with the Federal Government is subject to reduction of retired pay while receiving pay from a Federal Government civilian position. The term "retired member" means anyone, officer or enlisted, entitled to receive retired pay. The term "retired pay" includes both retired and retainer pay. The current law generally applies to retired regular officers, retired at any time, and to all former members of the uniformed services who left active duty after January 11, 1979. See 5 U.S.C. 5532 for exceptions to this general rule.

(i) *The dual compensation reduction formulas.* There are two provisions in the current dual compensation law which may operate to reduce the retired pay of retired members of the uniformed services who hold Federal Government civilian positions.

(A) *The first reduction provision.* The first reduction provision applies only to retired regular officers who retired at any time. This provision operates to reduce the retired pay of a retired regular military officer receiving pay from a Federal Government civilian

position regardless of the amount of salary from that civilian position. It provides that such retired military officer is entitled to receive the full pay of the civilian position, but retired pay will be reduced to an annual rate equal to base amount plus one-half of the remainder of the retired pay, if any. The base amount is increased periodically to reflect changes in the Consumer Price Index, See 5 U.S.C. 5532(b).

(B) *The second reduction provision.* The second reduction provision applies, in general, to all retired military members who first received retired pay after January 11, 1979. The reduction depends upon the amount of pay received from the Federal Government civilian position. This provision operates to reduce the retired pay of a retired member when the annual rate of pay for the civilian position combined with the annual rate of retired pay (reduced in the case of retired regular officers as discussed in § 84.33(c)(1)(i)(A)) exceeds the annual rate of basic pay for level V of the Executive Schedule. Reductions are computed as follows:

(*1*) If the combination of pay from the civilian position and retired pay exceeds the amount currently paid for level V of the Executive Schedule, the retired pay will be reduced to keep the total at the level V limit.

(*2*) Reductions to retired pay are made per pay period whenever the combination of the two salaries for the pay period exceeds the pay for a level V position for that pay period. Reductions made in such pay periods are not refundable even when the combined pay amounts for the total year is less than the annual rate for level V of the Executive Schedule;

(*3*) The amount of retired pay may not be reduced to an amount less than the amount deducted from the retired pay as a result of participation in any survivor's benefits in connection with retired pay or veterans insurance programs and no reductions shall be made to retired pay based, in whole or in part, upon disability incurred in the line of duty as a direct result of armed conflict or during a period of war.

(ii) *Waivers.* (A) A retired member may, in certain limited circumstances, obtain a waiver so that his retired pay would not be reduced while holding a Federal Government civilian position. See 5 U.S.C. 5532(g). The circumstances under which a waiver may be granted are:

(*1*) On a case by-case basis for a retired member holding a Federal Government civilian position for which there is exceptional difficulty in recruiting or retaining a qualified employee; or

(*2*) For temporary employment that is necessary due to an emergency involving a direct threat to life or property, or under other unusual circumstances.

(B) The Director, OPM, may grant a waiver at the request of the Head of an Executive agency. Additionally, the Director, OPM, may delegate to an agency the authority to grant waivers for the temporary employment of retired members during emergencies or other unusual circumstances, but not for employment necessitated by exceptional difficulties in recruiting or retaining qualified individuals. The Director, OPM, has delegated to DoD authority to approve dual compensation restriction waivers in certain circumstances at installations scheduled for closure.

(C) Waivers are to be the exception, not the rule. If appropriate, however, a waiver may be obtained for either or both of the dual compensation reductions. See 5 CFR part 553 for procedures for obtaining a waiver.

(2) *Post-military service employment in DoD under 5 U.S.C. 3326.* As of November 6, 1992, the suspension of this provision ended. See DoD Directive 1402.1.[22] To avoid appearances of favoritism or preferential treatment, retired military members may not be selected to fill civil service positions in DoD (including non-appropriated fund instrumentalities within 180 days following retirement unless:

(i) The appointment is authorized by the Secretary of a Military Department or designee, or by OPM if the position is in the competitive service;

(ii) The minimum rate of basic pay for the position has been increased under 5 U.S.C. 5305; or

(iii) A state of national emergency exists.

(d) *Foreign employment restrictions.* (1) Article I, Section 9, Clause 8, of the Constitution of the United States prohibits any person holding any office of profit or trust under the Federal Government from accepting any present, emolument, office, or title of any kind whatever from any king, prince, or foreign state without the consent of Congress.

(i) This provision prohibits employment of all retired military members, both officer and enlisted and both regular and reserve, by a foreign government unless Congressional consent is first granted. See 44 Comp. Gen. 130.

(ii) Employment by educational or commercial institutions owned, operated, or controlled by a foreign government is included within the scope of this restriction.

(iii) The penalty for violation is withholding the retired military member's retired pay in an amount equal to the foreign salary illegally received. See 61 Comp. Gen. 306.

(2) Congress has consented to the acceptance of civil employment with a foreign government by, among others, retired regular military members and reserve military members, if both the Secretary of the Military Department and the Secretary of State approve the employment. See 37 U.S.C. 908. Because approval is prospective only, foreign civil employment should not be accepted until approval has been obtained. Retired military members who wish to accept such employment should submit a written request for approval to the Secretary of their Military Department through appropriate channels. The request must fully describe the contemplated employment and the nature and extent of the involvement with the foreign government.

(3) A former military member desiring employment with a foreign government or any foreign business interest may be required to register as an agent of a foreign principal under the Foreign Agents Registration Act of 1938, 22 U.S.C. 611 *et seq.* Any person who acts as an agent of a foreign principal must file a registration statement with the U.S. Attorney General.

§ 84.34 Restrictions on former senior appointees.

Executive Order 12834 (58 FR 5911) requires contractual ethics commitments regarding post-Government service employment from full-time, non-career Presidential, Vice-Presidential or agency Head appointees in an Executive agency whose rate of basic pay is not less than the rate for level V of the Executive Schedule, except for those appointed as members of the senior foreign service or solely as uniformed service commissioned officers. See Executive Order 12834 and OGE Form 203,[23] "Senior Appointee Pledge," January 1993, and OGE Form 204,[24] "Trade Negotiation Pledge," January 1993.

§ 84.35 Restrictions on dealing with current or former DoD employees.

(a) *General rule.* Current DoD employees shall not knowingly deal, on behalf of the Federal Government, with

[22] See footnote 4 to § 84.7(d).

[23] Copies are available from U.S. Office of Government Ethics, 1201 New York Avenue, NW., suite 500, Washington, DC 20005–3917.

[24] See footnote 23 to § 84.34.

current or former DoD employees whose participation in the transaction violates any statute or DoD directive, regulation or policy.

(b) *Terminal leave.*

(1) Military members on terminal leave may accept civilian employment with the Federal Government and are entitled to the pay of that civilian position in addition to the pay and allowances to which entitled while on terminal leave. See 5 U.S.C. 5534a.

(2) A military officer on active duty may not accept a civil office with a State or local government, nor may he perform the duties of such an office. See 10 U.S.C. 973(b)(3). This applies while the military officer is on terminal leave. See 56 Comp. Gen 855.

§ 84.36 Reports of DoD and defense related employment (DD form 1787).

(a) *Individuals required to file.* The following former DoD employees are required by 10 U.S.C. 2397 to file DD Form 1787 with their former DoD component:

(1) Each former DoD employee of a DoD component who:

(i) Served at a pay rate equal to or greater than the minimum rate for a GS/GM–13, or served on active duty at least ten years and held the grade of 0–4 or above at any time during his service;

(ii) Within the two-year period immediately following termination of service or employment with the DoD component, is employed by a defense contractor who, during the preceding one-year period, was awarded $10 million or more in defense contracts; and

(iii) Is employed by or performs services for the defense contractor and receives compensation of or is salaried at a rate of $25,000 per year or more from the defense contractor.

(2) Compensation is received by a reporting individual if it is paid to a business entity with which the reporting individual is affiliated in exchange for services rendered by that reporting individual;

(3) A rate of $25,000 per year equates to $12 per hour.

(b) *Time of filing.* A former DoD employee shall file a report with his former DoD component DAEO or designee within 90 days of entering on duty with the defense contractor.

(c) *Review.* (1) When the report is filed, the DoD component DAEO or designee shall review the report to determine whether:

(i) Each item is completed and sufficient information is provided; and

(ii) Whether the information indicates any violation or apparent violation of any of the conflicts of interest, standards of conduct, procurement integrity, and related laws and regulations.

(2) The DoD component DAEO or designee need not audit the report. Disclosures are to be taken at "face value" unless there is a patent omission or ambiguity or the official has independent knowledge of matters outside the report. However, it is expected that the DoD component DAEO or designee will resolve any apparent violations to ensure there are no actual violations.

(3) If the DoD component DAEO or designee believes that additional information is required, the reporting individual shall be notified of the additional information required and the date by which it must be submitted. The reporting individual shall submit the required information directly to the DoD component DAEO or designee.

(4) When the DoD component DAEO or designee has completed the review and accomplished any necessary remedial action, he shall sign and date the report and dispose of it in accordance with paragraph (d)(2) of this section.

(5) If the DoD component DAEO or designee concludes that the reporting individual is not in compliance with applicable laws or regulations, the DoD component DAEO or designee shall:

(i) Notify the reporting individual of the preliminary determination;

(ii) Afford the reporting individual an opportunity for personal consultation, if practicable;

(iii) Determine what remedial action should be taken to bring the reporting individual into compliance; and

(iv) Notify the reporting individual of the remedial action required, indicating a date by which that action must be taken, normally within 90 days.

(6) When the DoD component DAEO or designee determines that a reporting individual has complied fully with the remedial measures, a notation to that effect shall be made in the comment section of the report. Then the DoD component DAEO or designee shall sign and date the report as the reviewing official and dispose of it in accordance with paragraph (d)(2) of this section.

(d) *Disposition.*

(1) The DoD component DAEO or designee shall ensure that appropriate data from each DD Form 1787 is extracted and sent to the Defense Manpower Data Center where a consolidated report to Congress is compiled.

(2) After the DoD component DAEO or designee signs and dates the report, he shall send it to SOCO.

(3) If steps ensuring compliance with applicable laws and regulations are not taken by the date established, the DoD component DAEO or designee shall take whatever other action might be required in accordance with subpart J of this part.

(4) DD Forms 1787 shall be retained by SOCO for six years from the date of filing with SOCO.

(e) *Public availability of reports.* DD Forms 1787 must be made available for public examination upon request after the reports are filed with SOCO, unless exempted pursuant to law. Reporting individuals are personally responsible for ensuring that their reports are accurate, complete, and timely.

(f) *Penalties*—(1) *Administrative penalties.* Anyone failing to file a report or falsifying or failing to file required information, may be subject to any applicable personnel or other action in accordance with applicable law or regulation, including adverse action. An administrative penalty of up to $10,000 may be imposed in accordance with 10 U.S.C. 2397.

(2) *Criminal liability.* Any individual who knowingly or willfully falsifies information on a report may be subject to criminal prosecution under 18 U.S.C. 1001.

Subpart J—Enforcement

§ 84.37 Enforcement of the provisions of the Joint Ethics Regulation.

Penalties for violation of the rules republished in, and prescribed by, this part include the full range of applicable criminal, civil and administrative sanctions for current DoD employees, including punishment under the UCMJ for military members. Many of the statutes that regulate the post-Government service employment activities of former or retired DoD employees also provide for specific criminal and administrative sanctions. This subpart sets out the requirements for reporting and inquiry to ensure that ethics-related laws and regulations are properly enforced and that appropriate administrative or disciplinary action is taken.

§ 84.38 Reporting procedures.

(a) *Reporting suspected violations.* With the exception of the provisions of 41 U.S.C. 423 that are addressed in paragraph (c) of this section, DoD employees who suspect that a violation of this part has occurred shall report the matter to any of the following:

(1) The DoD employee's agency designee;

(2) The suspected violator's agency designee;

(3) The head of the DoD component command or organization;

(4) Any Ethics Counselor;

(5) The DoD component's IG;

(6) The DoD component's criminal investigative office; or

(7) The DoD hotline or DoD component hotline.

(b) *Receipt of report.* (1) DoD component investigative offices shall consult local Ethics Counselors as appropriate to ensure that up-to-date expertise is applied in the investigation of each suspected violations of this part in recognition of rapidly changing rules and statutes in the ethics area.

(2) If a suspected violation is reported to some entity other than those named in paragraph (a)(4) through (a)(7) of this section, then the notified person shall promptly report the matter to his Ethics Counselor.

(3) An Ethics Counselor who receives a report shall review the facts and, if the facts tend to support a violation, report the allegation to the appropriate investigative organization or, through the chain of command or supervision, to the head of the DoD component command or organization of the suspected violator. In addition, the Ethics Counselor must ensure that the following is accomplished:

(i) If a violation of 18 U.S.C. 203, 205, 207, 208 or 209 is suspected, the matter shall be reported to the DoD component's criminal investigative organization. The investigative organization is responsible for investigating the allegation and notifying DoJ in accordance with DoD Directive 5525.7 [25]. In addition, the Ethics Counselor shall:

(A) Report to the DoD component DAEO as follows:

(*1*) The name and position (optional) of the informant;

(*2*) The name and position of the suspect;

(*3*) The suspected offense;

(*4*) The facts, as known or believed;

(*5*) The status of any action being taken.

(B) File periodic follow-up reports with the DoD component DAEO until a final determination is made;

(C) If the matter is referred to the DoJ or the U.S. Attorney, include OGE Form 202,[26] "Notification of Conflict of Interest Referral," January 1992, in the referral packet and send a copy to the DoD component DAEO for forwarding to OGE.

(ii) If a violation of 18 U.S.C. 201 or 281 is suspected, it shall be handled in the same manner as paragraph (b)(3)(i)(A) of this section except that OGE Form 202 is not used for referrals;

(iii) If a violation of 10 U.S.C. 2397 is suspected, the Ethics Counselor shall inquire into the matter and, if substantiated, attempt to obtain compliance. If these efforts fail, the Ethics Counselor shall forward a written report to the GC, DoD through the DoD component DAEO with a recommendation for action by the Secretary of Defense pursuant to 10 U.S.C. 2397(f);

(A) The report need be filed only when the Ethics Counselor determines that there is sufficient evidence to believe that a violation has occurred;

(B) The report shall include all relevant facts, a summary of witness statements, and a justification for the recommendation to refer or not to refer the violation for enforcement action.

(iv) If a violation of 10 U.S.C. 2397a is suspected, the Ethics Counselor shall report the matter to the DoD component DAEO in the same manner as in paragraph (b)(3)(i)(A) of this section. If the Ethics Counselor believes that the Secretary of Defense should take action pursuant to 10 U.S.C. 2397a(d), the Ethics Counselor shall forward a written report to the GC, DoD through the DoD component DAEO with a recommendation for action;

(A) The report need be filed only when the Ethics Counselor determines that there is sufficient evidence to believe that a violation has occurred;

(v) If a violation of 10 U.S.C. 2397b is suspected, the Ethics Counselor shall report the matter to the DoD component DAEO in the same manner as in paragraph (b)(3)(i)(A) of this section;

(vi) If it is suspected that an individual is receiving retired pay contrary to 37 U.S.C. 801, a report of the matter shall be made to the Defense Finance and Accounting Service. A copy of that report shall be sent to the DoD component DAEO;

(vii) If a violation of 5 CFR part 2635 involving a loss to the Federal Government of $5,000 or more is suspected, the Ethics Counselor shall report the matter to the DoD component DAEO in the same manner as in paragraph (b)(3)(i)(A) of this section.

(4) In addition, if any of the previous violations fall within a DoD component's procurement fraud program, the Ethics Counselor shall ensure that referrals, coordinations, and reports required by that program are accomplished. If the matter includes a suspected violation of the Gratuities Clause in a defense contract, the Ethics Counselor shall report the matter in accordance with DoD component procedures issued pursuant to 48 CFR 3.203. See paragraph (c) of this section.

(5) For matters not handled within the DoD component's procurement fraud program, any civil or criminal referrals to DoJ or the local U.S. Attorney of violations of this part shall be coordinated with the DoD component DAEO. The DoD component DAEO shall be informed of referrals of violations of this part handled within the DoD component's procurement fraud program.

(c) *Violations of 41 U.S.C. 423.*

(1) *Administrative sanctions.* Suspected violations of 41 U.S.C. 423 shall be processed in accordance with 48 CFR 3.104–11. See 41 U.S.C. 423(h)(2).

(2) *Civil sanctions.* Suspected civil violations shall be referred through the DoD component DAEO to DoJ. See 41 U.S.C. 423(i).

(3) *Criminal sanctions.* Suspected violations that involve the improper release of source selection information should be referred to the appropriate criminal investigative organization. See 41 U.S.C. 423(j).

(4) *Reporting.* Any suspected violation of the provisions of 41 U.S.C. 423 shall be reported as soon as practicable to the appropriate contracting officer. See 41 U.S.C. 423(h)(1). Any actions taken as the result of the above referrals shall be reported to the DoD component DAEO in accordance with paragraph (b)(3)(i)(A) of this section.

§ 84.39 Administrative enforcement procedures.

(a) *Statutory authority.* 10 U.S.C. 2397 and 2397a provide for administrative enforcement action and sanctions imposed by the Secretary of Defense against individuals and non-Federal entities not in compliance with these statutes.

(b) *Procedures for pursuing administrative action.* All recommendations for enforcement of 10 U.S.C. 2397 and 2397a forwarded to the Secretary of Defense shall be initiated, investigated and processed in accordance with the requirements of the Administrative Procedure Act. See 5 U.S.C. 551 *et seq.*

(c) *Hearing examiners.* In accordance with 5 U.S.C. 556, DoD shall appoint hearing examiners from within DoD to preside at the taking of evidence and provide recommendations to DoD as to final action.

(d) *Administrative sanctions.* (1) DoD may take appropriate disciplinary action whenever indicated by the outcome of a case involving violations of 10 U.S.C. 2397 and 2397a by:

(i) Imposing an administrative penalty, not to exceed $10,000;

[25] See footnote 4 to § 84.7(d)

[26] Copies are available from U.S. Office of Government Ethics, 1201 New York Avenue, NW., suite 500, Washington, DC 20005–3917

(ii) With respect to violations of 10 U.S.C. 2397a, imposing an additional administrative penalty of a particular amount if the individual is determined to have accepted or continued employment with a defense contractor during the ten-year period beginning with the date of separation from Federal Government service.

(2) DoD may take other appropriate disciplinary action when indicated by the outcome of a case in accordance with the laws or regulations violated.

(e) *Judicial review.* Any individual or non-Federal entity found in violation as described, and against whom an administrative sanction is imposed, may seek judicial review of the final administrative determination.

Subpart K—Training

§ 84.80 Office of Government Ethics regulation.

See 5 CFR part 2638, "Office of Government Ethics and Executive Agency Ethics Program Responsibilities."

§ 84.41 DoD guidance.

(a) *Initial and annual ethics training.* (1) Overall responsibility for initial and annual ethics training programs rests with the Head of each DoD component acting through his DAEO. The Head of the DoD component shall ensure that adequate resources are available to implement the requirements of this subpart. Support shall be provided by the DoD component legal and personnel offices, as necessary.

(2) In the Military Departments, responsibility for implementation of ethics training programs rests with the heads of DoD component commands or organizations who shall ensure that ethics training is accomplished in accordance with this subpart.

(3) Training shall be accomplished using material authorized by the DoD component DAEO or designee in meeting the requirements of this subpart. Ethics Counselors may augment this material with additional training material needed to address specific ethics issues peculiar to their organization.

(4) DoD component Heads and DoD component DAEOs have the authority to require that DoD employees other than the ones covered by 5 CFR part 2638 receive annual ethics training.

(b) *Procurment integrity training.* (1) Each DoD component shall establish, or insure that its DoD employees have access to, a procurement integrity training program. Such program shall be the responsibility of the DoD component's official in charge of acquisition, with the assistance of the legal and personnel offices, under the overall guidance of the GC, DoD. The procurement integrity training program shall, at a minimum, comply with 48 CFR 3.104–12.

(2) Heads of DoD components shall establish procedures to ensure that DoD employees receive (or have received) procurement integrity training and sign the Option Form (OF) 333, "Procurement Integrity Training Certificate for Procurement Officials," or similar certificate. Out-processing procedures shall also be established to ensure that DoD employees who leave an organization verify their status with regard to the restrictions contained in the Procurement Integrity Act (41 U.S.C. 423). An original copy of OF 333 or similar certificate should be placed in the appropriate personnel folder or other permanent file as determined by the DoD component. The individual executive the certificate should also retain a copy.

(3) The following DoD employees should receive procurement integrity training and execute the required certificate:

(i) All DoD employees who are members of the acquisition workforce;

(ii) All DoD employees who are engaged in, or who might become engaged in, procurement official activities, as set forth in 41 U.S.C. 423 and 48 CFR 3.104.

(4) This requirement may be waived if the head of the DoD component command or organization determines that the DoD employee will not act as a procurement official while assigned to the organization.

§ 84.42 Procedures.

(a) *Combined initial and annual ethics training (CIAET) for calendar year 1993.* (1) By December 31, 1993, all DoD employees, including those required to receive Annual Ethics Training (AET), non-appropriated fund instrumentality employees, and enlisted members, shall receive CIAET.

(2) CIAET shall be accomplished in person by a Qualified Individual or by recording in the presence of a Qualified Individual, subject to the following exceptions:

(i) If the DoD component DAEO determines it is impractical to accomplish CIAET in the presence of a Qualified Individual, DoD employees who are not required to receive AET may be trained by other means within the minimum training requirements set out by OGE in 5 CFR 2638.703 provided that, with the exception of enlisted members, such training was completed by February 3, 1993;

(ii) If the DoD component DAEO determines it is impractical to accomplish CIAET training in the presence of a Qualified Individual, then special Government employees and military officers serving on active duty fewer than 30 consecutive days annually may be trained by other means within the minimum training requirements set out by OGE in 5 CFR 2638.704;

(iii) If the DoD component DAEO makes, with the approval of OGE, a written determination that it is impractical to accomplish CIAET training in the presence of a Qualified Individual, then DoD employees who are required to receive AET may be trained by other means within the minimum training requirement set out by OGE in 5 CFR 2638.704. OGE requires the written determination to identify the particular DoD employees or groups of DoD employees concerned and the specific circumstances that make the presence of a Qualified Individual impractical (mere administrative inconvenience or cost to an agency, standing alone, shall not justify such determination).

(3) The term "immediate office" as used in 5 CFR 2638.703 shall mean the local Ethics Counselor's.

(4) CIAET shall be a minimum of one hour.

(5) Those DoD employees who are required to receive AET will satisfy their 1993 annual ethics training obligation if they attended CIAET in 1992 or 1993.

(b) *Initial ethics training (IET) for new DoD employees.* (1) Within 90 days of entering on duty, all DoD employees who did not receive CIAET, including those required to receive AET and enlisted members, shall receive IET for new DoD employees.

(2) IET shall be accomplished in person by a Qualified Individual or by recording in the presence of a Qualified Individual, and such IET shall qualify as AET for the year the new DoD employees entered on duty, subject to the following exceptions:

(i) If the DoD component DAEO determines it is impractical to accomplish IET in the presence of a Qualified Individual, DoD employees who are *not* required to receive AET may be trained by other means within the minimum training requirements set out by OGE in 5 CFR 2638.703;

(ii) If the DoD component DAEO determines that it is impractical to accomplish IET in the presence of a Qualified Individual, then DoD employees who are required to receive AET may be trained by other means within the minimum training

requirement set out by OGE in 5 CFR 2638.704 provided that such DoD employees receive additional annual ethics training, either CIAET, IET or AET, if more than three months remain of the calendar year in which those DoD employees entered on duty.

(3) The term "immediate office" as used in 5 CFR 2638.703 shall mean the local Ethics Counselor's office.

(4) IET shall be a minimum of one hour.

(c) *Annual ethics training (AET).* (1) Beginning in calendar year 1994, all DoD employees who file an SF 278 or SF 450, contracting officers and procurement officials, shall receive ethics training annually.

(2) AET shall be accomplished in person by a Qualified Individual or by recording in the presence of a Qualified Individual, subject to the following exceptions:

(i) If the DoD component DAEO determines it is impractical to accomplish AET in the presence of a Qualified Individual, then special Government employees and military officers serving fewer than 30 consecutive days annually, may be trained by other means within the minimum training requirements set out by OGE in 5 CFR 2638.704;

(ii) If the DoD component DAEO makes a written determination that it is impractical to accomplish AET in the presence of a Qualified Individual, then DoD employees other than special Government employees and military members serving fewer than 30 days annually may be trained by other means within the minimum training requirement set out by OGE in 5 CFR 2638.704. OGE requires the written determination to identify the particular DoD employees or groups of DoD employees concerned and the specific circumstances that make the presence of a Qualified Individual impractical (mere administrative inconvenience or cost to an agency, standing alone, shall not justify such determination).

(3) AET shall be a minimum of one hour.

(d) *Annual ethics training plans.* DoD agency (see definition of "agency") ethics training plans for 1994 and subsequent ethics training plans in accordance with paragraphs (b) and (c) of this section shall be submitted by DoD component DAEOs or designees directly to OGE with copies furnished to SOCO. DoD components that are not agencies shall submit annual ethics training plans to SOCO for approval and inclusion in the ethics training plan SOCO submits to OGE.

(e) *Ethics training assistance.* (1) SOCO shall make available ethics training for ethics trainers on an ongoing basis to ensure that Qualified Individuals are uniformly prepared to provide ethics training.

(2) SOCO shall distribute ethics training material to all DoD component DAEOs for use in all types of ethics training.

(3) Ethics training material shall include a training video with accompanying pamphlet, modular ethics training packages with copies of overhead slides, facilitator scripts, discussion hypotheticals, and handout material, and a programmed text. Other programmed texts, correspondence courses, and ethics computer games, and materials developed by DoD components will be distributed as they are developed.

(4) In the interest of Federal Government efficiency and economy, DoD components that develop ethics training develop ethics training material independently shall provide a copy of the material to SOCO for distribution to other DoD components.

(5) At a minimum, all ethics training shall include a review of part I of Executive Order 12674, 5 CFR part 2635 and this part.

§ 84.43 Responsibilities.

(a) The Head of each DoD component shall:

(1) Exercise personal leadership and take personal responsibility through the DoD component DAEO for establishing and maintaining the DoD component's ethics and procurement integrity training program and shall be personally accountable for the DoD component's compliance with the ethics and procurement integrity training requirements;

(2) Provide sufficient resources to enable the DoD component DAEO to implement and administer the DoD component's ethics and procurement integrity training program.

(b) Each DoD component DAEO shall:

(1) Be responsible for the implementation and administration of ethics and procurement integrity training and ensure that necessary resources are available to accomplish such training;

(2) Provide periodic ethics and procurement integrity training for Ethics Counselors;

(3) Certify Qualified Individuals to conduct ethics training.

(c) The head of each DoD component command or organization shall:

(1) Exercise personal leadership and take personal responsibility for establishing and maintaining the command's or organization's ethics and procurement integrity training program;

(2) Be personally accountable for the command's or organization's ethics and procurement integrity program;

(3) Ensure that DoD employees of the command or organization attend required ethics and procurement integrity training; and

(4) Direct administrative officers (or equivalent) of the command or organization to coordinate with the DoD component DAEO or designee to develop lists of all DoD employees of the command or organization who are required to receive ethics and procurement integrity training, schedule such training, annotate such lists to indicate when required training was accomplished and retain annotated lists for three years.

(d) The DoD SOCO shall:

(1) Make ethics and procurement integrity training for ethics trainers available on an ongoing basis to ensure that Qualified Individuals are uniformly prepared to provide such training;

(2) Distribute ethics and procurement integrity training material to all DoD component DAEOs for use in all types of ethics and procurement integrity training;

(3) Certify Qualified Individuals to conduct ethics training who may be used by DoD components.

(e) The director of each DoD component personnel office shall, in coordination with the DoD component DAEO or designee, establish procedures in coordination with the DoD component DAEO or designee to inform new DoD employees of their obligation to receive ethics and procurement integrity training as required.

(f) The administrative officer (or equivalent) of each DoD component command and organization shall:

(1) In coordination with the DoD component DAEO or designee, develop lists of all DoD employees within the DoD component command or organization who are required to receive ethics and procurement integrity training;

(2) In coordination with the DoD component DAEO or designee, ensure that DoD employees with the DoD component command or organization are scheduled to receive required ethics or procurement integrity training;

(3) Annotate such lists to indicate when required training was accomplished and retain annotated lists for three years.

(g) The DoD employees shall attend ethics and procurement integrity training as required.

Subpart L—Ethical Conduct

§ 84.44 Executive orders.

(a) See Executive Order 12674.

(b) See Executive Order 12834.

§ 84.45 Code of ethics for Government service.

In accordance with 5 U.S.C. 7301 note, each agency shall display, in appropriate areas of any Federal Government building in which at least 20 civilians are regularly employed by the agency, copies of the following Code of Ethics for Government Service:

Code of Ethics for Government Service

Any person in Government service should:

I. Put loyalty to the highest moral principles and to country above loyalty to persons, party, or Government department.

II. Uphold the Constitution, laws, and regulations of the United States and of all governments therein and never be a party to their evasion.

III. Give a full day's labor for a full day's pay; giving earnest effort and best thought to the performance of duties.

IV. Seek to find and employ more efficient and economical ways of getting tasks accomplished.

V. Never discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not; and never accept, for himself or herself or for family members, favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance of governmental duties.

VI. Make no private promises of any kind binding upon the duties of office, since a Government employee has no private word which can be binding on public duty.

VII. Engage in no business with the Government, either directly or indirectly, which is inconsistent with the conscientious performance of governmental duties.

VIII. Never use any information gained confidentially in the performance of governmental duties as a means of making private profit.

IX. Expose corruption wherever discovered.

X. Uphold these principles, ever conscious that public office is a public trust.

§ 84.46 DoD human goals.

On April 17, 1990, DoD established human goals. See Appendix C of this part.

§ 84.47 Ethical values.

(a) *General.* Ethics are standards by which one should act based on values. Values are core beliefs such as duty, honor, and integrity that motivate attitudes and actions. Not all values are ethical values (integrity is; happiness is not). Ethical values relate to what is right and wrong and thus take precedence over non-ethical values when making ethical decisions. DoD employees should carefully consider ethical values when making decisions as part of official duties.

(b) *Primary ethical values*—(1) *Honesty.* Being truthful, straightforward and candid are aspects of honesty.

(i) Truthfulness is required. Deceptions are easily uncovered and usually are. Lies erode credibility and undermine public confidence. Untruths told for seemingly altruistic reasons (to prevent hurt feelings, to promote good will, etc.) are nonetheless resented by the recipients.

(ii) Straightforwardness adds frankness to truthfulness and is usually necessary to promote public confidence and to ensure effective, efficient conduct of Federal Government operations. Truths that are presented in such a way as to lead recipients to confusion, misinterpretation or inaccurate conclusions are not productive. Such indirect deceptions can promote ill-will and erode openness, especially when there is an expectation of frankness.

(iii) Candor is the forthright offering of unrequested information. It is necessary in accordance with the gravity of the situation and the nature of the relationships. Candor is required when a reasonable person would feel betrayed if the information were withheld. In some circumstances, silence is dishonest, yet in other circumstances, disclosing information would be wrong and perhaps unlawful.

(2) *Integrity.* Being faithful to one's convictions is part of integrity. Following principles, acting with honor, maintaining independent judgment and performing duties with impartiality help to maintain integrity and avoid conflicts of interest and hypocrisy.

(3) *Loyalty.* There are many synonyms for loyalty: fidelity, faithfulness, allegiance, devotion and fealty. Loyalty is the bond that holds the nation and the Federal Government together and the balm against dissension and conflict. It is not blind obedience or unquestioning acceptance of the status quo. Loyalty requires careful balancing among various interests, values and institutions in the interest of harmony and cohesion.

(4) *Accountability.* DoD employees are required to accept responsibility for their decisions and the resulting consequences. This includes avoiding even the appearance of impropriety because appearances affect public confidence. Accountability promotes careful, well thought-out decision-making and limits thoughtless action.

(5) *Fairness.* Open-mindedness and impartiality are important aspects of fairness. DoD employees must be committed to justice in the performance of their official duties. Decisions must not be arbitrary, capricious or biased. Individuals must be treated equally and with tolerance.

(6) *Caring.* Compassion is an essential element of good government. Courtesy and kindness, both to those we serve and to those we work with, help to ensure that individuals are not treated solely as a means to an end. Caring for others is the counterbalance against the temptation to pursue the mission at any cost.

(7) *Respect.* To treat people with dignity, to honor privacy and to allow self-determination are critical in a government of diverse people. Lack of respect leads to a breakdown of loyalty and honesty within a government and brings chaos to the international community.

(8) *Promise keeping.* No government can function for long if its commitments are not kept. DoD employees are obligated to keep their promises in order to promote trust and cooperation. Because of the importance of promise keeping, it is critical that DoD employees only make commitments that are within their authority.

(9) *Responsible citizenship.* It is the civil duty of every citizen, and especially DoD employees, to exercise discretion. Public servants are expected to engage personal judgment in the performance of official duties within the limits of their authority so that the will of the people is respected in accordance with democratic principals. Just must be pursued and injustice must be challenged through accepted means.

(10) *Pursuit of excellence.* In public service, competence is only the starting point. DoD employees are expected to set an example of superior diligence and commitment. They are expected to be all they can be and to strive beyond mediocrity.

§ 84.48 Ethical decisionmaking.

(a) *General.* Virtually every one in Federal Government service makes job-related decisions. Some of these decisions may seem more important than others, but all should be preceded by a consideration of ethical ramifications. In some cases, the ethical element of decision-making will go no further than to consciously acknowledge that there are no significant ethical ramifications to consider. In other cases, in-depth ethical analysis is called for in addition to application of ethics rules. The following plan for decision-making ensures careful review of ethical consequences when there are alternative solutions that seem proper under existing laws and regulations. DoD employees should consider incorporating the following plan in official decisionmaking.

(b) *Ethical decisionmaking plan.*

(1) *Define the problem.* Proceed from a general statement of the problem to specific statements of the decisions to

be made. As you take the following steps, such as identifying goals and naming stakeholders new problems or needed decisions may become apparent. Be willing to add these to your problem list as you go.

(2) *Identify the goal(s).* Proceed from a general statement of an end result both long term and short term. Be prepared to add to this list as you take the following steps. Goals are something to strive toward. They are statements of the best possible results. The very best is not always achieved for everyone. Many problems do not allow for "win/win" outcomes. Be prepared to fall somewhat short of some goals for the sake of ethics and other considerations.

(3) *List applicable law or regulations.* Laws and regulations are basic constraints within which official decisions are made. Until all relevant laws and regulations are considered, ethical decision-making is impossible. Although it is conceivable that an ethical decision could violate a law or regulation, such circumstances are rare.

(4) *List the ethical values at stake.* Listing the ethical values at stake can awaken you to problems and goals that you may not have otherwise considered. It may alert you to stakeholders you may not have recognized. Listing the values reminds you of your commitment to them at a time when stress of the problem may cause you to forget.

(5) *Name all the stakeholders:* A stakeholder is anyone who is likely to be affected by a decision. Many stakeholders will be apparent because of the previous steps you already followed. More will occur to you as you give the matter a few minutes of thought. Do not forget to include yourself and the people who may depend on you for support, both at work and at home. As you list the stakeholders, try to note the way your decision could affect them. In other words, name what is at stake for the stakeholder.

(6) *Gather additional information.* This step is frequently overlooked. The stress from the problem urges speedy solutions. However, hasty decisions usually create problems of their own. Take the time to gather all necessary information. Ask questions, demand proof when appropriate, check your assumptions.

(7) *State all feasible solutions.* By this time, some feasible solutions will have presented themselves. Others may be found by sharing the lists and information you have pulled together and "brain storming." As you state the feasible solutions, note which stakeholders could be affected and what might be gained or lost.

(8) *Eliminate unethical options.* There may be solutions that seem to resolve the problem and reach the goal but which are clearly unethical. Remember that short term solutions are not worth sacrificing our commitment to ethics. The long term problems of unethical solutions will not be worth the short term advantages. Eliminate the unethical solutions.

(9) *Rank remaining solutions.* Other solutions may not be clearly unethical but may be questionable. You may have to rely on intuition or "gut feelings" to weed out these solutions. Put these possible solutions at the bottom of your list. Rank the remaining solutions, which are all ethical ones, in order of how close they bring you to your goal and solve the problem.

(10) *Commit to and implement the best ethical solution.* Commitment and implementation are vital to the ethical decision-making process. Determining which solution is the best ethical one is a meaningless exercise unless implementation of the ethical solution follows. If the right decision is not implemented, the door is left wide open for others to implement unethical solutions.

Appendix A to Part 84—Digest of Laws

Section 1. DoD-specific Statutes

(a) *Synopsis of laws.* DoD employees and former DoD employees are cautioned that the descriptions of the laws and regulations in this part should not be the only source relied upon to make decisions regarding their activities. Although the descriptions do provide general guidelines, the descriptions are not exhaustive and restrictions are dependent on the specific facts in a particular case. Accordingly, DoD employees and former DoD employees are encouraged to discuss specific cases with a DoD component Ethics Counselor (no attorney-client privilege) or with private counsel.

(b) *10 U.S.C. 2397a, "Requirements Relating to Private Employment Contacts Between Certain DoD Procurement Officials and Defense Contractors."*

(1) This statute applies to civilian DoD employees at pay rates of GS/GM–11 or above and to military officers in grades 0-4 or above. If such an individual has participated in the performance of a procurement function in connection with a DoD awarded defense contract and is contacted by the defense contractor to whom the defense contract was awarded regarding future employment opportunities with the defense contractor, the individual must:

(i) Promptly report the contact to his supervisor and to the DoD component DAEO; and

(ii) Disqualify himself from all participation in the performance of procurement functions relating to contracts of the defense contractor.

(2) A DoD employee is not required to report an initial contact with a defense contractor or disqualify himself if he terminates the contact immediately and rejects any offer of employment. The individual must make a report and disqualify himself, however, if subsequent contacts are made.

(c) *10 U.S.C. 2397, "Employees or Former Employees of Defense Contractors: Reports."* This statute requires all former civilian DoD employees GS/GM–13 or above, or military officers 0–4 or above, to file DD Form 1787 [1] for a period of two-years after leaving Federal Government service, if the former DoD employee is employed with a defense contractor who had been awarded $10 million in defense contracts during the year preceding employment of the former DoD employee, and the former DoD employee receives at least $25,000 a year ($12 per hour) from the defense contractor.

(d) *10 U.S.C. 2397b, "Certain Former DoD Procurement Officials: Limitations on Employment by Contractors".* This statute imposes a two year prohibition on former civilian DoD employees GS/GM–13 and above, and former military officers 0–4 and above, from accepting more than $250 in payment, gift, benefit, reward, favor, or gratuity (i.e., compensation) from defense contractors who had defense contracts in a total amount greater than $10 million during the fiscal year preceding the fiscal year that such compensation was accepted, if the individual:

(1) Spent the majority of his working days during the two-year period prior to leaving Federal Government service performing a procurement function at a site or plant owned or operated by the defense contractor; or

(2) Performed procurement functions relating to a major system, on a majority of the individual's working days during the two-year period prior to leaving Federal Government service, and in the performance of those functions participated personally and substantially in a manner involving decision-making responsibilities, through contact with the defense contractor; or

(3) In the case of former DoD employees, Senior Executive Service and above, and former military officers 0–7 and above, acted as a primary representative of the United States during the two-year period prior to leaving Federal Government service, in the negotiation of a defense contract in an amount in excess of $10 million with the defense contractor, or in the negotiation of an unresolved claim in excess of $10 million.

(e) *18 U.S.C. 281, "Restriction on Retired Military Officers Regarding Certain Matters Affecting the Government."* (1) This statute prohibits a retired military officer of the Armed Forces from accepting any compensation, for a period of two-years after release from active duty, for the representation of any individual in the sale of anything to the United States through the Military Department from which the military officer is retired.

(2) The statute also prohibits a retired military officer, during the two-year period

[1] Copies are available from DoD Standards of Conduct Office, Office of General Counsel, 1600 Defense Pentagon, Washington, DC 20301–1600

following the military officer's release from active duty, from prosecuting or assisting in the prosecution of any claim against the United States involving the Military Department from which the military officer is retired, or involving any subject matter with which the military officer was directly connected while in an active duty status.

(f) *37 U.S.C. 801, "Restriction on Payment to Certain Officers".* This statute prohibits the Federal Government from paying any retired officer, for a period of three years after such military officer's name is placed on a retired list of the regular Army, Navy, Air Force or Marine Corps, who is engaged for himself or others in selling, or contracting or negotiating to sell, supplies or war material to an agency of DoD, the Coast Guard, the Public Health Service, or the National Oceanic and Atmospheric Administration.

Section 2. Other Laws Related to Standards of Ethical Conduct

(a) *OGE digest.* Other ethics statutes are summarized in 5 CFR 2635.801(d) and 902.

(b) *Related statues.* Engaging in the following activities may subject current and former DoD employees to criminal and/or other penalties:

(1) Aiding, abetting, counseling, commanding, inducing, or procuring another to commit a crime under any criminal statute (18 U.S.C. 2);

(2) Concealing or failing to report to proper authorities the commission of a felony under any criminal statute if the individual knew of the actual commission of the crime (18 U.S.C. 4);

(3) Conspiring with one or more persons to commit a crime under any criminal statute or to defraud the United States, if any party to the conspiracy does any act to further the object of the conspiracy (18 U.S.C. 371);

(4) Misuse of a Federal Government vehicle (31 U.S.C. 1344 and 1349(b));

(5) Interference in an examination or personnel action in connection with Federal Government employment (18 U.S.C. 1917);

(6) Conversion of Federal Government property (18 U.S.C. 641);

(7) Private use of public money (18 U.S.C. 653), embezzlement of the money or property of another individual in the possession of a DoD employee by reason of his Federal Government employment (18 U.S.C. 654);

(8) Certain political activities (5 U.S.C. 7321–7327, 18 U.S.C. 600–603 and 606–607 apply to civilian DoD employees, and DoD Directive 1344.10[2] applies to military members);

(9) Failing to register under the Foreign Agents Registration Act of 1983 and acting as an agent of a foreign principal when required to register (18 U.S.C. 219);

(10) Soliciting contributions for gifts or giving gifts to superiors, or accepting gifts from subordinates (5 U.S.C. 7351) applies to civilians; regulations set out in 5 CFR 2635.301 through 2635.304 apply to both military and civilian DoD employees;

(11) Accepting, without statutory authority, any present, emolument, office or title, or employment of any kind, from any king, prince, or foreign state without the consent of the Congress; this restriction applies to any person holding any office or profit in or trust of the Federal Government, including all retired military members and regular enlisted members (Article I, Section 9, Clause 8, of the Constitution of the United States; exceptions to this restriction are at 37 U.S.C. 908);

(12) Union activities of military members (10 U.S.C. 976);

(13) Violating merit system principles (5 U.S.C. 2301).

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

Appendix B to Part 84—Excerpts From DoD Publications

Section 1. Department of Defense Waiver in Accordance With 18 U.S.C. 208(b)

18 U.S.C. 208(b) permits agencies to grant an exemption in writing from 18 U.S.C. 208(a) if the outside financial interest is deemed in advance not substantial enough to affect the integrity of Government services. Categories of financial interests may also be made nondisqualifying by a general regulation published in the **Federal Register**. Shares of a widely held, diversified mutual fund or regulated investment company have been exempted as being too remote or inconsequential to affect the integrity of the services of Government personnel.

Section 2. Department of the Army Waiver in Accordance With 18 U.S.C. 208(b)

A conflict does not exist when [Department of the Army] DA personnel hold shares of a widely held, diversified mutual fund or regulated investment company. In accordance with the provisions of 18 U.S.C 208b(2), such holdings are exempted as being too remote or inconsequential to affect the integrity of the services of Government personnel.

Section 3. Department of the Navy Waiver in Accordance With 18 U.S.C. 208(b)

(b) Under 18 U.S.C. 208(b)(2), [Department of the Navy] DON personnel need not be disqualified from participating in matters in which they have the following financial interests:

(1) Shares of widely held and diversified mutual, money market, trust, or similar funds offered for sale by a financial institution or by a regulated investment company;

(2) Deposits in and loans from banks or other financial institutions, provided they are at customary and generally available terms and conditions; and

(3) Federal, State, municipal, or local government bonds, regardless of the value of such interests.

(b) DON personnel who are members or officers of non-governmental associations or organizations must avoid activities on behalf of such groups that are incompatible with their official Government positions. Under certain circumstances, holding a position in a private association or organization or undertaking activities on its behalf could conflict with one's official duties. Holding, however, a position in a private, non-profit association or other organization that fosters and promotes the general interests of the naval service and which depends, in part, upon the voluntary efforts of DON personnel acting in their private capacities for leadership, is unlikely to affect the integrity of the services of such personnel. Under 18 U.S.C. 208(b)(2), such individuals are not disqualified from rendering advice or making recommendations within their chains of command on particular matters affecting such organizations if:

(1) They disclose their interest or affiliation to their supervisor prior to rendering advice or making recommendations;

(2) The final decision is made by higher authority; and

(3) The individual's commander does not determine that disqualification is otherwise required by the best interest of DON or of the United States.

Section 4. Department of the Air Force Waiver in Accordance With 18 U.S.C. 208(b)

Non-Disqualifying Financial Interest. Air Force personnel need not disqualify themselves if the financial holdings are in shares of a widely held diversified mutual fund or regulated investment company. The indirect interests in business entities of these financial holdings come from ownership by the fund or investment company of stocks in business entities. They are hereby exempted from the requirements of 18 U.S.C. 208(a), according to 18 U.S.C. 208(B)(2), as too remote or inconsequential to affect the integrity of the government officers' or employees' services.

Appendix C to Part 84—DoD Human Goals

Department of Defense, Human Goals, The Attainment of These Goals Requires That We Strive

To attract to the Department of Defense people with ability, dedication, and capacity for growth;

To provide opportunity for everyone, military and civilian, to rise to as high a level of responsibility as possible, dependent only on individual talent and diligence;

To assure that equal opportunity and safety programs are an integral part of readiness;

To make military and civilian service in the Department of Defense a model of equal opportunity for all regardless of race, color, sex, religion, or national origin;

To provide equity in civilian employment for older persons and disabled individuals and to provide a safe environment that is accessible to and usable by them;

To hold those who do business with or receive assistance from the Department to full compliance with its policies of equal opportunity and safety;

To help each service member in leaving the service to readjust to civilian life;

To provide a safe and healthful work environment, free from recognized occupational hazards for all personnel; and

To contribute to the improvement of our society, including its disadvantaged members, by greater utilization of our human and physical resources while maintaining full effectiveness in the performance of our primary mission.

Dated: March 10, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–5975 Filed 3–18–94; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD11–93–02]

RIN 2115–AE47

Drawbridge Operation Regulations; Snodgrass Slough, CA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of Sacramento County, the Coast Guard is amending the regulation for the Twin Cities Road Bridge crossing over Snodgrass Slough, mile 4.4 near Walnut Grove, California. The existing regulation requires 24 hours advance notice for openings. The amended regulation stipulates that the draw need open on 72 hours advance notice. This amendment will relieve the bridge owner of the burden of having a person on call to open the draw, and will still provide for the reasonable needs of navigation. The bridge has been opened only 38 times including tests since 1979.

EFFECTIVE DATE: April 20, 1994.

FOR FURTHER INFORMATION CONTACT: Jerry P. Olmes, Bridge Section, Eleventh Coast Guard District, at (510) 437–3514.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are Jerry P. Olmes, Project Manager, and Lieutenant Robin Barber, Project Attorney.

Regulatory History

In 58 FR 53896, Oct. 19, 1993, the Coast Guard published a notice of proposed rulemaking to amend the regulation that the draw open on 72 hours advance notice. In addition, the Commander, Eleventh Coast Guard District also published the proposal in a Public Notice dated Oct. 15, 1993. Six comments were received on the proposal. A public hearing was not requested and one was not held.

Background and Purpose

The bridge was built in 1931 as a movable bridge to allow for the infrequent passage of dredges and marine construction equipment. No operating equipment is installed, and the county must send a road crew to open the bridge by hand or by a truck-mounted engine. To avoid having personnel on call and to reduce operating expenses, Sacramento County initially requested to change the regulation to "Emergency Openings Only". That request was denied because it would not have provided for the needs of existing and future navigation. The County revised their request to extend the 24 hours advance notice to 72 hours, and that proposal was advertised as noted above.

Discussion of Comments and Changes

The Coast Guard received 6 comments on the Notice of Proposed Rulemaking. Three offered no objection. A recreational vessel operator objected on the basis that the regulation would impose an undue restriction on the mariner. The regulation will require additional notice and additional planning for passage, however it is not unduly restrictive.

A second objector, while agreeing with the proposal, felt as a taxpayer that openings should not be provided for recreational boats. Although there have been few bridge openings in recent years, more than half of those openings have been for recreational vessels, and most of the vessels operating on the waterway are recreational vessels. The Coast Guard believes that recreational boats comprise an important part of navigation on Snodgrass Slough and will continue to need access through the bridge in the future.

A third objector, a dredging company, considered the 72 hour advance notice as too restrictive should emergency response require access upstream of the bridge. The Coast Guard has changed the final rule to state that the draw shall open as soon as possible for vessels in distress, and vessels, including commercial vessels, engaged in rescue or emergency salvage operations, or emergency flood control efforts.

Regulatory Evaluation

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

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this rule 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 the impact of this proposal is expected to be so minimal, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this rule will not have a significant impact on a substantial number of small entities.

Collection of Information

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

Federalism

The Coast Guard has analyzed this proposal under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under section 2.B.2.g.(5) of Commandant Instruction M16475.1B, promulgation of operating requirements or procedures for drawbridges is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR Part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

Subpart B—Specific Requirements

1. The authority citation for Part 117 continues to read as follows:

33 U.S.C. 499; 49 CFR 1.46; and 33 CFR 1.05–1(g).

2. Section 117.195 is revised to read as follows:

§ 117.195 Snodgrass Slough.

The draw of the Sacramento County bridge, mile 4.4 at Walnut Grove, shall open on signal if at least 72 hours notice is given to Sacramento County Transportation Operations and Maintenance office at Sacramento. The draw shall open as soon as possible for vessels in distress, and vessels, including commercial vessels, engaged

in rescue or emergency salvage operations or emergency flood control efforts.

Dated: February 22, 1994.

R.D. Herr,

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

[FR Doc. 94–6517 Filed 3–18–94; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 117

[CGD08–94–002]

RIN 2115–AE47

Drawbridge Operation Regulations; Nueces Bay, TX

AGENCY: Coast Guard, DOT.

ACTION: Final rule; removal.

SUMMARY: This amendment removes the regulation for the US Highway 181 drawbridge across Neuces Bay, mile 0.5, at Corpus Christi, Texas, because a fixed span replacement bridge has been constructed and the drawspan bridge has been removed. Notice and public procedure have been omitted from this action because the drawspan bridge is no longer in existence.

EFFECTIVE DATE: March 21, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. John Wachter, Bridge Administration Branch, Eighth Coast Guard District, telephone (504) 589–2965.

SUPPLEMENTARY INFORMATION: This action has no economic consequences. It merely removes a regulation that is unnecessary because the regulated drawbrige no longer exists. Consequently, this action is considered to be non-major under Executive Order 12866 and is not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). Since there is no economic impact, a full regulatory evaluation is unnecessary. Because no notice of proposed rulemaking is required under 5 U.S.C. 553, this action is exempt from the Regulatory Flexibility Act (5 U.S.C. 605(b)). This action will not have a significant economic impact on a substantial number of small entities.

Drafting Information: The drafters of this amendment are Mr. John Wachter, project officer, and CDR D. G. Dickman, project attorney

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

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, the Coast Guard is amending Part 117 of Title 33, Code of Federal Regulations as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

§ 117.973 [Removed]

2. Section 117.973 is removed.

Dated: February 22, 1994.

J.C. Card,

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

[FR Doc. 94–6513 Filed 3–18–94; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[COTP Louisville 94–004]

RIN 2115–AA97

Safety Zone; Ohio River Mile 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 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 DATE: This regulation is effective on March 11, 1994, at 6 p.m. EST. It will terminate at 6 p.m. EST on April 1, 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. In effect, this regulation extends an existing safety zone which will terminate at 6 p.m. EST on March 11, 1994. Although this regulation continues restrictions which have been in place for fifteen days, 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 need to extend the restrictions, and how long they should be kept in place, could not have been predicted until recently, making it more practical to issue a new regulation instead of extending the current one. As the river conditions present an immediate hazard to navigation, life, and property, the Coast Guard deems it to be in the public's best interest to issue a regulation now.

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 temporary rule is not considered a significant regulatory action under Executive Order 12866 and is not significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979), 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 economic impact of this rule 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, the Coast Guard is amending subpart C of part 165 of title 33, Code of Federal Regulations, as follows. This is a temporary amendment and will not appear in the Code of Federal Regulations.

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.T02–016 is added, to read as follows:

§ 165.T02–016 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 regulation becomes effective on March 11, 1994, at 6 p.m. EST. It will terminate at 6 p.m. EST on April 1 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: March 10, 1994.

B.D. Branham,

Lieutenant Commander, U.S. Coast Guard, Acting Captain of the Port Louisville, Kentucky.

[FR Doc. 94–6518 Filed 3–21–94; 8:45 am]

BILLING CODE 4910–14–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 1845

Acquisition Regulation; Addition of Coverage to the NASA FAR Supplement on Providing Facilities to Contractors

AGENCY: Office of Procurement, Procurement Policy Division, National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comments.

SUMMARY: NASA has revised the NASA FAR Supplement (NFS), Part 1845, to authorize providing facilities (off-the-shelf, general purpose equipment) to contractors under certain limited conditions.

DATES: This interim rule is effective March 21, 1944. Comments are due no later than May 20, 1994.

ADDRESSES: Comments should be addressed to Ms. Carol E. Bennett, NASA Headquarters, Office of Procurement, Procurement Policy Division (Code HP), Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Larry G. Pendleton, telephone (202) 358–0487

SUPPLEMENTARY INFORMATION:

Background

FAR 45.302–1 states Government policy that contractors are required to supply all facilities necessary for the performance of Government contracts, unless the contracting situation falls under one of the five enumerated exceptions to that policy. In a review of NASA property practices, the General Accounting Office (GAO) has stated their opinion that NASA has not enforced this policy uniformly and that contractor-held facilities owned by NASA have increased substantially. NASA-owned, contractor-held facilities amounted to over $1.9 billion in FY 1993.

NASA is committed to reversing the practice of providing facilities to its contractors. However, since NASA now owns large quantities of facilities, a strategy is required to gradually reduce the amount of those facilities made available to contractors. This approach will maximize NASA's return on investment in facilities and avoid a significant short-term impact on NASA contractors. Therefore, where NASA-owned facilities exist to support a function being performed under contract, it may be in NASA's interest to continue to furnish these existing facilities to contractors until the items require replacement. At that time, policy compliance requires that contractors provide replacement items at their expense if the need for the facilities still exist.

Availability of NASA FAR Supplement

The NASA FAR Supplement, of which this regulation will become a part, is codified in 48 CFR, chapter 18, and is available in its entirety on a subscription basis from the Superintendent of Documents, Government Printing Office, Washington, DC 20402. Cite GPO Subscription Stock Number 933–003–00000–1. It is not distributed to the public, whether in whole or in part, directly by NASA.

Regulatory Flexibility Act

NASA certifies that this interim rule will not have significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601, et seq.).

Paperwork Reduction Act

This interim rule does not impose any reporting or record keeping requirements subject to the Paperwork Reduction Act.

List of Subjects in 48 CFR Part 1845

Government procurement.

Thomas S. Leudtke,

Deputy Associate Administrator for Procurement.

Accordingly, 48 CFR part 1845 is amended as follows:

1. The authority citation for 48 CFR part 1845 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1845—GOVERNMENT PROPERTY

1845.302–1 [Amended]

2. In section 1845.302–1, a new paragraph (c) is added to read as follows:

1845.302–1 Policy.

* * * * *

(c) In addition to the exceptions listed in FAR 45.302–1(a), existing NASA-owned facilities (whether contractor

acquired or Government furnished) may be retained for the remainder of the contract period and furnished under any follow-on contract for the same effort if the contracting officer determines that to do so would be in the best interest of the Government, *provided that:* (1) The facilities are required to accomplish the purpose of the contract;

(2) The resulting contract contains a provision requiring the contractor to replace any of the facilities that reach the end of their useful life during the contract period, or which are beyond economical repair, if the facilities are still needed for contract performance. Such replacements shall be made with contractor-owned facilities. The contract provision shall also expressly prohibit contractor acquisitions of facility items for the Government, unless specifically authorized by the contract or consent has been obtained in writing from the contracting officer pursuant to FAR 45.302–1(a);

(3) Consideration has been given to any alternative uses by Government personnel within the agency, in consultation with the Industrial Property Officer; and

(4) The contracting officer documents the file with a detailed explanation of the circumstances which make furnishing of the facilities in the best interest of the Government.

[FR Doc. 94–6464 Filed 3–18–94; 8:45 am]

BILLING CODE 7510–01–M

Proposed Rules

Federal Register
Vol. 59, No. 54
Monday, March 21, 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 AGRICULTURE

Agricultural Marketing Service

7 CFR Part 52

[FV-94-326]

United States Standards for Grades of Canned Peas

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: Pursuant to our periodic review of existing regulations and in response to a petition from the National Food Processors Association (NFPA), the Agricultural Marketing Service (AMS) proposes to revise the United States Standards for Grades of Canned Peas. The proposed rule would change the U.S. grade standards for canned peas by: Providing for the "individual attributes" procedure for product grading with sample sizes, acceptable quality levels (AQL's), tolerances and acceptance numbers (number of allowable defects); replacing dual grade nomenclature with single letter grade designations; basing the tolerance for extraneous vegetable material (EVM) on drained weight rather than net contents (product weight and weight of the brine); bringing tolerances for defects in canned peas in line with the tolerances for defects in frozen peas; removing § 52.2294, Score sheet for canned peas; and making minor editorial changes.

DATES: Comments must be received on or before May 20, 1994.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in duplicate to the Office of the Branch Chief, Processed Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, room 0709, South Building, P.O. Box 96456, Washington, DC 20090-4693. Comments should reference the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Branch Chief during regular business hours.

FOR FURTHER INFORMATION CONTACT: James R. Rodeheaver, Processed Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, room 0709, South Building, P.O. Box 96456, Washington, DC 20090-6456, Telephone (202) 720-4693.

SUPPLEMENTARY INFORMATION: The Department is issuing this rule in conformance with Executive Order 12866.

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This proposed rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

The AMS Administrator has certified that this action will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act, Public Law 96-354 (5 U.S.C. 601 *et seq.*), because it reflects current marketing practices. In addition, these standards are voluntary. A small entity may avoid incurring any additional economic impact by not employing the standards.

The United States Department of Agriculture (USDA) received a petition from the National Food Processors Association (NFPA), requesting that the U.S. grade standards for canned peas be revised. NFPA is a scientifically and technically-based trade association representing over 450 food industry companies.

NFPA's grade standards review subcommittee is responsible for reviewing the existing U.S. grade standards for canned fruits and vegetables to ascertain whether the standards remain current and reflect processing and marketing practices. Based on the subcommittee's recommendation, NFPA requested that the U.S. grade standards for canned peas, which are currently based on cumulative score points, be revised by converting the U.S. grade standards to statistically-based individual attributes grade standards, similar to the recently revised U.S. grade standards for canned green and wax beans (58 FR 4295, January 14, 1993).

NFPA also requested that market surveys or discussion drafts be made available for the industry to review. This proposal is based on the review of discussion drafts provided to the industry in June 1991 and again in July 1992. The drafts incorporated a grading system where individual tolerances would be assigned to each individual defect.

In this proposal, this system of grading, is referred to as "individual attributes." NFPA submitted its recommendation for changes in the most recent draft on March 5, 1993. It would provide statistically derived acceptable quality levels (AQL's) based on the tolerances in the current standards (except whenever possible, tolerances were changed to be more in line with the tolerances for the same defects in frozen peas).

In a meeting held with NFPA on May 27, 1992, USDA staff discussed changing the 1991 draft so that the published tolerances in the U.S. grade standards for canned peas would reflect the tolerances for an average lot size requiring 13 sample units instead of a single sample unit. This change would more accurately reflect the tolerances sought for specified defects for a given lot size since most lots require 13 sample units to determine the grade for the lot.

The standards would incorporate USDA's policy of replacing dual grade nomenclature with single letter grade designations. Under the proposal, "U.S. Grade A ("U.S. Fancy"), "U.S. Grade B" ("U.S. Extra Standard"), and "U.S. Grade C" ("U.S. Standard") would simply become "U.S. Grade A," "U.S. Grade B," and "U.S. Grade C."

This proposed revision would also change the criteria for evaluating extraneous vegetable material (EVM). The Food and Drug Administration (FDA) Standards of Identity and Quality for canned peas are based on the drained weight of the peas. Under the current U.S. grade standards for canned peas, EVM is evaluated on the basis of net contents (per 100 ounces of the peas and the brine). A pour-back method is used to determine if containers are adequately filled. The criteria for evaluating EVM in both FDA Standards

of Identity for canned peas and frozen peas and the U.S. grade standards for frozen peas are based on the weight of the peas only. This proposed revision of the voluntary grade standards would bring the quality factor of EVM in canned peas in line with the criteria used by FDA, as recommended by NFPA (21 CFR part 155).

Wherever justifiable, USDA proposes to bring the tolerances for defects in canned peas in line with the tolerances for the same defects in the U.S. grade standards for frozen peas.

USDA uses FDA's minimum quality criteria as a base when it proposes to establish higher levels of quality in the U.S. grade standards for canned peas. FDA has established different minimum tolerances for similar defects in canned peas and frozen peas. Therefore, USDA would establish tolerances for some defects in canned peas that will not be similar to the tolerances for defects in frozen peas. Whenever possible, tolerances for similar defects in canned peas would be the same as in frozen peas. Also, this proposed rule would remove § 52.2294, "Score sheet for canned peas," from the U.S. grade standards. Amending the canned peas score sheet can be more efficiently facilitated by editing the score sheet as a document not incorporated in the grade standards. This change is consistent with recently revised U.S. grade standards in which score sheets are no longer incorporated.

The proposal includes minor editorial changes and provides a uniform format consistent with recent revisions of other U.S. grade standards. The proposed format has been designed to provide users with simpler and more comprehensive standards. Definitions of terms and easy-to-read tables have been incorporated to assure better understanding and uniform application of the standards.

USDA has determined that this proposed rule would facilitate trade between processors and buyers and improve the marketing of canned peas.

List of Subjects in 7 CFR Part 52

Food grades and standards, Food labeling, Frozen foods, Fruit juices, Fruits, Reporting and recordkeeping requirements, Vegetables.

For the reasons set forth in the preamble, the U.S. Department of Agriculture proposes to amend 7 CFR part 52 as follows:

PART 52—PROCESSED FRUITS AND VEGETABLES, PROCESSED PRODUCTS THEREOF, AND CERTAIN OTHER PROCESSED FOOD PRODUCTS

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

Authority: 7 U.S.C. 1622, 1624.

2. In Subpart—United States Standards for Grades of Canned Peas, §§ 52.2281 through 52.2291 are revised to read as follows:

Subpart—United States Standards for Grades of Canned Peas

Sec.

52.2281 Product description.
52.2282 Types of canned peas.
52.2283 Definitions of terms.
52.2284 Fill of container.
52.2285 Sizes of peas.
52.2286 Grades.
52.2287 Factors of quality.
52.2288 Prerequisite requirements and allowances for defects.
52.2289 Sample size.
52.2290 Quality requirements.
52.2291 Single sample unit.

§ 52.2281 Product description.

Canned peas means the canned product prepared from clean, sound, shelled, succulent peas as such product is defined in the Standards of Identity for Canned Peas (21 CFR 155.170) issued pursuant to the Federal Food, Drug, and Cosmetic Act.

§ 52.2282 Types of canned peas.

(a) *Early peas* means canned succulent peas of Alaska or other smooth skin varieties.

(b) *Sweet peas* means canned succulent peas of sweet, wrinkled varieties.

§ 52.2283 Definitions of terms.

(a) *Acceptable quality level (AQL)* means the maximum percent of defective units or the maximum number of defects per hundred units of product that, for the purpose of acceptance sampling, can be considered satisfactory as a process average.

(b) *Appearance.* (1) *Good appearance* means that the peas are practically all uniform in color and are reasonably free of insignificant blemishes.

(2) *Reasonably good appearance* means that the peas are fairly uniform in color and fairly free from areas of insignificant blemish.

(c) Blemishes. (1) *Blemished* means a unit that is spotted or otherwise discolored (other than blond), such as vivid-green or brown, to the extent that its appearance or eating quality is materially affected.

(2) *Seriously blemished* means a unit that is seriously discolored or spotted, such as a dark discolored pea, to the extent that the appearance or eating quality is seriously affected.

(d) *Blond* means peas that are cream-colored or yellow in color.

(e) *Defect* means any nonconformance of a unit(s) of product from a specified requirement of a single quality characteristic.

(f) *Extraneous vegetable material (EVM)* means any harmless vegetable material, to include: (1) *Flat* material common to the pea plant such as leaves and pods, and flat vegetable material from other plants;

(2) *Cylindrical material* common to the pea plant such as stems or pieces of vines, and cylindrical vegetable material from other plants; and

(3) *Spherical material* not common to the pea plant such as thistle buds, berries and pieces of berries.

(g) *Flavor and odor.* (1) *Good flavor and odor* means the product has a characteristic flavor and odor and is free from objectionable flavors and odors.

(2) *Reasonably good flavor and odor* means that the product may be lacking in characteristic flavor and odor but is free from objectionable flavors and odors.

(h) *Liquor*—(1) *Good liquor* means the color of liquor is typical, may have a slight cloudiness or a tint of green, only a slight to moderate amount of suspended material or sediment may be present, and the liquor is not viscous.

(2) *Reasonably good liquor* means the liquor may be cloudy or slightly green, may have a pronounced accumulation of sediment, may be dull but not off color, and may be viscous but not so viscous that the liquor will not separate from the peas.

(i) *Piece of pea (broken pea)* means: (1) A pea from which a cotyledon or a large portion thereof has become separated;

(2) Two detached whole cotyledons;

(3) Pieces of detached cotyledons aggregating the equivalent of an average size cotyledon; and

(4) A whole detached skin or portions of detached skin aggregating the equivalent of an average size whole skin.

(j) *Sample unit* means the amount of product specified to be used for grading. For appearance, flavor and odor, liquor, and varietal characteristics, a sample unit is the entire contents of the container. For grading EVM, a sample unit is each 1700 grams (60.0 oz) drained product; for blemished (spotted), seriously blemished, and broken peas (pieces), a sample unit is each 400 peas.

For grading maturity, a sample unit is each 50 peas or more in accordance with Table III and IV in § 52.2288.

(k) *Tolerance* means the percentage of defective units allowed for each quality factor.

(l) *Unit* means each whole pea.

§ 52.2284 Fill of container.

(a) The standard for fill of container for canned peas is not incorporated in the grade of the finished product since fill is not a factor of quality for the purposes of these grades. Except in the case of vacuum pack, canned peas shall be considered standard in fill if they meet the standard of fill promulgated under the Federal Food, Drug, and Cosmetic Act (21 CFR 155.170). The standard is as follows: If the container is so filled that, when the peas and liquid are removed from the container and returned thereto (pour-back method), the leveled peas (irrespective of the quantity of the liquid), 15 seconds after they are so returned completely fill the container.

(b) A container with lid attached by double seam shall be considered to be completely filled when it is filled to the level 5 mm (3/16 in) vertical distance below the top of the double seam; and a glass container shall be considered to be completely filled when it is filled to the level 13 mm (½ in) vertical distance below the top of the container. Canned peas that do not meet this requirement are "Below Standard in Fill."

§ 52.2285 Sizes of peas.

Except for the factor of defects in determining pieces of peas, the sizes of peas are not considered in ascertaining the quality of the product for the purposes of these grades. The size of a pea is determined on the basis of the diameter of the circular opening(s) through which the pea will pass or will not pass without force or pressure. The size designations and diameters applicable to canned peas are shown in Table I of this section.

TABLE I.—SIZES OF CANNED PEAS

Size designation	Diameter of circular openings in inches (millimeters)	
	Will not pass through	Will pass through
Size 1	.....	9/32 (7.1)
Size 2	9/32 (7.1)	10/32 (7.9)
Size 3	10/32 (7.9)	11/32 (8.7)
Size 4	11/32 (8.7)	12/32 (9.5)
Size 5	12/32 (9.5)	13/32 (10.3)
Size 6	13/32 (10.3)	14/32 (11.1)
Size 7	14/32 (11.1)	

§ 52.2286 Grades.

(a) *U.S. Grade A* is the quality of canned peas that: (1) Meets the following prerequisites in table II of § 52.2288 in which the canned peas: (i) Have similar varietal characteristics;

(ii) Have a good appearance;

(iii) Have not more than one (1) percent, by weight, blond peas;

(iv) Have a good liquor; and

(v) Have a good flavor and odor.

(2) Is within the limits for defects as specified in tables IV, V, and VII of § 52.2288, as applicable.

(b) *U.S. Grade B* is the quality of canned peas that: (1) Meets the following prerequisites in Table II of § 52.2288 in which the canned peas: (i) Have similar varietal characteristics;

(ii) Have a good appearance;

(iii) Have not more than one (1) percent, by weight, blond peas;

(iv) Have a good liquor; and

(v) Have a good flavor and odor.

(2) Is within the limits for defects as specified in tables IV, V, and VII of § 52.2288, as applicable.

(c) *U.S. Grade C* is the quality of canned peas that: (1) Meets the following prerequisites in Table II of § 52.2288 in which the canned peas:

(i) Have similar varietal characteristics;

(ii) Have a reasonably good appearance;

(iii) Have not more than two (2) percent, by weight, blond peas;

(iv) Have a reasonably good liquor; and

(v) Have reasonably good flavor and odor.

(2) Is within the limits for defects as specified in tables IV, V, and VII of § 52.2288, as applicable.

(d) *Substandard* is the quality of canned peas that fail to meet the requirements of U.S. Grade C.

§ 52.2287 Factors of quality.

The grade of canned peas is based on requirements for the following quality factors: (a) *Prerequisite quality factors:* (1) Varietal characteristics;

(2) Appearance;

(3) Blond peas;

(4) Liquor; and;

(5) Flavor and odor.

(b) *Classified quality factors:* (1) Maturity;

(2) Extraneous vegetable material (EVM);

(3) Blemished, spotted or discolored peas;

(4) Seriously blemished or seriously discolored peas; and

(5) Pieces of peas (broken).

§ 52.2288 Prerequisite requirements and allowances for defects.

TABLE II.—PREREQUISITES REQUIREMENTS

Factors	Grade A	Grade B	Grade C
Varietal characteristics	Similar	Similar	Similar.
Appearance	Good	Good	Reasonably good.
Blond peas	Not more than 1% by weight	Not more than 1% by weight	Not more than 2% by weight.
Liquor	Good	Good	Reasonably good.
Flavor and odor	Good	Good	Reasonably good.

TABLE III.— AQL'S AND TOLERANCES FOR MATURITY BASED ON BRINE FLOATATION [1]

Grade	Type	AQL	Tolerance	Percent salt in solution
A	Sweet	10.1	12.0	11.0
		1.3	2.0	13.0
	Early	17.6	20.0	11.0
		1.3	2.0	13.5
B	Sweet	13.0	15.0	13.0
	2.9	2.9	4.0	15.0
	Early	27.2	30.0	13.5
		6.4	8.0	15.0
C	Sweet	8.2	10.0	15.0

TABLE III.— AQL'S AND TOLERANCES FOR MATURITY BASED ON BRINE FLOATATION [1]—Continued

Grade	Type	AQL	Tolerance	Percent salt in solution
	Early	8.2	10.0	16.0

[1] Based on 650 peas (50 × 13).

Table IV.—Lot Acceptance Numbers (Sinkers) for Brine Floatation

Grade	Type	Percent salt soultion	Total number of peas 150	300	650	1050	1450
A	Sweet	11.0	21	39	78	122	165
		13.0	4	7	13	20	26
	Early	11.0	34	63	130	205	279
		13.5	4	7	13	20	26
B	Sweet	13.0	26	48	98	154	209
		15.0	8	13	26	39	53
	Early	13.5	50	94	195	309	422
		15.0	15	26	52	80	108
C	Sweet	15.0	18	33	65	101	137
	Early	16.0	18	33	65	101	137

Table V.—Canned Peas Acceptance Numbers for Extraneous Vegetable Material (EVM) [1]

Description of Material	Unit Designation	Grade A	Grade B	Grade C
Flat; or	Each 1.5 cm^2 (0.25 in^2); or	1	2	
Cylindrical; or spherical	Each 13 mm (each 0.50 in); or each piece			
Flat, cylindrical, and spherical EVM	Total weight in grams			9

[1] For each 1700 g (60 ozs) of drained product.

TABLE VI.—AQL'S AND TOLERANCES FOR OTHER DEFECTS [1]

Defects	Grade A		Grade B		Grade C	
	AQL	Tolerance	AQL	Tolerance	AQL	Tolerance
Blemished peas	0.80	1.0	2.6	3.0	4.5	5.0
Seriously blemished	0.37	0.50	0.58	0.75	0.80	1.0
Pieces of peas (broken) larger than No. 2 sieve size	4.5	5.0	9.3	10.0	11.8	12.5
Pieces of peas (broken) No. 1 & 2	6.4	7.0	9.3	10.0	11.3	12.0

[1] Based on 5200 peas (400x13).

TABLE VII.—LOT ACCEPTANCE NUMBERS FOR OTHER DEFECTS, ALL SIZES

Units of product (peas)	1200	2400	5200	8400	11600
Grade A:					
Blemished peas	15	26	52	80	108
Seriously blemished	8	14	26	40	53
Pieces of peas (broken) larger than No. 2 sieve size	66	125	259	410	560
Pieces of peas (broken) No. 1 & 2 sieve sizes	91	174	363	576	787
Grade B:					
Blemished peas	40	75	154	242	330
Seriously blemished	11	20	39	60	81
Pieces of peas (broken), any sieve size	129	248	520	827	1133
Grade C:					
Blemished peas	66	125	259	410	560
Seriously blemished	15	26	52	80	108
Pieces of peas (broken) larger than No. 2 sieve size	160	309	652	1040	1426
Pieces of peas (broken) No. 1 & 2 sieve sizes	153	296	625	997	1367

§ 52.2289 Sample size.

The sample size used to determine whether the requirements of these standards are met shall be as specified in the sampling plans and procedures in the "Regulations Governing Inspection and Certification of Processed Fruits and Vegetables, Processed Products Thereof, and Certain Other Processed Food Products" (7 CFR 52.1 through 52.83).

§ 52.2290 Quality requirements.

A lot of canned peas is considered as meeting the requirements for quality if:
(a) The prerequisite requirements specified in § 52.2286 are met; and
(b) None of the allowances for the individual quality factors specified in tables IV, VI, and VII of 352.2288, as applicable are exceeded.

§ 52.2291 Single sample unit.

Each unofficial sample unit submitted for quality evaluation will be treated individually and is considered as meeting the requirements for quality if:
(a) The prerequisite requirements specified in § 52.2286 are met;
(b) The acceptable quality levels in Tables III, V, and VI of § 52.2288, as applicable for the sieve size, are not exceeded.

Dated: March 15, 1994.

Lon Hatamiya,

Administrator, Agricultural Marketing Service.

[FR Doc. 94–6546 Filed 3–18–94; 8:45 am]

BILLING CODE 3410–02–P

Animal and Plant Health Inspection Service

7 CFR Parts 300 and 318

[Docket No. 93–118–1]

Interstate Movement of Carambola from Hawaii

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to allow the fruit of carambola to be moved interstate from Hawaii. As a condition of movement, the fruit of carambola would be required to undergo prescribed treatment for fruit flies under the supervision of an inspector of Plant Protection and Quarantine, Animal and Plant Health Inspection Service. This proposed action would allow the interstate movement from Hawaii of this fruit while continuing to provide protection against the spread of injurious plant pests from Hawaii to other parts of the United States.

DATES: Consideration will be given only to comments received on or before May 20, 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. 93–118–1. 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 requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Frank E. Cooper, Senior Operations Officer, Plant Protection and Quarantine, APHIS, USDA, room 635, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8295.

SUPPLEMENTARY INFORMATION:

Background

The Hawaiian Fruits and Vegetable regulations (contained in 7 CFR 318.13 through 318.13–17 and referred to below as the regulations) govern the movement of raw and unprocessed fruits and vegetables, cut flowers, rice straw, mango seeds, and cactus plants and cactus parts, from Hawaii into or through the continental United States, Guam, the Northern Mariana Islands, Puerto Rico, the Virgin Islands of the United States, or any other territory or possession of the United States. Under the regulations, any such movement is defined as "interstate movement."

Of the articles governed by the regulations, some are absolutely prohibited interstate movement. Others are prohibited such movement if they fail to meet certain qualifying criteria. The interstate movement of carambola from Hawaii has been prohibited because of the risk that it could spread injurious insects from Hawaii to other parts of the United States. We are proposing to amend the regulations by adding § 318.13–4h to allow the fruit of carambola (*Averrhoa carambola*) to be moved interstate from Hawaii under specified conditions, described below. We are proposing to allow this interstate movement at the request of various shippers, and after conducting pest risk analyses [1] that indicate that the fruit of carambola can be moved interstate under the conditions described without significant pest risk.

Authorized Treatment for Carambola

Carambola is attacked in Hawaii by the Mediterranean fruit fly (*Ceratitis capitata*), the melon fly (*Bactrocera cucurbitae*), and the Oriental fruit fly (*Bactrocera dorsalis*). Although visual inspection cannot be relied upon to detect the insects, the fruit can be treated to destroy these pests. Therefore, we are proposing to allow the fruit of the carambola to be moved interstate from Hawaii only if it has been treated in accordance with the Plant Protection and Quarantine (PPQ) Treatment Manual, which has been incorporated by reference into the Code of Federal Regulations at 7 CFR part 300. We would revise the PPQ Treatment Manual to show that treatments authorized by the Administrator of the Animal and Plant Health Inspection Service for carambola from Hawaii are as follows:

Temperature	Exposure period
32 °F (0.00 °C) or below	10
33 °F (0.56 °C) or below	11
34 °F (1.11 °C) or below	12
35 °F (1.67 °C) or below	14

This treatment has been determined to be effective against the insects listed above, based on research evaluated and approved by the Department. Information on this research may be obtained from the Hoboken Methods Development Center, Plant Protection and Quarantine, APHIS, USDA, 209 River Street, Hoboken, NJ, 07030. Pest risk analyses conducted by APHIS have determined that any other injurious plant pests that might be carried by carambola would be readily detectable by a PPQ inspector.

Carambola moved interstate from Hawaii would also be subject to the requirements in §§ 318.13–3 and 318.13–4 of the regulations. Section 318.13–3 provides, among other things, that a certificate issued in accordance with § 318.13–4(b) must be attached to the container of the regulated article moved interstate from Hawaii, and that the movement must comply with any applicable compliance agreement under § 318.13–4(d). Section 318.13–4(b) provides, among other things, that a certificate may be issued if the article is treated under the observation of an inspector in accordance with administratively approved procedure, and is subsequently handled either in accordance with a compliance agreement or under supervision required by an inspector.

[1] Information on these pest risk analyses may be obtained by writing to the person listed under FOR FURTHER INFORMATION CONTACT.

Nonsubstantive Change

In this proposed rule, we would also make a nonsubstantive change to add an Office of Management and Budget (OMB) "control number" at the end of § 318.13–4. This number indicates that OMB has reviewed and approved the information collection and recordkeeping requirements in that section.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been determined to be not significant for purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget.

We are proposing to allow the fruit of carambola to move from Hawaii to other parts of the United States. Safeguards would be established to prevent the introduction of injurious plant pests from Hawaii into other parts of the United States.

At present, there are approximately 5 to 10 farms in Hawaii that produce commercial quantities of carambola. These farms are small, family-owned, operations.

The changes proposed would provide Hawaiian producers with access to markets in other parts of the United States. We estimate that approximately 1,500 to 3,000 pounds of fresh carambola fruit could be shipped from Hawaii to other parts of the United States annually. These shipments would have an estimated annual market value of between $3,000 and $9,800, depending on market prices. This represents less than .0002 percent of total Hawaiian agricultural production. The average annual market value of Hawaiian agricultural products totals about $600 million.

Small shippers of Hawaiian fruits and vegetables would also receive some benefits from the proposed amendments. We estimate that between 10 and 15 small entities would be able to increase marginally the volume of products shipped to other parts of the United States.

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

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required 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 have been approved by the Office of Management and Budget (OMB), and there are no new requirements. The assigned OMB control number is 0579–0088.

List of Subjects

7 CFR Part 300

Incorporation by reference, Plant diseases and pests, Quarantine.

7 CFR Part 318

Cotton, Cottonseeds, Fruits, Guam, Hawaii, Plant diseases and pests, Puerto Rico, Quarantine, Transportation, Vegetables, Virgin Islands.

Accordingly, 7 CFR parts 300 and 318 would be amended as follows:

PART 300—INCORPORATION BY REFERENCE

1. The authority citation for part 300 would be revised to read as follows:

Authority: 7 U.S.C. 150ee, 161, 162; 7 CFR 2.17, 2.51, and 371.2(c).

2. In § 300.1, paragraph (a) would be revised to read as follows:

§ 300.1 Materials incorporated by reference.

(a) The Plant Protection and Quarantine Treatment Manual, which was revised and reprinted November 30, 1992, and includes all revisions through _____, has been approved for incorporation by reference in 7 CFR chapter III by the Director of the Office of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

* * * * *

PART 318—HAWAIIAN AND TERRITORIAL QUARANTINE NOTICES

3. The authority citation for part 318 would continue to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, 164a, 167; 7 CFR 2.17, 2.51, and 371.2(c).

§ 318.13–4 [Amended]

4. Section 318.13–4 would be amended by adding, at the end of the section, the following:

(Approved by the Office of Management and Budget under control number 0579–0088)

5. A new § 318.13–4h would be added to read as follows:

§ 318.13–4h Administrative instructions; conditions governing the movement of the fruit of carambola from Hawaii.

(a)(1) Subject to the requirements of §§ 318.13–3 and 318.13–4 and any other applicable regulations, the fruit of carambola may be moved interstate from Hawaii only if it is treated under the supervision of an inspector with a treatment authorized by the Administrator for the following pests: the Mediterranean fruit fly (*Ceratitis capitata*), the melon fly (*Bactrocera cucurbitae*), and the Oriental fruit fly (*Bactrocera dorsalis*).

(2) Treatments authorized by the Administrator are listed in the Plant Protection and Quarantine Treatment Manual, which is incorporated by reference at § 300.1 of this chapter.

Done in Washington, DC, this 15th day of March 1994.

Patricia Jensen,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 94–6549 Filed 3–18–94; 8:45 am]

BILLING CODE 3410–34–P

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9 CFR Part 113

[Docket No. 93–071–1]

Viruses, Serums, Toxins, and Analogous Products; Detection of Extraneous Agents by the Fluorescent Antibody Technique

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations concerning testing by the fluorescent antibody technique for extraneous agents (viruses) in cells, of animal origin that are used in the manufacture of veterinary biologics. The proposed amendment would allow the use of alternative fluorescent-antibody conjugated antibodies; revised the list of extraneous agents to be tested for; and include extraneous agents for which equine cells are to be tested. The proposed amendment is necessary to update the requirements related to the testing for extraneous viruses.

DATES: Consideration will be given only to comments received on or before April 20, 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. 93–071–1. 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 requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. David A. Espeseth, Deputy Director, Veterinary Biologics, BBEP, APHIS, USDA, room 838, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8245.

SUPPLEMENTARY INFORMATION:

Background

In accordance with the regulations contained in 9 CFR part 113, Standard Requirements are prescribed for the preparation of veterinary biological products. A Standard Requirement consists of specifications, procedures, and test methods which define the standards of purity, safety, potency, and efficacy for a given type of veterinary biological product. Microorganisms, animal cells, and ingredients of animal origin used in production are required by regulations in part 113 to be tested for extraneous viruses. In part, this involves testing for the presence of extraneous viruses by the fluorescent antibody technique described in § 113.47. When the current standard requirement was established, fluorescent antibodies were constructed by conjugating antibodies to one of the fluorochromes, fluorescein. Fluorochromes are any of a variety of chemicals used in cytochemistry to produce a secondary fluorescence in the specimen. In the intervening years, additional fluorochromes have been developed for use as cytochemical markers or stains.

Standard Requirements included in the regulations specify that cells, Master Seed virus, and most ingredients of animal origin used in the production of biological products be tested for contaminating bacteria, fungi, mycoplasma, cytopathogenic organisms, viruses, hemadsorbing agents, and extraneous agents (viruses) detectable by the fluorescent antibody technique. The presence of specific fluorescence associated with the use of certain antibodies, in comparison with the appropriate controls, is an indication of the presence of the contaminating antigen or extraneous virus against which the antibody was made.

Current § 113.47 lists the types of extraneous viruses against which fluorescein-conjugated antibodies are to be used in testing cells from certain species of animals. New viruses have since been identified as animal pathogens. No viruses which are disease agents of horses are included in the current § 113.47. As new knowledge has developed, testing for these agents has been necessary.

Changes and Clarifications

The title of § 113.47 refers to the detection of extraneous agents. Since the section is specific to viruses, the title would be amended accordingly.

The current regulations in § 113.47 limit the stain used in the fluorescent antibody test to fluorescein (a fluorochrome). Other fluorochromes, when conjugated to antibodies, may be expected to perform as well as fluorescein in the test for extraneous viruses. This proposed amendment would allow the use of any fluorochrome-conjugated antibody in such tests. The term "fluorescein-conjugated antibody" would be replaced with "fluorochrome-conjugated antibody" everywhere it appears in § 113.47 and in § 113.52(b)(2) (i) and (ii).

The current regulation in § 113.47(a) provides for staining cell monolayers for parvovirus as early as 4 days after subculturing. Other viruses may also be detected by processing at less than 7 days. Therefore, the specific exemption for parvovirus has been deleted in § 113.47(a), and the provision in § 113.47(a)(3) for fixing control monolayers at less than 7 days has been modified to require that a test monolayer also be fixed (processed so as to arrest growth and assure attachment of the monolayer to the surface of the vessel in which they are grown) at the same time. In addition, another monolayer of the material under test and the negative control monolayer must be held for at least 7 days before fixing. Further clarification is made to § 113.47(a)(3) that all monolayers would be stained concurrently, regardless of time of fixing, at least 7 days after subculture.

The current regulations in § 113.47 lists the specific extraneous viruses against which antibodies are to be used in the testing of certain types of cells. The cells with which the fluorescent antibody test is to be used are specified in §§ 113.51, 113.52, 113.53, or 113.55. In the proposed amendment to § 113.47, Vero cells would not be listed as one of the specific cell types since they are specified in those sections as listed above. We have also revised the list of cell types to be tested for extraneous viruses to include equine cells. Those using other cells for the production of biologics may also be required to test for specified viruses before such use is approved.

Proposed amendments to § 113.47(b) pertain to the extraneous viruses associated with specific cells that would be tested for using specific fluorochrome-conjugated antibodies. All cells (including caprine and equine would be tested for bovine virus diarrhea virus, reovirus, and rabies virus. In addition, bluetongue virus would be added to the list of extraneous agents for testing bovine cells, canine coronavirus would be listed for testing canine cells, feline infectious peritonitis virus would be specified in place of coronavirus for testing feline cells, and porcine hemagglutinating encephalitis virus would be added for testing porcine cells. Equine cells would be tested with fluorochrome-conjugated antibodies to equine herpesvirus and to equine viral arteritis virus.

In addition, non-substantive minor editorial changes to the regulations are made for clarity.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been determined to be not significant for purpose of Executive Order 12866 and therefore has not been reviewed by OMB.

These proposed amendments should not have a significant economic impact on manufacturers since it would broaden the range of fluorochrome-labeled antibodies that may be used in conducting the fluorescent antibody test and would revise the list of extraneous agents for which various cell types are to be tested with the fluorescent antibody technique. The proposed amendments would thus remove outdated requirements and provide flexibility in the types of antibody that may be used in tests for extraneous agents.

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

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no

retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This proposed rule contains no information collection or recordkeeping requirements under the Paperwork Act of 1980 (44 U.S.C. 3501 *et seq.*)

List of Subjects in 9 CFR Part 113

Animal biologics, Exports, Imports, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 113 would be amended as follows:

PART 113—STANDARD REQUIREMENTS

1. The authority citation for part 113 would continue to read as follows:

Authority: 21 U.S.C. 151–159; 7 CFR 2.17, 2.51, and 371.2(d).

2. Section 113.47 would be revised to read as follows:

§ 113.47 Detection of extraneous viruses by the fluorescent antibody technique.

The test for detection of extraneous viruses by the fluorescent antibody technique provided in this section shall be conducted when prescribed in an applicable Standard Requirement or in a filed Outline of Production for a product.

(a) Monolayer cultures of cells (monolayers), at least 7 days after the last subculturing, shall be processed and stained with the appropriate antiviral fluorochorome-conjugated antibody as specified in paragraph (b) of this action.

(1) Three groups of one or more monolayers shall be required for each specific virus prescribed in paragraph (b) of this section.

(i) At the time of the last subculturing, one group of test monolayers shall be inoculated with approximately 100–300 $FAID_{50}$ of the specific virus being tested for as positive controls.

(ii) One group of monolayers shall be the "material under test."

(iii) One group of monolayers, that are of the same type of cells as the test monolayers and that have been tested as prescribed in §§ 113.51 or 113.52 (whichever is applicable), shall be prepared as negative controls.

(2) Each group of monolayers shall have a total area of at least 6 cm^2.

(3) Positive control monolayers may be fixed (processed so as to arrest growth and assure attachment of the monolayer to the surface of the vessel in which they are grown) before 7 days after subculturing if fluorescence is enhanced by doing so, *Provided*, That a monolayer of the material under test is also fixed at the same time as the positive control and a monolayer of the material under test is also fixed at least seven days after subculturing. Monolayers that are fixed before 7 days after subculturing shall be stained at the same time as the test monolayers and negative controls fixed at least 7 days after subculturing.

(b) The antiviral fluorochrome-conjugated antibodies to be used shall depend on the type of cells required to be tested for extraneous viruses as specified in an applicable Standard Requirement or in a filed Outline of Production. Antiviral fluorochrome-conjugated antibodies specific for the extraneous viruses shall be applied to each respective type of cell in accordance with the following list. Under certain circumstances, additional tests may need to be conducted, as determined by the Administrator. When a specific antiviral fluorochrome-conjugated antibody is used in testing for the listed extraneous viruses specified in more than one cell type, it need only be applied to the most susceptible cell type.

(1) All cells shall be tested for:
- (i) Bovine virus diarrhea virus;
- (ii) Reovirus; and
- (iii) Rabies virus.

(2) Bovine, caprine, and ovine cells shall, in addition, be tested for:
- (i) Bluetongue virus;
- (ii) Bovine adenoviruses;
- (iii) Bovine parvovirus; and
- (iv) Bovine respiratory syncytial virus.

(3) Canine calles shall, in addition, be tested for:
- (i) Canine coronavirus;
- (ii) Canine distemper virus; and
- (iii) Canine parvovirus.

(4) Equine cells shall, in addition, be tested for:
- (i) Equine herpesvirus; and
- (ii) Equine viral arteritis virus.

(5) Feline cells shall, in addition, be tested for:
- (i) Feline infectious peritonitis virus; and
- (ii) Feline panleukopenia virus.

(6) Porcine cells shall, in addition, be tested for:
- (i) Porcine adenovirus;
- (ii) Porcine parvovirus;
- (iii) Transmissible gastroenteritis virus; and
- (iv) Porcine hemagglutinating encephalitis virus.

(7) Firms that do not have rabies virus on premises either for research or production purposes are exempt from having to produce positive rabies virus control monolayers. Fixed positive rabies virus control monolayers will be provided by the National Veterinary Services Laboratories.

(c) After staining, each group of monolayers shall be examined for the presence of specific fluorescence attributable to the presence of extraneous viruses.

(1) If the material under test shows any evidence of specific viral fluorescence, it is unsatisfactory and may not be used; *Provided*, That, if specific fluorescence attributable to the virus being tested for is absent in the positive control monolayers, the test is inconclusive and may be repeated.

(2) If the fluorescence of the monolayers inoculated with the specific virus as positive controls is equivocal, or if the negative monolayers show equivocal fluorescence indicating possible viral contamination, or both, the test shall be declared inconclusive, and may be repeated; *Provided*, That, if the test is not repeated, the material under test shall be regarded as unsatisfactory for use in the production of biologics.

3. Section 113.52, paragraph (b)(2)(i) and (ii), would be revised to read as follows:

§ 113.52 requirements for cell lines used for production of biologics.

* * * * *

(b) * * *

(2) * * *

(i) At least two monolayers shall be stained with an antispecies fluorochrome-conjugated antibody unrelated to the species of origin of the MCS.

(ii) At least two monolayers shall be stained with an antispecies fluorochrome-conjugated antibody specific to the species of origin of the MCS.

* * * * *

§§ 113.51, 113.52, and 113.53 [Amended]

4. In the following places, the word "agents" would be removed and the word "viruses" added in its place:

a. Section 113.51, paragraph (c)(3)(ii).

b. Section 113.52, paragraph (f)(4)(ii).

c. Section 113.53, paragraph (c)(6)(ii).

Done in Washington, DC, this 15th day of March 1994.

Patricia Jensen,

Acting Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 94–6550 Filed 3–18–94; 8:45 am]

BILLING CODE 3410–34–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 94–ANM–12]

Proposed Amendment to Class D Airspace; Missoula, MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would amend the Missoula, Montana, Class D airspace from full-time back to part-time. This action is necessary to correct an error in the airspace description that occurred during the airspace reclassification process. Airspace reclassification, in effect as of September 16, 1993, has discontinued the use of the term "airport traffic area" and, for control zones with operating control towers, replaced it with the designation "Class D airspace." This amendment would bring publications up-to-date giving continuous information to the aviation public.

DATES: Comments must be received on or before April 30, 1994.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, ANM–530, Federal Aviation Administration, Docket No. 94–ANM–12, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

The official docket may be examined at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: James Riley, ANM–537, Federal Aviation Administration, Docket No. 94–ANM–12. 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone number: (206) 227–2537.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 94–ANM–12." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch ANM–530, 1601 Lind Avenue SW., Renton, Washington 98055–4056. 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 amend Class D airspace at Missoula, Montana. During the airspace reclassification process the language designating the Class D airspace as part-time was inadvertently omitted. This action would correct that error. Airspace reclassification, in effect as of September 16, 1993, has discontinued the use of the term "airport traffic area" and, for control zones with operating control towers, replaced it with the designation "Class D airspace." The coordinates for this airspace docket are based on North American Datum 83. Class D airspace is 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 Class D airspace designation listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposed 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 5000 General

* * * * *

ANM MT D Missoula, MT [Revised]

Missoula International Airport, MT
(Lat. 46°54′59″ N, long. 114°05′26″ W)

That airspace extending upward from the surface to and including 5,700 feet MSL within a 4.4-mile radius of the Missoula International 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 Director.

* * * * *

Issued in Seattle, Washington, on March 9, 1994.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 94–6527 Filed 3–18–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 94–ANM–16]

Proposed Amendment to Class D Airspace; Spokane, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would amend the Spokane, Washington, Class D airspace From Full-Time Back to Part-Time. This action is necessary to correct an error in the airspace description that occurred during the airspace reclassification process. Airspace reclassification, in effect as of September 16, 1993, has discontinued the use of the term "airport traffic area" and, for control zones with operating control towers, replaced it with the designation "Class D airspace." This amendment would bring publications up-to-date giving continuous information to the aviation public.

DATES: Comments must be received on or before April 30, 1994.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management branch, ANM–530, Federal Aviation Administration, Docket No. 94–ANM–16, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

The official docket may be examined at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: James Riley, ANM–537, Federal Aviation Administration, Docket No. 94–ANM–16, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone number: (206) 227–2537.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Commments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 94–ANM–16." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, ANM–530, 1601 Lind Avenue SW., Renton, Washington 98055–4056. 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 amend Class D airspace at Spokane, Washington. During the airspace reclassification process the language designating the Class D airspace as part-time was inadvertently omitted. This action would correct that error. Airspace reclassification, in effect as of September 16, 1993, has discontinued the use of the term "airport traffic area" and, for control zones with operating control towers, replaced it with the designation "Class D airspace." The coordinates for this airspace docket are based on North American Datum 83. Class D airspace is 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 Class D airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. If, 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 than will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of 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

* * * * *

ANM WA D Spokane, WA [Amended]

Spokane, Felts Field, WA

(Lat. 47°40′59″ N, long. 117°19′21″ W)

That airspace extending upward from the surface to and including 4,500 feet MSL within a 4-mile radius of Felts Field, excluding that airspace within the Spokane International Airport, WA, Class C 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 Seattle, Washington, on March 9, 1994.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 94–6526 Filed 3–18–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 94–ANM–14]

Proposed Amendment to Class D Airspace; Walla Walla, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would amend the Walla Walla, Washington, Class D airspace from full-time back to part-time. This action is necessary to correct an error in the airspace description that occurred during the airspace reclassification process. Airspace reclassification, in effect as of September 16, 1993, has discontinued the use of the term "airport traffic area" and, for control zones with operating control towers, replaced it with the designation "Class D airspace." This amendment would bring publications up-to-date giving continuous information to the aviation public.

DATES: Comments must be received on or before April 30, 1994.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, ANM–530, Federal Aviation Administration, Docket No. 94–ANM–14, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

The official docket may be examined at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: James Riley, ANM–537, Federal Aviation Administration, Docket No. 94–ANM–14, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone number: (206) 227–2537.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 94–ANM–14." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, ANM–530, 1601 Lind Avenue SW., Renton, Washington 98055–4056. 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 amend Class D airspace at Walla Walla, Washington. During the airspace reclassification process the language designating the Class D airspace as part-time was inadvertently omitted. This action would correct that error. Airspace reclassification, in effect as of September 16, 1993, has discontinued the use of the term "airport traffic area" and, for control zones with operating control towers, replaced it with the designation "Class D airspace." The coordinates for this airspace docket are based on North American Datum 83. Class D airspace is 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 Class D airspace designation listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of 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

* * * * *

ANM WA D Walla Walla, WA [Amended]

Walla Walla Regional Airport, mt WA
(lat. 46°05′40″ N, long. 118°17′17″ W)

That airspace extending upward from the surface to and including 3,700 feet MSL within a 4.3-mile radius of the Walla Walla 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 Seattle, Washington, on March 9, 1994.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 94–6528 Filed 3–18–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 94–ANM–7]

Proposed Amendment to Class E Airspace; Kalispell, MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would amend the Kalispell, Montana, Class E Airspace. This action is necessary to accommodate arrival/departure aircraft transitioning between the en route and terminal areas in western Montana. Airspace reclassification, in effect as of September 16, 1993, has discontinued the use of the term "transition area," replacing it with the designation "Class E airspace." The area would be depicted on aeronautical charts.

DATES: Comments must be received on or before May 10, 1994.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, ANM–530, Federal Aviation Administration, Docket No. 94–ANM–7, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

The official docket may be examined at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Bob Brown, ANM–535, Federal Aviation Administration, Docket No. 94–ANM–7, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone number: (206) 227–2535.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such wirtten data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 94–ANM–7" The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, ANM–530, 1601 Lind Avenue SW., Renton, Washington 98055–4056. 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 Avaiation Regulations (14 CFR part 71) to amend Class E airspace at Kalispell, Montana to accommodate arrival/departure aircraft transitioning between the en route and terminal areas in western Montana. Airspace reclassification, in effect as of September 16, 1993, has discontinued the use of the term "transition area," and airspace extending upward from 700 feet or more above the surface of the earth is now Class E airspace. The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designation listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

2. The incorporation by 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.

* * * * *

ANM MT E5 Kalispell, MT [Revised]

Kalispell, Glacier Park International Airport, MT

(Lat. 48°16′43″ N., long. 114°15′18″ W.)

Smith Lake NDB

(Lat. 48°06′30″ N., Long, 114°27′40″ W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the Glacier Park International Airport, and

within 4.8 miles each side of the 035° and 215° bearing from the Smith Lake NDB extending from the 7-mile radius to 10.5 miles southwest of the NDB; that airspace extending upward from 1,200 feet AGL bounded by a line beginning at lat. 47°30'00" N., long. 113°30'03" W.; to lat. 48°30'00" N., long. 113°30'03" W.; west along lat. 48°30'00" N., to the Montana/Idaho state boundary, south along the Montana/Idaho state boundary until intersecting long. 47°30'03" N., then to the point of beginning; excluding Federal airways.

* * * * *

Issued in Seattle, Washington, on March 10, 1994.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 94–6523 Filed 3–18–94; 8:45 am]

BILLING CODE 4910–13–M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1700

Requirements for the Special Packaging of Household Substances; Request for Comment on Additional Data Concerning Proposed Rule

AGENCY: Consumer Product Safety Commission.

ACTION: Proposed rule; request for comment.

SUMMARY: On October 5, 1990, the Commission proposed to amend its requirements under the Poison Prevention Packaging Act of 1970, as amended, for child-resistant packaging. These amendments would change the child and adult tests under which child-resistant packaging is evaluated. In a **Federal Register** document published March 5, 1991, the period for submitting written comments was extended to July 1, 1991, and comment was solicited on a change to the adult test protocol that was suggested during the original comment period. Oral comments were received on December 5, 1990, and September 12, 1991.

The Commission received a number of comments on various aspects of the proposed rule. The Commission's staff also continued to analyze available data and contracted for additional tests of child-resistant packaging to address issues raised by the comments.

In this document, the Commission requests comment on data that have become available since the original proposal and on changes to the proposed test protocols suggested by the new data.

DATES: Written comments are due no later than May 20, 1994.

ADDRESSES: Written comments and data should be mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, or delivered to room 502, 4330 East-West Highway, Bethesda, MD 20814.

FOR FURTHER INFORMATION CONTACT: Suzanne Barone, Project Manager for Poison Prevention, Directorate for Health Sciences, Consumer Product Safety Commission, Washington, DC 20207; telephone (301)504–0477.

SUPPLEMENTARY INFORMATION:

I. Background

The Poison Prevention Packaging Act of 1970 (PPPA), 15 U.S.C. 1471–1476, authorizes the Consumer Product Safety Commission to issue requirements that certain household substances be sold in child-resistant packaging. Under the PPPA, the Commission has defined and established standards for such "special" packaging. 16 CFR 1700.1(b)(4), 1700.3, 1700.15, and 1700.20. The Commission has also determined which household substances are required to have the special packaging. 16 CFR 1700.14.

To comply with the special packaging requirements, a package must resist entry by most young children and must not be difficult for most adults to open and properly resecure, within specified time periods. The existing requirements were developed before the widespread use of child-resistant packaging and, therefore, without the benefit of the actual use experience and test data that since have become available.

In the **Federal Register** of October 5, 1990, the Commission proposed to amend its requirements under the PPPA. 55 FR 40856. The current regulations provide that a package design must be capable of resisting opening by 85 percent of a panel of 200 children after a 5-minute period and by 80 percent of the panel after a single demonstration of how to open the package and an additional 5-minute period. The package must also be able to be opened and, if appropriate, properly closed within 5 minutes by 90 percent of a panel of 100 persons (70 percent female) of ages from 18–45 years.

Because some persons, especially older persons, find certain types of child-resistant packaging difficult to open and resecure properly, a number of people either purposely purchase products in packages that are not child-resistant or do not properly resecure the package after opening it initially. The Commission concludes that if these difficult-to-use packages were replaced with packages that are easier to use, more people of all ages would purchase and properly use child-resistant packaging, with a reduction in the number of poisonings of children. In order to accomplish this goal, the Commission proposed to substitute a panel of 100 older adults, ages from 60–75 years, for the current panel of 18–45 year-olds. The Commission believes that substituting a panel of older adults, who as a group are less able to open child-resistant packaging, will exclude the more difficult-to-use designs that now can pass the test with the younger panel. In addition, the Commission proposed to reduce the time provided for the adults to open and, if appropriate, properly resecure the packages from 5 minutes to 1 minute. In order to allow the use of new packaging designs that are unfamiliar, the originally proposed 1-minute opening/resecuring test would have been preceded by a 30-second period that the test subject can use to become familiar with how the package operates. The Commission stated that if it concluded that it is not feasible to substitute a panel of 60–75 year-olds for the present panel of 18–45 year-olds, it proposed to reduce the time allowed for the 18–45 year-olds to 30 seconds, preceded by a 30-second familiarization period.

Other proposed amendments are intended to simplify the current test procedures, without reducing the ability of the test to determine child-resistance. These amendments include testing for child resistance by using sequential groups of 50 children, rather than using the full 200-child panel each time, until a statistically valid determination of whether the package is child-resistant is obtained, or until the current number of children tested, 200, is reached. Also, the Commission proposed to use 3 age groups, of 42–44, 45–48, and 49–51 months, with 30, 40, and 30 percent of the children in each age group, respectively, instead of the current 10 age groups between 42 and 51 months.

The remaining proposed amendments are intended to ensure that the test protocol produces more consistent results. These amendments are: to add a procedure for determining whether the package has been secured adequately by the adults; to limit the number of subjects that could be tested by any one tester to no more than 30 percent of the children or 35 percent of the adults; to limit the children in each group who are tested at or obtained from any given site to not more than 20 percent; to limit the percentage of the total number of adults tested who are tested at or obtained from any given site to not more than 35 percent; and to issue guidelines for standardized instructions to be used when testing.

The proposal specified that written comments would be received until January 3, 1991, and oral comments were received by the Commission on December 5, 1990. The written and oral comments included several requests that the comment period be extended for periods up to 180 days. The requests stated that the testing and evaluations needed to respond to the proposal required the additional time. Some requests also asked for a second opportunity to submit oral comments at the end of the extended period for submitting written comments.

The Commission considered these requests and granted an extension of 180 days, until July 1, 1991, for submission of written comments. Additional oral comments were received on September 12, 1991.

During the original comment period, a suggestion was received for a variation of the adult test that had not been discussed specifically in the proposal. In the original proposal, the Commission indicated that it was considering shortening the present 5-minute test time for the adult panel to 1 minute, but providing a 30-second period prior to the test that the test subject would use to become familiar with how to open the package. A commenter suggested that the proposed 30-second familiarization period be extended to 5 minutes and that the test subject must be able to open the package during that time. The subjects who are successful in opening the package during the familiarization period would then be tested to see if they could then open and resecure the package within 1 minute. Subjects would have to be successful in both time periods in order for the package to pass the adult test. The commenter suggested that the longer familiarization period would allow time for test subjects to learn how to operate unfamiliar designs. The Commission preliminarily concluded that this suggestion may have merit and requested comment on it. 56 FR 9181.

The Commission received a number of comments in response to the proposed rule and the additional request for comment. Some of the commenters' concerns can be alleviated by changes to the proposed rule. The staff also contracted for additional testing to obtain information to address the comments received on the proposed 5-minute/1-minute test. The test data and the Commission staff's analyses of the data are available from the Commission's Office of the Secretary.

The remainder of this notice describes the comments that required additional information to address or that the Commission currently believes may require changes in the proposed test procedure. This notice also describes the new data and the changes to the test procedures that the Commission preliminarily concludes are appropriate. Any other comments will be addressed at the time the Commission considers issuance of a final rule.

This notice does not necessarily repeat background information, rationale for the proposed rule, findings, etc., that were in the earlier **Federal Register** notices discussed above, which should be consulted by persons not familiar with them.

II. Response to Comments

The comments on the proposal that have resulted in changes to the proposal, other changes to the proposal, and relevant new data are discussed under the subject matter groupings given below. Other relevant comments will be addressed when the Commission considers a final rule.

1. Variability of the 60–75 Year-Old Age Group

In the previously proposed rule, the senior test panel consisted of 100 adults between the ages of 60–75 selected at random. Several comments were received concerning the lack of a defined age distribution of the participants throughout the 60–75 age group. Commenters stated that a random sample would result in 50–60 percent of the participants being in the 71–75 year old age group. The lack of homogeneity, and the variability of the 60–75 year age group were also commented on. The commenters placed special emphasis on the variability of the 71–75 year-old age group, as measured by the participants' time to open the packages. The commenters requested that the 71–75 age group be dropped from the test due to high variability and the lack of homogeneity.

To address the comments concerning distribution, the Commission's staff recommends dividing the 60–75 year old age group into three age groups: 60–64, 65–70, and 71–75. This would assure a more uniform spread of subjects throughout the age range.

The allocation of the participants to the three groups was determined by analyzing child-resistant package test data obtained from testing persons 60–75 years of age in 1984 and 1985. These data were presented previously (55 FR 40858 and (Wilbur, C. J., 1985)). The analysis of the data indicated that the 60–64 year old group and the 65–70 year old group performed similarly (Kissinger, 1993). The 71–75 year old group had a lower proportion of success and therefore was more variable with respect to whether the participants were successful or unsuccessful. The staff recommends allocating a larger number of participants to the 71–75 year old group to decrease overall variability. The 3 age groups would be allocated as 30 percent ages 60–64, 30 percent ages 65–70, and 40 percent ages 71–75. The proportions of success from the 3 age groups would then be weighted equally, so that the 71–75 year old group is not more heavily represented.

The recommended age distribution and allocations were applied in testing contracted by CPSC (CPSC–C–91–1135) to establish their validity for various reclosable and non-reclosable child-resistant packages. The results confirmed that the performance of the 60–64 year-old age group and the 65–70 year-old group were not significantly different; therefore, it was valid to allocate the same number of participants to these groups. The performance of the group 71–75 years of age was significantly lower than the performance of the younger two age groups. This confirms that a larger sample size for the age group is warranted.

The larger sample size for the 71–75 year-old group adjusts for the slightly greater variability seen in that group using a pass/fail response variable in which a fixed amount of time for opening and closing the package is allotted to each participant. The variability discussed by the commenters pertained to the variability in the mean time to open packages by the different age groups. This is a different response variable from the pass/fail response variable used by CPSC. However, time to open is not a valid response variable in a pass/fail test that allows a fixed amount of time for opening and closing.

In addition to distribution and variability, comments were received about the lack of homogeneity of the 60–75 year age group. The commenters did not define the term homogeneity. Homogeneity is defined by the CPSC staff as the similarity of the subjects of different ages within a particular age group in their ability to successfully open and resecure the various child-resistant packages. The CPSC staff statistically analyzed the homogeneity of the three age groups using the results of tests with reclosable and non-reclosable packages. No significant differences were found in performance within each of the three age groups (60–64, 65–70, and 71–75) for either reclosable or non-reclosable packages (Kissinger, 1993a). The CPSC testing used a minimum of five sites in each test. The senior-adult protocol is

therefore being modified to include this limitation.

2. Sequential Test

Many comments were received questioning the Commission's preliminary statutory findings that the proposed protocol is technically feasible and practicable. The commenters stated that although the Commission included data on packages that passed the 1-minute senior test with a senior-adult use effectiveness ("SAUE") greater than 90 percent, the probability of these packages passing consistently was unknown. The commenters stated that SAUE of 95 percent in 1 test is required to assure that the package will pass consistently at 90 percent. Commenters stated that the protocol must be designed to avoid failing an effective package with a true proportion a little greater than 90 percent, or passing a marginal package with a true proportion a little less than 90 percent. Various commenters suggested that this could be accomplished by eliminating the 71–75 year-old age group, or by decreasing the SAUE acceptance criterion to 85 percent.

To address these comments, the CPSC's staff developed a sequential testing scheme. The test maintains the senior age range of 60–75 years of age and the acceptance criterion of 90 percent, while assuring a high level of confidence for passing packages (Kissinger, 9/18/92). Seniors are tested sequentially in panels of 100, until a statistically reliable pass/fail determination can be made or a total of 400 adults are tested. Providing for a larger number of adults to be tested for packages that perform near the 90 percent criterion will increase the likelihood of making the correct decision of passing or failing.

Each panel of 100 seniors between the ages of 60–75 years is divided into three age groups (30 percent 60–64, 30 percent 65–70 and 40 percent 71–75), which are given equal weighting. The results of the test of the first 100-senior panel are then evaluated to determine if the package passed (significantly greater than the 90 percent acceptance criterion), if it failed (significantly less than the 90 percent acceptance criterion), or if further testing is required to make the determination. If further testing is required, another panel of 100 seniors is tested and the determination of passing, failing, or performing further testing is made based on the combined results of the 200 participants. This process continues using additional panels of 100 seniors until a passing or failing criterion is met or 400 subjects are tested for a particular package.

The decision points for passing, failing, and continuing to test seniors are in proposed § 1700.20(a)(3) below. For the calculated values, for the first three 100 senior panels, a 98 percent confidence interval lies entirely above or below the 90 percent acceptance criterion for the passing and failing decision points.

The sequential testing procedure for senior adults was applied to four reclosable and four non-reclosable child-resistant packages. Each package was tested by 400 participants to verify the testing procedure. Fewer than 400 participants would have to be tested to determine passing results in the actual application of the sequential test with the samples tested by CPSC. One reclosable and 3 of the non-reclosable packages may have required testing 200 participants to determine passing using the acceptance criteria, depending on the order of the panels. The decision of passing could be made for the other 4 packages after testing 100 seniors. Even though packaging exists on the market that will pass the revised test methods with a high level of confidence after testing 100 or 200 people, the staff recommends extending the sequential test scheme to allow up to 400 participants. This addresses the commenter's concerns about "borderline" packages by using additional testing when the true proportion is close to the .900 acceptance criterion.

3. Technical Feasibility, Practicability, and Appropriateness

Many commenters contended that the Commission failed to make the required findings of technical feasibility, practicability, and appropriateness for the 1-minute test published in the proposed rule. Commenters indicated that the results from the child-resistant continuous-thread package testing were too close to the 90 percent effectiveness criterion to be reliable. The commenters stated that, although child-resistant-snap and child-resistant-lug packages had passing SAUE, these packages were not appropriate for many of the household substances regulated by the PPPA. To address these comments, CPSC's staff contracted testing to develop and verify an alternative test method and to demonstrate that effective packaging was technically feasible, practicable, and appropriate for the range of substances regulated by the PPPA.

Four commercially available child-resistant reclosable packages were tested using the 5-min./1-min. test. A lug (ASTM type IIA), a snap (ASTM type IIIA), and two continuous-thread packages (ASTM types IA and IB) were tested. The closures and bottles cover a range of sizes that are appropriate for PPPA-regulated substances. All four reclosable child-resistant packages passed the senior test with SAUE above the 0.951 acceptance criterion for 100 subjects. The majority of test participants indicated that the child-resistant packages were easy to use. The results provide evidence that senior-effective packaging can be developed (technically feasible), can be mass produced (practicable), and can provide adequate packaging for the range of PPPA-regulated products (appropriate).

4. Child-Resistant Effectiveness

Many commenters expressed concerns that child-resistant effectiveness would be reduced in order to develop packaging that is "senior-friendly." A discussion of the influence of the senior adult-use effectiveness on child-resistant effectiveness was published in the proposed rule. Child testing was conducted using the same reclosable package types to verify the child-resistance effectiveness of these "senior friendly" packages. Child testing was conducted in panels of 50 children, according to the proposed changes. (The exception was the child-resistant continuous-thread IA, for which an adult resecuring test was performed.) All reclosable packages tested had child-resistant effectiveness above the regulated acceptance criterion after 10 minutes and a single demonstration.

This demonstrates that it is possible to manufacture packaging that both is easy to use by seniors and maintains a high level of child-resistance.

5. Non-Reclosable Packaging

In the proposed rule the Commission had no data to indicate that senior-effective non-reclosable packages (pouches and blisters) were technically feasible, practicable, and appropriate. Many commenters stated that the senior test protocol would eliminate unit dose packaging from the market. However, commenters supplied very little data to support this claim.

The CPSC contracted for tests to obtain data on the senior effectiveness of currently marketed non-reclosable child-resistant packaging. Four non-reclosable child-resistant packages were tested: ASTM type IV–A (pouch), ASTM type IV–C (pouch with tool), ASTM Type VIII–E (blister with tool), and ASTM Type VIII–D (blister). All 4 package types passed with SAUE above 0.940 for 200 participants. Three of the

4 packages passed with a SAUE above 0.951 for 100 participants.

The data provide evidence that non-reclosable child-resistant packaging is technically feasible and practicable. Non-reclosable child-resistant packaging is currently available that can pass the senior effectiveness requirement with or without the use of a tool. The majority of the participants thought the various types of non-reclosable packages were easy to open.

6. Screening Tests

The proposed rule stated that the senior test panel would be composed only of adults who have successfully passed 1-minute screening tests using non-child-resistant packaging. A non-child-resistant snap and continuous-threaded package are the two screening packages. The participants have to open and to resecure the two non-child-resistant packages within 1 minute for each package. People unable to open either of these packages do not participate in the test. The screening test was proposed to eliminate individuals with limited ability. The range of movement and strength required to open and close non-child-resistant snap and continuous-threaded packages serves as the baseline for test participation.

Several commenters argued that the screening process should apply to people who failed the child-resistant packages during the first 5-minute test period. The testing firms indicated that participants were frustrated and confused by the number of packages they were asked to open. The CPSC staff adopted the practice of screening only those who fail to open the test package during the first 5-minute period in the testing conducted under contract CPSC–91–1135. The Commission proposes to amend the test procedures to incorporate this change.

Many commenters disagreed with the choice of the screening packages used by CPSC (non-child-resistant snap and continuous-thread packages). Commenters indicated that the screening packages should be the non-child-resistant version of the type of child-resistant package being tested. One commenter requested that the screening process be done in the beginning of the test with the non-child-resistant version of the test package to help the participants become more familiar with the operation of the cap.

The purpose of the screening test is not to familiarize participants with package types. The senior test has an initial 5-minute period, which allows ample time for participants to read instructions and become familiar with the packaging. The screening test was designed to eliminate people with limited function, as measured by the ability to open common non-child-resistant packaging. People unable to open these packages probably require assistance opening any kind of packaging.

Many commenters requested a separate screening test for non-reclosable (unit dose) package testing. The commenter supplied the results of testing a non-child-resistant blister, in which 9 out of 94 participants failed to open the package within 1 minute. The commenters stated that if non-child-resistant blister packaging does not meet the opening times, the proposal is unrealistic for child-resistant non-reclosable packages.

The results of CPSC testing of non-reclosable child-resistant packages indicate that senior-effective non-reclosable child-resistant packages are technically feasible and practicable. The definition of child-resistance for unit dose packaging is determined by the toxicity of the product in the packaging or eight units, whichever is less. There are no standards for non-child-resistant unit-dose packaging.

The CPSC tested a "non-child-resistant" non-reclosable package. All 100 seniors were able to open one unit of the blister package within the allotted time periods.

The purpose of the screening test is to eliminate individuals with limited ability. The non-child-resistant snap and continuous-thread serve this function, and there is no need to use packaging of the particular type being tested. In addition, a non-child-resistant blister packaging screening test could introduce unreliable results unless performance standards were specified for such packaging.

One comment was received regarding the use of a vision/reading test to eliminate people who had limited vision or were illiterate. The Commission concludes that this is unnecessary. As part of the process of informed consent prior to testing, participants read and fill out a consent form. People who state they don't have their glasses or cannot read the sheet for any reason are not included in the test. Since CPSC is required by the regulations for the Protection of Human Subjects (16 CFR part 1028) to use informed consent in all human testing, participants read the form, give their birth date, and sign the form as part of the test. It is not necessary to include a separate vision or reading test.

7. Age Calculation for Children

The proposed rule modified the child test protocol by reducing the number of age groups for testing from 10 to 3. The proposal specifies that the children be selected at random and that the inclusive ages of the children are such that 30 percent of the children are from 42 to 44 months, 40 percent are from 45 to 48 months, and 30 percent are from 49 to 51 months. A comment was received requesting that the calculation of age be based on "near age" rather than on the month in which the child was born. The commenter indicated that "near age" makes it possible to calculate a child's age plus or minus 15 days. If the month of birth is used, the distribution could range from plus or minus 30 days.

The current PPPA test procedures defined in 16 CFR 1700.20(a)(1) indicate a distribution of children by "nearest age." The term nearest age was not included in the proposed revisions. The child-resistant package testing contracted by CPSC uses a standardized formula for the calculation of the children's age to the "nearest" month. In response to the comment, the calculation for near age will be included as part of the child-test procedure to standardize the definition of the children's age range.

8. Evaluation of the 5-Minute/1-Minute Test Protocol

The 5-minute/1-minute test was proposed by CPSC following commenters' concerns that the proposed 1-minute senior test would eliminate innovative packages. Commenters stated that if the participants learned how to open the unfamiliar package during an initial 5-minute period, less time would be required for the second opening. The two-time-period (5-min./1-min.) test allows participants to read the instructions and become familiar with the package and requires them to open the package within the 5-minute period. The second test period provides 1 minute for the participant to properly open and resecure a second package.

The test results from the four reclosable and four non-reclosable packages were analyzed to determine if people "learned" from the first time period. The difference in the time for the first and second openings was compared for each successful participant. The results show a significant decrease in the amount of time it takes a participant to open the package the second time. This is true for all eight package types, including ASTM type IB (CT) and the non-reclosable

packages that may be less familiar to the general population.

Although the 1991 request for comment stated that the second test period was 1 minute, CPSC's contractor timed the second test period to 5 minutes to determine if a longer second-test time period was appropriate. A second time period of 1 minute was found to be ample. When the appropriate controls are applied (age distribution, tester and site restriction, etc.), the 5-minute/1-minute senior test appears to be a valid method for measuring SAUE for all types of packages tested, and the Commission proposes to adopt it.

9. Definition of the Test Procedure

The current PPPA regulations do not include the test instructions used by CPSC for the child and adult test. The Commission proposed adding a recommendation to § 1700.20 for the use of standardized instructions as guidelines for conducting the child and adult tests. Recommended standardized test instructions for the 1-minute senior test were published in the previously proposed rule. The Commission received comments supporting standardization of the test procedures.

The Commission agrees that the procedures and instructions for the senior and child tests should be followed closely to ensure the statistical reliability of these tests and control variability. Accordingly, the Commission proposes to include mandatory standardized instructions for the child and senior-adult tests in the rule.

10. Calculation of Senior Adult Use Effectiveness (SAUE)

SAUE is calculated by averaging the proportion of success for the three senior age groups. Successful participants are those who open the test package within the first 5-minute period and open and properly resecure the test package within the second 1-minute time period. The proportions of success for 60–64, 65–70, and 71–75 year old age groups are averaged so that the 71–75 year old age group is not more heavily represented. The calculated SAUE is compared to the acceptance criteria for the sequential test. The SAUE is calculated in the same manner for 100, 200, 300, or 400 participants. A formula for the calculation of SAUE and some examples are in § 1700.20(d)(3) of the proposed rule set forth below.

11. Adult-Resecuring Test

The PPPA requires that adults be able to use child-resistant packaging properly, which includes both opening the package and resecuring it to a child-resistant condition. The adult resecuring test was proposed by CPSC as a procedure to determine whether packages have been resecured when an objective determination that the package has been resecured to a child-resistant condition cannot be made otherwise. Packages which have been opened and appear to be resecured by the adults are given to children to open according to the child test protocols. Openings by children, in excess of the number of openings that represent standard child-resistant effectiveness, count as failures to resecure by adults. However, the use of the 5-min./1-min. senior test protocol has resulted in several changes in the procedure and calculations in the adult-resecuring test that are incorporated in the proposed rule set forth below. In addition, the calculation of failures in the adult resecuring test has been simplified by using only the 80 percent child-resistant effectiveness that applies after both 5-minute periods (10 minutes total), and not the additional 85 percent effectiveness criterion applicable after the first 5-minute period of the regular child test.

III. Comment Period

The Commission believes a 60-day comment period is adequate since the changes are largely in response to previous comments and industry has been aware of many of the changes for some time. The staff has been providing technical support to a project on inter-laboratory testing of child-resistant packaging being conducted by ASTM's Institute for Standards Research. This project uses the protocol that is in the revised proposal set forth below, and the industry thus is already familiar with the revised proposal.

IV. Commission Findings

Except as noted above, the changes to the proposed rule do not warrant any changes in the Commission's findings concerning the statutory findings required by the PPPA, the effective date, the initial regulatory flexibility analysis, or the lack of environmental effects of the rule.

List of Subjects in 16 CFR Part 1700

Consumer protection, Drugs, Infants and children, Packaging and containers, Poison prevention, Toxic substances.

V. Conclusion

For the reasons given above, the Commission proposes to amend 16 CFR Part 1700 as follows:

PART 1700—[AMENDED]

1 The authority citation for part 1700 is revised to read as follows:

Authority: 15 U.S.C. 1471–76. Secs. 1700.1 and 1700.14 also issued under 15 U.S.C. 2079(a).

2. In § 1700.15, paragraph (b)(2) is revised and paragraph (e) is added to read as follows:

§ 1700.15 Poison prevention packaging standards.

(2) Senior adult use effectiveness (SAUE) of not less than 0.900 for the senior-adult panel test of § 1700.20(a)(3).

* * * * *

(e) When it is determined by rule that the younger-adult test of § 1700.20(a)(4) shall apply instead of the senior-adult test of § 1700.20(a)(3), the effectiveness shall be not less than 90 percent.

3. In § 1700.20, paragraph (a) is revised and paragraph (d) is added to read as follows:

§ 1700.20 Testing procedure for special packaging.

(a) *Test protocols*—(1) *General requirements*—(i) *Requirements for packaging.* As specified in § 1700.15(b), special packaging is required to meet the child test and senior-adult test requirements of this § 1700.20. The younger-adult test is retained in the regulations for use in the event the Environmental Protection Agency determines that the senior-adult test is not appropriate in particular instances.

(ii) *Condition of packages to be tested.* Any tamper-resistant feature of the package to be tested shall be removed prior to testing unless it is part of the package's child-resistant design. Where a package is supplied to the consumer in an outer package that is not part of the package's child-resistant design, the time required to remove the outer package is not counted in the times allowed for attempting to open and, if appropriate, reclose the package.

(2) *Child test*—(i) *Test subjects.* (A) Use from 1 to 4 groups of 50 children, as required under the sequential testing criteria in table 1. No more than 20 percent of the children in each group shall be tested at or obtained from any given site. Each group of children shall be randomly selected as to age, subject to the limitations set forth below. Thirty percent of the children in each group shall be of age 42–44 months, 40 percent of the children in each group shall be of age 45–48 months, and 30 percent of the children in each group shall be of age

49–51 months. The children's ages in months shall be calculated as follows:

(*1*) Arrange the birth date and test date by the numerical designations for month, day, and year (e.g., test date: 8/3/1990; birth date: 6/23/1986).

(*2*) Subtract the month, day, and year numbers for the birth date from the respective numbers for the test date. This may result in negative numbers for the months or days. (e.g.,

8 /	03 /	1990
−6 /	23 /	1986
2	−20	4

(*3*) Multiply the difference in years by 12 to obtain the number of months in the difference in years, and add this value to the number of months that was obtained when the birth date was subtracted from the test date (i.e., 4×12=48; 48+2=50). This figure either will remain the same or be adjusted up or down by 1 month, depending on the number of days obtained in the subtraction of the birth date from the test date.

(*4*) If the number of days obtained by subtracting the days in the birth date from the days in the test date is +16 or more, 1 month is added to the number of months obtained above. If the number of days is −16 or less, subtract 1 month. If the number of days is between −15 and +15 inclusive, no change is made in the number of months. Thus, for the example given above, the number of days is −20, and the number of months is therefore 50−1=49 months.

(B) The difference between the number of boys and the number of girls in each age range shall not exceed 10 percent of the number of children in that range. The children selected should have no obvious or overt physical or mental handicap. Each child's parent or guardian shall read and sign a consent form prior to the child's participation.

(ii) *Test failures.* A test failure shall be any child who opens the special packaging or gains access to its contents. In the case of unit packaging, however, a test failure shall be any child who opens or gains access to the number of individual units which constitute the amount that may produce serious personal injury or serious illness, or a child who opens or gains access to more than 8 individual units, whichever number is lower, during the full 10 minutes of testing. The determination of the amount of a substance that may produce serious personal injury or serious illness shall be based on a 25-pound child. Manufacturers or packagers intending to use unit packaging for a substance requiring special packaging are requested to submit such toxicological data to the Commission.

(iii) *Sequential test.* The sequential test is initially conducted using 50 children, and, depending on the results, the criteria in table 1 determine whether the package is either child-resistant or not child-resistant or whether further testing is required. Further testing is required if the results are inconclusive and involves the use of one or more additional groups of 50 children each, up to a maximum of 200 children. No individual shall administer the test to more than 30 percent of the children tested in each group. Table 1 gives the acceptance (pass), continue testing, and rejection (fail) criteria to be used for the first 5 minutes and the full 10 minutes of the children's test. If the test continues past the initial 50-child panel, the package openings shown in Table 1 are cumulative.

TABLE 1.—NUMBER OF OPENINGS: ACCEPTANCE (PASS), CONTINUE TESTING, AND REJECTION (FAIL) CRITERIA FOR THE FIRST 5 MINUTES AND THE FULL 10 MINUTES OF THE CHILDREN'S PROTOCOL TEST

Test panel	Cumulative number of children	Package openings					
		First 5 minutes			Full 10 minutes		
		Pass	Continue	Fail	Pass	Continue	Fail
1	50	0–3	4–10	11+	0–5	6–14	15+
2	100	4–10	11–18	19+	6–15	16–24	25+
3	150	11–18	19–25	26+	16–25	26–34	35+
4	200	19–30	.....	31+	26–40	.....	41+

(iv) *Test procedures.* The children shall be divided into groups of two. The testing shall be done in a location that is familiar to the children; for example, their customary nursery school or regular kindergarten. No child shall test more than two special packages. When more than one special package is being tested, each package shall be of a different ASTM type and they shall be presented to the paired children in random order. This order shall be recorded. The children shall be tested by the procedure incorporated in the following test instructions:

Standardized Child Test Instructions

1. Reclosable packages with closure liners shall be properly resecured at least 72 hours prior to beginning the test to allow the liner to "take a set."

2. All packages shall be handled so that no damage or jarring will occur during storage or transportation. The packages shall not be exposed to extreme conditions of heat or cold. The packages shall be tested at room temperature.

3. The children shall have no overt physical or mental handicaps. No child with a permanent or temporary illness, injury, or handicap that would interfere with his/her effective participation shall be included in the test.

4. The testing shall take place in a well-lighted location that is familiar to the children and that is isolated from all distractions.

5. Reclosable packages shall be opened and properly resecured one time by the tester who will be conducting the test. The opening and resecuring shall not be done in the presence of the children. (In the adult-resecuring test, the tester must not open and resecure the package prior to the test.)

6. The tester, or another adult, shall escort a pair of children to the test area. The tester shall ask the two children to sit down in chairs that are positioned so that there is no visual barrier between the children and the tester.

7. The tester shall talk to the children to make them feel at ease.

8. The children shall not be given the impression that they are in a race or contest. They are not to be told that the test is a game or that it is fun. They are not to be offered a reward.

9. The tester shall record all data prior to, or after, the test so that full attention can be on the children during the test period.

10. The tester shall use a stopwatch(s) to time the number of seconds it takes the child to open the package and to time the 5-minute test periods.

11. To begin the test, the tester shall hand the children identical packages and say, "PLEASE TRY TO OPEN THIS FOR ME."

12. If a child refuses to participate after the test has started, the tester shall reassure the child and gently encourage the child to try. If the child continues to refuse, the tester shall ask the child to hold the package in his/her lap until the other child is finished. This pair of children shall not be eliminated from the results unless the refusing child disrupts the participation of the other child.

13. Each child shall be given up to 5 minutes to open his/her package. The tester shall watch the children at all times during the test. The tester shall minimize conversation with the children as long as they continue to attempt to open their packages. The tester shall not discourage the children verbally or with facial expressions. If a child gets frustrated or bored and stops trying to open his/her package, the tester shall reassure the child and gently encourage the child to keep trying.

14. The children shall be allowed freedom of movement to work on their packages as long as the tester can watch both children (e.g., they can stand up, get down on the floor, or bang or pry the package).

15. If a child is endangering himself or others at any time, the test shall be stopped and the pair of children eliminated from the final results.

16. The children shall be allowed to talk to each other about opening the packages and shall be allowed to watch each other try to open the packages.

17. A child shall not be allowed to try to open the other child's package.

18. If a child opens his/her package, the tester shall say, "Thank You," take the package from the child and put it out of the child's reach. The child shall not be asked to open the package a second time.

19. At the end of the 5-minute period, the tester shall demonstrate how to open the package if either child has not opened his or her package. A separate "demo" package shall be used for the demonstration.

20. Prior to beginning the demonstration, the tester shall ask the children to set their packages aside. The children shall not be allowed to continue to try to open their packages during the demonstration period.

21. The tester shall say, "WATCH ME OPEN MY PACKAGE."

22. Once the tester gets the children's full attention, the tester shall hold the demo package approximately two feet from the children and open the package at a normal speed as if the tester were going to use the contents. There shall be no exaggerated opening movements.

23. The tester shall not discuss or describe how to open the package.

24. To begin the second 5-minute period, the tester shall say, "NOW YOU TRY TO OPEN YOUR PACKAGES."

25. If one or both children have not used their teeth to try to open their packages during the first 5 minutes, the tester shall say, "YOU CAN USE YOUR TEETH IF YOU WANT TO." This is the only statement that the tester shall make about using teeth.

26. The test shall continue for an additional 5 minutes or until both children have opened their packages, whichever comes first.

27. At the end of the test period, the tester shall say, "THANK YOU FOR HELPING." In addition, the tester shall say, "NEVER OPEN PACKAGES LIKE THIS WHEN YOU ARE BY YOURSELF. THIS KIND OF PACKAGE MIGHT HAVE SOMETHING IN IT THAT WOULD MAKE YOU SICK."

28. The children shall be escorted back to their classroom or other supervised area by the tester or another adult.

29. If the children are to participate in a second test, the tester shall have them stand up and stretch for a short time before beginning the second test. The tester shall take care that the children do not disrupt other tests in progress.

(3) *Senior-adult panel*—(i) *Test subjects.* Use from 1 to 4 groups of 100 senior adults, as required under the sequential testing criteria in table 2. Not more than 24 percent of the senior adults tested shall be obtained from or tested at any one site. Each group of senior adults shall be randomly selected as to age, subject to the limitations set forth below. Seventy percent of each group shall be female. Thirty percent of the senior adults in each group shall be 60–64 years old, 30 percent of the senior adults in each group shall be 65–70 years old, and 40 percent of the senior adults in each group shall be 71–75 years old. The senior adults selected should have no obvious or overt physical or mental handicap. Only persons who can open and close conventional (not child-resistant) snap and continuous-threaded type plastic closures in 1-minute screening tests shall be included in the senior-adult panel. The screening tests for this purpose shall use snap and continuous-threaded (CT) plastic closures having a diameter of 28 mm ±18 percent, the CT closures having been resecured 72 hours before testing at 10 inch-pounds of torque. The containers shall be round plastic containers, in sizes of 2 ounce ±½ ounce for the CT-type closure and 8 drams ±4 drams for the snap-type closure.

(ii) *Sequential test.* (A) No individual tester shall administer the test to more than 35 percent of the senior adults tested. The sequential test is initially conducted using 100 senior adults. Depending on the results, the criteria in Table 2 determine whether the package is either senior adult use effective or not senior adult use effective or whether further testing is required. Further testing is required if the results are inconclusive and would involve the use of 1 or more additional groups of 100 senior adults each, up to a maximum of 400 senior adults. Table 2 gives the acceptance (pass), continue testing, and rejection (fail) criteria to be used for the senior-adult test.

TABLE 2.—CALCULATED SENIOR ADULT USE EFFECTIVENESS (SAUE): ACCEPTANCE (PASS), CONTINUE TESTING, AND REJECTION (FAIL) CRITERIA FOR THE SENIOR-ADULT PROTOCOL TEST

Test panel	Cumulative senior adults	Pass	SAUE continue	Fail
1	100	≥0.951	<0.951–>0.807	≤0.807
2	200	≥0.940	<0.940–>0.838	≤0.838
3	300	≥0.934	<0.934–>0.851	≤0.851
4	400	≥0.900		<0.900

(B) *SAUE.* The calculated senior adult use effectiveness (SAUE) is calculated by averaging the proportions of success for the 3 age groups (ages 60–64, 65–70, and 71–75). The proportion of success for each age group is calculated by dividing the number of persons in that age group who opened the package in the first (5-minute) test period and who opened and (if appropriate) properly resecured the package in the 1-minute test period by the total number of persons in that age group who were tested. Thus, the equation for calculation of the SAUE is:

$$\frac{\text{No. of Successes (60-64)}}{\text{Nos. 60-64 tested}} + \frac{\text{No. of Successes (65-70)}}{\text{Nos. 65-70 tested}} + \frac{\text{No. of Successes (71-75)}}{\text{Nos. 71-75 tested}}$$

For example, for results after the test of the first group of 100 senior adults, if:

29 of 30 subjects 60–64 successful = 0.967 proportion of success
28 of 30 subjects 65–70 successful = 0.933 proportion of success
36 of 40 subjects 71–75 successful = 0.900 proportion of success
0.967 + 0.933 + 0.900 = 2.800; dividing by 3 = 0.933 SAUE

(with this SAUE, testing would continue). If the test continues past the first panel of senior adults, the number of successes and the number tested are cumulative. Thus, for results after the test of the second group of 100 senior adults, (200 total), if:

59 of 60 subjects 60–64 successful = 0.983 proportion of success
57 of 60 subjects 65–70 successful = 0.950 proportion of success
74 of 80 subjects 71–75 successful = 0.925 proportion of success
0.983 + 0.950 + 0.925 = 2.858; dividing by 3 = 0.953 SAUE

(with this SAUE, testing would stop because the SAUE exceeds the acceptance criterion for 200 senior adults).

(iii) *Test procedures.* (A) Reclosable packages with closure liners shall be properly secured, if appropriate, at least 72 hours prior to beginning the test to allow the liner to "set." Torque-dependent closures shall be secured at the same on-torque as applied on the packaging line. All packages shall be handled so that no damage or jarring will occur during storage or transportation. The packages shall not be exposed to extreme conditions of heat or cold. The packages shall be tested at room temperature.

(B) The senior adults shall be tested individually, rather than in groups of two or more. The senior adults shall receive only such printed instructions on how to open and properly secure the special packaging as will appear on or accompany the package as it is delivered to the consumer. The senior-adult panel is tested according to the procedure incorporated in the following senior-adult panel test instructions:

Test Instructions for Senior Test

The following test instructions are used for all senior tests. If non-reclosable packages are being tested, the commands to close the package are eliminated.

1. No adult with a permanent or temporary illness, injury, or disability which would interfere with his/her effective participation shall be included in the test.

2. Each adult shall read and sign a consent form prior to participating. If an adult cannot read the consent form for any reason (forgot glasses, illiterate etc.), he/she shall not participate in the test.

3. Each adult shall participate individually and not in the presence of other participants or onlookers.

4. The tests shall be conducted in well-lighted and distraction-free areas.

5. Records shall be filled in before or after the test, so that the tester's full attention is on the participant during the test period. Recording the test times to open and resecure the package are the only exceptions.

6. To begin the first 5-minute test period, the tester says, "I AM GOING TO ASK YOU TO OPEN AND PROPERLY CLOSE THESE TWO IDENTICAL PACKAGES ACCORDING TO THE INSTRUCTIONS FOUND ON THE CAP." (Specify other instruction locations if appropriate.)

7. The first package is handed to the participant by the tester, who says, "PLEASE OPEN THIS PACKAGE." After the participant opens the package, the tester says, "PLEASE CLOSE THE PACKAGE." Participants are allowed up to 5 minutes to read the instructions and open and close the package. The tester uses a stopwatch(s) or other timing device to time the opening and resecuring times. The elapsed times in seconds to open the package and to close the package are recorded on the data sheet as two separate times.

8. If the package contains product, the tester shall say, "PLEASE OPEN THE PACKAGE. PLEASE EMPTY THE (PILLS, TABLETS, CONTENTS, etc.) INTO THIS CONTAINER."

9. After 5 minutes, or when the participant has opened and closed the package, whichever comes first, the tester shall take all test materials from the participant.

10. To begin the second test period, the tester shall give the participant a NEW package and say, "PLEASE OPEN THIS PACKAGE." After the package is opened, the tester says, "PLEASE CLOSE THIS PACKAGE."

11. The participants are allowed up to 1 minute to open and close the package. The elapsed times in seconds to open and to close the package are recorded on the data sheet as two separate times. The time that elapses between the opening of the package and the end of the instruction to close the package is not counted as part of the 1-minute test time.

12. After the 1-minute test, or when the participant has opened and closed the package, whichever comes first, the tester shall take all the test materials from the participant.

13. Participants who do not open the package in the first 5-minute test period are asked to open and close two non-CR screening packages. The participants are given a 1-minute test period for each package. The tester shall give the participant a package and say, "PLEASE OPEN AND PROPERLY CLOSE THIS PACKAGE." The tester records the time for opening and closing, or 61 seconds, whichever is less, on the data sheet. The tester then gives the participant the second package and says, "PLEASE OPEN AND PROPERLY CLOSE THIS PACKAGE." The times to open and resecure or 1 minute, whichever is less, shall be recorded on the data sheet.

14. Participants who cannot open and resecure both of the non-CR screening packages are not counted as part of the 100-senior panel. Additional participants are selected and tested.

15. No adult may participate in more than two tests. If a person participates in two tests, the packages tested shall not be the same ASTM type of package.

16. If more adults in a sex or age group are tested than are necessary to determine SAUE, the last person(s) tested shall be eliminated from that group.

(4) *Younger-adult panel.* (i) One hundred adults, age 18 to 45 inclusive, with no overt physical or mental handicaps, and 70 percent of whom are female, shall comprise the test panel for younger adults. The adults shall be tested individually, rather than in groups of two or more. The adults shall receive only such printed instructions on how to open and properly resecure the special packaging as will appear on the package as it is delivered to the consumer. Five minutes shall be allowed to complete the opening and, if appropriate, the resecuring process.

(ii) Records shall be kept of the number of adults unable to open and the number of the other adults tested who fail to properly resecure the special packaging. The number of adults who successfully open the special packaging and then properly resecure the special packaging (if resecuring is appropriate) is the percent of adult-use effectiveness of the special packaging. In the case of unit packaging, the percent of adult-use effectiveness shall be the number of adults who successfully open a single package.

* * * * *

(d) *Recommendations.* The following instructions and procedures, while not required, are used by the Commission's staff and are recommended for use where appropriate.

(1) Report Format for Child Test:

A. Identification

1. Close-up color photographs(s) clearly identifying the package and showing the opening instructions on the closure.
2. Product name and the number of tablets or capsules in the package.
3. Product manufacturer.
4. Closure model (trade name—*e.g.*, "KLIK & SNAP").
5. Closure size (*e.g.*, 28 mm).
6. Closure manufacturer.
7. Closure material and color(s) (*e.g.*, white polypropylene).
8. Closure liner material.
9. TAC seal material.
10. Opening instructions (quote exactly, *e.g.*, "WHILE PUSHING, DOWN, TURN RIGHT"). Commas are used to separate words that are on different lines.
11. Symbols, numbers, and letters found inside the closure.
12. Package model.
13. Package material and color.
14. Net contents.

15. Symbols, numbers, and letters on the bottom of the package.

16. Other product identification, *e.g.*, EPA Registration Number.

B. Procedures

1. Describe all procedures for preparing the test packages.

2. Describe the testing procedures.

3. Describe all instructions given to the children.

4. Define an individual package failure.

C. Results

1. Openings in each 5-minute period and total openings for males and for females in each age group.

2. Opening methods (*e.g.*, normal opening, teeth, etc.).

3. Mean opening times and standard deviation for each 5-minute test period.

4. The percentage of packages tested at each site as a percentage of total packages.

5. The percentage of packages tested by each tester as a percentage of total packages.

6. Child-resistant effectiveness for the first 5-minute period and for the total test period.

(2) Standardized Adult-Resecuring Test Instructions:

The adult-resecuring test is used by the CPSC to determine if torque-dependent continuous-threaded packages have been properly resecured. It may be appropriate for other package designs where an objective determination of resecuring is not easily made. The adult-resecuring test is performed as follows:

1. After the adult participant in either the senior-adult test of 16 CFR 1700.20(a)(3) or the younger-adult test of 16 CFR 1700.20(a)(4) has resecured the package, or at the end of the test period (whichever comes first), the tester shall take the package and place it out of reach. The adult participant shall not be allowed to handle the package again.

2. The packages that have been opened and appear to be resecured by adults shall be tested by children according to the child-test procedures to determine if the packages have been properly resecured. The packages are given to the children without being opened or resecured again for any purpose.

3. Using the results of the adult tests and the tests of apparently-resecured packaging by children, the adult use effectiveness is calculated as follows:

a. *Senior adult use effectiveness (SAUE)*—i. *Procedure*. The SAUE of a package following an adult resecuring test is calculated in the following manner.

(A) If the proportion of children who opened the package in the full 10 minutes of the resecuring test is 0.200 or less, the apparently resecured packages were resecured to a child-resistant condition, and the SAUE is calculated normally in the manner provided in 16 CFR 1700.20(a)(3)(ii)(B). In this event, all the persons who apparently resecured their package are counted as successes, regardless of whether the package subsequently was opened by a child in the adult resecuring test.

(B) If the proportion of children who opened the package in the full 10 minutes of the resecuring test exceeded 0.200, the excess over 0.200 is subtracted from the adult average proportion of apparent success to calculate the SAUE. *Example*: If, in a 100-senior test, 29 of 30 participants 60–64 opened and appeared to resecure the package, 28 of 30 participants 65–70 opened and appeared to resecure the package, and 36 of 40 participants 71–75 opened and appeared to resecure the package, then 93 of the tested packages were opened and apparently resecured. These 93 packages are then tested with 93 children. If 22 children opened the packages, the proportion of children who opened the packages is 0.237. Since this exceeds 0.200 by 0.037, 0.037 is subtracted from the average proportion of apparent success for the senior adults. Since the average proportion of apparent success for the senior adults is

$$\frac{((29/30)+(28/30)+(36/40))}{3}=0.933,$$

the SAUE is 0.933 − 0.037 = 0.896.

b. *Younger adult use effectiveness*. i. The number of adult opening and resecuring failures, plus the number of packages that were opened by the children during the full 10-minute test that exceeds 20 percent of the apparently-resecured packages, equals the total number of failures.

ii. The total number of packages tested by adults (which is 100) minus the total number of failures equals the percent adult-use effectiveness.

(3) Report Format for Adult-Resecuring Test:

A. Identification

Record the following items:

1. Close-up color photograph(s) clearly identifying the package and showing the top of the closure.

2. Product name and the number of tablets or capsules in the package.

3. Product manufacturer.

4. Closure model (trade name).

5. Closure size (e.g., 28 mm).

6. Closure manufacturer.

7. Closure material and color(s) (e.g., white polypropylene).

8. Closure liner material.

9. Symbols, numbers, and letters found inside the closure.

10. TAC seal material.

11. Opening instructions (Quote exactly, e.g., "WHILE PUSHING, DOWN, TURN RIGHT"). Commas are used to separate words that are on different lines.

12. Package model.

13. Package material and color.

14. Net contents.

15. Symbols, numbers, and letters on the bottom of the package.

16. Other product identification, e.g., EPA Registration Number.

B. Procedures

1. Describe all procedures for preparing the test packages.

2. Describe the testing procedures in detail.

3. Describe all instructions given to participants.

4. Define an individual package failure and the procedures for determining a failure.

C. Results

Adult Test

1. Total packages opened and total packages resecured; packages opened by males and by females; and packages resecured by males and by females.

2. Mean opening times and standard deviation for total openings, total openings by females, and total openings by males.

3. Mean resecuring times and standard deviation for total resecurings, total resecurings by females and total resecurings by males.

4. The percentage of packages tested at each site as a percentage of total packages.

5. The percentage of packages tested by each tester as a percentage of total packages.

6. Methods of opening (e.g., normal opening, pried closure off, etc.)

Child Test

1. Openings in each 5-minute period, and total openings, for males and females in each age group.

2. Opening methods.

3. Mean opening times and standard deviation for each 5-minute test period.

4. The percentage of packages tested at each site as a percentage of total packages.

5. The percentage of packages tested by each tester as a percentage of total packages.

6. Section 1700.14(a) is revised by inserting "meeting the requirements of § 1700.20(a)" after "is such that special packaging".

Dated: March 14, 1994.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

Appendix 1—List of References

(This Appendix will not be printed in the Code of Federal Regulations)

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–33761; File No. S7–7–94]

RIN 3235–AG14

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

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Proposed rule amendments.

SUMMARY: The Commission is proposing for comment amendments that would allow broker-dealers to use a theoretical pricing model when calculating capital charges for listed options and related positions. Haircuts for options and related positions, when computed using this model, would more accurately reflect the risk inherent in broker-dealers' option positions. The proposed amendments are intended to provide capital charges that better protect broker-dealers against market risk.

DATES: The requested written data, views, arguments or comments must be received on or before May 16, 1994.

ADDRESSES: People wishing to submit written data, views, arguments, or comments should file three copies with Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Stop 6–9, Washington, DC 20549. All written data, views, arguments, or comments should refer to File No. S7–7–94. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Michael A. Macchiaroli, Associate Director, (202) 272–2904; Roger G. Coffin, Branch Chief, (202) 272–7375; Timothy H. Thompson, Branch Chief, (202) 272–2372; or Bradley W. Paulson, Staff Attorney (202) 272–2396; Office of Capital Markets and Financial Responsibility, Division of Market Regulation, Securities and Exchange Commission.

SUPPLEMENTARY INFORMATION:

I. Introduction

In May 1993, the Commission issued a concept release soliciting public comment on issues relating to the standards imposed on derivative products by the net capital rule ("Concept Release").[1] The Concept Release noted that, at the time, the Commission's staff was studying a recommendation to adopt a theoretical pricing model developed by The Options Clearing Corporation ("OCC") to determine haircuts for broker-dealers' option positions under the net capital rule. The Concept Release specifically asked questions on the use of theoretical pricing formulas to determine haircuts for over-the-counter ("OTC") options. The Commission is now proposing for comment amendments to the net capital rule, that would allow broker-dealers to use data derived from OCC's theoretical pricing model to determine haircuts for listed options and related positions.[2]

The proposed amendments will not change the current strategy-based haircut methodology for OTC options. As noted in the Concept Release, before adequate charges for OTC options can be determined, it will be necessary to ascertain the manner in which the credit risk associated with these positions can be adequately measured. The Commission, however, continues to be interested in studying the applicability of the proposed theoretical pricing haircut methodology to assess the market risk for OTC options and currently is evaluating, among other things, the comment letters addressing the questions for comment set forth in the Concept Release.

II. Historical and Technical Background

A. Current Net Capital Treatment of Options

The Commission's net capital rule requires that every registered broker-dealer maintain sufficient liquid assets to enable those firms that fall below the minimum net capital requirements to liquidate in an orderly fashion without the need for a formal proceeding. Generally, net capital, as defined by Rule 15c3–1, is a broker-dealer's net worth plus liabilities subordinated in accordance with Appendix D of the net capital rule, minus assets not readily convertible into cash and certain percentages, or haircuts, of a firm's proprietary securities positions, including option positions.

Currently, the net capital rule provides two basic capital treatments for option positions held by broker-dealers. The first approach, which is set forth in Appendix A to Rule 15c3–1, assumes that the option will be exercised or held to expiration. The second approach, a premium-based approach, assumes that options are used as trading positions. This approach is contained in paragraph (c)(2)(x) of Rule 15c3–1. Both methodologies of computing charges provide for lower haircuts for certain risk offsetting positions held by broker-dealers, although the premium-based approach recognizes more types of offset positions. The provisions of Appendix A were designed for firms clearing their proprietary listed option and related positions.[3] While market-makers on the floors of the option exchanges are exempt from the net capital rule,[4] a clearing firm endorsing or guaranteeing the listed option positions of non-clearing market-makers is required to charge the premium-based haircuts to its capital. The premium-based approach also can be used by a clearing firm if its business is limited almost exclusively to effecting (either directly or as agent) and clearing market-making transactions in listed options.[5]

As currently drafted, paragraph (c)(2)(x)(F) of Rule 15c3–1 provides that, if the haircuts for a particular market-maker's account exceed the equity in the account, the carrying broker-dealer may not extend further credit to the market-maker unless the carrying broker-dealer requires the additional deposit of sufficient equity to eliminate the net capital charge. However, the Division, in an interpretive letter approved by the Commission, has allowed the carrying broker-dealer to forego this requirement if it takes a charge against its capital to the extent that the equity in the market-maker's account is insufficient to cover the haircuts.[6]

B. Development of Option Pricing Models

Over the last 30 years, several models have been developed to determine the value of an option.[7] Initially, these models were applied to warrants, because, at the time, that market was more active.[8] Option pricing formulas have been refined and are now widely used to calculate option prices by assigning pre-determined values to the factors that are known to affect their prices.

In 1973, Fischer Black and Myron Scholes introduced a formula to calculate European call option prices.[9] The primary factors affecting the price of an option are: The value of the underlying asset, the exercise price of the option, the price volatility of the underlying asset, the risk-free rate of interest and the remaining time to expiration. The payment of dividends on the stock, as well as the exercise timing of the option (i.e., American or European), also can be factors in the pricing of an option.

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[1] Securities Exchange Act Rel. No. 32256 (May 4, 1993), 58 FR 27486 (May 10, 1993).

[2] Simultaneous with this release, the Division of Market Regulation ("Division") is issuing a letter stating that it will recommend no enforcement action to the Commission if, pursuant to the terms of that letter, broker-dealers use theoretical pricing data provided by OCC to calculate haircuts for listed options and related positions.

[3] In a letter dated October 23, 1985, the Commission's staff issued no-action relief allowing broker-dealers clearing their proprietary listed option and related positions to apply a premium-based haircut methodology. Letter from Michael A. Macchiaroli, Assistant Director, to Michael Minikes, Chairman, Capital Committee, Securities Industry Association, (October 23, 1985).

[4] 17 CFR 240.15c3–1(b)(1).

[5] 17 CFR 240.15c3–1(a)(7).

[6] Letter from Lee A. Pickard, Director, Division, Commission, to Joseph W. Sullivan, President, Chicago Board Options Exchange (April 8, 1977).

[7] An option gives the holder the right to buy (i.e., a call) or sell (i.e., a put) a particular underlying instrument at a certain price for a limited period of time. An option's price, or "premium," has two components, the option's intrinsic value and the "time value." An option's intrinsic value is the difference between the price of the underlying instrument and the strike price. The time value is the amount by which the premium exceeds the option's intrinsic value.

[8] Fischer Black, "How We Came Up With the Formula" in The Financial Derivatives Reader 176 (Kolb ed. 1992).

[9] Fischer Black & Myron Scholes, The Pricing of Options and Corporate Liabilities 3 J. Polit. Econ. 637 (May–June 1973).

A European option can be exercised only on the expiration date, while an American option can be exercised at any time prior to expiration date.

Subsequent to the development of the Black-Scholes formula, John Cox, Stephen Ross and Mark Rubinstein developed a binomial pricing model to determine the value of options.[10] Unlike the Black-Scholes formula, which employs "mathematical tools * * * [that] are quite advanced" to determine the probable value of the underlying instrument at the time of expiration, the Cox-Ross Rubinstein model replicates periodical upward and downward movements in the value of an option until the option's expiration date.[11] By determining different probable option values at various periods during the life of an option, the Cox-Ross-Rubinstein model is able to incorporate dividend yields, and American option prices can be determined.

Based on the Cox-Ross-Rubinstein model, OCC has developed the Theoretical Intermarket Margining System ("TIMS") to measure the market risk associated with participants' positions and establish clearing house margin requirements.[12] Likewise, for the last several years, option pricing models, including the Cox-Ross-Rubinstein model, have been commonly used by market professionals to develop trading strategies and to manage market risk. In light of such industry-wide usage, recommendations have been made urging the Commission to adopt option pricing models to set capital charges.

The proposed amendments to Rule 15c3–1 would establish a haircut methodology based on the Cox-Ross-Rubinstein binomial model. This model would be used to determine an option's theoretical gains and losses after re-pricing the option in relation to assumed changes in the value of the underlying instrument. At least initially, OCC would run the model as explained below and deliver to interested broker-dealers the gains and losses from each option positions which would be downloaded by the broker-dealer into a spreadsheet provided by OCC. The spreadsheet would contain all of the broker-dealer's relevant positions.

III. Description of the Proposed Rule Amendment

With respect to each option series[13] it clears, OCC would collect the following information on a daily basis:

(i) The dividend streams for the underlying securities,

(ii) Interest rates (either the current call rate or the Eurodollar rate for the maturity date which approximates the expiration date of the option),

(iii) Days to expiration, and

(iv) Closing underlying security and option prices from various vendors.

Using these values and the binomial model, OCC would measure the implied volatility for each option series.

OCC then would input to the model the resulting implied volatility for each option series and other data, except the underlying value, used in the calculation of the implied volatility. For each option series, the model would calculate theoretical prices at ten equidistant valuation points within a range consisting of an increase or a decrease of the following percentages of the daily market price of the underlying instrument:

(i) +(−)15% for equity securities with a ready market, narrow-based indexes, and non-high-cap, broad- based indexes,

(ii) +(−)6% for major market currencies,[14] and

(iii) +(−)10% for high-cap, broad-based indexes.

On a daily basis, OCC would use the model to determine the theoretical gains/losses between the option's closing price and the theoretical price at each one of the ten equidistant valuation points. OCC would provide daily these theoretical gain/loss amounts to broker-dealers.

Upon receipt of the theoretical gain/loss amounts, the broker-dealer would download the information to a theoretical pricing haircut spreadsheet. The broker-dealer must add to the spreadsheet all proprietary or market-maker positions to be haircut. The spreadsheet generates a profit/loss amount at each valuation point for each option series and related positions covering the same underlying asset. The greatest loss at any of the valuation points becomes the haircut for those positions. The spreadsheet has been programmed to compute a minimum haircut charge and identify the greater of the computed or minimum charge as the haircut.

For example, assume a portfolio consisting of IBM common stock and various puts and calls on IBM common stock with different strikes and expiration dates. OCC would re-price each option position assuming that the price of the IBM common stock had moved up or down by a maximum of 15%, at ten valuation points (i.e., −15%, −12%, −9%, −6%, −3%, +3%, +6%, +9%, +12%, +15%). The single, maximum net loss amount at any one of the ten valuation points would become the haircut for the portfolio.

Within any portfolio type involving the same underlying stock, index or currency, 100% of a position's gain at any one valuation point will be allowed to offset another position's loss at the same valuation point. Between qualified stock baskets (provided that the stock basket represents no less than 90% of a high-cap, broad-based index's capitalization or 100% of the capitalization of a narrow-based index)[15] offset by index options, or futures or futures options on the same underlying index, 95% of gains would offset losses at the same valuation point. Among high-cap, broad-based index options, futures and futures options, 90% of the gain on one high-cap, broad-based index position in the same market group, *e.g.* U.S. or Japan, would offset the loss on a position on a different high-cap, broad-based index at the same valuation point. Among non-high-cap, broad-based index options, futures and futures options, 75% of the gain on one non-high-cap, broad-based index position shall offset the loss on a position on a different non-high-cap, broad-based index at the same valuation point. The difference in offsets are designed to take into account liquidity and execution risk in different markets.

IV. Discussion of Issues Pertaining to the Proposed Theoretical Pricing Haircut Methodology

A. Pilot Program

At the request of the Commission's staff, The Chicago Board Options Exchange, Inc. ("CBOE") and OCC established a pilot program to compare the results achieved under the current haircut methodology and the theoretical pricing approach. The pilot study was conducted from April 22, 1992, through July 31, 1992, and included twelve firms clearing either independent or proprietary market-maker accounts. The pilot program included approximately 1,400 market-maker accounts.

The study employed the methodology that is now being proposed to replace the current treatment for options and related positions set forth in the net capital rule. As part of the pilot study, a minimum charge of ⅛ of a point per option contract was applied when the theoretical pricing haircut for the class

[10] John Cox, Mark Rubinstein & Stephen Ross, Option Pricing: A Simplified Approach 7 J. Fin. Econ. 229 (1979).

[11] *Id.* at 230.

[12] Securities Exchange Act Rel. No. 23167 (April 22, 1986), 51 FR 16127 (April 30, 1986).

[13] An option series includes option contracts of the same type (either a call or a put) and exercise style covering the same underlying instrument with the same exercise price, expiration date and number of underlying units.

[14] Deutsche Mark, British Pound, Swiss Franc, French Franc, Canadian Dollar, Japanese Yen and European Currency Unit.

[15] The proposed amendments would not recognize stock basket offsets for non-high-cap, broad-based indexes.

or product group reflected little or no market exposure. This minimum charge (raised to ¼ of a point in the current proposal), was assessed to account for liquidation risk.

During the pilot study period, the proposed haircut methodology resulted in an average haircut level reduction of 38% for self-clearing market-maker firms. This average remained generally constant throughout the pilot study period. This reduction in haircut levels seemed to have resulted from the fact that, while these firms take large positions, they tend to be more active in covering their market risk.

The results of the pilot study revealed that haircut charges for non-clearing market-maker firms increased by an average of 3%. Of the non-clearing market-maker accounts, 70% reflected a haircut change of less than +(−) $50,000. At the same time, however, total deductions for those firms (reflecting an increase in haircuts above the equity levels kept in the market-maker accounts) increased by an average of 59%. The decrease or minor increase in haircut levels, accompanied by a substantial increase in deductions, seemed to have been the result of a redistribution of haircuts to accounts containing positions with greater market exposure but with less equity to cover the haircut increase.

This conclusion appeared to be further confirmed by the fact that, under the proposed methodology, haircut charges for accounts with short positions appeared to increase.[16] During the pilot study, CBOE and OCC selected ten accounts that reflected significant differences between the current haircut methodology and theoretical pricing haircuts. Five of these accounts consisted of index option positions, while the rest consisted of equity options. As a general rule, when using theoretical prices to calculate haircuts, excess short positions resulted in a substantial haircut increase. This also was true in the case of index option accounts, where, assuming a +(−) 10% underlying movement, accounts with excess short positions endured an increase in haircut levels, unless the risk associated with the short positions was offset by the profit in another position.

To further test the level of market protection provided by the proposed underlying price movement assumptions, the Commission's staff required CBOE and OCC to compare haircuts under the proposed theoretical price-based methodology and under the current methodology, assuming a 22% daily downward market move for two days. In addition, given the magnitude of this market move, implied volatilities were assumed to double in size. The results of this test seemed to be consistent with the general conclusions of the pilot study.

B. Underlying Price Movement Assumption for Certain Index and Currency Options

One of the principal variables affecting the value of an option is the price of the underlying instrument. The Commission, therefore, believes that underlying price movement assumptions for the proposed theoretical pricing model should be consistent with the volatility assumptions currently incorporated in the net capital rule. These assumptions are: 6% for major market foreign currencies, 15% for equities with a ready market, narrow-based indexes and 10% for high-cap, broad-based indexes and non-high-cap broad-based indexes. These underlying price movement assumptions reflect the risk stemming from major movements in the value of the option's underlying instrument.

While CBOE and OCC agree with the Commission with regard to the underlying price movement assumptions for equities with a ready market,[17] they believe that, with respect to high-cap, broad-based index options, a +(−)10% underlying price movement assumption for all broker-dealers may be too large. Similarly, the Philadelphia Stock Exchange ("Phlx") believes that an underlying price movement assumption of +(−)6% for major market foreign currency options may be too large for non-clearing market-makers. CBOE, OCC and Phlx, therefore, have recommended the following underlying price movement assumptions: (i) +6%, (−)8% for high-cap, broad-based index positions of non-clearing option market-makers and a +(−)10% underlying volatility assumption for all other broker-dealers, and (ii) +(−)4½% for the major market foreign currency positions of non-clearing option market-makers and a +(−)6% for all other broker-dealers.

CBOE and OCC note that during the pilot study, haircuts for non-clearing index market-makers increased by an average of approximately 27% and deductions increased by 121%. The data, however, provides very little information indicating whether this percentage is entirely due to the application of a +(−)10%, rather than if the proposed +6%, (−)8% underlying price movement assumption, or whether the increase was the result of account positions reflecting a larger market exposure. The data provided, however, shows that during the course of the study there were days when the application of a +(−)10% underlying price movement assumption resulted in haircut reductions. Moreover, in one case for which detailed account information was provided, the data showed that, in the absence of excess naked short positions, theoretical pricing haircuts assuming a +(−)10% underlying price movement resulted in an 81% reduction in haircut levels.

In light of the concerns raised and the lack of sufficient data, the Commission is requesting comments on the recommendation set forth by CBOE, OCC and Phlx. In particular, the Commission would like to receive information on the impact upon traders, their clearing firms and the pricing and liquidity of the index and currency markets resulting from the implementation of a +(−)10% underlying volatility assumption for high-cap, broad-based index options and a +(−)6% for major market currency options and related positions. The Commission also would welcome information regarding the cost of keeping the underlying price movement assumptions at the proposed levels, rather than at the levels recommended by CBOE, OCC and Phlx.[18] In this regard, the Commission invites commentators to discuss the extent to which foregoing the added protection afforded by a +(−)10% underlying price movement for high-cap, broad-based index options and a +(−)6% for major market currency options and related positions is justified in light of the possibility of sudden market movements such as those experienced in 1987 and 1989.

[16] Past market experiences have shown that short option positions tend to be particularly risky. In relation to the Market Break of 1987, the Division noted the link between substantial market-maker losses and short option positions. At the time, the Division concluded that "* * * the present net capital treatment accorded to short options positions is inadequate to insure against the risks of major market movements." Division, The October 1987 Market Break 5–46 (February 1988).

[17] Letter from Mary L. Bender, First Vice President, CBOE & John C. Hiatt, Executive Vice President, OCC to Michael A. Macchiaroli, Associate Director, Division, Commission (May 7, 1993) at 7.

[18] In this regard, the Commission encourages commentators to consider, in particular, the impact that the marginal cost of capital will have on the proposed rule amendment.

C. Series Specific Volatilities and Constant Short-term Interest Rates

Prices derived from theoretical pricing models are a function of the variables inputted. In computing the theoretical price of an option, the Cox-Ross-Rubinstein model, like the Black-Scholes formula, assumes that the implied volatility will remain constant over the life of the option. Accordingly, the underlying instrument's price is expected to change smoothly, never reflecting a sudden large movement. Likewise, in computing theoretical prices it is assumed that the short-term interest rate never changes.

(1) Series Specific Volatilities

Failure to take into account abrupt changes in an option's implied volatility could result in unrealistic theoretical prices and less than adequate capital requirements.[19] The proposed rule amendment requires the use of daily calculated series specific implied volatilities. It has been suggested, however, that implied volatility inputs should be allowed to fluctuate within chosen parameters.

There seems to be, however, little market consensus as to the manner in which such adjustment can be implemented. Although it appears that the underlying price movement assumptions embodied in the proposed rule amendment are sufficiently large to adequately address any concerns raised by the use of a constant implied volatility measure, the Commission solicits comments on this issue.

(2) Constant Short-Term Interest Rates

Some commentators have suggested that interest rate variables should be allowed to fluctuate within chosen parameters when computing theoretical pricing haircuts. Aside from the computational burden associated with allowing interest rates to fluctuate within chosen parameters,[20] it is generally believed that option prices are not so sensitive to changes in interest rates so as to warrant changes in the model's interest rate factor. Moreover, as previously noted, it would seem that the substantial proposed underlying price movement assumptions should compensate for any pricing problem associated with a constant interest rate input.

[19] See generally Fischer Black, "How to use the Holes in Black Scholes" in The Financial Derivatives Reader 198 (Kolb ed. 1992).

[20] Altering the interest rate assumption would result in a substantial increase in the number of computer calculations necessary to determine theoretical pricing haircuts.

D. Minimum Charges

During the pilot program, a minimum haircut of 1/8 of a point per option contract was applied. Pursuant to a recommendation by OCC and CBOE, the proposed amendments would increase the minimum charge to 1/4 of a point per contract. The Commission believes that this increase is appropriate to account for liquidation and decay risk in the prices of long and short options in those instances in which application of the theoretical pricing haircut methodology results in little or no charge.

The proposed minimum charge presumes that a basic equity option contract covers 100 shares. To the extent that an option or futures contract exceeds the size of a basic option contract the minimum charge would have to be increased by the additional percentage amount of underlying units. For example, if an IBM option contract covered 500 shares instead of the usual 100, the minimum charge would be $125 ((*i.e.*, 5 × 25).

E. Distribution of Theoretical Pricing Data

The theoretical pricing haircut methodology set forth in the proposed rule amendment seems to provide appropriate capital levels for broker-dealers. While the securities industry generally supports the proposal and its immediate implementation, the Commission believes that there are several details in the proposed rule that should be observed closely, and continued to be discussed in light of the public comment received in response to this proposal.

In this regard, particular concerns have been raised respecting the use of proprietary versions of option pricing models to calculate haircuts. During the pilot study, OCC calculated the theoretical value for each option series. Accordingly, the values inputted to determine the theoretical pricing haircuts and, consequently, the resulting haircuts were consistent among broker-dealers with the same positions. In order to secure reliable results during the pilot study, moreover, OCC applied editing procedures to ensure the accuracy of the resulting values.[21]

[21] Prices for options and underlying assets were supplied by at least two sources, private vendors and the exchanges where the products were traded. OCC would perform a direct comparison of the supplied price data. Subsequently, OCC would subject option prices to a reasonableness check by calculating theoretical prices for every option series. Ranges based on the option's theoretical price were then set. An option's price was verified if a market price fell outside its designated range. OCC would use a theoretical price in place of a market price that fell outside its designated range.

In light of the reliance on the choices made concerning the model's variables, the use of proprietary models could result in significantly different theoretical prices given the same assumed underlying price movement. The Commission believes, therefore that there is a need for a controlled environment that ensures the integrity of the haircut results for all broker-dealers using the proposed methodology. Allowing broker-dealers to employ any proprietary model and/or failing to control the sources of the various values inputted to the model would substantially hinder the ability to examine the accuracy of option haircuts and their effectiveness as a way of ensuring adequate capital levels. For this reason, the proposed amendments to Rule 15c3–1 would require broker-dealers to use exclusively the theoretical pricing values produced and distributed nightly by OCC (or such other entity as the Commission may designate).

While the proposed amendments provide authority for the Commission to designate other providers of theoretical option prices, OCC is designated in the rule as a provider because it is presently in a unique position with respect to the listed securities option positions in that it is the issuer of the options, the clearing agent of the options, and the entity that currently sets margin requirements for its clearing members by use of a theoretical pricing model. The Commission also considers it critical that OCC is subject to Commission inspection and regulation.

The Commission solicits comment on whether it is preferable to continue to use a single theoretical pricing model or whether, and subject to what conditions, the Commission should consider allowing the use of alternative models. The Commission also requests comments on whether limitations should be imposed on fees charged by entities providing theoretical prices.

F. Alternative Strategy-Based Methodology

As a practical matter, to be able to implement the proposed haircut methodology, broker-dealers will be required to have a computerized interface with OCC's system.[22] This

[22] For broker-dealers requiring theoretical gains/losses data, OCC is considering a menu approach to select the classes of options for which values are needed. This approach is intended to reduce the expense and transmission time of providing values which are not needed.

For broker-dealers who are not participants, OCC is considering the possibility of establishing a dial-up facility to provide theoretical gain/loss amounts. The particular characteristics of this facility would

Continued

linkage would allow broker-dealers to receive timely the theoretical gain/loss amounts provided by OCC. In addition, the computer system would enable broker-dealers to make the multiple calculations that are necessary in order to apply such data to their option positions.

The Commission realizes that broker-dealers with limited option positions might find it not cost effective to implement a computerized interface with OCC. In order to address this concern, the proposed amendments contain an alternative strategy-based haircut methodology. This alternative methodology generally follows the conservative approach currently embodied in Appendix A to the net capital rule.

Broker-dealers employing the proposed strategy-based methodology would be required to eliminate from net worth the time value associated with long or short option positions. In addition, this alternative haircut methodology will allow only certain basic strategies used by broker-dealers to offset market risk. In particular, broker-dealers would be allowed to take a reduced charge for hedged positions consisting of a long underlying position and an offsetting short call, a short underlying position and an offsetting long call, and a long underlying position and an offsetting long put. The Commission believes that these strategies will allow broker-dealers who do not want to use the theoretical price-based methodology to maintain lower haircut requirements that are consistent with the market risk associated with their option positions.

V. Discussion of Related Issues

In connection with the adoption of a theoretical pricing haircut methodology, the Commission believes it is necessary to make the following changes to the net capital rule:

A. Deletion of Paragraph (a)(7) of the Net Capital Rule

As previously stated, the net capital rule contains two haircut methodologies, the premium-based approach and the approach embodied in Appendix A to Rule 15c3–1. Currently, pursuant to the provisions of paragraph (a)(7) of the net capital rule, the premium-based approach is available to a clearing firm, if its business is limited almost exclusively to effecting (either directly or as agent) and clearing market-making transactions in listed options.

The proposed amendments would delete paragraph (a)(7) of the net capital rule. The Commission believes that this provision is no longer necessary, because the proposed amendments would eliminate the distinction between the premium-based approach and the approach set forth in Appendix A.

B. Steps To Be Taken by a Broker-Dealer Carrying the Account of an Option Market-Maker, When Equity in That Account Is Insufficient To Cover Haircuts

Pursuant to the provisions of a 1977 interpretive letter, carrying broker-dealers are not required to refrain from extending credit in a market-maker account when haircuts for that account exceed the equity in the account.[23] This interpretation is conditioned on the carrying broker-dealer taking a charge against capital to the extent that the equity is insufficient to cover the haircuts. The proposed amendments would incorporate this interpretation into the net capital rule.

VI. Request for Comments

The Commission invites interested persons to submit written data, views, arguments and/or comments on the proposed amendments. The Commission is particularly interested in receiving comments from broker-dealers on how these proposed rule amendments would affect their required capital levels. Also, the Commission is interested in analyses from broker-dealers on the ability of the theoretical pricing models to accurately predict the risks in trading these instruments.

VII. Effects on Competition and Summary of Initial Regulatory Flexibility Analysis

Section 23(a) of the Exchange Act, 15 U.S.C. 78w(a)(2), requires the Commission, in adopting rules under the Exchange Act, to consider the anti-competitive effect of the rule, if any, and to balance any impact against the regulatory benefits to be gained. The Commission has considered the proposed amendments in light of this standard and believes, preliminarily, that if adopted they would not likely impose any significant burden on competition that is not necessary or appropriate in furtherance of the Exchange Act. The Commission solicits comment on this preliminary view.

In accordance with 5 U.S.C. 603, the Commission has prepared an Initial Regulatory Flexibility Analysis ("IRFA") concerning the proposed amendments. The analysis notes that the proposed amendments would implement a haircut methodology that employs a mathematical formula to determine the theoretical value of options. The purpose of these amendments is to make haircuts reflect more accurately the risks associated with option positions.

Because of the complexity of the formula used to compute theoretical prices, and in order to ensure the integrity of the resulting haircuts, the Commission is proposing that only the OCC theoretical pricing haircut program be utilized. Accordingly, to be able to use this system it will be necessary for a broker-dealer to have an automate interface with OCC's computer system. This would enable broker-dealers to receive reliable, nightly data necessary to calculate haircuts.

The proposed amendments will impact "small business[es]" or "small organization[s]," as those terms are defined in 17 CFR 240.0–10(c), subject to Rule 15c3–1, insofar as they would be required to implement a computer interface with OCC to be able to comply with the requirements of the proposed rule amendment. In order to reduce the impact on these broker-dealers, the proposed amendments set forth an alternative haircut methodology that is based on the basic option strategies used by broker-dealers.

A copy of the IRFA may be obtained by contacting Timothy H. Thompson, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549, tel: (202) 272–2372.

VIII. Statutory Analysis

The amendments are proposed pursuant to the authority conferred on the Commission by section 15(c)(3) of the Act.

List of Subjects in 17 CFR Part 240

Brokers, Reporting and recordkeeping requirements, Securities.

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

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

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

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

* * * * *

be determined in conjunction with the potential users.

[23] *Supra* note 7.

§ 240.15c3–1 [Amended]

2. Section 240.15c3–1 is amended by removing and reserving paragraph (a)(7).

3. Section 240.15c3–1 is amended by adding an undesignated center heading before paragraph (c)(2)(x) and revising paragraph (c)(2)(x) to read as follows:

§ 240.15c3–1 Net capital requirements for brokers or dealers.

* * * * *

(c) * * *

(2) * * *

Brokers or Dealers Carrying Accounts of Listed Options Specialists

(x)(A) With respect to any transaction in listed options for which a broker or dealer acts as a guarantor, endorser or carrying broker or dealer for listed options purchased or written by a specialist that is either not otherwise subject to the provisions of this section or is described in paragraph (c)(2)(vi)(N) of this section, such broker or dealer shall adjust its net worth by deducting as of noon of the next business day the amounts computed as of the prior business day pursuant to § 240.15c3–1a. The required deductions may be reduced by any liquidating equity that exists in such specialist's market maker account as of the close of the prior business day or by the deposit of additional funds or securities in the account by noon of the next business day, and shall be increased to the extent of any liquidating deficit in such account. In no event shall excess equity in the specialist's market maker account result in an increase of the net capital of any such guarantor, endorser, or carrying broker or dealer.

(B) *Definitions.* (*1*) The term *listed option* shall mean a standardized option as defined in § 240.9b–1 that is traded on a registered national securities exchange or the automated facilities of a registered national securities association and is subject to the transaction reporting requirements of the registered entity where it trades.

(*2*) For purposes of this provision, the equity in an individual specialist's market maker account shall be computed by:

(*i*) Marking all securities positions long or short in the account to their respective current market values;

(*ii*) Adding (deducting in the case of a debit balance) the credit balance carried in such specialist's market maker account; and

(*iii*) Adding (deducting in the case of short positions) the market value of positions long in such account.

(C) No guarantor, endorser or carrying broker or dealer shall permit the sum of the deductions required pursuant to § 240.15c3–1 in respect of all transactions in specialists' market maker accounts guaranteed, endorsed or carried by such broker or dealer to exceed 1,000 percent of such broker's or dealer's net capital as defined in § 240.15c3–1(c)(2) for any period exceeding three business days. If at any time such sum exceeds 1,000 percent of such broker's or dealer's net capital, then the broker or dealer shall:

(*1*) Immediately transmit telegraphic or telephone facsimile notice of such event to the Division of Market Regulation in the headquarter's office of the Commission in Washington, DC, to the district or regional office of the Commission for the district or region in which the broker or dealer maintains its principal place of business and to its examining authority designated pursuant to section 17(d) of the Securities Exchange Act of 1934 Act ("Designated Examining Authority"); and

(*2*) Be subject to the prohibitions against withdrawal of equity capital set forth in § 240.15c3–1(e), and to the prohibitions against reduction, prepayment and repayment of subordination agreements set forth in paragraph (b)(11) of § 240.15c3–1d, as if such broker or dealer's net capital were below the minimum standards specified by each of those paragraphs.

(D) If at any time there is a liquidating deficit in a specialist's market maker account, then the broker or dealer guaranteeing, endorsing or carrying listed options transactions in such specialist's market maker account may not extend any further credit in that account, and shall take steps to liquidate promptly existing positions in the account. The broker or dealer also shall transmit by the close of business of the following business day telegraphic or telephone facsimile notice to its Designated Examining Authority and the Designated Examining Authority of the specialist, if different from its own.

* * * * *

4. Section 240.15c3–1a is revised to read as follows:

§ 240.15c3–1a Options (Appendix A to 17 CFR 240.15c3–1).

(a) *Definitions.* (1) The term *unlisted option* shall mean any option not included in the definition of *listed option* provided in paragraph (c)(2)(x) of § 240.15c3–1.

(2) For purposes of this section, the term *option series* includes listed option contracts of the same type (either a call or a put) and exercise style, covering the same underlying security with the same exercise price, expiration date, and number of underlying units.

(3) For purposes of this Appendix A to § 240.15c3–1, the term *related instrument* within an option class or product group includes futures contracts and options on futures contracts covering the same underlying instrument. In relation to options on major market foreign currencies a related instrument within an option class also shall include forward contracts on the same underlying currency.

(4) For purposes of this Appendix A to § 240.15c3–1, the term *underlying instrument* includes long and short positions, as appropriate, covering the same major market foreign currency, the same security, other than an option contract (*underlying security*), or a security which is exchangeable for or convertible into the underlying security within a period of 90 days. If the conversion or exchange requires the payment of money or results in a loss upon conversion at the time when the security is deemed an *underlying instrument* for purposes of this Appendix A to § 240.15c3–1, the broker or dealer will deduct from net worth the full amount of the conversion loss or the amount required for the conversion or exchange. The term *underlying security* shall not be deemed to include futures contracts, options on futures contracts or unlisted products.

(5) For the purposes of this Appendix A to § 240.15c3–1, the term *product group* is two or more option classes, related instruments and underlying instruments in the same portfolio type for which it has determined a percentage of offsetting profits may be applied to losses at the same valuation point.

(b) Every broker or dealer shall deduct from net worth, in calculating net capital, the amount resulting from the computation required under the provisions of paragraph (b)(1) of this section, unless it elects to calculate the required deductions in accordance with the provisions of paragraph (b)(2) of this section.

Theoretical Pricing Charges

(1)(i) *Definitions.* (A) The terms *theoretical gains and losses* shall mean the gain and loss in the value of individual option series and the value of related instruments within that option's class, at ten equidistant intervals (*valuation points*) ranging from an assumed movement (both up and down) in the current market value of the underlying instrument equal to the percentage corresponding to the deductions otherwise required under

§ 240.15c3–1 for the underlying instrument. Theoretical gains and losses shall be calculated by The Options Clearing Corporation, or such other entity as the Commission may designate, using an approved theoretical options pricing model.

(B) The term *approved theoretical options pricing model* shall mean a mathematical model, previously provided in writing to the Commission, which is used by The Options Clearing Corporation to calculate theoretical gains and losses.

(C) The term *major market foreign currency* shall mean the currency of a sovereign nation whose short-term debt is rated in the highest category by at least two nationally recognized statistical rating organizations for which there is a substantial inter-bank forward currency market. For purposes of this section, the European Currency Unit (*ECU*) shall be deemed a major market foreign currency.

(D) The term *qualified stock basket* shall mean a set or basket of stock positions with an aggregate market value at least equal to the aggregate underlying value of a particular index option and related instrument within that index option's class, provided that the set or basket of stock represents no less than 90% of the capitalization for a high-cap or non-high-cap broad-based market index, or, in the case of a narrow-based index, no less than 100% of the capitalization for such narrow-based index.

(ii) With respect to positions involving listed options in a single specialist's market maker account, and, separately, with respect to positions involving listed option positions in its proprietary or other account, the broker or dealer shall group long and short positions into the following portfolio types:

(A) Equity options on the same underlying instrument and positions in that underlying instrument;

(B) Options on the same major market foreign currency, positions in that major market foreign currency and related instruments within those options' class;

(C) High-cap broad-based market index options, related instruments within an option class and qualified stock baskets on the same index;

(D) All other high-cap broad-based market index options and related instruments within the index option's class or product group;

(E) Non-high-cap broad based index options on the same index and related instruments within that index option's class and qualified stock baskets in the same index;

(F) All other non-high-cap broad-based market index options and related instruments within that index option's class or product group, and

(G) Narrow-based index options, related instruments within the index option's class and qualified stock baskets on the same index.

(iii) Before making the computation, each broker or dealer shall obtain from The Options Clearing Corporation the theoretical gains and losses for each options series and for the related instruments within those options' class in each specialist's market maker account guaranteed, endorsed or carried by a broker or dealer, or in the proprietary or other accounts of that broker or dealer.

(A) Upon receipt of the theoretical gains and losses, for each one of the portfolio types described above, the broker or dealer shall multiply the corresponding theoretical gains and losses at each of the ten equidistant valuation points by the number of positions held in a particular options series, the related instruments within those options class and the positions in the same underlying instrument.

(B) In determining the aggregate profit or loss for each portfolio type, the broker or dealer will be allowed the following offsets:

(*1*) Between options on the same underlying instrument, positions covering the same underlying instrument and related instruments within the options' class, 100% of a position's gain shall offset another position's loss at the same valuation point;

(*2*) Between high-cap broad-based market index options or related instruments within the option class and qualified stock baskets on the same index, 95% of gains shall offset losses at the same valuation point;

(*3*) Between narrow-based market index options or related instruments within the option class and qualified stock baskets on the same index, 95% of gains shall offset losses at the same valuation point;

(*4*) Among positions involving options series covering different high-cap broad-based index options within the same product group, 90% of the gain in a high-cap broad-based market index option and related instruments within that index option's class shall offset the loss at the same valuation point in a different high-cap broad-based market index option and related instruments within that index option's class;

(*5*) Among positions involving options series covering different non-high-cap broad-based index options within the same product group, 75% of the gain in a non-high-cap broad-based market index option and related instruments within that index option's class shall offset the loss at the same valuation point in another non-high-cap broad-based market index option and related instruments within that index option's class or product group; and

(*6*) Between non-high-cap broad-based market index options or related instruments within the same options class and qualified stock baskets on the same index, 95% of the gains shall offset losses at the same valuation point.

(C) For each portfolio type, the total deduction shall be the larger of:

(*1*) The amount for any of the ten equidistant valuation points representing the largest theoretical loss after applying the offsets provided above; or

(*2*) A minimum charge equal to one quarter (¼) point times the multiplier for each equity and index option contract and each related instrument within the option's class or product group, or $25 for each option on a major market foreign currency with the minimum charge for futures contracts and options on futures contracts adjusted for contract size differentials, not to exceed market value in the case of long positions in options and options on futures contracts; or

(*3*) In the case of portfolio types involving index options and related instruments offset by a qualified stock basket, there will be a minimum charge of 5% of the market value of the qualified stock basket for high-cap broad-based and narrow-based indexes; or

(*4*) In the case of portfolio types involving index options and related instruments offset by a qualified stock basket, there will be a minimum charge of 10% of the market value of the qualified stock basket for non-high-cap broad-based indexes.

Alternative Strategy Based Charges

(2) A broker or dealer may elect not to apply the method described in paragraph (b)(1) of this section and, instead, calculate adjustments to net worth in accordance with the provisions of this paragraph (b)(2).

(i) *Definitions.* (A) The term *intrinsic value* or *in-the-money amount* shall mean the amount by which the exercise value, in the case of a call, is less than the current market value of the underlying instrument, and, in the case of a put, is greater than the current market value of the underlying instrument.

(B) The term *out-of-the-money amount* shall mean the amount by which the exercise value, in the case of

a call, is greater than the current market value of the underlying instrument, and, in the case of a put, is less than the current market value of the underlying instrument.

(C) The term *time value* shall mean the current market value of an option contract that is in excess of its intrinsic value.

(ii) Every broker or dealer electing to calculate adjustments to net worth in accordance with the provisions of this paragraph (b)(2) must make the following adjustments to net worth:

(A) Add the time value of a short position in a listed option; and

(B) Deduct the time value of a long position in a listed option, which relates to a position in the same underlying instrument or in a related instrument within the option class or product group as recognized in the strategies enumerated in paragraph (b)(2)(iii)(D) of this section.

(iii) In computing net capital after the adjustments provided for in paragraph (b)(2)(ii) of this section, every broker or dealer shall deduct the percentages specified in this paragraph (b)(2)(iii) for all listed option positions, positions covering the same underlying instrument and related instruments within the options' class or product group. However, where computing the deductions required for commodity or securities positions, other than a listed option position, if said positions have no related listed option position the broker or dealer shall compute the required deductions for such commodity or securities positions separately.

Uncovered Short Calls

(A) Where a broker or dealer is short a call, deducting the percentage required by paragraphs (c)(2)(vi) (A) through (K) of § 240.15c3–1 of the current market value of the underlying instrument for such option reduced by the out-of-the-money amount, to the extent that such reduction does not operate to increase net capital. In no event shall this deduction be less than the greater of $250 for each short call option contract for 100 shares or 50% of the aforementioned percentage.

Uncovered Short Puts

(B) Where a broker or dealer is short a put, deducting the percentage required by paragraphs (c)(2)(vi) (A) through (K) of § 240.15c3–1 of the current market value of the underlying instrument for such option reduced by the out-of-the-money amount, to the extent that such reduction does not operate to increase net capital. In no event shall the deduction provided by this paragraph be less than the greater of $250 for each short put option contract for 100 shares or 50% of the aforementioned percentage.

Long Positions

(C) Where a broker or dealer is long puts or calls, deducting 50 percent of the market value of the net long put and call positions in the same options series.

Certain Security Positions With Offsetting Options

(D)(*1*) Where a broker or dealer is long a put for which it has an offsetting long position in the same number of units of the same underlying instrument, or in a related instrument within the option class or product group covering the same number of units of the same underlying instrument, deducting the percentage required by paragraphs (c)(2)(vi) (A) through (K) of § 240.15c3–1 of the current market value of the underlying instrument for the long offsetting position, not to exceed the out-of-the money amount. In no event shall the deduction provided by this paragraph be less than $25 for each option contract for 100 shares, provided that the minimum charge need not exceed the intrinsic value of the option.

(*2*) Where a broker or dealer is long a call for which it has an offsetting short position in the same number of units of the same underlying instrument, or in a related instrument within the option class or product group covering the same number of units of the same underlying instrument, deducting the percentage required by paragraphs (c)(2)(vi) (A) through (K) of § 240.15c3–1 of the current market value of the underlying instrument for the short offsetting position, not to exceed the out-of-the-money amount. In no event shall the deduction provided by this paragraph be less than $25 for each option contract for 100 shares, provided that the minimum charge need not exceed the intrinsic value of the option.

(*3*) Where a broker or dealer is short a call for which it has an offsetting long position in the same number of units of the same underlying instrument, or in a related instrument within the option class or product group covering the same number of units of the same underlying instrument, deducting, the percentage required by paragraphs (c)(2)(vi) (A) through (K) of § 240.15c3–1 of the current market value of the underlying instrument for the offsetting long position reduced by the short call's intrinsic value. In no event shall the deduction provided by this paragraph be less than $25 for each option contract for 100 shares.

(c) With respect to transactions involving unlisted options, every broker or dealer shall determine the value of unlisted option positions in accordance with the provision of paragraph (c)(2)(i) of § 240.15c3–1, and shall deduct the percentages of all securities positions or unlisted options in the proprietary or other accounts of the broker or dealer specified in this paragraph (c). However, where computing the deduction required for a security position as if the security position had no related unlisted option position and positions in unlisted options as if uncovered would result in a lesser deduction from net worth, the broker or dealer may compute such deductions separately.

Uncovered Calls

(1) Where a broker or dealer is short a call, deducting, 15 percent (or such other percentage required by paragraphs (c)(2)(vi) (A) through (K) of § 240.15c3–1) of the current market value of the security underlying such option reduced by any excess of the exercise value of the call over the current market value of the underlying security. In no event shall the deduction provided by this paragraph be less than $250 for each option contract for 100 shares.

Uncovered Puts

(2) Where a broker or dealer is short a put, deducting 15 percent (or such other percentage required by paragraphs (c)(2)(vi) (A) through (K) of § 240.15c3–1) of the current market value of the security underlying the option reduced by any excess of the market value of the underlying security over the exercise value of the put. In no event shall the deduction provided by this paragraph be less than $250 for each option contract for 100 shares.

Covered Calls

(3) Where a broker or dealer is short a call and long equivalent units of the underlying security, deducting 15 percent (or such other percentage required by paragraphs (c)(2)(vi) (A) through (K) of § 240.15c3–1) of the current market value of the underlying security reduced by any excess of the current market value of the underlying security over the exercise value of the call. No reduction under this paragraph shall have the effect of increasing net capital.

Covered Puts

(4) Where a broker or dealer is short a put and short equivalent units of the underlying security, deducting 15 percent (or such other percentage required by paragraphs (c)(2)(vi) (A) through (K) of § 240.15c3–1) of the

current market value of the underlying security reduced by any excess of the exercise value of the put over the market value of the underlying security. No such reduction shall have the effect of increasing net capital.

Conversion Accounts

(5) Where a broker or dealer is long equivalent units of the underlying security, long a put written or endorsed by a broker or dealer and short a call in its proprietary or other accounts, deducting 5 percent (or 50 percent of such other percentage required by paragraphs (c)(2)(vi) (A) through (K) of § 240.15c3–1) of the current market value of the underlying security.

(6) Where a broker or dealer is short equivalent units of the underlying security, long a call written or endorsed by a broker or dealer and short a put in his proprietary or other accounts, deducting 5 percent (or 50 percent of such other percentage required by paragraphs (c)(2)(vi) (A) through (K) of § 240.15c3–1) of the market value of the underlying security.

Long Options

(7) Where a broker or dealer is long a put or call endorsed or written by a broker or dealer, deducting 15 percent (or such other percentage required by paragraphs (c)(2)(vi) (A) through (K) of § 240.15c3–1) of the market value of the underlying security, not to exceed any value attributed to such option in paragraph (c)(2)(i) of § 240.15c3–1.

Dated: March 15, 1994.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–6413 Filed 3–18–94; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 351

[Docket No. 82N–0291]

RIN 0905–AA06

Vaginal Drug Products for Over-the-Counter Human Use; Withdrawal of Advance Notice of Proposed Rulemaking; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of withdrawal of advance notice of proposed rulemaking; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice of withdrawal of advance notice of proposed rulemaking that appeared in the **Federal Register** of February 3, 1994 (59 FR 5226). The document announced the withdrawal of the advance notice of proposed rulemaking that would have established conditions under which over-the-counter (OTC) vaginal drug products are generally recognized as safe and effective and not misbranded. The document was published with some errors. This document corrects those errors.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD–810), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5000.

In FR Doc. 94–2263, appearing on page 5226 in the **Federal Register** of Thursday, February 3, 1994, the following corrections are made:

1. On page 5229, in the third column, in reference 4, in the first line, "Pidieu" is corrected to read "Ridley".

2. On page 5230, in the first column, in reference 7, in the first line, "Gardner" is corrected to read "Giarola", and in the second line, "Multicenter" is corrected to read "Multicentre", and "Ta-Ro-Cap" is corrected to read "Ta-Ro Cap".

Dated: March 14, 1994.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 94–6502 Filed 3–18–94; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Part 291

[Docket No. R–94–1693; FR–3531–P–01]

RIN 2502–AG15

Single Family Property Disposition Program; Closing Agent Escrow Accounts

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the regulations at 24 CFR 291 governing the Single Family Property Disposition program to require HUD contract closing agents, notwithstanding any State or local law to the contrary, to establish separate escrow accounts for all proceeds of the sale of HUD-acquired homes in the name of the contractor as "Trustee for the Department of Housing and Urban Development." The proposed rule would also prohibit the commingling of proceeds from the sale with non-HUD funds. The proposed rule would codify a contractual provision in current contracts between HUD and its closing agents.

DATES: Comments due date: May 20, 1994.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Office of the General Counsel, Rules Docket Clerk, 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 during regular business hours (7:30 a.m. to 5:30 p.m. Eastern Time) at the above address.

FOR FURTHER INFORMATION CONTACT: Courtland Wilson, Acting Director, Single Family Property Disposition, room 9172, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410–0500; telephone (202) 708–0740; TDD for hearing- and speech-impaired (202) 708–4594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The disposition of single family properties that are acquired by HUD or are otherwise in HUD's custody is governed under 24 CFR part 291. Under § 291.130(c) of those regulations, HUD contracts with qualified firms or persons to administer the closings for the sale of the properties. These "closing agents" are paid by HUD to conduct the closings at no cost to purchasers of the properties. The functions of the closing agents, which are specified in § 291.130(c)(3), include "collecting and disbursing funds related to the sale, including wiring the net proceeds to HUD's account * * *."

Under HUD's contracts with the closing agents, the agents are obligated to establish a separate non-interest bearing escrow account, as trustee for the Department of Housing and Urban Development, for deposit of the proceeds and to facilitate the wire transfer of the funds to the U. S. Treasury. As a result of the requirement for a separate escrow account, closing agents are prohibited from commingling

any funds collected for HUD with funds they may collect in the conduct of any other non-HUD closings.

It has come to the attention of the Department that some States or local governments may have laws that conflict with the contract requirements, such as requiring closing agents to deposit all proceeds of sales closings conducted by the agents in a single interest-bearing account, and to remit the interest to the State or local government for use in housing or other government programs. This proposed rule would amend § 291.130(c) to require by regulation what has heretofore been contractually required. The amendment, which explicitly preempts any State or local law to the contrary, would prohibit the commingling of proceeds collected by the closing agent for HUD with any non-HUD funds. The proposed rule also would require the closing agent to establish a separate non-interest bearing account for the deposit of funds collected for HUD in the name of the agent as Trustee for HUD.

The Department believes this requirement is fundamental to the protection and integrity of government funds, and therefore should be codified as regulation. This would also remedy a situation that places many of its closing agents in the position of not being able to reconcile their duties under their contracts with HUD, and under State or local law.

Other Matters

Paperwork Reduction Act

The changes in this proposed rule would not affect the information collection requirements for the Single Family Property Disposition program previously approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Executive Order 12866, Regulatory Planning and Review

This proposed rule was approved by the OMB as a significant rule under Executive Order 12866, which was signed by the President on September 30, 1993.

National Environmental Policy Act

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding is available for public inspection between 7:30 a.m. and 5.30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, room 10276, 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 preemption of State or local law in § 291.130(c), with regard to proceeds of sales collected by closing agents, is subject to review under Section 4 of the Order, which prescribes special requirements for the preemption of State law by Federal statutes and regulations. (On August 22, 1988, HUD, by **Federal Register** Notice (53 FR 31926), implemented Executive Order 12612 for the policy formulation and implementation functions of HUD.)

When determining whether grounds for regulatory preemption exist under the Order, the Department considers whether there is firm and palpable evidence that compliance with State law stands as an obstacle to the accomplishment and execution of the full Federal purposes and objectives. The Department's objective in preventing the commingling of HUD sale proceeds with non-HUD proceeds is protection of the integrity of funds belonging to the Mutual Mortgage Insurance Fund. The requirements concerning separate accounts for HUD sales proceeds were established in 1990 as a result of very large losses to the insurance fund because of embezzlement of funds by closing agents. These losses were very detrimental to the accomplishment of the goals of the Department. The Department believes it has sufficient grounds for preemption under the Order since compliance with State laws requiring commingling would impose an obstacle to the Federal objective of protecting the insurance fund from loss.

Executive Order 12606, the Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this proposed rule would not have a significant impact on family formation, maintenance, and general well-being, and thus is not subject to review under the Order. The proposed rule governs the procedures under which the Department sells acquired single family property. Any effect on the family would be indirect and insignificant.

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 the proposed rule would not have a significant economic impact on a substantial number of small entities. The proposed rule governs the procedures under which the Department sells acquired single family property.

Semiannual Agenda of Regulations

This proposed rule was listed as item number 1509 in the Department's Semiannual Agenda of Regulations published at 58 FR 56402, 56424 on October 25, 1993, under Executive Order 12291 and the Regulatory Flexibility Act.

List of Subjects in 24 CFR Part 291

Community facilities, Conflict of interests, Homeless, Lead poisoning, Low and moderate income housing, Mortgages, Reporting and recordkeeping requirements, Surplus government property.

For the reasons set forth in the preamble, part 291 of title 24 of the Code of Federal Regulations would be amended to read as follows:

PART 291—DISPOSITION OF HUD-ACQUIRED SINGLE FAMILY PROPERTY

1. The authority citation for part 291 would be revised to read as follows:

Authority: 12 U.S.C. 1709 and 1715(b); 42 U.S.C. 1441, 1551a, and 3535(d).

2. Section 291.130 would be amended by adding a new paragraph (c)(4) to read as follows:

§ 291.130 Closing.

* * * * *

(c) * * *

(4) Notwithstanding any State or local law to the contrary, the closing agent must establish a separate non-interest bearing escrow account for the proceeds of all HUD sales in the name of the closing agent with the restriction "As Trustee for the U.S. Department of Housing and Urban Development." Sale proceeds collected for HUD must not be commingled with any other funds not designated for HUD. On the day of closing or the next banking day, the closing agent must deposit the sales proceeds and initiate the request for wire transfer of the proceeds due HUD via FEDWIRE. If the bank does not immediately wire the deposited sales proceeds, the closing agent must obtain an official dated receipt for the deposit and wire transfer request. At the time of the actual wire transfer, the closing agent must obtain a properly dated confirmation of the wire transfer, to

verify proper and timely transfer of funds.

* * * * *

Dated: March 15, 1994.

Nicolas P. Retsinas,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 94–6483 Filed 3–18–94; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 950

Wyoming Permanent Regulatory Program

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

ACTION: Proposed rule; public comment period on proposed extension request.

SUMMARY: OSM is announcing the receipt of a request regarding required amendments to the Wyoming permanent regulatory program (the Wyoming program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Wyoming is requesting OSM to extend the required amendment time frames at 30 CFR 950.16 (bb) through (gg).

This document sets forth the times and locations that the Wyoming program and the proposed extension request to that program are available for public inspection and the comment period during which interested persons may submit written comments on the proposed extension request.

DATES: Written comments must be received by 4 p.m., m.d.t. April 20, 1994.

ADDRESSES: Written comments should be mailed or hand delivered to Guy V. Padgett at the address listed below.

Copies of the Wyoming program, the proposed extension request, and all written comments received in response to this document 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 extension request by contacting OSM's Casper Field Office.

Guy V. Padgett, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement; 100 East B Street, room 2128; Casper, WY; 82601–1918. Telephone: (307) 261–5776.

Dennis Hemmer, Director, Wyoming Department of Environmental Quality; Herschler Building, Fourth floor West; 122 West 25th Street; Cheyenne, Wyoming; 82002. Telephone: (307) 777–7758.

FOR FURTHER INFORMATION CONTACT: Guy V. Padgett; Telephone (307) 261–5776.

SUPPLEMENTARY INFORMATION:

I. Background on the Wyoming Program

On November 26, 1980, the Secretary of the Interior conditionally approved the Wyoming program. General background information on the Wyoming program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Wyoming program can be found in the November 26, 1980, **Federal Register** (45 FR 78637). Subsequent actions concerning Wyoming's program and program amendments can be found at 30 CFR 950.12, 950.15, and 950.16.

II. Discussion of Proposed Extension

On February 28, 1994, the State of Wyoming submitted a request to extend the time frames at 30 CFR 950.16 (bb) through (gg), as codified in the January 24, 1994, **Federal Register** (59 FR 3521), to allow the State time to conduct "negotiated rule making" pursuant to Wyoming's program. At the conclusion of the "negotiated rule making" Wyoming hopes to submit a package to OSM that would include any legislation passed in the 1994 session, the negotiated rules agreed to by all parties, and any needed changes in legislation required to fully implement the agreement by the parties. Wyoming stated that it "anticipates submitting this package by the end of 1994."

Wyoming has pending legislation (Senate File No. 29) proposed to address some of the required amendments as submitted to OSM for review as an informal amendment dated February 4, 1994 (Administrative record No. WY–26–2). If approved the legislation would remove the definitions and shrub standards promulgated in Enrolled Act No. 86 [Senate File No. 39].

OSM is now considering Wyoming's request to extend the time frames and is seeking public comment on whether the proposed extension can and should be granted.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed extension request satisfies the applicable program approval criteria of 30 CFR 732.15. If the extension request is deemed adequate, it will become part of the Wyoming program.

Written Comments

Written comments should be specific, pertain only to the issue proposed in this rulemaking, and include explanations in support of the commentor's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Casper Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

IV. Procedural Determinations

Compliance With Executive Order 12866

This proposed rule is exempted from review by the office of Management and Budget under Executive Order 12866 (Reduction of Regulatory Burden).

Compliance With 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 1255) 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.

Compliance With the 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)).

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.*).

Compliance With the 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 data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 950

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 15, 1994.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

[FR Doc. 94–6494 Filed 3–18–94; 8:45 am]

BILLING CODE 4310–05–M

POSTAL SERVICE

39 CFR Part 111

Revisions to Standards Related To Deposit and Delivery of Mail

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: The Postal Service proposes changes in several Domestic Mail Manual (DMM) standards concerning how customers' mail is deposited with or delivered by the Postal Service. These changes to Domestic Mail Manual (DMM) standards arise from suggestions presented during the 1993 DMM redesign project.

This proposal focuses on matters related to the deposit of mail by Express Mail or Priority Mail drop shipment, on the delivery of accountable mail, on conditions for use of post office box service and general delivery, and on the elimination of firm holdout service.

DATES: Comments must be received on or before May 5, 1994.

ADDRESSES: Written comments should be mailed or delivered to Manager, Mailing Standards, USPS Headquarters, 475 L'Enfant Plaza SW., Washington, DC 20260–2419. Copies of all written comments will be available for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, in room 5610 at the above address.

FOR FURTHER INFORMATION CONTACT: Leo F. Raymond, (202) 268–5199.

SUPPLEMENTARY INFORMATION: The Postal Service proposes to make the following changes to the DMM.

1. D910.1.6 and D920.1.7 and 4.6 are amended to eliminate the specific limitation on the number of post office boxes that may be assigned to one party. In place of this limit, language is added to allow local postmasters latitude to vary post office box service limitations based on local conditions. For example, if demand for boxes is high, the postmaster could refuse to assign additional boxes to one customer if the postmaster determined that other customers (such as those on a waiting list) would likely be unable to obtain post office box service as a result. Conversely, the postmaster with low demand for box service would be able to assign more than five boxes per customer. The postmaster could also use customer service expectations and mail volume as criteria for limiting or expanding post office box availability. (D920.1.6 already allows the postmaster to limit caller service.)

Provisions are also added to allow customers whose mail volume overflows the capacity of the box(es) already assigned the option of applying for additional post office box service (if available) to which the excess volume can be addressed.

Fees for post office box and caller service are not affected by these proposals.

2. D910.4.8 and D930.1.0 are amended to allow postmasters to limit the use of general delivery service under specific conditions. As with the proposals above, these revisions are to allow postmasters reasonable latitude in offering service based on local conditions. It is not the intent of the Postal Service to deprive current or potential general delivery customers of access to this form of delivery service. Rather, this proposal seeks to allow the postmaster's assessment of local conditions to predicate extension or limitation of general delivery service in accordance with local needs.

3. D930.2.0 is amended to eliminate firm holdout service. This traditional form of general delivery functionally resembles caller service, for which the Postal Service is entitled to a fee. Elimination of firm holdout service should not effectively limit customers' access to delivery service, nor limit their options for other forms of delivery: Rural or city carrier service may be used where available, caller service, or post office box service may be used. Current firm holdout customers would have the same options as other customers with comparable delivery needs. Firm holdout customers would not be allowed to redesignate themselves as general delivery customers unless the customer meets the eligibility criteria for general delivery service. If the proposal is adopted, the actual date for termination of the service would be set at 90 days after publication of the final rule to allow for an orderly adjustment of service to current firm holdout customers.

4. P070.6.2 is amended to reduce the 10-day advance notice requirement for adding destinations to existing Express Mail or Priority Mail drop shipment arrangements to three business days. The requirement for a 10-day notice at the initiation of a drop shipment program is retained. While this proposal is more accommodating to customers, it does not change the realities that bear on revisions to transportation or handling of drop shipments. As a result, it remains both reasonable and necessary for the Postal Service to continue to require at least three business days advance notice, and for drop shipment customers to be as timely and informative as possible about their service needs to ensure that those needs can be met.

5. D500, S911.4.0, S912.3.0, S913.3.0, S915.3.0, S916.3.0, S917.3.0, and S921.4.0 are amended to relocate common requirements to new D042.1.7. That section includes a proposed new standard that requires the person signing for an item to print as well as sign his or her name. This proposed change will apply to Express Mail and mail receiving registered, certified, insured, return receipt, restricted delivery, return receipt for merchandise, and COD service, and is intended to improve the usefulness of the record of delivery that demonstrates that the mail was delivered and the service rendered. Whether on a Postal Service delivery record or on a receipt returned to the sender, an illegible signature may compromise the value of the service for which the sender paid; the proposed new standard is designed to avoid that potential problem. Because most persons can provide a printed name that is more legible than their handwritten signature, the Postal Service believes the former will be valuable to the sender in those instances when it becomes necessary to identify the person who

received an accountable mailpiece. Concurrently, the proposed language in D042.1.7 consolidates and standardizes generally preexisting language, and includes a definition of "recipient," a description of limitations on the recipient's access to the mail prior to delivery, and a notice that positive identification might be required by the Postal Service when the recipient is not known to the Postal Service employee delivering the item. To allow for an orderly implementation of those provisions that represent new requirements, if adopted, the actual date for their implementation would be set at 90 days after publication of the final rule.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites comments on the following proposed revisions of the DMM, incorporated by reference in the Code of Federal Regulations. See 39 CFR part 111.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001-3011, 3201-3219, 3403-3406, 3621, 5001.

2. Revise the following units of the Domestic Mail Manual as noted below:

D042 CONDITIONS OF DELIVERY

1.0 General Conditions

* * * * *

1.7 Express Mail and Accountable Mail

The following specific conditions also apply to the delivery of Express Mail and accountable mail (registered, certified, insured for more than $50, or COD, as well as mail for which a return receipt or a return receipt for merchandise is requested or for which the sender has specified restricted delivery):

a. The recipient (addressee or addressee's representative) may obtain the sender's name and address, and may look at the mailpiece while held by the USPS employee before accepting delivery and endorsing the delivery receipt.

b. The mailpiece must not be opened or given to the recipient before the recipient signs *and* legibly prints his or her name on the delivery receipt (and return receipt, if applicable) and returns the receipt(s) to the USPS employee.

c. Suitable identification can be required of the recipient (if not known to the USPS employee) before delivery of the article.

d. When delivery is not restricted at the sender's request, mail addressed to a person at a hotel, apartment house, etc., may be delivered to any person in a supervisory or clerical position to whom mail for that location is usually delivered.

e. USPS responsibility ends at the time the article is delivered to the recipient (or another party subject to 1.7d and 2.0 through 8.0).

f. Notices are left for articles that cannot be delivered. If an article is not called for or redelivery is not requested, the article is returned to the sender after 15 days (30 days for COD) unless the sender specifies fewer days on the mail.

g. A stamp approved by the postmaster may be used to provide the signature and name of the individual or organization receiving the article. To obtain approval for such a stamp, the company must submit a written statement to the postmaster that the person whose name appears on the stamp is the same as the person who is authorized to accept accountable mail, accompanied by a sample of the authorized employee's signature that can be verified against that appearing on the stamp. (On mail addressed to a federal or state official, the stamp need only show the name and location of the accepting organization.) After approval, the stamped signature and name are acceptable only if a clean legible impression is provided.

* * * * *

D500 EXPRESS MAIL

* * * * *

4.0 Delivery

Delivery of Express Mail is subject to the standards in D042.

* * * * *

D910 POST OFFICE BOX SERVICE

1.0 Basic Information

* * * * *

1.6 Limitation on Service

The postmaster may require a boxholder to use caller service based on the volume of mail received by the customer, the level of service requested by the customer, or the availability of boxes to meet demand. Existing post office box customers will not be allowed to use additional boxes at post offices having a waiting list for post office boxes. Not more than once per semiannual payment period, a customer who was required to use caller service based on the volume of mail received may submit a written request to the postmaster for a new determination of whether sufficient volume remains to still require use of caller service.

* * * * *

3.0 Use

* * * * *

3.5 Overflow

When mail for a customer's post office box(es) exceeds the capacity of the box(es) on 12 of any 20 consecutive business days (excluding Saturdays, Sundays, and national holidays), the customer must use caller service, change to a larger box, or use one or more additional boxes (subject to availability) to which mail will be addressed.

* * * * *

4.0 Fees

* * * * *

4.8 General Delivery

[Replace the second sentence with the following:]

For other customers, general delivery may be provided subject to the standards for that service.

* * * * *

D920 CALLER SERVICE

1.0 Basic Information

* * * * *

1.7 Uses

Subject to D910, when mail for a customer's post office box(es) exceeds the capacity of the box(es) on 12 of any 20 consecutive business days (excluding Saturdays, Sundays, and national holidays), or when the customer seeks multiple caller service separations, the postmaster can require the customer to use caller service, change to a larger box, or use one or more additional boxes (subject to availability) to which mail will be addressed. Not more than once per semiannual payment period, a customer who was required to use caller service based on the volume of mail received may submit a written request to the postmaster for a new determination of whether sufficient volume remains to still require use of caller service.

* * * * *

4.0 Fees

* * * * *

4.6 Box Numbers

[Delete the last sentence.]

* * * * *

D930 GENERAL DELIVERY

1.0 Basic Information

1.1 Purpose

General delivery is intended for use primarily at:

a. Post offices without carrier delivery service.

b. Non-city delivery offices for customers who prefer not to use post office box service and for whom use of post office box or caller service, or delivery by carrier, would be an unreasonable inconvenience.

c. Any post office to serve transients and customers not permanently located.

1.2 Restrictions on Service

Postmasters may restrict the use of general delivery by customers:

a. Who cannot present suitable identification.

b. At post offices having city carrier service, even if customers neither advise the post office of their delivery address nor obtain post office box or caller service.

c. Whose volume of mail or level of service (e.g., holding mail) cannot be reasonably accommodated.

1.3 Delivery to Addressee

General delivery customers can be required to present suitable identification before mail is given to them.

1.4 Holding Mail

General delivery mail is held for no more than 30 days, unless a shorter period is requested by the sender. Subject to 1.2, general delivery mail may be held for longer periods if requested by the sender or addressee.

2.0 Firm Holdouts

[Delete the section.]

P072 EXPRESS MAIL AND PRIORITY MAIL DROP SHIPMENT

[Note: P072.1.2 will be renumbered P070.6.2 in DMM issue 47 (4-10-94).]

1.0 Permits and Authorizations

* * * * *

1.2 Listing Destination Offices

[In the second sentence, replace "10 workdays" with "3 business days."]

* * * * *

S911 REGISTERED MAIL

* * * * *

4.0 Delivery Conditions

4.1 Basic Conditions

Delivery of registered mail is subject to the standards in D042. The postmaster can require the addressee to call for registered mail at the post office if delivery by carrier would not be safe.

[Delete existing 4.2 (the deleted material is relocated to D042.1.7); renumber 4.3 as 4.2.]

* * * * *

S912 CERTIFIED MAIL

* * * * *

3.0 Delivery

[Replace existing 3.1 and 3.2 with the following:]

Delivery of certified mail is subject to the standards in D042.

* * * * *

S913 INSURED MAIL

* * * * *

3.0 Delivery

[Replace existing 3.1 and 3.2 with the following:]

A parcel insured for $50 or less is delivered as ordinary mail. Delivery of insured mail is subject to the standards in D042.

* * * * *

S915 RETURN RECEIPTS

* * * * *

3.0 Delivery

[Replace existing 3.1 and 3.2 with the following:]

Delivery of mail for which a return receipt is requested is subject to the standards in D042.

* * * * *

S916 RESTRICTED DELIVERY

* * * * *

3.0 Delivery

3.1 Conditions

[At the end of the first sentence, replace "except that" with "subject to D042 and these exceptions."]

* * * * *

S917 RETURN RECEIPT FOR MERCHANDISE

* * * * *

3.0 Delivery

[Replace existing 3.1 with the following:]

Delivery of return receipt for merchandise mail is subject to the standards in D042.

* * * * *

S921 COLLECT ON DELIVERY (COD) MAIL

* * * * *

4.0 Delivery

[Delete existing 4.2 and 4.3; renumber existing 4.1 and 4.4 as 4.2 and 4.3; insert new 4.1 as follows:]

4.1 Basic Conditions

Delivery of COD mail is subject to the standards in D042.

* * * * *

An appropriate amendment to 39 CFR 111.3 to reflect these changes will be published if the proposal is adopted.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 94–6313 Filed 3–18–94; 8:45 am]

BILLING CODE 7710–12–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OAQPS CA 13–13–6194; FRL–4852–2]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; San Joaquin Valley Unified Air Pollution Control District et al.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA is proposing a limited approval and limited disapproval of revisions to the California State Implementation Plan (SIP) which concern the control of volatile organic compound (VOC) emissions from crude oil production wells where production has been enhanced by steam injection, and during the transfer of organic liquids between storage units and delivery vessels. The intended effect of proposing limited approval and limited disapproval of these rules is to regulate emissions of VOCs in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA's final action on this notice of proposed rulemaking (NPR) will incorporate these rules into the federally approved SIP. EPA has evaluated each of these rules and is proposing a simultaneous limited approval and limited disapproval under provisions of the CAA regarding EPA actions on SIP submittals and general rulemaking authority because these revisions, while strengthening the SIP, also do not fully meet the CAA provisions regarding plan submissions and requirements for nonattainment areas.

DATES: Comments must be received on or before April 20, 1994.

ADDRESSES: Comments may be mailed to: Daniel A. Meer, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Copies of the rule revisions and EPA's evaluation report of each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95814.

San Joaquin Valley Unified Air Pollution Control District, 1999 Tuolumne Street, suite #200, Fresno, CA 93721.

Kern County Air Pollution Control District, 2700 "M" Street, Suite 290, Bakersfield, CA 93301.

South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765–4182.

FOR FURTHER INFORMATION CONTACT: Mae Wang, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1200.

SUPPLEMENTARY INFORMATION:

Applicability

The rules being acted on in this document are: San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) Rule 465.1, Steam-Enhanced Crude Oil Production Well Vents; Kern County Air Pollution Control District (KCAPCD) Rule 411.1, Steam-Enhanced Crude Oil Production Well Vents; and South Coast Air Quality Management District (SCAQMD) Rule 462, Organic Liquid Loading. These rules were submitted by the California Air Resources Board (CARB) to EPA on January 28, 1992, May 30, 1991, and May 13, 1991, respectively.

Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 CAA or pre-amended act), that included the Los Angeles-South Coast Air Basin, and the San Joaquin Valley Area which encompassed the following eight air pollution control districts (APCDs): Fresno County APCD, Kern County APCD,[1] Kings County APCD, Madera County APCD, Merced County APCD, San Joaquin County APCD, Stanislaus County APCD, and Tulare County APCD. 43 FR 8964, 40 CFR 81.305. Because some of these areas were unable to meet the statutory attainment date of December 31, 1982, California requested under section 172(a)(2), and EPA approved, an extension of the attainment date to December 31, 1987.[2] 40 CFR 52.238. On May 26, 1988, EPA notified the Governor of California, pursuant to section 110(a)(2)(H) of the pre-amended Act, that the portions of the California SIP associated with the SCAQMD and the above districts were inadequate to attain and maintain the ozone standard, and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. In amended section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone and established a deadline of May 15, 1991 for states to submit corrections of those deficiencies.

On March 20, 1991, the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) was formed. The SJVUAPCD has authority over the San Joaquin Valley Air Basin which includes all of the above eight counties except for the Southeast Desert Air Basin portion of Kern County. Thus, Kern County Air Pollution Control District (KCAPCD) still exists, but only has authority over the Southeast Desert Air Basin portion of Kern County.

Section 182(a)(2)(A) applies to areas designated as nonattainment prior to enactment of the amendments and classified as marginal or above as of the date of enactment. It requires such areas to adopt and correct RACT rules pursuant to pre-amended section 172(b) as interpreted in pre-amendment guidance.[3] EPA's SIP-Call used that guidance to indicate the necessary corrections for specific nonattainment areas. The South Coast Air Basin is classified as extreme, and the San Joaquin Valley Area is classified as serious. Therefore, the SCAQMD and the APCDs found in the San Joaquin Valley Air Basin (now collectively known as the SJVUAPCD) were subject to the RACT fix-up requirement and the May 15, 1991 deadline.[4] KCAPCD was subject to EPA's SIP-Call, but was not subject to the RACT fix-up requirement and the May 15, 1991 deadline.[5]

The State of California submitted many revised rules to EPA for incorporation into its SIP on May 13, 1991, May 30, 1991 and January 28, 1992, including the rules being acted on in this document. This document addresses EPA's proposed action for the following rules: SJVUAPCD Rule 465.1, adopted by the SJVUAPCD on September 19, 1991; KCAPCD Rule 411.1, adopted by the KCAPCD on May 6, 1991; and SCAQMD Rule 462, adopted by the SCAQMD on December 7, 1990. SJVUAPCD Rule 465.1 was determined to be complete on April 3, 1992, and KCAPCD Rule 411.1 and SCAQMD Rule 462 were determined to be complete on July 10, 1991 pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51, appendix V[6] and are being proposed for limited approval and limited disapproval.

SJVUAPCD Rule 465.1 and KCAPCD Rule 411.1 control the emission of VOCs from crude oil production wells where production has been enhanced by steam injection. SCAQMD Rule 462 controls emissions of VOCs during the transfer of organic liquids between storage tanks and delivery vessels. VOCs contribute to the production of ground level ozone and smog. These rules were originally adopted as part of the districts' efforts to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and have been revised in response to EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement. The

[1] At that time, Kern County included portions of two air basins: The San Joaquin Valley Air Basin and the Southeast Desert Air Basin. The San Joaquin Valley Air Basin portion of Kern County was designated as nonattainment, and the Southeast Desert Air Basin portion of Kern County was designated as unclassified. See 40 CFR 81.305 (1991).

[2] This extension was not requested for the following counties: Kern, Kings, Madera, Merced and Tulare. Thus, the attainment date for these counties remained December 31, 1982.

[3] Among other things, the pre-amendment guidance consists of those portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice" (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988); and the existing control technique guidelines (CTGs).

[4] The SCAQMD and the SJVUAPCD retained their designations of nonattainment and were classified by operation of law pursuant to section 107(d) and section 181(a) upon the date of enactment of the Clean Air Act Amendments of 1990. See 56 FR 56694 (November 6, 1991).

[5] KCAPCD was not subject to the RACT fix-up requirement and the May 15, 1991 deadline because the Southeast Desert Air Basin portion of Kern County was not a pre-enactment nonattainment area, and thus, was not automatically designated nonattainment on the date of enactment of the Clean Air Act Amendments of 1990. (See section 107(d) and section 182(a)(2)(A) of the Clean Air Act Amendments of 1990.) However, the KCAPCD is still subject to the requirements of EPA's SIP-Call because the SIP-Call included all of Kern County. The substantive requirements of the SIP-Call are the same as those of the statutory RACT fix-up requirement.

[6] EPA adopted completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

following is EPA's evaluation and proposed action for these rules.

EPA Evaluation and Proposed Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy guidance documents listed in footnote 3. Among those provisions is the requirement that a VOC rule must, at a minimum, provide for the implementation of RACT for stationary sources of VOC emissions. This requirement was carried forth from the pre-amended Act.

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guideline (CTG) documents which specify the minimum requirements that a rule must contain in order to be approved into the SIP. The CTGs are based on the underlying requirements of the Act and specify the presumptive norms for what is RACT for specific source categories. Under the CAA, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to "fix-up" their RACT rules. See section 182(a)(2)(A). The CTG documents applicable to SCAQMD Rule 462, Organic Liquid Loading, are entitled: Control of Hydrocarbons from Tank Truck Gasoline Loading Terminals, EPA–450/2–77–026; Control of Volatile Organic Compound Leaks from Gasoline Tank Trucks and Vapor Collection Systems, EPA–450/2–78–051; and Control of Volatile Organic Emissions from Bulk Gasoline Plants, EPA–450/2–77–035. For some source categories, such as steam-enhanced crude oil production wells, EPA did not publish a CTG. In such cases, the District will make a determination of what controls are required to satisfy the RACT requirement, by reviewing the operations of facilities with the affected source category. In that review, the technological and economic feasibility of the proposed controls were considered. Additionally, for both CTG and non-CTG categories, the Districts may rely on EPA policy documents, such as the Blue Book, to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

SJVUAPCD Rule 465.1, Steam-Enhanced Crude Oil Production Well Vents, is a revision of current SIP approved rules from two of the eight districts which combined to form SJVUAPCD. The two SIP approved rules are Fresno Rule 413.1, Steam Drive Well Vents—Crude Oil Production, and Kern Rule 411.1, Steam Drive Wells—Crude Oil Production.

SJVUAPCD Rule 465.1 and KCAPCD's submitted Rule 411.1 are nearly identical. These rules contain the following revisions from the current SIP rules:

1. Added definitions, recordkeeping, and test methods.
2. Deleted emissions averaging and emissions offsetting.
3. Added limited exemptions and an allowable leak schedule.
4. Revised compliance schedules.

KCAPCD Rule 411.1 also specifies a more stringent emissions reduction requirement than its current SIP rule.

SCAQMD Rule 462, Organic Liquid Loading, contains the following significant changes from the current SIP rule:

1. Added definitions and recordkeeping requirements.
2. Deleted Executive Officer discretion in approving equivalent control systems.
3. Added more stringent loading requirements and organic vapor emissions limit.

EPA has evaluated these rules for consistency with the CAA, EPA regulations, and EPA policy and has found that the revisions address and correct many deficiencies previously identified by EPA. These corrected deficiencies have resulted in clearer, more enforceable rules. Furthermore, the addition of more stringent standards in KCAPCD submitted Rule 411.1 and SCAQMD Rule 462 should lead to more emission reductions.

Although these rules will strengthen the SIP, they still contain deficiencies which were required to be corrected pursuant to the section 182(a)(2)(A) requirement of part D of the CAA. SJVUAPCD Rule 465.1 and KCAPCD 411.1 have similar deficiencies associated with lack of clarity in specifying rule applicability, an unapprovable provision which exempts equipment modifications from New Source Review, and insufficient recordkeeping requirements. SCAQMD Rule 462 lacks clarity in specifying source applicability, and references unapproved and insufficient test methods. A detailed discussion of rule deficiencies can be found in the Technical Support Document for each rule which is available from the U.S. EPA, Region IX office. Because of these deficiencies, the rules are not fully approvable pursuant to the section 182(a)(2)(A) of the CAA because they are not consistent with the interpretation of section 172 of the 1977 CAA as found in the Blue Book and may lead to rule enforceability problems.

Because of the above deficiencies, EPA cannot grant full approval of these rules under section 110(k)(3) and part D. Also, because the submitted rules are not composed of separable parts which meet all the applicable requirements of the CAA, EPA cannot grant partial approval of the rules under section 110(k)(3). However, EPA may grant a limited approval of the submitted rules under section 110(k)(3) in light of EPA's authority pursuant to section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP. The approval is limited because EPA's action also contains a simultaneous limited disapproval. In order to strengthen the SIP, EPA is proposing a limited approval of SJVUAPCD Rule 465.1, KCAPCD Rule 411.1, and SCAQMD 462 under sections 110(k)(3) and 301(a) of the CAA.

At the same time, EPA is also proposing a limited disapproval of these rules because they contain deficiencies that have not been corrected as required by section 182(a)(2)(A) of the CAA, and, as such, the rules do not fully meet the requirements of part D of the Act. Under section 179(a)(2), if the Administrator disapproves a submission under section 110(k) for an area designated nonattainment, based on the submission's failure to meet one or more of the elements required by the Act, the Administrator must apply one of the sanctions set forth in section 179(b) unless the deficiency has been corrected within 18 months of such disapproval. Section 179(b) provides two sanctions available to the Administrator: Highway funding and offsets. The 18 month period referred to in section 179(a) will begin on the effective date of EPA's final limited disapproval. Moreover, the final disapproval triggers the federal implementation plan (FIP) requirement under section 110(c). It should be noted that the rules covered by this NPR have been adopted by SJVUAPCD, KCAPCD and SCAQMD, and are currently in effect in those districts. EPA's limited disapproval action in this NPR does not prevent SJVUAPCD, KCAPCD, SCAQMD or EPA from enforcing these rules.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic,

and environmental factors and in relation to relevant statutory and regulatory requirements.

Regulatory Process

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

Limited approvals under sections 110 and 301 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

EPA's limited disapproval of the State request under sections 110 and 301 and subchapter I, part D of the CAA does not affect any existing requirements applicable to small entities. Federal disapproval of the state submittal does not affect its state enforceability. Moreover, EPA's limited disapproval of the submittal does not impose any new federal requirements. Therefore, EPA certifies that this limited disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements nor does it impose any new federal requirements.

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), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. A future notice will inform the general public of these tables. On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the waiver until such time as it rules on EPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: March 8, 1994.

John Wise,

Regional Administrator.

[FR Doc. 94–6391 Filed 3–18–94; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[RI6–1–5811; A–1–FRL–4850–6]

Clean Air Act Approval and Promulgation of Implementation Plans for Rhode Island State Implementation Plan Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: The EPA is proposing to approve revisions to the Rhode Island State Implementation Plan (SIP) adopted by the Rhode Island Department of Environmental Management (DEM) on October 30, 1992. The DEM submitted these revisions to EPA on November 13, 1992. The revisions concern Rhode Island Air Pollution Control Regulations Number 19, "Control of Volatile Organic Compounds from Surface Coating Operations," Number 25, "Control of Volatile Organic Compound Emissions from Cutback and Emulsified Asphalt," and Number 26, "Control of Volatile Organic Compound Emissions from Manufacture of Synthetic Pharmaceutical Products." These rules define Reasonably Available Control Technology (RACT) for the following source categories: Paper Coating, Fabric Coating, Vinyl Coating, Metal Coil Coating, Metal Furniture Coating, Magnet Wire Coating, Large Appliance Coating, Miscellaneous Metal Parts Coating, Wood Products Coating, Flat Wood Paneling Coating, Manufacture and Application of Cutback and Emulsified Asphalt, and Manufacture of Synthetic Pharmaceutical Products. The rules require compliance with RACT no later than May 1, 1994 for manufacture and use of cutback and emulsified asphalt, no later than November 19, 1994 for manufacture of synthetic pharmaceutical products, and no later than May 31, 1995 for all other categories. The EPA has evaluated the revisions to Regulation Nos. 19, 25, and 26 and is proposing to approve them under section 110(k)(3) of the Clean Air Act, as amended in 1990.

DATES: Comments on this proposed action must be received in writing by April 20, 1994.

ADDRESSES: Comments should be addressed to Linda M. Murphy, Director, Air, Pesticides and Toxics Management Division, John F. Kennedy Federal Building, Boston, MA 02203. Copies of the State's submittal and other information are available for inspection during normal hours at the following locations: Environmental Protection Agency, One Congress Street, 10th Floor, Boston, MA; and the Division of Air and Hazardous Materials, 291 Promenade Street, Providence, RI, 02908.

FOR FURTHER INFORMATION CONTACT: Martha Larson, (617) 565–3270.

SUPPLEMENTARY INFORMATION:

I. Background

Under the Clean Air Act, prior to the 1990 Amendments, ozone nonattainment areas were required to adopt RACT rules for sources of VOC emissions. EPA issued three sets of Control Technique Guidelines (CTG) documents, establishing a "presumptive norm" for RACT for various categories of VOC sources. The three sets of CTGs were: (1) Group I—issued before January, 1978 (15 CTGs); (2) Group II—issued in 1978 (9 CTGs); and (3) Group III—issued in the early 1980's (5 CTGs). Those sources not covered by a CTG were called non-CTG sources. EPA determined that the area's SIP-approved attainment date established which RACT rules the area needed to adopt and implement. Under section 172(a)(1), ozone nonattainment areas were generally required to attain the ozone standard by December 31, 1982. Those areas that submitted an attainment demonstration projecting attainment by that date were required to adopt RACT for sources covered by the Group I and II CTGs. Those areas that sought an extension of the attainment date under section 172(a)(2) to as late as December 31, 1987 were required to adopt RACT for all CTG sources and for all major (i.e., 100 ton per year or more of VOC emissions) non-CTG sources.

Rhode Island established an attainment date of December 31, 1982 and, therefore, was required to adopt

RACT for Group I and II CTGs. Rhode Island adopted rules for the applicable source categories covered by Group I and II CTGs. In addition, Rhode Island adopted a rule which covered all major sources (100 tons per year or more of VOC emissions).

Section 182(b)(2) of the Clean Air Act as amended in 1990 requires States to adopt RACT rules for all areas designated nonattainment for ozone and classified as moderate or above. There are three parts to the section 182(b)(2) RACT requirement: (1) RACT for sources covered by an existing CTG—i.e., a CTG issued prior to the enactment of the Clean Air Act Amendments of 1990; (2) RACT for sources covered by a post-enactment CTG; and (3) all major sources not covered by a CTG. This RACT requirement applies to nonattainment areas that previously were exempt from certain RACT requirements and requires them to "catch up" to those nonattainment areas that became subject to those requirements during an earlier period. In addition, it requires newly designated ozone nonattainment areas to adopt RACT rules consistent with those for previously designated nonattainment areas.

Rhode Island is required to adopt rules under section 182(b)(2) for the entire State because all areas within the State are classified as serious ozone nonattainment areas. Under section 182(b)(2), the State is required to adopt RACT requirements for all major sources, including sources covered by a post-enactment CTG, or not covered by a CTG. Rhode Island has adopted rules which cover major sources which will be covered by post-enactment CTGs or which are not covered by a CTG. EPA will be proposing to approve these rules in a separate notice. With the exception of Wood Products coating, all of the categories which were submitted in the State's November 13, 1992 submittal and are being proposed for approval are existing CTG categories. The rules in the November 13, 1992 submittal which EPA is proposing to approve meet the requirements of section 182(b)(2)(B), which requires that RACT be adopted for all CTG categories issued before the date of the enactment of the Clean Air Act Amendments of 1990.

As of the date of enactment of the Clean Air Act Amendments of 1990, Rhode Island lacked RACT rules for the following source categories for which CTGs had been published by EPA: Miscellaneous Refinery Sources, Leaks from Petroleum Refineries, Rubber Tire Manufacture, Polymer Manufacturing, SOCMI and Polymer Manufacturing Equipment Leaks, Large Petroleum Dry Cleaners, Air Oxidation Processes—SOCMI, Equipment Leaks from Natural Gas/Gasoline Processing Plants, Automobile and Light-Duty Trucks Coating, Can Coating, Metal Coil Coating, Metal Furniture Coating, Magnet Wire Coating, Large Appliance Coating, Miscellaneous Metal Parts Coating, Flat Wood Paneling Coating, Cutback Asphalt, and Synthesized Pharmaceutical Products.

Rhode Island has submitted a January 28, 1992 negative declaration letter. Through the negative declaration, the State is asserting that the area has no sources within the area that would be subject to a rule for that source category, or which would not be required to comply with RACT under another State regulation. The State has submitted negative declarations for the CTG categories listed below: Miscellaneous Refinery Sources, Leaks from Petroleum Refineries, Rubber Tire Manufacture, Polymer Manufacturing, SOCMI and Polymer Manufacturing Equipment Leaks, Large Petroleum Dry Cleaners, Air Oxidation Processes—SOCMI, Equipment Leaks from Natural Gas/Gasoline Processing Plants, Automobile and Light-Duty Trucks Coating, and Can Coating. EPA is proposing to approve this submittal as meeting the section 182(b)(2) RACT requirement for the State and source categories listed. However, if evidence is submitted during the comment period that there are existing sources within the State that, for purposes of meeting the RACT requirements, would be subject to one or more of these rules, if developed, EPA would be unable to take final approval action on the negative declarations.

The State needed to submit rules for the remaining CTG categories for which rules had not previously been adopted or for which the State did not submit negative declarations. Therefore, the State needed to submit RACT rules for Metal Coil Coating, Metal Furniture Coating, Magnet Wire Coating, Large Appliance Coating, Miscellaneous Metal Parts Coating, Flat Wood Paneling Coating, Cutback Asphalt, and Synthesized Pharmaceutical Products. In addition, the major source definition for serious areas has been lowered under the amended Act to sources that emit greater than 50 tons per year of VOC. Therefore, the State was required to adopt RACT rules for all sources that exceed this cut-off.

VOCs contribute to the production of ground level ozone and smog. Rhode Island adopted Rhode Island Air Pollution Control Regulations 19, 25, and 26 as part of an effort to achieve the National Ambient Air Quality Standard (NAAQS) for ozone. The following is EPA's evaluation and proposed action for Rhode Island Air Pollution Control Regulations 19, 25, and 26.

II. EPA Evaluation and Proposed Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the Clean Air Act and EPA regulations, as found in section 110 and part D of the Clean Air Act and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for this action, appears in various EPA policy guidance documents. For the purpose of assisting State and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guidelines (CTG) documents. The CTGs are based on the underlying requirements of the Act and specify the presumptive norms for RACT for specific source categories. The CTGs applicable to Air Pollution Control Regulation Number 19, "Control of Volatile Organic Compounds from Surface Coating Operations," are entitled "Control of Volatile Organic Emissions from Existing Stationary Sources—Volume II: Surface Coating of Cans, Coils, Paper, Fabrics, Automobiles, and Light-Duty Trucks" (EPA–450/2–77–08), "Control of Volatile Organic Emissions from Existing Stationary Sources Volume III: Surface Coating of Metal Furniture" (EPA–450/2–77–032), "Control of Volatile Organic Emissions from Existing Stationary Sources Volume IV: Surface Coating for Insulation of Magnet Wire" (EPA–450/2–77–033), "Control of Volatile Organic Emissions from Existing Stationary Sources Volume V: Surface Coating of Large Appliances" (EPA–450/2–77–034), "Control of Volatile Organic Emissions from Existing Stationary Sources—Volume VI: Surface Coating of Miscellaneous Metal Parts and Products" (EPA–450/2–78–015), and "Control of Volatile Organic Emissions from Existing Stationary Sources Volume VII: Factory Surface Coating of Flat Wood Paneling" (EPA–450/2–78–032). The CTG applicable to Air Pollution Control Regulation Number 25, "Control of Volatile Organic Compound Emissions from Cutback and Emulsified Asphalt," is entitled "Control of Volatile Organic Compounds from Use of Cutback Asphalt" (EPA–450/2–77–037). The CTG applicable to Air Pollution Control Regulation Number 26, "Control of Volatile Organic Compound Emissions from Manufacture of Synthetic

Pharmaceutical Products," is entitled "Control of Volatile Organic Emissions from Manufacture of Synthesized Pharmaceutical Products" (EPA–450/2–78–029). EPA has not yet developed CTGs to cover all sources of VOC emissions. Further interpretations of EPA policy are found in those portions of the proposed Post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987) and "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice" (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988) and the existing CTGs. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

Rhode Island has amended Regulation 19 to include the following source categories: Metal Coil Coating, Metal Furniture Coating, Magnet Wire Coating, Large Appliance Coating, Miscellaneous Metal Parts Coating, Wood Product Coating, and Flat Wood Paneling Coating. Rhode Island adopted Regulation 25 in order to cover the Cutback Asphalt source category. Rhode Island adopted Regulation 26 in order to cover the Synthesized Pharmaceutical Products source category. With the exception of Wood Product Coating, emission limits and related requirements for these categories are established in CTGs issued by EPA. EPA has not published a CTG for Wood Product Coating. Areas subject to the requirements of section 182(b)(2) are required to adopt RACT requirements for all major sources. In order to meet the requirements of section 182(b)(2), Rhode Island developed emission limits for Wood Product coating based on wood furniture coating emission limits adopted by California Air Quality Management Districts.

Rhode Island has defined RACT consistently with EPA guidance for the required source categories, and has addressed all of the deficiencies and inconsistencies in the draft submittals and in the proposed rules which were identified by EPA in EPA's comment letters of April 28 and May 15, 1992, and in EPA's comments made during the public comment period, which were submitted to Rhode Island on August 7, 1992. Rhode Island's regulations and EPA's evaluation are detailed in a memorandum, dated July 14, 1993, entitled "Technical Support Document for Rhode Island's Revised Regulations Controlling Surface Coating Sources and New Regulations Controlling Volatile Organic Compound Emissions from Pharmaceutical and Cutback Asphalt Sources." Copies of that document are available, upon request, from the EPA Regional Office listed in the ADDRESSES section of this document.

III. Proposed Action

EPA has evaluated the State's submittal for consistency with the Clean Air Act, EPA regulations, and EPA policy. EPA has determined that the proposed rules meet the Clean Air Act's requirements and is proposing approval of the following rules under section 110(k)(3): Rhode Island Air Pollution Control Regulations Number 19, Number 25, and Number 26.

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

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 Table 3 SIP revisions from the requirements of Section 3 of Executive Order 12291 for a period of two years.

The EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue this waiver until such time as it rules on EPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic 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 Clean Air 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 small entities affected. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410 (a)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Ozone, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: February 25, 1994.

Harley S. Laing,

Acting Regional Administrator, Region I.

[FR Doc. 94–6389 Filed 3–18–94; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 721

[OPPTS–50604; FRL–4075–2]

RIN 2070–AC37

Refractory Ceramic Fiber; Proposed Significant New Use of a Chemical Substance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a significant new use rule (SNUR) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) which would require persons to notify EPA at least 90 days before commencing the manufacture, import, or processing of refractory ceramic fiber (RCF) in any new product form or any new application of an existing product form. The proposed rule lists the existing product forms and ongoing applications of existing product forms known to EPA. The required notice would provide EPA with the opportunity to evaluate the intended use and associated activities, and an opportunity to protect against unreasonable risks, if any, from exposure that could result from the significant new use. EPA is soliciting comments from the public on any ongoing applications of the product forms of RCF which are not among the applications listed in this proposed rule.

DATES: Written comments must be received by EPA no later than April 20, 1994.

ADDRESSES: All comments must be submitted in triplicate to: TSCA Document Receipt Office (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–G99, 401 M St., SW., Washington, DC 20460. Comments that contain information claimed as confidential must be clearly marked "confidential business information" (CBI). If CBI is claimed, three additional sanitized copies must also be submitted. Nonconfidential versions of comments on this proposed rule will be placed in the rulemaking record and will be available for public inspection. Comments should include the docket control number. The docket control number for the chemical substance in this SNUR is OPPTS–50604. Unit VI. of this preamble contains additional information on submitting comments containing CBI claims.

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

SUPPLEMENTARY INFORMATION: This proposed SNUR for refractory ceramic fiber (RCF) would require persons to notify EPA at least 90 days before commencing the manufacture, import, or processing of RCF in any product form not listed, or for any application of existing product forms not listed in this proposed rule. The required notice is intended to provide EPA with the information needed to evaluate new uses and their associated activities, and an opportunity to protect against potentially adverse exposure to RCF before it can occur.

I. Authority

Section 5(a)(2) of TSCA (15 U.S.C. 2605 (a)(2)) authorizes EPA to determine that a use of a chemical substance is a "significant new use." The Agency must make this determination by rule after considering all relevant factors, including those listed in section 5(a)(2). Section 5(a)(2) factors generally relate to the extent to which a use changes the volume of a chemical's production or the type, form, magnitude, or duration of exposure to it. Once EPA determines that a use of a chemical substance is a significant new use, section 5(a)(1)(B) of TSCA requires persons to submit a notice to EPA at least 90 days before they manufacture, import, or process the chemical substance for that use.

Persons subject to this SNUR would comply with the same notice requirements and EPA regulatory procedures as submitters of premanufacture notices (PMNs) under section 5(a)(1)(A) of TSCA. In particular, these requirements include the information submission requirements of section 5(b) and (d)(1), the exemptions authorized by section 5(h)(1), (2), (3), and (5), and the regulations at 40 CFR part 720. EPA may take regulatory action under section 5(e), 5(f), 6, or 7 to control the activities for which it has received a SNUR notice. If EPA does not take action, section 5(g) of TSCA requires EPA to explain in the **Federal Register** its reasons for not taking action.

Persons who intend to export a chemical substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b). The regulations that interpret section 12(b) appear at 40 CFR part 707.

II. Applicability of General Provisions

General regulatory provisions applicable to SNURs are codified at 40 CFR part 721, subpart A. In the **Federal Register** of August 17, 1988 (53 FR 31252), EPA promulgated a "User Fee Rule" (40 CFR part 700) under the authority of TSCA section 26(b). Provisions requiring persons submitting significant new use notices to submit certain fees to EPA are discussed in detail in that **Federal Register** document. Refer to the CFR and the cited **Federal Register** notice for further information.

III. Summary of This Proposed Rule

EPA is proposing to designate the manufacture, import, or processing of RCF in any product form not listed in this proposed rule, or any application of listed product forms not listed in this proposed rule, as a significant new use. RCF is defined by the Chemical Abstract Service as follows:

> An amorphous man-made fiber produced from the melting and "blowing" or "spinning" of calcined kaolin clay or a combination of alumina (Al_2O_3) and silica (SiO_2). Oxides such as zirconia, ferric oxide, titanium oxide, magnesium oxide, calcium oxide, and alkalies may also be added. Approximate percentages (by weight) of components may vary as follows: Alumina, 20 to 80 percent; silica, 20 to 80 percent; and other oxides in lesser amounts, approximately 1 to 5 percent (CAS number 142844–00–6).

This proposed rule would require persons who intend to manufacture, import, or process RCF, as defined above, to submit a significant new use notice to EPA at least 90 days before manufacturing, importing, or processing RCF for use in any product form or any application of listed product forms not included in the following lists. These lists include all existing product forms and applications of RCF known to EPA.

PRODUCT FORMS

1. Bulk fibers.
2. Blankets, defined as high temperature insulation that is produced from spun RCF and is in the form of a mat or blanket.
3. Boards, defined as high temperature insulation that is produced from bulk fibers and is in the form of compressed rigid board, has a higher density than blankets, and is used as core material, or as sandwich assemblies.
4. Ropes and braids, defined as high temperature insulation that is produced by textile operations and is used for packing, seals, and wicking applications.
5. Woven textiles, defined as high temperature insulation that is in the form of cloth, tape, or sleeve and is produced by textile processes.
6. Papers and felts, defined as flexible high temperature insulation that is produced by papermaking processes and is used for seals, gaskets, and other automotive and aerospace applications.
7. Vacuum cast shapes, defined as high temperature insulation that is produced by forming specialized shapes on prefabricated molds with wet fibers, and then drying them by vacuum and heat, thereby transforming the bulk fiber into rigid, shaped, products.
8. Specialties, defined as forms (i.e. mixes, cements, and caulking compounds) that contain wet, inorganic binder and are used as protective coating putties, as well as adhesives and heat and fire barriers in high temperature applications.
9. Modules, defined as a packaged functional assembly of blanket insulation with hardware for attaching to the surfaces of furnaces, kilns, and other high temperature industrial equipment.

APPLICATIONS

1. Insulation linings of high temperature industrial furnaces and related equipment.
2. Hot spot repair of industrial furnace linings.
3. Industrial furnace curtains.
4. Industrial furnace gaskets and seals.
5. Insulation of pipes, ducts, and cables associated with high temperature industrial furnaces.
6. Fire protection for industrial process equipment.
7. Aircraft/aerospace heat shields.
8. Commercial and consumer appliances consisting of prefabricated chimneys, pizza ovens, self-cleaning ovens, and wood-burning stoves.

9. Automobile applications consisting of brake pads, clutch facings, catalytic converters, air bags, shoulder belt controls, and passenger compartment heat shields.

For purposes of the above listed product forms and applications, high temperature refers to temperatures up to 3000 °F.

The product forms and applications listed in this proposed rule were reported by the Thermal Insulation Manufacturers Association (TIMA) in 1991 (Carborundum Company, Premier Refractories and Chemicals, Inc., and Thermal Ceramics, Inc., March 7, 1991). The TIMA submission did not include those applications which utilize less than 10 percent of any product form. Also, some miscellaneous applications named in the TIMA submission could not be readily categorized for the list in this proposal. For these reasons, EPA is soliciting comments from the public concerning existing product forms and ongoing applications of RCF not listed in this proposed rule. Anyone having knowledge of such product forms and applications should notify EPA during the comment period for the proposed rule. The notification to EPA should include a brief description of the ongoing product form or application, identification of the product forms involved, and substantiation of the ongoing product forms or application (e.g. invoices, shipping records). If no notices of additional ongoing applications are received, for the purposes of the final rule, EPA will assume the list in proposed § 721.2090 is complete.

IV. Background Information on Refractory Ceramic Fiber

A. Production and Use Data

RCF is processed by two different methods: The "spinning" process and the "blowing" process. The resultant fiber is vitreous and noncrystalline. Fiber diameters vary within the product, ranging from approximately 0.06 μm (micrometers) to greater than 3 μm. Lengths vary also in the final product and are dependent upon the processing used.

RCFs are used primarily for high temperature industrial insulation applications, most frequently as refractory lining in high temperature furnaces, heaters, and kilns in industries such as ethylene, steel, aluminum, ceramics, and glass production. RCFs are also used in automotive applications, aerospace uses, and in certain commercial appliances such as self-cleaning ovens, and prefabricated chimneys.

RCFs are currently produced by six companies in the United States at eight locations. The Carborundum Company, Premier Refractories and Chemicals, Inc., and Thermal Ceramics Inc., together account for the bulk of U.S. production of RCFs. The three other domestic producers are A.P. Green Industries, ELTECH Thermal Systems Corporation, and Industrial Insulation, Inc. Approximately 80 million pounds of RCFs were produced in the United States in 1990. The range of uses of RCF has changed significantly over the last 15 to 20 years, with an increasing number of industrial and consumer applications. Initially, high production costs limited their uses to special high technology applications and the aerospace industry. During the late 1960's the increasing cost of other insulating refractories and of energy made the use of RCF for furnace and kiln linings more economical. At the same time, a gradual increase in the process operating temperatures was being seen in the chemical processing industry, necessitating the development of improved high temperature refractories. As an example, ceramic fiber blanket linings have since been successfully utilized at temperature up to 3000 °F (1650 °C).

B. Health Effects

EPA has classified RCF as a Category B2, probable human carcinogen, based on sufficient evidence from animal studies, and in the absence of human data. A single-dose chronic inhalation study using kaolin, a common type of RCF, showed a high incidence of mesotheliomas in hamsters. Several types of RCF, including kaolin RCF, have been shown to cause increased incidence of lung tumors and pleural mesotheliomas in rats following long-term inhalation exposure or direct application of the fibers in the trachea. Administration of RCF by intraperitoneal or intrapleural injection also caused increased incidence of peritoneal and pleural mesotheliomas in several studies in rats. Results of available chronic inhalation studies with RCF also showed the development of pleural and lung fibrosis in exposed rats and hamsters (IRIS (1992) Integrated Risk Information System. Refractory Ceramic Fibers: Carcinogenicity assessment, September 1, 1992. EPA).

The University of Cincinnati is currently conducting a morbidity study of workers to determine if occupational exposure to RCF is associated with increased respiratory disease (Lockey, J. et al., 1990 Refractory Ceramic Fibers: Pulmonary Morbidity Study of Workers. September 1985). Preliminary results indicate that RCF exposure is associated with increased pleuritic chest pain, decreasing spirometric function, and increased prevalence of pleural plaques that are also known to be associated with asbestos fiber exposure.

V. Objectives and Rationale for This Proposed Rule

On November 21, 1991, the Agency concluded that, based on animal inhalation data submitted to the Agency under section 8(e) of TSCA, RCFs may present an unreasonable risk of cancer to human health. After conducting an accelerated review of RCF under section 4(f), EPA concluded there was not sufficient data available (particularly on exposure to and substitutes for RCF) to determine whether or not RCFs present an unreasonable risk. However, there was sufficient basis for human health concerns to initiate a regulatory investigation of RCFs to determine whether action under TSCA section 6 to control the use of RCFs was appropriate. The regulatory investigation of RCFs includes a thorough review of a recently completed multiple dose animal inhalation study, an update of the findings from an ongoing worker epidemiology study, an analysis of substitutes, and development of comprehensive exposure data. (EPA and three of the six domestic manufacturers of RCF have recently entered a consent agreement which provides for the collection of exposure monitoring data from the facilities of the participating companies and their customers.)

To determine what would constitute a significant new use, EPA considered all relevant factors, including those listed in TSCA section 5(a)(2)(A) through (D). Data indicate that RCF may be carcinogenic and fibrogenic. Considering the toxicity of RCF, and the fact that EPA cannot predict with certainty what new forms or applications of RCF might be developed in the future, EPA has serious concerns regarding the potential projected volume of manufacturing and processing of RCF; the potential methods and manner of manufacturing, processing, distribution in commerce, and disposal of RCF; the extent to which a new form or application might change the form or type of human exposure to RCF; and the extent to which a new form or application might increase the magnitude and duration of human exposure to RCF.

EPA believes that any new product form or application of RCF and its related manufacture, import, or processing should be designated as a significant new use. EPA consulted with TIMA to ascertain the full extent of all

existing uses of RCF. The resulting lists of product forms and applications of product forms in this proposed rule represent all uses of RCF known to EPA. Currently RCF is not subject to any other Federal regulation that would provide a mechanism for preventing potential exposures before they occur.

Based on these consideration, EPA wants to achieve the following objectives with regard to the significant new use that is designated in this proposed rule:

1. EPA wants to ensure that it would receive notice of any company's intent to manufacture, import, or process RCF for the significant new use designated in this proposed rule before that activity begins.

2. EPA wants to ensure that it would have an opportunity to review and evaluate data submitted in a significant new use notice before the notice submitter begins manufacturing, importing, or processing RCF for the significant new use designated in this proposed rule.

3. EPA wants to ensure that it would be able to regulate prospective manufacturers, importers, or processors of RCF before a significant new use of the substance occurs, provided that the degree of potential health and/or environmental risk, or the uncertainty about the risks, is sufficient to warrant such regulation.

If EPA receives a Significant New Use Notice (SNUN) in response to this rule after it becomes final, EPA anticipates that a "product stewardship" program would be critical to its evaluation of the proposed significant new use. Based on the information available to EPA at this time, EPA believes that a product stewardship program which includes monitoring of workplace exposure and identifying means or methods for reducing exposure, can represent an important step toward reducing the risk of RCF to human health. Therefore, EPA would encourage any SNUN submitter to provide information on ways the submitter will limit or mitigate exposure to RCF.

VI. Applicability of Proposed Rule to Uses Occurring Before Effective Date of the Final Rule

EPA believes that the intent of section 5(a)(1)(B) is best served by designating a use as a significant new use as of the proposal date of the SNUR rather than as of the effective date of the final rule. If uses begun during the proposal period of a SNUR were considered ongoing as of the effective date, it would be difficult for EPA to establish SNUR notice requirements, because any person could defeat the SNUR by initiating the proposed significant new use before the rule became effective; this interpretation of section 5 would make it extremely difficult for EPA to establish SNUR notice requirements.

Persons who begin commercial manufacture, importation, or processing of RCF for any new use between publication of the proposal and the effective dates of the SNUR may comply with this proposed SNUR before it is promulgated. If a person were to meet the conditions of advance compliance as codified at § 721.45(h), the person will be considered to have met the requirements of the final SNUR for those activities. If persons who begin commercial manufacture, import, or processing of RCF for a new use between publication of the proposal and the effective date of the SNUR do not meet the conditions of advance compliance, they must cease that activity before the effective date of the rule. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements (§ 721.25) and wait until the notice review period, including all extensions, expires.

VII. Economic Analysis

EPA has evaluated the potential costs of establishing SNUR reporting requirements for RCFs. The costs to EPA of issuing a SNUR range from $12,400 to $24,100. This estimated range assumes an expenditure of 2.17 to 3.94 in-house worker-months between the time a SNUR is proposed and when it is promulgated. Preproposal costs are not included in the estimate because these costs are incurred even if the Agency ultimately decides not to promulgate the SNUR. Additionally, the costs to EPA of enforcement have not been estimated here.

If a SNUN is submitted, EPA would also incur estimated costs of $9,800 to review the SNUN. EPA may also incur costs associated with modification of the SNUR if such action is necessary. The uncertainty of any such costs is too great to make a reasonable estimate in this analysis possible.

Costs to the industry as a result of this SNUR could occur in two ways. First, direct costs would be incurred by persons who intend to manufacture, import, or process RCFs for a significant new use. The costs incurred would be those involved in submitting a SNUN to the Agency, which are estimated to be $2,200 to $10,000 per notice, as well as the related costs due to delays in initiating the production and use of the chemical. The firm would also be required to pay a $2,500 user fee to EPA when submitting its notice. Second, costs associated with regulatory follow-up could also be incurred by a submitter. The uncertainty of such costs is too great to make a reasonable estimate possible in this analysis.

The Agency's complete economic analysis for this proposed SNUR is available in the public record for this proposed rule (OPPTS–50604).

VIII. Comments Containing Confidential Business Information

Any person who submits comments claimed as CBI must mark the comments as "confidential," "trade secret," or other appropriate designation. Comments not claimed as confidential at the time of submission will be placed in the public file. Any comments marked as confidential will be treated in accordance with the procedures in 40 CFR part 2. Any party submitting comments claimed to be confidential must prepare and submit a nonconfidential version of the comments that EPA can place in the public file.

IX. Rulemaking Record

EPA has established a record for this rulemaking (docket control number OPPTS–50604). The record includes basic information considered by EPA in developing this proposed rule. EPA will accept additional materials for inclusion in the record at any time between this proposal and designation of the complete record. EPA will identify the complete rulemaking record by the date of promulgation.

A public version of the record, without any CBI, is available in the OPPT Nonconfidential Information Center (NCIC), also known as, TSCA Public Docket Office, from 8 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday, except legal holidays. NCIC is located in Rm. E–G102 (East Tower Tunnel), 401 M St., SW., Washington, DC 20460.

X. Regulatory Assessment Requirements

A. Executive Order 12866

Under Executive Order 12866, EPA must judge whether a rule is "significant" and therefore requires a Regulatory Impact Analysis. EPA has determined that this proposed rule would not be a "significant" rule because it would not have an effect on the economy of $100 million or more, and it would not have a significant effect on competition, costs, or prices. While there is no precise way to calculate the total annual cost of compliance with this proposed rule, EPA estimates that the reporting cost for

submitting a SNUN would be approximately $2,200 to $10,000. Notice submitters would also have to pay a $2,500 user fee to EPA to partially offset the costs of processing the notice. EPA believes that, because of the nature of the rule, and the chemical substance involved, there would be few SNUNs submitted. Furthermore, while the expense of a notice and the uncertainty of possible EPA regulation may discourage certain innovation, that impact would be limited because such factors are unlikely to discourage an innovation that has high potential value.

Pursuant to the terms of this Executive Order, it has been determined that this rule is not "significant" and is therefore not subject to review by the Office of Management and Budget (OMB).

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), EPA has determined that this proposed rule would not have a significant impact on a substantial number of small businesses. EPA has not determined whether parties affected by this proposed rule would likely be small businesses. However, EPA expects to receive few SNUR notices for the chemical substance. Therefore, EPA believes that the number of small businesses affected by the rule would not be substantial, even if all of the SNUR notice submitters were small firms.

C. Paperwork Reduction Act

OMB has approved the information collection requirements contained in this proposed rule under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and has assigned OMB control number 2070–0038.

Public reporting burden for this collection of information is estimated to be 118.6 hours per response, and includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, (2131), U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20530, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information requirements contained in this proposal.

List of Subjects in 40 CFR Part 721

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

Dated: March 8, 1994.

Victor J. Kimm,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR part 721 be amended as follows:

PART 721—[AMENDED]

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

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

2. By adding new § 721.2090 to subpart E to read as follows:

§ 721.2090 Refractory ceramic fiber.

(a) *Chemical substance and significant new use subject to reporting.* (1) The chemical substance, refractory ceramic fiber (RCF), CAS No. 142844–00–6, is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section. RCF is defined as an amorphous man-made fiber produced from the melting and blowing or spinning of calcined kaolin clay or a combination of alumina (Al_2O_3) and silica (SiO_2). Oxides such as zirconia, ferric oxide, titanium oxide, magnesium oxide, calcium oxide, and alkalies may be added. The percentage (by weight) of components is as follows: Alumina, 20 to 80 percent; silica, 20 to 80 percent; and other oxides in lesser amounts.

(2) The significant new use is: Use in any product form not listed in paragraph (a)(2)(i) of this section, or any application of the listed product forms not included in paragraph (a)(2)(ii) of this section.

(i) Product forms: Bulk fibers; blankets, "defined as high temperature insulation that is produced from spun RCF and is in the form of a mat or blanket"; boards, "defined as high temperature insulation that is produced from bulk fibers and is in the form of compressed rigid board, has a higher density than blankets, and is used as core material or as sandwich assemblies"; ropes and braids, "defined as high temperature insulation that is produced by textile operations and is used for packing, seals, and wicking applications"; woven textiles, "defined as high temperature insulation that is in the form of cloth, tape, or sleeve and is produced by textile processes"; papers and felts, "defined as flexible high temperature insulation that is produced by papermaking processes and is used for seals, gaskets, and other automotive and aerospace applications"; vacuum cast shapes, "defined as high temperature insulation that is produced by forming specialized shapes on prefabricated molds with wet fibers, and then drying them by vacuum and heat, thereby transforming bulk fiber into rigid, shaped products"; specialties, "defined as forms (i.e. mixes, cements, and caulking compounds) that contain wet, inorganic binder and are used as protective coating putties, as well as adhesives and heat and fire barriers in high temperature applications"; and modules, "defined as a packaged functional assembly of blanket insulation with hardware for attaching to the surfaces of furnaces and kilns.

(ii) Applications: Insulation linings of high temperature industrial furnaces and related equipment; hot spot repair of industrial furnace linings; industrial furnace curtains; industrial furnace gaskets and seals; insulation of pipes, ducts, and cables associated with high temperature industrial furnaces; fire protection for industrial process equipment; aircraft/aerospace heat shields; commercial and consumer appliances consisting of prefabricated chimneys, pizza ovens, self-cleaning ovens, and wood-burning stoves; and automobile applications consisting of brake pads, clutch facings, catalytic converters, air bags, shoulder belt control, and passenger compartment heat shields.

(b) [Reserved]

[FR Doc. 94–6552 Filed 3–18–94; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 61

RIN 3067–AC24

National Flood Insurance Program; Insurance Rates

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would increase the chargeable (subsidized) rates, which apply to all structures located in communities participating in the Emergency Program of the National Flood Insurance Program (NFIP) and apply to certain structures in communities in the Regular Program. The rule is proposed because the NFIP's loss reserves in the National Flood Insurance Fund require an increase in premium income to meet expected

short-term future demands. We intend the proposed rule to help the NFIP satisfy the premium requirements for the historical average loss year and to reduce the general taxpayer's burden with a more equitable sharing of the costs of flood losses between the general taxpayers and the insureds.

DATES: Comments must be received on or before May 5, 1994.

ADDRESSES: Please send comments to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street, SW., room 840, Washington, DC 20472, (fax) (202) 646–4536.

FOR FURTHER INFORMATION CONTACT: Charles M. Plaxico, Federal Emergency Management Agency, Federal Insurance Administration, 500 C Street, SW., Washington, DC 20472, (202) 646–3422.

SUPPLEMENTARY INFORMATION: These proposed amendments, which would increase the National Flood Insurance Program (NFIP) chargeable (subsidized) rates, are the result of an ongoing review and reappraisal of the NFIP and of continuing efforts to maintain a business-like approach to its administration by emulating successful property insurance programs in the private sector and, at the same time, to achieve greater administrative and fiscal effectiveness in its operations. The proposed amendments are intended to help the NFIP satisfy the premium requirements for the historical average loss year and to reduce the general taxpayer's burden with a more equitable sharing of the costs of flood losses between the general taxpayers and the insureds. Coverage changes and optional deductibles, in addition to rate increases, are part of the ongoing effort to achieve these goals.

The chargeable (subsidized) rates, for which an increase is being proposed, are the rates applicable to structures located in communities participating in the Emergency Program of the NFIP and to certain structures in communities in the Regular Program.

They are countrywide rates for two broad building type classifications which, when applied to the amount of insurance purchased and added to the expense constant and Federal policy fee, produce a premium income somewhat loss than the expense and loss payments incurred on the flood insurance policies issued on that basis. The funds needed to supplement the inadequate premium income are provided by the National Flood Insurance Fund. The subsidized rates are promulgated by the Administrator for use under the Emergency Program (added to the NFIP by the Congress in section 408 of the Housing and Urban Development Act of 1969) and for use in the Regular Program on construction or substantial improvement started before the effective date of the initial Flood Insurance Rate Map (FIRM) or on or before December 31, 1974 (this additional grandfathering was added to the NFIP by Congress in section 103 of the Flood Disaster Protection Act of 1973), whichever is later.

It should be noted that over the NFIP's history, the Program's insurance written has not been subjected to the truly catastrophic flood event. Thus, the historical average is substantially less than could be expected over the long term when the influence of the extremely infrequent, truly catastrophic flood would result in a significant increase in the average historical year's losses. It is because of these fortuitous conditions, the lack of market penetration in areas suffering catastrophic floods, and relatively high market penetration in the southeastern part of the United States which has not suffered a catastrophic flood event recently, that the Program has remained self-supporting since 1986. However, the current status of the Program's loss reserves in the National Flood Insurance Fund requires an increase in premium income relative to the expected short-term future demands. Effective as of January 1, 1994, policyholders required to pay actuarial rates had an average 9% increase in their premiums.

Using current subsidized rates and projecting full risk loss costs to 1994 levels, it is expected that the average annual shortfall in premiums needed to fund loss expenses for each subsidized policyholder would be $419.00.

The statutory mandate to establish reasonable chargeable rates requires the Federal Emergency Management Agency (FEMA) to balance the need for providing reasonable rates to encourage potential insureds to purchase flood insurance with the requirement that the NFIP be a flexible program which minimizes cost and distributes burdens equitably among those who will be protected by flood insurance and the general public. FEMA has examined the current chargeable rates and the amount of subsidy required to supplement the inadequate premium income derived from insurance policies to which these rates apply. Based on this examination, FEMA has determined that it is necessary to bring NFIP closer to a self-supporting basis and create a sounder financial basis for the program. At this time, FEMA proposes an approximate 9% increase in the chargeable or subsidized premiums as follows:

Type of Structure	Rates per year per $100 coverage on	
	Structure	Contents
(1) Residential ..	$0.60	$0.70
(2) All other (including hotels and motels with normal occupancy of less than 6 months in duration)	.70	1.40

For comparison, the current subsidized rates are as follows:

Type of structure	Rates per year per $100 coverage on	
	Structure	Contents
(1) Residential ..	$0.55	$0.65
(2) All other (including hotels and motels with normal occupancy of less than 6 months in duration)	.65	1.30

The proposed increase has been balanced between the statutory requirement that the chargeable rates be consistent with the objective of making flood insurance available where necessary at reasonable rates so as to encourage prospective insureds to purchase flood insurance and the need for decreasing the federal subsidy, thus more equitably distributing the burden.

The projected average annual premium for subsidized policies using the revised chargeable rates and purchasing estimated 1994 amounts of insurance is $409.00, a $21.00 increase over the present average. Despite this increase, it represents only an estimated 37% of the premium that would have to be charged if these policies were actuarially rated (i.e., not subsidized).

National Environmental Policy Act

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4371 et seq., and the implementing regulations of the Council on Environmental Quality, 40 CFR parts 1500–1508, FEMA has prepared an environmental assessment of this proposed rule. The assessment concludes that there will be no significant impact on the human environment as a result of the issuance of the proposed rule. It is, therefore, found that the action does not constitute a major Federal action significantly affecting the quality of the human environment. On this basis, an Environmental Impact Statement will be

prepared. Copies of the environmental assessment are available for inspection through the Rules Docket Clerk, Federal Emergency Management Agency, room 840, 500 C St. SW., Washington, DC 20472.

Regulatory Flexibility Act

I certify that this proposed rule will not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., because the increased rates proposed will average approximately $1.75 per month, and the proposed rule is not expected: (1) To adversely affect the availability of flood insurance to small entities, (2) to have significant secondary or incidental effects on a substantial number of small entities, nor (3) to create any additional burden on small entities.

Paperwork Reduction Act

This proposed rule does not contain a collection of information requirement as described in section 3504(h) of the Paperwork Reduction Act.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 61

Flood insurance.

Accordingly, FEMA proposed to amend 44 CFR part 61 as follows:

PART 61—INSURANCE COVERAGE AND RATES

1. The authority citation for part 61 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127 of Mar. 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

2. Section 61.9 is revised to read as follows:

§ 61.9 Establishment of chargeable rates.

(a) Pursuant to section 1308 of the Act, chargeable rates per year per $100 of flood insurance are established as follows for all areas designated by the Administrator under part 64 of this subchapter for the offering of flood insurance.

RATES FOR NEW AND RENEWAL POLICIES

Type of structure	Rates per year per $100 coverage on	
	Structure	Contents
(1) Residential ..	$0.60	$0.70
(2) All other (including hotels and motels with normal occupancy of less than 6 months in duration	.70	1.40

(b) The contents rate shall be based upon the use of the individual premises for which contents coverage is purchased.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

James L. Witt,

Director.

[FR Doc. 94–6394 Filed 3–18–94; 8:45 am]

BILLING CODE 6718–01–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 192

[Docket PS–135; Notice 2]

RIN 2137–AC32

Customer-Owned Service Lines

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: This document relates to a notice of proposed rulemaking (NPRM) published on Thursday, February 3, 1994 (59 FR 5168). The NPRM proposed to require operators of gas distribution systems who do not maintain buried customer-owned service lines to advise their customers of the proper maintenance of these gas lines and of the potential hazards of not properly maintaining them. This supplemental notice clarifies that the proposed notification requirements apply to operators of gas transmission systems who do not maintain customer-owned service lines. It also proposes to apply the proposed notification requirements to above ground customer-owned service lines.

DATES: The comment period for this supplemental NPRM and for the NPRM published February 3, 1994 is May 5, 1994. Late filed comments will be considered to the extent practicable. Interested persons should submit as part of their written comments all the material that is considered relevant to any statement or argument made.

ADDRESSES: Written comments must be submitted in duplicate and mailed or hand-delivered to the Dockets Unit, room 8421, U.S. Department of Transportation, Research and Special Programs Administration, 400 Seventh Street, SW., Washington, DC 20590–0001. Identify the docket and notice numbers stated in the heading of this notice. All comments and materials cited in this document will be available for inspection and copying in room 8421 between 8:30 a.m. and 4:30 p.m. each business day. Non-federal employee visitors are admitted to the DOT headquarters building through the southwest quadrant at Seventh and E Streets.

FOR FURTHER INFORMATION CONTACT: Christina M. Sames, (202) 366–4561, regarding the content of this document, or the Dockets Unit (202) 366–5046 for copies of this document or other materials in the docket.

SUPPLEMENTARY INFORMATION: On February 3, 1994, RSPA published a notice of proposed rulemaking titled, "Customer-Owned Service Lines" (59 FR 5168). This notice proposed to require each operator of a natural gas or petroleum gas distribution system that does not maintain buried customer-owned service lines up to the building wall or to the end-use equipment to part 192 standards, to provide written notification to the customer of the proper maintenance requirements for these lines and of the potential hazards of not maintaining these lines. The notice proposed to define a customer-owned service line as "* * * a pipeline that transports natural gas or petroleum gas from a service line to (1) an exterior wall of a building, or (2) end-use equipment. 'Farm taps' are customer-owned service lines which begin at a customer meter, usually adjacent to a gas transmission line, and run to a single consumer." By including "farm taps" in the definition of a customer-owned service line, RSPA intended to include gas transmission operators in the proposed notification requirements.

RSPA wishes to clarify that the notification requirements apply to each gas transmission operator who does not maintain a customer-owned service line up to the building wall. Thus, the proposed requirements would apply to gas transmission pipelines which branch off and run to a single consumer (also referred to as farm taps or industrial taps). The portion of the

pipeline subject to the proposed regulation would be the section from the meter or the connection to the customers piping up to the building wall. The term "single consumer" is meant to include, but is not limited to, farms, homes, schools, manufacturing plants, and factories.

RSPA also proposes to extend the proposed notification requirements to gas transmission and distribution operators who do not maintain above ground customer-owned service lines up to the building wall. RSPA has become aware of situations where the meter is adjacent to the home or building and the pipeline running from the outlet of the meter to the home or building wall is above ground. In these instances, the operator is responsible for the pipeline up to the meter, and the customer is responsible for the small portion of pipeline from the outlet of the meter to the home or building wall. RSPA invites public comment on whether these short sections of customer-owned service lines have been properly installed and whether they are periodically maintained. RSPA believes that some of these sections were installed and are voluntarily maintained by the operator, even though they are the responsibility of the customer. Commenters are requested to support their responses with leak and incident data that includes information on personal injuries, deaths, and property damages.

RSPA would also like to clarify that, for buried customer-owned service lines, RSPA is only referring to the main line running from the outlet of the meter or the connection to the customer's piping to the building wall or end-use equipment. RSPA does not intend to include lines which branch off of the main customer-owned service line and run to heated pools, grills, and similar equipment.

Regulatory Analyses

Executive Order 12866 and DOT Regulatory Policies and Procedures

This proposed rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not subject to review by the Office of Management and Budget. The rule is not considered significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11034, February 26, 1979). A revised regulatory evaluation is available for review in the docket.

Executive Order 12612

The proposed rule has been analyzed in accordance with the principles and criteria in Executive Order 12612 ("Federalism"), and does not have sufficient federalism impacts to warrant the preparation of a federalism assessment.

Regulatory Flexibility Act

A draft regulatory evaluation has been prepared to determine the economic impact of the NPRM and this supplemental NPRM. Based on the facts available, I certify that this proposal will not, if promulgated, have a significant economic impact on a substantial number of small entities. This certification is subject to modification as a result of a review of comments received in response to this proposal.

Paperwork Reduction Act

The information collection requirements associated with this notice of proposed rulemaking are being submitted to the Office of Management and Budget (OMB) for approval in accordance with 44 U.S.C. chapter 35 under the following:

Administration: Department of Transportation, Research and Special Programs Administration;
Title: Customer-owned service line information dissemination;
Need for Information: To reduce the number of incidents and resulting deaths, injuries, property, and environmental damage caused by improper maintenance of customer-owned service lines;
Proposed Use of Information: To advise owners of customer-owned service lines of the proper maintenance of these gas lines and of the potential hazards of not properly maintaining these lines;
Frequency: Occasionally;
Burden Estimate: $500,000 initially, $50,000 annually thereafter;
Respondents: Gas transmission & distribution operators;
Form(s): N/A;
Average Burden Hours per Respondent: Minimal.

For further information contact: The Information Management Division, M–34, Office of the Secretary of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–4735. Comments on the proposed information collection requirements should be submitted to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, Attn: Desk Officer for Department of Transportation, Research and Special Programs Administration. It is requested that comments sent to OMB also be sent to the RSPA rulemaking docket for this proposed action.

List of Subjects in 49 CFR Part 192

Pipeline safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, RSPA proposes to amend 49 CFR part 192 as follows:

PART 192—[AMENDED]

1. The authority citation for part 192 continues to read as follows:

Authority: 49 App. U.S.C. 1672 and 1804; 49 CFR 1.53.

2. Section 192.3 would be amended by adding the following definition to read as follows:

§ 192.3 Definitions

* * * * *

Customer-Owned service line means a pipeline that transports natural gas or petroleum gas from a service line to:

(1) An exterior wall of a building, or

(2) End-use equipment. *Farm taps* and *industrial taps* customer-owned service lines which begin at a customer meter, usually adjacent to a gas transmission line, and run to a single consumer.

* * * * *

3. Section 192.16 would be added to subpart A to read as follows:

§ 192.16 Customer-owned service lines.

(a) Each transmission or distribution operator that does not maintain a customer-owned service line to part 192 standards, shall provide written notification to the customer:

(1) That the customer owns and is responsible for the maintenance of the customer-owned service line;

(2) Of the essential elements for proper maintenance of the customer-owned service line, such as those listed in subpart M of this part or those listed in applicable local building codes;

(3) Of available resources that could aid the customer in obtaining maintenance assistance, such as the gas pipeline operator, the state licensing board for plumbers and state plumbers' associations, Federal and state gas pipeline safety organizations, the local building code agencies, and appropriate leak detection, gas utility, and corrosion protection contractors;

(4) Of any information that the operator has concerning the operation and maintenance of the customer-owned service line that could aid the customer, such as information on excavation damage prevention, local codes and standards (when applicable), and the age, location, and material of the customer-owned service line; and

(5) The potential hazards of not maintaining the customer-owned service line, such as corrosion and gas leakage.

(b) An operator shall provide the notification required in paragraph (a) of this section:

(1) Before (enter date 6 months after date of publication of final rule) for existing customers; and

(2) Before (enter date 6 months after date of publication of final rule) or within 30 days from date the gas service line is placed in service for new customers, whichever is later.

(c) Each operator must keep a record of the written notifications made under the requirements of paragraph (a) of this section.

George W. Tenley, Jr.

Associate Administrator for Pipeline Safety.

[FR Doc. 94–6274 Filed 3–18–94; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB42

Endangered and Threatened Wildlife and Plants; Reopening of Comment Period on Proposed Endangered Status for Argali

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of reopening of comment period.

SUMMARY: The Service gives notice that the comment period on the proposed rule to determine endangered status for the argali in Kyrgyzstan, Mongolia, and Tajikistan will be reopened for 30 days to obtain comments on new data.

DATES: All comments and information received through April 20, 1994 will be considered in making a final decision on the proposal and will be included in the administrative record.

ADDRESSES: Please send correspondence regarding this notice to the Chief, Office of Scientific Authority; Mail Stop: Arlington Square, room 725; U.S. Fish and Wildlife Service; Washington, DC 20240 (Fax number 703–358–2276). Express and messenger-delivered mail should be addressed to the Office of Scientific Authority; room 750, 4401 North Fairfax Drive; Arlington, Virginia 22203. Comments and other information received will be available for public inspection, by appointment, from 8 a.m. to 4 p.m., Monday through Friday, at the Arlington, Virginia address.

FOR FURTHER INFORMATION CONTACT: Dr. Charles W. Dane, Chief, Office of Scientific Authority, at the above address (phone 703–358–1708).

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 27, 1993 (58 FR 25595–25600), the Fish and Wildlife Service (Service) issued a proposed rule to determine endangered status for the argali (*Ovis ammon*), a wild sheep, in Kyrgyzstan, Mongolia, and Tajikistan. The species currently is classified as threatened in those three countries and as endangered throughout the rest of its range. Effective January 1, 1993, a special rule (50 CFR 17.40(j)) provides for the limited importation into the United States of argali trophies taken in Kyrgyzstan, Mongolia, and Tajikistan, once the Service has received from the governments of those countries properly documented and verifiable certification that: (1) Argali populations are sufficiently large to sustain sport hunting; (2) regulating authorities have the capability to obtain sound data on these populations; (3) regulating authorities recognize these populations as a valuable resource and have the legal and practical means to manage them as such; (4) the habitat of these populations is secure; (5) regulating authorities can ensure that the involved trophies have in fact been legally taken from the specified populations; and (6) funds derived from the involved sport hunting are applied primarily to argali conservation. The original comment period on the proposed reclassification and proposed repeal of the special rule ended on October 25, 1993.

The proposal of April 27, 1993, stated that the threatened classification and special rule appeared inadequate to provide for the protection of the species in Kyrgyzstan, Mongolia, and Tajikistan. In addition, no substantive response has been received relative to the special rule's requirement for the certification indicated above. The Service, however, attempted to collect information that could help meet this requirement, through the funding of a survey by Dr. Anna Luschekina of the Russian Academy of Sciences, Moscow. A final report of this survey was recently submitted to the Service. As this report contains information that may be relevant to a final decision regarding the proposal of April 27, 1993, the Service now reopens the comment period for 30 days and will provide copies of the report upon request.

Authority: 16 U.S.C. 1531–1544.

List of Subjects in 50 CFR Part 17

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

Dated: February 28, 1994.

Mollie H. Beattie,

Director, Fish and Wildlife Service.

[FR Doc. 94–6427 Filed 3–18–94; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 59, No. 54
Monday, March 21, 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

Hemlock Point ANILCA Access Easement, Flathead National Forest, Missoula County, MT

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare an environmental impact statement.

SUMMARY: The notice is hereby given that the Flathead National Forest is gathering information to prepare an Environmental Impact Statement (EIS) for a proposal to grant easement and authorize construction of roads across certain National Forest System lands located in the Swan Valley. The action is proposed in response to an applicant seeking legal access to 640 acres of non-Federal land located within the Forest boundary The proposed action is located approximately 45 miles south of Kalispell, Montana. The non-Federal land to be accessed is described as Section 29, Township 20 North, Range 17 West, P.M.M., Missoula County, Montana.

DATES: Written comments concerning the scope of the analysis must be received by May 1, 1994.

ADDRESSES: Send written comments to Forest Supervisor, Flathead National Forest, 1935 Third Avenue East, Kalispell, MT 59901.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and EIS should be directed to Earl Sutton, NEPA Coordinator, Flathead National Forest. Phone: (406) 755–5401.

SUPPLEMENTARY INFORMATION: The Flathead National Forest is initiating this action in response to an application filed by Plum Creek Timber Company. The applicant requests easement across National Forest lands for the purposes of establishing permanent legal access to 640 acres of land owned by the applicant. The section of land to be accessed is surrounded by National Forest System lands and no legal road access to the section currently exists.

The applicant seeks legal access pursuant to the Alaska National Interest Lands Conservation Act (ANILCA). The ANILCA directs the agency to grant access to inholdings of non-Federal land within the National Forest boundary for the reasonable use and enjoyment of those lands by the landowner. The applicant has stated that it intends to manage the lands to be accessed for long term timber production utilizing conventional ground based logging systems. The applicant intends to build roads on the easement(s) sufficient to support the intended use of the land. The forest Supervisor has determined (based on contemporaneous uses of similarly situated lands) that the intended use of the non-Federal land constitutes reasonable use and enjoyment and that the requested mode of access is reasonable.

Pursuant to the implementing regulations of the ANILCA, 36 CFR 251.110, the Forest Service will determine the routes and modes of access which minimize damage or disturbance to National Forest System lands and resources. The environmental analysis conducted for the EIS will be used to determine the most appropriate location of easements.

A range of alternatives will be considered, including a no action alternative. Other alternatives will explore potential easement locations and may include terms and conditions placed on the use of the roads to protect forest resources located on Federal lands.

The proposed action is located in designated habitat for four threatened or endangered species including the gray wolf, grizzly bear, peregrine falcon and bald eagle. Pursuant to the Endangered Species Act (ESA) the Forest will prepare a Biological Assessment to determine the effect of the action on the potentially affected species. The Forest will consult with the U.S. Fish and Wildlife Service to review the fundings of the Biological Assessment and to determine what, if any, actions may be taken to reduce or mitigate adverse effects to listed species.

Preliminary scoping for this proposed action identified a number of issues to be considered in the environmental analysis. These include the effects of resource development on the threatened grizzly bear, the endangered gray wolf, adjacent Wilderness and roadless resources, water quality, and a variety of sensitive fish, wildlife and plant species.

Public participation is invited at any time during the analysis process prior to the final decision, however, two periods are specifically identified for submission of comments.

During the scoping period initiated by this notice, the Forest Service is seeking preliminary issues and concerns from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed action. The scoping period will extend to May 1, 1994. Issues and concerns identified during this period will be used to prepare a Draft Environmental Impact Statement (DEIS). The scoping process includes:

1. Identification of potential issues.
2. Identification of issues to be analyzed in depth.
3. Elimination of insignificant issues or those which have been covered by a relevant previous environmental analysis.
4. Identification of additional reasonable alternatives.
5. Identification of potential effects associated with the proposed action.
6. Determination of potential cooperating agencies and task assignments.

The DEIS will be issued to individuals and organizations who submit comments or express interest during the scoping period and to other requesting copies. The Forest Service will accept comments on the DEIS for a period of at least 45 days from the date the Environmental Protection Agency's notice of availability appears in the **Federal Register**. Comments related to the DEIS will be analyzed and considered in preparing the Final Environmental Impact Statement (FEIS). The Forest Service will respond to the comments received in the FEIS.

The Draft Environmental Impact Statement is planned to be completed and available for public review in May, 1994. The Final Environmental Impact Statement is scheduled for completion in November, 1994.

The Responsible Official will document the decision and reasons for the decision in a Record of Decision when the FEIS is completed. The decision will be subject to Forest

Service appeal regulations (36 CFR part 215). The Responsible Official for this action is Joel D. Holtrop, Forest Supervisor, Flathead National Forest.

The Forest Service believes it is important to give reivewers notice at this early stage 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 first environmental impact statement may be waived or dismissed by the courts. *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 14, 1994.

Joel D. Holtrop,

Forest Supervisor, Flathead National Forest.

[FR Doc. 94–6491 Filed 3–18–94; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Hearing on Racial and Ethnic Tensions in American Communities; Poverty, Inequality, and Discrimination—New York City

Notice is hereby given pursuant to the provisions of the United States on Civil Rights Act of 1983, Public Law 98–183, 97 Stat. 1301, as amended, that a public hearing of the U.S. Commission on Civil Rights will commence on Monday, May 16, 1994, beginning at 9 a.m., in the Ceremonial Court of the U.S. Court of International Trade, located at One Federal Plaza, New York, New York 10007.

The purpose of the hearing will be to collect information within the jurisdiction of the Commission, in order to examine the underlying causes of racial and ethnic tensions in the United States.

The Commission is an independent, bipartisan, factfinding agency authorized to study, collect, and disseminate information, and to appraise the laws and policies of the Federal Government, and to study and collect information concerning legal developments, with respect to discrimination or denials of equal protection of the laws under the Constitution because of race, color, religion, sex, age, handicap, or national origin, or in the administration of justice.

Hearing impaired persons who will attend the hearing and require the services of a sign language interpreter, should contact Betty Edmiston, Administrative Services and Clearinghouse Division, at (202) 376–8105 (TDD (202) 376–8116)), at least five (5) working days before the scheduled date of the hearing.

Dated at Washington, DC, March 15, 1994.

Stuart J. Ishimaru,

Acting Staff Director

[FR Doc. 94–6478 Filed 3–18–94; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Technology Administration

National Institute of Standards and Technology

[Docket No. 940383–4063]

Invitation for Proposals—Advanced Technology Program (ATP)

AGENCY: National Institute of Standards and Technology, Technology Administration, Commerce.

ACTION: Notice.

SUMMARY: The Technology Administration's National Institute of Standards and Technology (NIST) invites applications for funding under the Advanced Technology Program (ATP), and announces a public meeting for all interested parties. During 1994, the ATP will hold:

(1) General Competition 94–01 in which proposals in all areas of technology meeting the ATP criteria are solicited, and,

(2) Several Program Competitions focussed on specific technology or technology application areas.

This invitation provides general information for all of the competitions planned for 1994 as well as specific information for General Competition 94–01. Proposal due dates, program competition topics, and other competition-specific instructions for each of the Program Competitions will be published in the Commerce Business Daily (CBD) later this year.

Those interested in applying for ATP funding must contact the ATP at the address shown below to obtain application materials. The Proposal Preparation Kit available upon request from the ATP contains the application forms, background material, and instructions referenced in this invitation. The new ATP Proposal Preparation Kit may be used either for General Competitions or Program Competitions. The Advanced Technology Program is Program Number 11.612 in the Catalog of Federal Domestic Assistance.

As explained in the supplementary information section below, applicants have the option of submitting abbreviated proposals prior to full proposals in Competition 94–01.

DATES: Abbreviated proposals for General Competition 94–01 must be received at the address listed below no later than 3 p.m. local time on April 20, 1994. Proposals transmitted by facsimile or electronic mail will NOT be accepted. Each applicant submitting an abbreviated proposal will receive a written recommendation regarding whether or not to prepare and submit a full proposal. Such notification will be mailed on or before May 25, 1994. Full proposals must be received by 3 p.m. local time on June 22, 1994. Should the National Institute of Standards and Technology (NIST) site be closed on the specified due date, ATP proposals will be due at 3 p.m. on the next business day that the NIST site is open. It is the responsibility of applicants to ensure that their proposals are received at the ATP by the date and time stated. Due dates for the program competitions will be published in the CBD at the time each competition is announced. Should there ever be an extension of the due date for any ATP competition, that information will be provided via a notice published in the CBD as well as a recorded message on the ATP toll-free "Hotline" number (1–800–ATP–FUND.)

For this reason, we recommend that applicants check this recorded message prior to the closing date.

A public meeting for parties considering applying for funding in ATP General Competition 94–01 will be held beginning at 1 p.m. on April 6, 1994 in the Red Auditorium at NIST at the address shown below. Attendance at this public meeting is not required of potential proposers. The purpose of the meeting is to provide general information regarding the ATP procedures, selection process, and proposal preparation to potential applicants unfamiliar with the ATP. No discussion of specific proposals will occur at this meeting. Dates and times of analogous public meetings for the program competitions will be announced later in the CBD, transmitted to those on the ATP mailing list, and described on the ATP toll-free Hotline.

NIST intends to select proposals for funding approximately four months after the closing date for Competition 94–01 full proposals. (The actual selection date will depend on the number of applications received.)

ADDRESSES: The public meeting will be in the Red Auditorium at NIST, Administration Building, National Institute of Standards and Technology, Quince Orchard and Clopper Roads, Gaithersburg, MD. Exit Interstate 270 at exit 10 northbound or exit 11B southbound.

Abbreviated proposals must be sent to:
Abbreviated Proposals, Competition 94–01, Advanced Technology Program, A430 Admin. Bldg. (Bldg. 101), National Institute of Standards and Technology, Quince Orchard at Clopper Road, Gaithersburg, MD 20899–0001.

Full proposals must be sent to:
Competition 94–01, Advanced Technology Program, A430 Admin. Bldg. (Bldg. 101), National Institute of Standards and Technology, Quince Orchard at Clopper Road, Gaithersburg, MD 20899–0001.

FOR FURTHER INFORMATION CONTACT: To request a copy of the ATP Proposal Preparation Kit and to have your name added to the ATP mailing list for future mailings, use whichever of these four options is the most convenient for you:

(1) Call the ATP toll-free number, 1–800–ATP–FUND. You will have the option of hearing recorded messages regarding the status of the ATP or speaking to one of our customer representatives who will take your name and address. If our representatives are all busy when you call, leave a message after the tone. To ensure that the information is entered correctly, please speak distinctly and slowly and spell words that might cause confusion. Leave your phone number as well as your name and address.

(2) Contact ATP via fax at (301) 926–9524. A backup fax number is (301) 869–1150.

(3) Contact ATP via electronic mail at atp@micf.nist.gov. Include your name, full mailing address and phone number.

(4) Write to the ATP at the address shown above.

Note that the ATP is mailing new Proposal Preparation Kits to all those individuals whose names are currently in the ATP computer data base. Such individuals need not contact the ATP to request a kit unless the kit fails to arrive within a week of this announcement.

SUPPLEMENTARY INFORMATION:

Background

The ATP is managed by the National Institute of Standards and Technology, an element of the Technology Administration (TA) of the Department of Commerce. ATP was established by section 5131 of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–418, 15 U.S.C. 278n), as modified by Public Law 102–245.

The ATP works with U.S. industry to advance the nation's competitiveness—and economy—by helping to fund the development of high-risk but powerful new technologies that underlie a broad spectrum of potential new applications, commercial products, and services. Through cooperative agreements with individual companies or groups of companies, large and small, the ATP invests in industrial projects to develop technologies with high-payoff potential for the nation. The ATP accelerates technologies that—because they are risky—are unlikely to be developed in time to compete in rapidly changing world markets without such a partnership of industry and government. By sharing the cost of such projects, the ATP catalyzes industry to pursue promising technologies. The Proposal Preparation Kit expands on the goals of the ATP and describes in detail what constitutes a good ATP proposal.

The ATP operates under program procedures published at part 295, title 15, of the Code of Federal Regulations. These procedures were recently updated (**Federal Register**, Vol. 59, No, 4, January 6, 1994). A copy of the updated version of these procedures is provided in Appendix 2 of the new ATP Proposal Preparation Kit.

Cooperative research agreements rather than grants are the funding instruments used for ATP awards. A cooperative research agreement differs from a grant with respect to the amount of interaction between the Federal Government and the recipient, and is used to provide financial assistance when substantial involvement is anticipated between the government and the recipient.

Invitation for Proposals

The ATP invites applications for funding from:

(1) Individual United States businesses in amounts not to exceed $2 million (federal share) over three years. Single applicants must fund all indirect costs associated with the project.

(2) Industry-led joint research and development ventures, where ATP support will serve as a catalyst for the proposed joint venture project, and provided, however, that the ATP share is a minority share of the cost of the venture for up to five years.

Applicant eligibility is discussed in detail in the Proposal Preparation Kit.

All awards are subject to the availability of appropriations. Future or continued funding for multi-year projects will be at the discretion of NIST and will be contingent on such factors as satisfactory performance and the availability of funds.

Number of Copies

Applicants for General Competition 94–01 must submit four (4) copies of their abbreviated proposal, prepared in accordance with the instructions in this announcement, to the Advanced Technology Program at the address listed elsewhere in this announcement. Those applicants who submit full proposals must submit eleven (11) copies of their full proposal, prepared in accordance with the instructions in the ATP Proposal Preparation Kit. Each copy of the abbreviated proposal or full proposal should be marked with the competition number (Competition 94–01 for the 1994 General Competition) and the shipping label should also note the competition number.

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this notice under provisions of the Paperwork Reduction Act (OMB control number 0693–0009).

Abbreviated Proposals

Abbreviated proposals will be accepted for General Competition 94–01, and will be accepted for some future program competitions as specified in the CBD notice(s). The purpose of abbreviated proposals is to provide applicants with limited resources early feedback regarding whether the proposed project falls within the scope

of the ATP and whether the project proposed appears sufficiently promising relative to the selection criteria to warrant preparation of a full proposal. In competitions where abbreviated proposals are accepted, applicants who submit such proposals will be notified in writing whether or not ATP recommends submission of a full proposal.

ATP provides telephone debriefings upon request to those who submit full proposals to any competition. Such debriefings will provide applicants with feedback regarding the strengths and weaknesses of the proposal. However, no debriefings, written or oral, will be provided for abbreviated proposals. Feedback on abbreviated proposals will be limited to a yes/no recommendation regarding whether or not to submit a full proposal.

You may submit a full proposal whether or not you have submitted an abbreviated proposal, and whether or not ATP has recommended that you submit a full proposal. Since only those abbreviated proposals that best meet the proposal selection criteria will be recommended for full proposal, and since the ATP anticipates receiving perhaps a factor of twenty or more abbreviated proposals than can be funded, it is likely that a substantial majority of the abbreviated proposals will not recommended for full proposal preparation.

Proprietary information in abbreviated proposals will be protected just as it is in full proposals. If your proposal contains proprietary information, mark it accordingly; however, the title page must not include proprietary information. We recommend including the following legend on the title page: "Proposal contains proprietary information. Title page nonproprietary."

Full proposals must be prepared in accordance with the instructions in the Proposal Preparation Kit. In preparing an abbreviated proposal, heed the general advice provided in the ATP Proposal Preparation Kit, but follow the specific formatting instructions below.

On the title page (cover sheet) of the abbreviated proposal, which must contain only non-proprietary information, provide the following information:

(1) Competition Number (94–01 for the 1994 General Competition)

(2) Title of the project (90 character limit—we recommend a title that is indicative of the content of the proposal rather than a vague title such as "Restoring American Competitiveness.")

(3) Single applicant or joint venture (specify which).

(4) Submitting organization. (If application is a joint venture application, also include a listing of the members of the joint venture other than the submitting organization.)

(5) Contact person's name.

(6) Contact person's address.

(7) Contact person's telephone, fax number, and e-mail address.

(8) Key words (90 character limit).

Do NOT include any of the forms or certifications required for full proposals in your abbreviated proposal.

Limit the abbreviated proposal to no more than 10 pages plus the title page. In abbreviated proposals, only the cover page plus the first 10 pages will be read. Additional pages will be ignored in formulating the recommendation. Use either 8½×11 inch or A4 metric size paper with an easily-readable font. (See page 13 of the Proposal Preparation Kit.)

Briefly address each of the five ATP evaluation criteria described in Chapter 1 of the Proposal Preparation Kit. Be sure not to leave out the following points, which are essential in making a determination as to how promising your proposal is:

(1) In addressing the scientific and technical merit criterion, define your technical goals quantitatively and outline the R&D tasks required to accomplish them. Compare and contrast your approach to the current state of the art and related R&D that you believe your competition is doing. Explain why your project has high technical risk and why it is innovative. Explain how the proposed R&D will take into account downstream manufacturing concerns and/or commercial applications requirements.

(2) In addressing criteria 2 and 3, relate the technical goals to your company or joint venture's business strategy. Explain why this project is important to your company or joint venture and how it will contribute to economic growth in the United States. Explain why ATP funds are needed. Briefly describe the path to commercialization for the technology. Joint ventures should also briefly describe the structure of the venture and the role of each participant.

(3) Briefly summarize the budget profile for the project including the amount requested from ATP for each year and the proposed cost-sharing by the applicant(s) each year (indirect costs for single applicants, matching funds for joint ventures.) For joint venture applicants, show approximately how much ATP funding would go to each applicant each year. Identify major subcontractors if known, and projected subcontract amounts.

Mail 4 copies of your abbreviated proposal to the address shown above.

Funds Available for Cooperative Research Agreements

An estimated $20 to $25 million in first-year funding will be available for General Competition 94–01. The number of awards will depend on the quality of the proposals received and the amount of funding requested by the proposals under consideration for awards, but based on ATP's experience, is unlikely to exceed 30. An estimated $100–$125 million in first-year funds will be available for the several program competitions to be announced later this fiscal year. For every ATP competition, NIST reserves the right to fund proposals totalling more or less than the amount of funding tentatively allocated to that competition if the number of high quality proposals received is judged to be more or fewer respectively than anticipated.

Preparation of Full Proposals and Reporting Requirements

The ATP Proposal Preparation Kit, available from the ATP, contains background material on the ATP, detailed contents and formatting guidelines for the preparation of full proposals, and the required forms. Also included is information on reporting and audit requirements for recipients. To be accepted for review, full proposals must meet all of the requirements outlined in the Kit. Full proposals that fail to meet one or more of the those requirements will be considered non-responsive to this solicitation.

Award Criteria and Proposal Review Process

The criteria used to evaluate proposals submitted in response to this notice and the proposal review process are documented in the Proposal Preparation Kit.

Negotiation of Cooperative Agreements

NIST reserves the right to negotiate project scope and funding levels with ATP cooperative research agreement recipients.

Submission of Revised Proposals

An applicant may submit a full proposal that is a revised version of a full proposal submitted to a previous ATP competition. NIST will examine such proposals to determine whether substantial revisions have been made. Where the revisions are determined not to be substantial, NIST reserves the right

to score and rank, or where appropriate, to reject, such proposals based on reviews of the previously-submitted proposal.

Transfer of Proposals

NIST reserves the right to transfer a full proposal received in response to a General Competition invitation to a Program Competition underway in the same general timeframe if the subject matter of the proposal clearly falls within the scope of the Program Competition. NIST will not transfer proposals from Program Competitions to General Competitions. Applicants will be notified if and when a proposal is transferred from a General Competition to a Program Competition.

Other Requirements, Requests, and Provisions

No award of Federal funds shall be made to an applicant or recipient who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, a negotiated repayment schedule is established and at least one payment is received, or other arrangements satisfactory to the Department are made.

All for-profit and nonprofit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management honesty or financial integrity.

Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal or written assurance that may have been received, there is no obligation on the part of the Department of Commerce to cover pre-award costs.

Primary Applicant Certification

All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension, and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying," and the following explanation are hereby provided:

a. *Nonprocurement Debarment and Suspension*—Prospective participants, (as defined at 15 CFR part 26, section 105) are subject to 15 CFR part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies;

b. *Drug-Free Workplace*—Grantees (as defined at 15 CFR part 26, section 605) are subject to 15 CFR part 26, subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies;

c. *Anti-Lobbying*—Persons (as defined at 15 CFR part 28, section 105) are subject to the lobbying provisions of 31 USC 1352, "Limitations on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater; and,

d. *Anti-Lobbying Disclosures*—Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 28, Appendix B.

Lower Tier Certification—Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions and Lobbying" and Form SF–LLL, "Disclosure of Lobbying Activities." Although the CD–512 is intended for the use of primary recipients and should not be transmitted to NIST, the SF–LLL submitted by any tier recipient or subrecipient should be forwarded in accordance with the instructions contained in the award document.

A false statement on any application for funding under ATP may be grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001. The ATP does not involve the mandatory payment of any matching funds from state or local government and does not affect directly any state or local government. Accordingly, the Department of Commerce has determined that Executive Order 12372, "Intergovernmental Review of Federal Programs" is not applicable to this program. Recipients and subrecipients are subject to all Federal laws and Federal and Department of Commerce policies, regulations, and procedures applicable to financial assistance awards.

Applicants are hereby notified that any equipment or products authorized to be purchased with funding provided under this program must be American-made to the maximum extent feasible in accordance with Public Law 103–121, sections 606 (a) and (b). Adequate justification will be required for any proposed purchases of equipment or products that are not American-made.

Dated: March 15, 1994.

Arati Prabhakar,

Director, NIST.

[FR Doc. 94–6462 Filed 3–18–94; 8:45 am]

BILLING CODE 3510–13–M

National Oceanic and Atmospheric Administration

[I.D. 031094B]

Marine Mammals

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

ACTION: Issuance of modification to permit no. 882 (P397A).

SUMMARY: Notice is hereby given that on March 15, 1994, Permit No. 882, issued to Dan R. Salden, Ph.D., Hawaii Whale Research Foundation, Box 1772, Southern Illinois University at Edwardsville, Edwardsville, IL 62026–1772, was modified.

ADDRESSES: The modification and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, rm. 13130 Silver Spring, MD 20910 (301/712–3389);

Director, Southwest Region, NMFS, 501 W. Ocean Boulevard, suite 4200, Long Beach, CA 90802–4213 (310/980–4016); and

Coordinator, Pacific Area Office, Southwest Region, NMFS, 2570 Dole Street, room 106, Honolulu, HI 96822–2396 (808/955–8831).

SUPPLEMENTARY INFORMATION: The subject modification has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the provisions of §§ 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the provisions of § 222.25 of the regulations governing the taking,

importing, and exporting of endangered fish and wildlife (50 CFR part 222).

The Permit was modified to authorize the collection, on an opportunistic basis, of marine mammal biological specimens (e.g., sloughed skin, mucous, and placentas) found floating in the water.

Dated: March 15, 1994.

Herbert W. Kaufman,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 94–6493 Filed 3–18–94; 8:45 am]

BILLING CODE 3510–22–P

Travel and Tourism Administration

Travel and Tourism Advisory Board; Board Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. (app. 1976) notice is hereby given that the Travel and Tourism Advisory Board of the U.S. Department of Commerce will convene on April 7, 1994, 8:30 a.m. to 5 p.m., in Los Angeles, California. The meeting will be held at the Los Angeles Convention Center, 1201 S. Figueroa Street.

From 8:30 a.m.–12 p.m., the Board will conduct a California Tourism Summit to address the role of the Federal Government in tourism development in California. The Board will conduct its business meeting from 2–5 p.m. in the same location. Members advise the Secretary of Commerce on matters pertinent to the Department's responsibilities to accomplish the purpose of the National Tourism Policy Act (Public Law 97–63), and provide guidance to the Under Secretary for Travel and Tourism.

Agenda items are as follows:

California Tourism Summit—April 7, 1994

Welcome—Darryl Hartley-Leonard, Chairman.
Remarks and Introductions by Secretary Ron Brown.
Presentations by Elected Officials.
California State Panel.
California Cities Panel.
Arts/Multicultural Tourism Panel.
Environmental/Rural Tourism Panel.
Attractions Panel.

Business Meeting—April 7, 1994

I. Call to Order.
II. Roll Call.
III. White House Conference on Tourism.
IV. Tourism Policy Council.
V. EDA Defense Conversion Project.
VI. USTTA Program Update.
VII. Miscellaneous.
VIII. Adjournment.

A number of seats will be available to observers from the public and press. To assure adequate seating, individuals intending to attend should notify the Committee Control Officer in advance. The public will be permitted to file written statements with the Committee Control Officer before or after the meeting.

Dana V. Shelley, Committee Control Officer, United States Travel and Tourism Administration, room 1863, U.S. Department of Commerce, Washington, DC 20230 (telephone: 202–482–0137), will respond to public requests for information.

Greg Farmer,

Under Secretary of Commerce for Travel and Tourism.

[FR Doc. 94–6490 Filed 3–18–94; 8:45 am]

BILLING CODE 3510–11–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Federative Republic of Brazil

March 16, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits for the new agreement year.

EFFECTIVE DATE: April 1, 1994.

FOR FURTHER INFORMATION CONTACT: Nicole Bivens Collinson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

In a Memorandum of Understanding (MOU) dated February 24, 1994, the Governments of the United States and the Federative Republic of Brazil agreed to amend and extend their current bilateral agreement through March 31, 1996. The limit for Category 219 has been reduced for special carryforward used during the previous agreement period.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish limits for the period April 1, 1994 through March 31, 1995.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 58 FR 62645, published on November 29, 1993).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the MOU, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 16, 1994.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on December 9, 1993; pursuant to the Memorandum of Understanding dated February 24, 1994 between the Governments of the United States and the Federative Republic of Brazil; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on April 1, 1994, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Brazil and exported during the twelve-month period beginning on April 1, 1994 and extending through March 31, 1995, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
Aggregate Limit 200–239, 300–369, 400–469 and 600–670, as a group.	385,390,491 square meters equivalent.
Sublevels in the aggregate	
218	4,744,250 square meters.
219	16,218,814 square meters.
225	8,302,437 square meters.
300/301	6,434,294 kilograms.

Category	Twelve-month restraint limit
313	38,647,105 square meters.
314	6,523,345 square meters.
315	19,570,035 square meters.
317/326	17,790,939 square meters.
334/335	127,665 dozen.
336	70,926 dozen.
338/339/638/639	1,276,667 dozen.
342/642	375,907 dozen.
347/348	922,038 dozen.
350	143,046 dozen.
361	964,593 numbers.
363	20,586,742 numbers.
369–D [1]	459,800 kilograms.
410/624	9,488,502 square meters of which not more than 2,573,941 square meters shall be in Category 410.
433	17,867 dozen.
445/446	69,995 dozen.
604	450,400 kilograms of which not more than 344,235 kilograms shall be in Category 604–A [2].
607	4,182,293 kilograms.
647/648	425,556 dozen.
669–P [3]	1,532,670 kilograms.

[1] Category 369–D: only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.

[2] Category 604–A: only HTS number 5509.32.0000.

[3] Category 669–P: only HTS numbers 6305.31.0010, 6305.31.0020 and 6305.39.0000.

Imports charged to these category limits for the period April 1, 1993 through March 31, 1994 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The conversion factor for Categories 338/339/638/639 is 10 square meters per dozen.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–6578 Filed 3–18–94; 8:45 am]

BILLING CODE 3510–DR–F

Denial of Participation in the Special Access Program

March 16, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs denying the right to participate in the Special Access Program.

EFFECTIVE DATE: April 1, 1994.

FOR FURTHER INFORMATION CONTACT: Lori E. Goldberg, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Committee for the Implementation of Textile Agreements (CITA) has determined that Designs by Cappuccino is in violation of the requirements set forth for participation in the Special Access Program.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs, effective on April 1, 1994, to deny Designs by Cappuccino the right to participate in the Special Access Program, for a period of two months, from April 1, 1994 through May 31, 1994.

Requirements for participation in the Special Access Program are available in **Federal Register** notices 51 FR 21208, published on June 11, 1986; 52 FR 26057, published on July 10, 1987; and 54 FR 50425, published on December 6, 1989.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 16, 1994.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: The purpose of this directive is to notify you that the Committee for the Implementation of Textile Agreements has determined that Designs by Cappuccino is in violation of the requirements for participation in the Special Access Program.

Effective on April 1, 1994, you are directed to prohibit Designs by Cappuccino from further participation in the Special Access Program, for a period of two months, from April 1, 1994 through May 31, 1994. For the period April 1, 1994 through May 31, 1994, goods accompanied by Form ITA–370P which are presented to U.S. Customs for entry under the Special Access Program will not be accepted. In addition, for the period April 1, 1994 through May 31, 1994, you are directed not to sign ITA–370P forms for export of U.S.-formed and cut fabric for Designs by Cappuccino.

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–6579 Filed 3–18–94; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Department of the Army

Procedures for Preparation and Submission of Proprosals

AGENCY: Armament Retooling and Manufacturing Support (ARMS) Public/Private Task Force (PPTF).

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of the next meeting of the Armament Retooling and Manufacturing Support (ARMS) Public/Private Task Force (PPTF). The PPTF is chartered to develop new and innovative methods to maintain the government-owned, contractor-operated ammunition industrial base and retain critical skills for a national emergency. Purpose of this meeting is to provide detailed information on procedures, processes, and seek recommendations for improving execution of the ARMS program. Focus of attention will be on preparation and submission of proposals, role responsibility; both contractor and Government, and application of incentives. This session is open to the public.

DATES OF MEETINGS: April 5–7, 1994.

PLACE OF MEETING: Jumer's Castle Lodge, Spruce Hills Drive and Utica Ridge Road, Bettendorf, IA.

TIME OF MEETING: 9 a.m.—5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. R. B. Auger, ARMS Task Force, HQ Army Materiel Command, 5001 Eisenhower Avenue, Alexandria, Virginia 22333; Phone (703) 274–9838.

SUPPLEMENTARY INFORMATION: Reservations should be made directly with Jumer's Castle Lodge; telephone (319) 359–7141. Please be sure to mention that you will be attending the ARMS meeting or confirmation Number 358598 to assure occupancy in the block of rooms set aside for this meeting. Request you contact Donna Ponce in the ARMS Team Office at Rock Island Arsenal; telephone (309) 782–3058/3325, if you will be attending the meeting, so that our roster or attendees is accurate. This number may also be

used if other assistance regarding the Arms meeting is required.

Gregory D. Showalter,

Alternate Army Federal Register Liaison Officer.

[FR Doc. 94–6623 Filed 3–18–94; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Meeting

AGENCY: National Assessment Governing Board; ED.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Reporting and Dissemination Committee of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under section 10 (a) (2) of the Federal Advisory Committee Act. This document is intended to notify the general pubic of their opportunity to attend.

DATES: April 14, 1994.

TIME: 11 a.m. (est).

LOCATION: 800 North Capitol Street NW., suite 825, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mary Ann Wilmer, Operations Officer, National Assessment Governing Board, suite 825, 800 North Capitol Street NW., Washington, DC, 20002–4233, Telephone: (202) 357–6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 406(i) of the General Education Provisions Act (GEPA) as amended by Section 3403 of the National Assessment of Educational Progress Improvement Act (NAEP Improvement Act), Title III–C of the Augustus F. Hawkins—Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (Pub. L. 100–297), (20 USC 1221e–1).

The Board is established to formulate policy guidelines for the National Assessment of Educational Progress. The Board is responsible for selecting subject areas to be assessed, developing assessment objectives, identifying appropriate achievement goals for each grade and subject tested, an establishing standards and procedures for interstate and national comparisons.

The Reporting and Dissemination Committee of the National Assessment Governing Board will meet April 14, 1994 from 11 a.am until 12:30 p.m. Because this is a teleconference meeting, facilities will be provided so the public will have access to he Committee's deliberations. The agenda for this teleconference meeting includes three items: (1) Plans for implementation of the Widmeyer Group recommendations on dissemination strategies for NAEP; (2) NCES plan for release of1992 NAEP report on Effective Schools and Instruction in Mathematics; and (3) Use of achievement levels in reporting 1994 reading results.

Records are kept of all Board proceedings and are available for pubic inspection at the U.S. Department of Education, National Assessment Governing Board, suite 825, 800 North Capitol Street NW., Washington, DC, from 8:30 a.m. to 5 p.m.

Date: March 15, 1994.

Roy Truby,

Executive Director, National Assessment Governing Board.

[FR Doc. 94–6467 Filed 3–18–94; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Extension of a Revised Draft Environmental Assessment of the Urgent-Relief Acceptance of Foreign Research Reactor Spent Fuel

AGENCY: Department of Energy.

ACTION: Extension of public comment period.

SUMMARY: DOE, in response to public comments received to date, has decided to extend to April 8, 1994, the public comment period on the revised draft Environmental Assessment (EA) for Urgent-Relief Acceptance of Foreign Research Reactor Spent Fuel.

DATES: Comments on the revised draft EA should be postmarked by April 8, 1994, to ensure consideration. Comments postmarked after that date will be considered to the extent practicable.

ADDRESSES: Comments or requests for copies of the revised draft EA should be addressed to: Mr. David Huizenga, Office of the Deputy Assistant Secretary, Office of Environmental Restoration and Waste Management, U.S. Department of Energy (Mail Stop EM–30), 1000 Independence Avenue SW., Washington, DC 20585–0001. Telephone: (202) 586–0368.

FOR FURTHER INFORMATION CONTACT: For further information on the revised draft EA contact Mr. David Huizenga at the above address. For further information regarding the Department of Energy National Environmental Policy Act process, please contact: Ms. Carol M. Borgstrom, Director, Office of NEPA Oversight (EH–25), U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585–0001. Telephone: (202) 586–4600 or leave a message at (800) 472–2756.

SUPPLEMENTARY INFORMATION: On February 9, 1994, the Department of Energy published a notice in the **Federal Register** (59 FR 6008) announcing the availability of the revised draft EA and the close of the public comment period scheduled for March 7, 1994. The Department proposed to transport spent fuel to the United States as part of an effort to minimize the use of highly enriched uranium in civil program worldwide. The urgency of the proposed action arose from the need to ensure that countries currently possessing this spent fuel continue to support the nonproliferation initiatives of the United States embodied in the Reduced Enrichment for Research and Test Reactors Program until an Environmental Impact Statement could be completed on the proposed policy to accept up to 15,000 spent fuel elements from foreign research reactors for up to fifteen years.

In response to requests from several parties to extend the comment period, and to ensure that all interested parties have the opportunity to comment, DOE is extending the comment period to April 8, 1994. Comments should be postmarked by April 8, 1994, to ensure consideration. Comments postmarked after that date will be considered to the extent practicable.

Issued at Washington, DC, March 16, 1994.

Jill E. Lytle,

Deputy Assistant Secretary, Environmental Restoration and Waste Management.

[FR Doc. 94–6668 Filed 3–18–94; 8:45 am]

BILLING CODE 6450–01–P

Record of Decision; Proposed Healy Clean Coal Project, Denali Borough, AK

AGENCY: Department of Energy.

ACTION: Record of Decision; Proposed Healy Clean Coal Project, Denali Borough, AK.

SUMMARY: The Department of Energy (DOE) has prepared an environmental impact statement (EIS) (DOE/EIS–0186) to assess the environmental impacts associated with the Healy Clean Coal Project (HCCP), a proposed demonstration project near Healy, Alaska that would be cost-shared by DOE and the Alaska Industrial Development and Export Authority (AIDEA), a state agency, under DOE's

Clean Coal Technology (CCT) Program. After careful consideration of these impacts, along with program goals and objectives, DOE has decided that it will provide approximately $110 million in federal funding support (about 48% of the total cost of about $227 million) for the construction and operation of two integrated clean coal technologies to be demonstrated in the HCCP.

The National Park Service (NPS) raised concerns that increased emissions from the combined operation of the HCCP and the existing Golden Valley Electric Association, Inc., (GVEA) Unit No. 1 at Healy would adversely affect the nearby Denali National Park and Preserve (DNPP). In response to those concerns, DOE facilitated negotiations between the project participants and the U.S. Department of the Interior (DOI) (the parent department of the NPS). The negotiations were successfully concluded and a Memorandum of Agreement was signed by DOI, DOE, AIDEA, and GVEA on November 9, 1993. Under the Agreement, DOI has supported the issuance of the final EIS and has withdrawn its request for an adjudicatory hearing to reconsider the air quality permit issued to AIDEA for the HCCP by the Alaska Department of Environmental Conservation (ADEC).

The cornerstone of the Memorandum of Agreement is the planned retrofit of Unit No. 1 to reduce emissions of NO_x and SO_2. The Agreement calls for Unit No. 1 to be retrofitted with low-NO_x burners after the start-up of the HCCP to decrease Unit No. 1 emissions by approximately 50%; the Agreement also requires that SO_2 emissions from Unit No. 1 be reduced by 25% using duct injection of sorbent. After retrofit of the Unit No. 1, the combined emissions of both units are expected to be only slightly greater than the current emissions from Unit No. 1. In addition, the Agreement requires that the combined emissions from the site be reduced temporarily to current Unit No. 1 levels if a visibility plume or haze attributable to the site is observed. Furthermore, the Agreement may be renegotiated to require further mitigation, including a permanent limitation on site emissions at current Unit No. 1 levels, if such observed impacts persist.

The Agreement will become effective contingent upon its incorporation into the ADEC air quality permit. DOE's decision to provide cost-shared funding for the HCCP is likewise contingent on incorporation of the terms of the Agreement into the permit.

FOR FURTHER INFORMATION CONTACT: For further information on the EIS, contact Earl W. Evans, Environmental Coordinator, Office of Clean Coal Technology, U.S. Department of Energy, Pittsburgh Energy Technology Center, P.O. Box 10940, Pittsburgh, PA 15236. Telephone (412) 892–5709. For further information on the DOE NEPA process, contact Carol M. Borgstrom, Director, Office of NEPA Oversight [EH–25], Office of Environment, Safety and Health, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. Telephone (202) 586–4600 or (800) 472–2756.

SUPPLEMENTARY INFORMATION: DOE prepared this Record of Decision pursuant to Council on Environmental Quality (CEQ) regulations for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508) and DOE regulations (10 CFR part 1021). This Record of Decision is based on the DOE Final EIS for the Proposed Healy Clean Coal Project (DOE/EIS–0186).

An overall strategy for compliance with NEPA was developed for the CCT Program, consistent with the CEQ NEPA regulations and DOE regulations for compliance with NEPA, that includes consideration of both programmatic and project-specific environmental impacts during and after the process of selecting a project. This strategy is called tiering (40 CFR part 1508.28), which refers to the coverage of general matters in a broader EIS (e.g., for the CCT Program) with subsequent narrower statements or environmental analyses incorporating by reference the general discussions and concentrating solely on the issues specific to the particular project under consideration.

The DOE strategy has three principal elements. The first element involved preparation of a comprehensive Programmatic EIS for the CCT Program (DOE/EIS–0146, November 1989) to address the potential environmental consequences of widespread commercialization of each of 22 successfully demonstrated clean coal technologies in the year 2010. The Programmatic EIS evaluated: (1) A no-action alternative, which assumed that the CCT Program was not continued and that conventional coal-fired technologies with flue gas desulfurization controls would continue to be used for new plants or as replacements for existing plants that are retired or refurbished and (2) a proposed action, which assumed that CCT Program projects were selected for funding and that successfully demonstrated technologies undergo widespread commercialization by 2010.

The second element involved preparation of a preselection, project-specific environmental review of the HCCP based on project-specific environmental data and analyses that the offeror supplied to DOE as part of the proposal.

The third element consists of preparing site-specific NEPA documents for each selected project. For the HCCP, DOE determined that an EIS should be prepared to address project-specific concerns. As part of the overall NEPA strategy for the CCT Program, the HCCP EIS draws upon the Programmatic EIS and preselection environmental reviews that have already analyzed many alternatives and scenarios (e.g., alternative technologies and sites).

Project Description

The HCCP would be located on the southern edge of the Interior Basin of Alaska, about 80 miles southwest of Fairbanks and 250 miles north of Anchorage. The facility is proposed to be built adjacent to the existing 25–MW Healy Unit No. 1 conventional pulverized-coal unit owned and operated by GVEA in a rural setting along the east bank of the Nenana River, about 2.5 miles east-southeast of Healy. Healy Unit No. 1 has been operating as a baseload power plant since November 1967 and has an expected operating life until at least 2007. The facility employs 29 people. The 65-acre site is located about 4 miles north of the nearest border of DNPP and 8 miles north of the entrance to DNPP.

The HCCP site would be classified for land use as an industrial site. The majority of the site has sustained surface alteration from the construction and operation of the existing Healy Unit No. 1 generating plant, support buildings, coal storage areas, ash ponds, roads, electric substation, and transmission lines.

The combustion technology to be demonstrated is the TRW Applied Technologies Division entrained combustion system with limestone injection to capture SO_2 in the flue gas. The heart of the system consists of twin all-metal combustors connected by short ducts to the boiler. First-stage precombustors burn about 25% of the coal, and exhaust gas from the precombustors is mixed with intake air to preheat the main (or slagging-stage) combustors that burn the remaining 75% of the coal. As the coal burns, molten slag collects on the walls of the combustors and flows toward openings in the bottom of the main combustors where it falls into water-filled slag tanks. The slagging combustors decline slightly from horizontal to aid in the

flow of the molten slag. Some slag solidifies on the water-cooled surfaces and serves to insulate and protect the metal walls from erosion and excessive temperatures. The main combustion sections operate at a slight air deficiency to reduce the amount of NO_x produced. In the boiler, combustion products mix with additional air to complete the combustion reactions. The combustors are coupled with a specially designed boiler that, in addition to its heat recovery function, produces low NO_x levels, functions as a limestone calciner, and accomplishes first-stage SO_2 removal. Therefore, flue gas from combustion is expected to contain lower concentrations of SO_2 and NO_x than flue gas from conventional combustion.

The postcombustion technology to be integrated with the advanced combustion system is the Joy Technologies, Inc./Niro Atomizer spray dryer absorber for a second stage of SO_2 removal and particulate removal. The flue gas would mix with an atomized spray that includes activated lime from the limestone injection during combustion, resulting in additional chemical reactions to remove SO_2 and PM. A baghouse provides further capture of PM and SO_2 before the flue gas exits through the stack. A portion of the lime collected by the spray dryer and the baghouse would be recycled to the spray dryer and used for SO_2 removal, thereby increasing SO_2 removal efficiency while reducing solid waste.

The integrated process is expected to demonstrate at least 90% SO_2 removal. It is also anticipated that at least 20% of the total available sulfur in the flue gas would be captured in the combustion process and at least 70% in the flue gas desulfurization system. Of the total ash generated, 60–90% would be removed from the combustors as slag and from the boiler hoppers as bottom ash. Most of the remaining ash would be removed in the baghouse.

The integrated process is suitable for repowering existing facilities or for new facilities. If successfully demonstrated, it would provide an alternative technology to conventional pulverized-coal boilers with conventional flue gas desulfurization controls, while lowering overall operating costs and reducing the volume of solid waste generated by conventional technology in current use.

Project Status

Project activities to date have been limited to the application for permits and approvals necessary to construct and operate the HCCP, and the preparation of designs and specifications necessary to apply for these permits and approvals, prepare the EIS, and provide assurance that this innovative technology will meet permit requirements.

On September 3, 1992, the Alaska Public Utility Commission (APUC) issued a Certificate of Public Convenience and Necessity, which will allow AIDEA to provide electric service from the HCCP. The APUC also approved a power sales agreement under which GVEA will purchase the output of the HCCP from AIDEA. The Trustees for Alaska, a non-profit, public interest, environmental law firm, appealed this decision, and on November 24, 1993, the Superior Court for the State of Alaska, Third Judicial District, affirmed the APUC's decision. The Trustees for Alaska have appealed this ruling to the Alaska Supreme Court. On January 27, 1994, the Superior Court granted the Trustees for Alaska's motion to stay the Certificate pending a final ruling by the Alaska Supreme Court. Also, on March 10, 1993, the ADEC issued a Prevention of Significant Deterioration (PSD) air quality permit for the HCCP. AIDEA has applied to ADEC to have the provisions of the Memorandum of Agreement discussed in the **SUMMARY** incorporated into the PSD permit. AIDEA is also in the process of obtaining other permits and approvals.

Alternatives

Congress directed DOE to pursue the goals of the CCT Program by means of partial funding of projects owned and controlled by nonfederal-government sponsors. This statutory requirement places DOE in a much more limited role than if the federal government were the owner and operator of the project. In the latter situation, DOE would be responsible for a comprehensive review of reasonable alternatives for siting the project. However, in dealing with an applicant, the scope of alternatives is necessarily more restricted, because the agency must focus on alternative ways to accomplish its purpose which reflect both the application before it and the functions it plays in the decisional process. It is appropriate in such cases for DOE to give substantial weight to the applicant's needs in establishing a project's reasonable alternatives.

Based on the foregoing principles, the reasonable alternatives to the proposed action are the no-action alternative (including scenarios reasonably expected as a consequence of the no-action alternative) and an alternative site nearer the coal mine fuel source.

Proposed Action

The proposed action is the provision of approximately $110 million in cost-shared federal funding support, which is about 48% of the $227 million total cost, for the construction and operation of two integrated clean coal technologies to be demonstrated in the HCCP, a new 50–MW coal-fired power generating facility at Healy, Alaska. The two technologies to be demonstrated are the TRW entrained combustion system and the Joy spray dryer absorber. These technologies have been designed to achieve reduction in emissions of SO_2, NO_X, and particulate matter (PM) while being energy efficient technologies capable of being used in new facilities or retrofitted to existing units. The technologies would be dependent on each other as part of an integrated system.

AIDEA conceived, designed, and proposed the HCCP in response to a Program Opportunity Notice issued by DOE in May 1989 to solicit proposals. DOE's role is limited to providing the cost-shared funding for AIDEA's proposed project. In addition, AIDEA and DOE have different objectives to be attained through the HCCP: DOE's objective is to demonstrate the technologies, while AIDEA's intent is to promote economic development, in this case by increasing Alaska's coal-fired electrical generating capacity.

Coal would be supplied for the HCCP by Usibelli Coal Mine, Inc., (UCM) from its open-pit Poker Flats Mine and other reserves, located about 4 miles north of the proposed site. GVEA has entered into a power sales agreement for the purchase and distribution of the electricity that would be generated by the HCCP. AIDEA has assembled a team composed of GVEA, UCM, Stone & Webster Engineering Corporation, Foster Wheeler Energy Corporation, TRW, and Joy to design, build, and operate the power plant. The project participant would obtain all applicable permits for the HCCP and would comply with all applicable laws, regulations, and ordinances. AIDEA initially proposed a site about 4 miles north of the currently proposed site. The participant subsequently proposed, with DOE approval, to move the proposed HCCP 4 miles south after AIDEA limited the project to a power generation facility because the initially proposed co-located coal-upgrading operations were not expected to be economical because of their early stage of development.

No Action

This alternative does not provide federal cost-shared funding for the

HCCP. The Programmatic EIS for the CCT Program (DOE/EIS–0146) evaluated the consequences of no action on a programmatic basis. Under the no-action alternative for the HCCP, the commercial readiness of the proposed technologies for the combined removal of SO_2, NO_X, and PM would not be demonstrated at Healy, Alaska, and probably would not be demonstrated elsewhere because there are currently no other similar proposals in the CCT Program. The opportunity to demonstrate these technologies would likely be lost. As a result, commercialization of the technologies could be delayed or might not occur because the utility and industrial sectors tend to utilize known and demonstrated technologies over new, unproven technologies.

Under the no-action alternative, two reasonably foreseeable scenarios could result. Neither scenario would contribute to the objectives of demonstrating the economic feasibility and environmental acceptability of new coal utilization and pollution control technologies.

First, GVEA could continue to operate the present power plant and continue to buy natural-gas-generated power from Anchorage utilities without building any new generating facilities. No construction activities or changes in operations would occur. Coal requirements and electricity generation would remain constant, and there would be no change in current environmental impacts of plant operations.

Second, a conventional coal-fired power plant equivalent in capacity to the proposed project could be built in the Healy area by the project participants or other parties without DOE's financial assistance to meet the power demand. The best available conventional control technologies would be required. These would likely include dry scrubbers that use lime to remove SO_2 from the flue gas, low-NO_X burners, and a baghouse to remove PM. The dry scrubbers would generate a solid waste that, along with the PM from the baghouse, would be returned to the UCM Poker Flats Mine for disposal. The new plant would lessen or eliminate the need to buy power from Anchorage utilities to the same extent as the HCCP.

Alternative Site

The feasibility of siting coal-fired power plants in various locations in the Alaska Railbelt has been studied on several occasions by several organizations. GVEA and the City of Fairbanks, for example, proposed to build a 130–MW coal-fired plant adjacent to Healy Unit No. 1 in 1978; and in 1985 and 1988, the Alaska Power Authority studied the feasibility of siting coal-fired power plants in the Alaska Railbelt. In 1987, the City of Nenana performed a preliminary feasibility study for a coal-fired electric generation facility to be located near the city.

These studies all showed that siting a coal-fired power plant at any of the studied locations, including Healy, would have environmental impacts. Although an alternative site location such as Nenana might have been feasible for the projects referenced above, such a location renders a proposed CCT project economically infeasible from GVEA's standpoint because of increased capital requirements, labor costs, and fuel costs. In addition, siting the plant near Nenana to utilize the river water source could impact anadromous fisheries. Locating the plant between Nenana and Fairbanks would probably not be permitted because of nonattainment of air quality standards in the Fairbanks area. A location away from the existing electrical intertie system would require construction of a new powerline transmission link at a cost of about $500,000 per mile and with associated environmental impacts. Siting a plant near existing communities between Healy and Fairbanks could also require developing new infrastructure.

The project participant has determined that the only alternative sites that appear feasible for economic or environmental reasons are those along the Nenana River close to the UCM Poker Flats mine and adjacent to the existing power intertie. Within that area, sites closer to the mine mouth, sites near an existing community infrastructure, and sites that do not require additional disturbance or access routes appear to have advantages. The project participant previously had considered a site located at the UCM train loadout facility across the Nenana River from the UCM mine. This site, which is the site initially proposed by AIDEA, is typical of feasible alternative sites from the standpoint of environmental and socioeconomic impacts and was therefore adopted as the reasonable alternative site to be analyzed in the EIS.

Other alternatives which did not meet the goals and objectives of the CCT Program or of the participant were dismissed from further consideration.

Environmentally Preferred Alternative

No action would be the environmentally preferred alternative, depending on what action AIDEA and GVEA would take as a result of a DOE decision not to fund the project. If GVEA continued to purchase power in lieu of building a new plant, impacts would remain at current levels. However, if a new conventional coal-fired plant were to be built, it would cause greater air quality impacts than the HCCP. In addition, the reduction in emissions of Unit No. 1 resulting from the Memorandum of Agreement would not occur. While it is reasonably foreseeable that GVEA could pursue a conventional plant to meet its power needs if DOE were not to fund the HCCP, that eventuality is somewhat speculative, because it is unknown whether such a plant could meet all regulatory requirements. However, a conventional plant would be expected to meet the limits of the air quality permit issued by ADEC in March 1993 for the HCCP.

Major Environmental Impacts and Mitigation Measures

Potential impacts to air quality, surface water, groundwater, and ecological and socioeconomic resources that could result from construction and operation of the proposed HCCP are analyzed in the HCCP EIS.

Air Quality and Visibility

Of primary concern are the impacts to air quality and visibility expected from HCCP operation, as predicted by analyses based on computer models. The analysis examined the impacts of the HCCP alone, and cumulatively with those from Unit No. 1, both without and with the retrofit to Unit No. 1 provided for by the Memorandum of Agreement.

Emissions

The following table shows the projected emissions, in tons per year, for the Healy site, including the reductions to be achieved by the Memorandum of Agreement.

Unit No. 1 only		Healy site w/o MOA		Healy site w/ MOA	
SO_2	630	Unit No. 1	630	Unit No. 1	1472
		HCCP	124	HCCP	124

Unit No. 1 only			Healy site w/o MOA			Healy site w/ MOA		
					754			596
NO_x	848		Unit No. 1	848		Unit No. 1	429	
			HCCP	577		HCCP	577	
					1425			1006
Total		1478			2179			1602

For NO_X control, the Agreement calls for Unit No. 1 to be retrofitted with low-NO_X burners after the start-up of the HCCP. GVEA has agreed to reduce Unit No. 1 NO_X emissions by approximately 50%, from 848 tons per year to 429 tons per year. The Agreement also requires that SO_2 emissions from Unit No. 1 be reduced by 25%, from 630 tons per year to 472 tons per year, using duct injection of sorbent (e.g., flash-calcined material or lime). If the HCCP demonstration technology operates as expected, combined NO_X and SO_2 emissions from the Healy site would increase by only about 8%, from 1478 tons per year to 1602 tons per year, even though electrical generation would increase from the existing 25 MW to 75 MW for the two units. This is about 25% less than the 2179 tons per year that would be emitted if Unit No. 1 were to continue to operate, unretrofitted, in conjunction with the HCCP at its demonstration target levels. GVEA is required under the Agreement to request permit emissions limitations to reflect the levels achieved during the HCCP demonstration, allowing for reasonable operational variability.

If the HCCP demonstration fails to meet project objectives for air emissions, but attains levels allowed by the permit issued by ADEC in March 1993, (the "permitted case"), then the combined emissions from the Healy site would be capped under the Agreement at 2160 tons per year (i.e., 1439 and 721 tons per year of NO_X and SO_2, respectively), about 46% over the emissions for the existing Healy site. These maximum emission levels would be incorporated as permit conditions.

Additional Mitigation

DOE believes that the Healy site can be operated at the emission levels provided by the Memorandum of Agreement without causing unacceptable air quality impacts (see below). However, the Agreement requires that additional measures will be taken to further reduce combined emissions from the site, if necessary, to protect DNPP from visibility plume or haze impacts. Specifically, GVEA must reduce combined site emissions to the levels of Unit No. 1 for 12 hours whenever NPS (or ADEC) notifies GVEA of the presence of a visible plume or haze inside DNPP attributable to the Healy site. If these conditions occur more than 10 times in any six month period, then NPS may reopen the Agreement and negotiate with GVEA new emission limitations or other measures for the site, including reducing emissions to the levels of Unit No. 1. If NPS and GVEA cannot agree, the matter will be arbitrated in accordance with the Administrative Dispute Resolution Act (5 U.S.C. 571–583).

Air Quality

Generally accepted computer models, appropriate for establishing compliance with Clean Air Act (CAA) regulatory requirements, were used for analyzing potential impacts within the Healy area (a Class II air quality area) and within DNPP (a Class I air quality area where stringent standards have been established by the U.S. Environmental Protection Agency). The CAA standards have been used as a gage for assessing potential impacts associated with HCCP air emissions. For the purpose of air quality analysis, two emission rates (levels) based on a 100% plant capacity factor were analyzed using the computer models. These are the "demonstration case," based on the very low emission rates that are the target objectives of the HCCP demonstration, and the "permitted case," based on the emission levels contained in the March 1993 ADEC permit. Both cases were modelled with and without the retrofit controls on Unit No. 1 provided by the Memorandum of Agreement. Maximum ambient (at or beyond the facility perimeter) concentrations resulting from the combined operation of Healy Unit No. 1 and the HCCP are predicted to be less than the National Ambient Air Quality Standards (NAAQS) for all cases, although the predicted short term SO_2 concentrations approached the standards. Almost all of the modeled concentrations are predicted to occur at the site perimeter, resulting not from the new HCCP, but from downwash (downward movement) of the existing Unit No. 1 stack plume caused by the larger and taller HCCP boiler building. Thus, there was no difference between the predicted concentrations for the demonstration and permitted cases at either level of Unit No. 1 emissions. However, the reduced emission levels from retrofitted Unit No. 1 resulted in a small reduction in maximum SO_2 concentrations and a greater than 50% reduction in maximum NO_X concentrations for both the demonstration case and the permitted case.

NAAQS are used to establish absolute limits for pollutant concentrations in the ambient air, whereas Prevention of Significant Deterioration (PSD) "increments" have been established to define permissible air quality degradation. For analyzing air quality impacts within DNPP, the stringent standards of the PSD limits for Class I areas were used to gauge potential impacts of the HCCP at both the demonstration and the permitted case emissions. Modeling results for the HCCP demonstration case indicate that maximum concentrations would be less than 50% of the PSD Class I limits in all cases. However, the permitted case emission levels consumed 88% percent or more of the short term increments for SO_2 and particulate matter.

Visibility and Haze

The issue of the HCCP's potential to cause visibility impacts within DNPP is of great concern to the NPS, a cooperating agency by virtue of its role as Federal Land Manager for the DNPP. Air quality and, when weather conditions permit, visibility within DNPP are considered among the best anywhere. Visibility impairment, if any, is expected to take the form of a yellowish-brown NO_2 plume that would reduce visibility or be noticeable when contrasted against relatively clean air either above or below the plume line.

For visibility analysis, two computer models and a visibility monitoring (photographic) program were used to analyze potential visibility impacts within DNPP. The area of detailed study included the far eastern edge of DNPP within the Nenana River Valley. Views from the interior of DNPP, including views of Mt. McKinley, are not expected to be subject to visibility impairment. The results from the computer-based modeling predict that for the HCCP demonstration case, a visible plume

may be perceived by DNPP visitors a total of 2 hours per year (h/year). The computer modeling also predicts that when the HCCP and Unit No. 1 would operate simultaneously (without retrofit of Unit No. 1), a visible plume may be perceived by visitors 15 h/year. The combined operation of the HCCP and Unit No. 1 after the retrofits provided by the Memorandum of Agreement predict that a plume may be perceived 9 h/year. At the higher levels of the HCCP permitted case, a plume is predicted 26 h/year without retrofit, and 20 h/year with retrofit of Unit No. 1. In addition, the computer modeling predicts that during operations of the existing Unit No. 1 alone, a visible plume should be perceived 6 h/year. This is consistent with the fact that there have been no published sightings of a visible plume from Unit. No. 1 from or within DNPP by observers or operating camera equipment.

A sensitivity analysis of the effect of using modelling assumptions preferred by the NPS indicated that a plume could be perceptible as much as 78 h/year for the HCCP demonstration case, 262 h/year for the simultaneous operation of the HCCP and unretrofitted Unit No. 1, and 205 h/year for the simultaneous operation of both units after the retrofit of Unit No. 1. Results increase to 329 h/year and 294 h/year for the HCCP permitted case, combined with Unit No. 1 unretrofitted, and Unit No. 1 retrofitted, respectively. Use of these same assumptions also predicts that the current operation of Unit No. 1 alone may cause a visible plume to be perceived 145 h/year.

DOE has concluded that the modeling using the original assumptions form reasonable estimates of the number of hours that a plume from the HCCP and in combination with Unit No. 1 may be perceptible. The results using the assumptions preferred by the NPS are beyond credible estimates in view of the actual experience with Unit No. 1, that is, there are no published sightings of a plume from Unit No. 1. The 145 h/yr prediction for Unit No. 1 is 39% of the 372 hours of the year during which, based on historic conditions, wind direction and speed would allow a transport of a potentially perceptible plume to the DNPP Visitors Center.

An analysis of regional haze reveals that adding HCCP emissions to those from Unit No. 1 increases the estimated number of events per year by only one event. A sensitivity analysis of the effect of using assumptions preferred by the NPS was also done for haze modeling. Although a larger number of events was predicted when the NPS assumptions were used, all of the modeling indicated little increase by adding HCCP emissions to those from Unit No. 1, regardless of the assumptions. Observations have not attributed regional haze to the existing Unit No. 1.

DOE is fully aware of the uncertainties inherent in the computer modelling of visibility and haze impacts. However, the implications of these uncertainties for predicting the impacts of the HCCP have been significantly mitigated by the terms of the Memorandum of Agreement discussed above. If a plume, or haze is sighted, emissions will be reduced to existing Unit No. 1 levels.

Water Quality

The EIS also evaluates impacts of construction and operation of the HCCP on surface water, including the Nenana River. Primary impacts to the Nenana River would be caused by the rejection of waste heat to the river from the discharge of a once-through cooling system. During the production of electricity, power plants need to reject waste heat. During preliminary engineering design, the participant evaluated three different systems for waste heat rejection: (1) Wet cooling tower, (2) dry (air) cooling tower, and (3) a once-through system that would use water directly from the Nenana River. The existing Unit No. 1 uses once-through cooling. A wet cooling tower was found to be not feasible because the subarctic climate of central Alaska would present operational problems and a wet cooling tower could adversely affect local weather conditions. A dry cooling tower was found to be very expensive because it would be much larger than a wet tower and dry towers consume large amounts of power to drive circulation fans. The large power requirement of a dry cooling tower would lower the overall plant efficiency. The option of a once-through system was selected because with the discharge of cooling water from Healy Unit No. 1 and the HCCP into the Nenana River, cumulative water temperatures during winter months would be below the Alaska Department of Environmental Conservation (ADEC) limit of 55.4° F at 30 ft downstream of the HCCP discharge and beyond. During summer months, cumulative water temperatures would be below the limit beyond 50 ft downstream of the HCCP discharge. The state has been asked by the project participant to allow a thermal mixing zone of 600 ft for the HCCP to meet the state limit. The Nenana River, at the proposed site, does not support a large population of sport fish; the fish found at the proposed site are primarily round whitefish and longnose suckers. However, during the winter, cold shock could kill fish acclimated to the warmer temperatures of the once-through cooling system discharge that become deprived of the warmed water if the HCCP would suddenly shut down. A cross connection would be installed between the Healy Unit No. 1 and HCCP discharges to provide the flexibility of discharging Unit No. 1 water downstream of the intake basin during summer, and to keep the water intakes free of ice during winter if Unit No. 1 is shut down. The cross connection may mitigate cold shock mortality by allowing discharge to both outfalls when Unit No. 1 is shut down during winter months.

During the winter, the waste heat rejected by Unit No. 1's once-through cooling system presently prevents the Nenana River from completely freezing over for an approximate distance of 4 miles downstream (to the north). It is estimated that during operation of both the proposed HCCP and Unit No. 1, the combined thermal discharge would extend the area to about 10 miles downstream. Residents of the village of Ferry, which is located about 13 miles downstream of the proposed site, use the frozen river as an ice bridge to transport supplies and materials across the Nenana River during the winter. Although remnants of the thermal plume reaching Ferry could cause a delay in the river's freezing at the beginning of winter and an earlier breakup of the ice sheet in the spring, it is expected that the river would continue to freeze at Ferry.

The EIS analyzes short-term and long-term socioeconomic impacts associated with construction and operation of the proposed HCCP, particularly in the areas of housing, education, traffic, police and fire protection, and medical services. During HCCP construction, a peak of approximately 300 workers is estimated. To help reduce the "boomtown" effect on the Healy area, it is proposed that a temporary construction camp would be built at a location about 0.5 miles from the proposed site to house most workers. Longer-term socioeconomic impacts would result from 32 new workers expected for HCCP operations and from 8 new jobs created at the UCM mine. It is estimated that these new workers and their families would increase the population of the Healy area by approximately 102 people by 1996–1997.

No Action Alternative

The no-action alternative would result if DOE does not provide cost-shared

funding support for the HCCP; two reasonably foreseeable scenarios could result (see Alternatives above). For the no-change scenario, impacts would remain unchanged from the baseline conditions. For the conventional coal-fired plant scenario, the level of impacts would be almost identical to that of the HCCP for most resource areas because the resource requirements and discharges are nearly identical, except for air emissions. Surface water, groundwater, and ecological and socioeconomic impacts are not expected to change from those in the HCCP. The amount of coal required for the conventional plant would be about 90% of the coal required for the HCCP. However, total mining operations (including coal mined for other users) would increase at the UCM mine by about 10% for the conventional plant compared with the HCCP because about 50% of the coal used by the HCCP would be waste coal uncovered during mining for run-of-mine coal. Particulate emissions from fugitive dust during mining would be about 10% greater for the conventional plant. Operational air emissions are expected to be up to 100% greater for the conventional plant (compared with HCCP demonstration case) because the conventional plant would only be required to meet emissions standards existing at the time of construction, while the HCCP is expected to generate emissions substantially less than the standards. The conventional plant would be expected to generate about 50% less ash following combustion. Fewer trips, involving less ash, would be required to return the ash to the UCM mine, although the mine can easily accommodate the greater amount of ash disposal from the HCCP.

Alternative Site

In addition to the proposed site, the EIS considers the alternative site for the HCCP located about 4 miles north-northwest of the proposed site. The EIS analysis indicates that, except for air quality, other environmental and socioeconomic impacts would be greater if the HCCP were to be constructed and operated at the alternative site. The alternative site has been disturbed, in part, during the construction of the loadout facility and conveyor system that transfers coal across the Nenana River from the mine. However, the alternative site is somewhat isolated and much less of an "industrial site" than the area adjacent to the existing Unit No. 1. For example, construction of the HCCP at the alternative site would require the site clearing of 37 acres of which 22 acres are identified as wetlands in the National Wetlands Inventory. Only about 10 acres need to be prepared at the proposed site adjacent to Unit No. 1 and no loss of wetlands would occur. Also, during the winter the rejection of waste heat from the HCCP into the Nenana River at the alternative site may extend the area of ice-free water approximately 1 mile closer to the village of Ferry (2 vs 3 miles). However, cumulative thermal effects resulting from the discharge of the HCCP and Unit No. 1 cooling water into the Nenana River would not occur at the alternative site. The expected maximum elevation in river water temperature would be less than that expected at the proposed site because the ambient river temperature would not be elevated by Unit No. 1 thermal discharge. However, cumulative impacts at the proposed site would be mitigated by the installation of a cross connection to direct the discharge to either or both outfalls. If the HCCP were built at the alternative site about 13 additional workers would be required for plant operations over the 32 workers required at the proposed site because it would no longer be possible to integrate the operations of both Unit No. 1 and the HCCP. These additional operational workers would be needed for control room operations and maintenance.

Air quality analysis using computer models was performed to analyze the potential impact from air emissions if the HCCP was constructed and operated at the alternative site. The predicted maximum concentrations for the demonstration case are less than the PSD Class I limits. Because the alternative site is located about 6 miles east of the nearest border of DNPP (and about 8 miles north of the DNPP border that is downwind of frequent winds), while the proposed site is about 4 miles north of DNPP, air dispersion modeling has indicated that maximum concentrations of air pollutants within DNPP would be reduced for the alternative site as compared with the proposed site.

Impacts outside of DNPP would also decrease, except for PM which would increase or remain about the same. Cumulative concentrations from the simultaneous operation of the HCCP at the alternative site and the existing Unit No. 1 would be reduced from those predicted for the HCCP at the proposed site because the new HCCP boiler building would not affect the Unit No. 1 stack plume. Visibility impacts to DNPP from operation of the HCCP at the alternative site are expected to be similar to the proposed site.

Comments Received

DOE received two letters of comment on the FEIS. Mr. Dave Lacey of College, Alaska commented that heavy metals and carbon dioxide were inadequately analyzed. Mr. Lacey also objected to the economic and Federal budget implications of a government cost-shared project. He requested a public hearing to explore these issues. Mr. Lacey's letter raised similar issues to those provided in his oral and written comments on the draft EIS. DOE believes that they were adequately addressed in the FEIS, and that an additional hearing is not necessary.

The Trustees for Alaska urged DOE to delay issuance of this Record of Decision until after the Alaska Supreme Court rules on the Trustees for Alaska's appeal of the Superior Court decision upholding the APUC's issuance of a Certificate of Convenience and Necessity to AIDEA for the HCCP. The Trustees for Alaska claimed that the order of the Superior Court to stay the Certificate pending a final ruling by the Supreme Court undermines DOE's ability to depend on the APUC action to establish the need for the project.

This argument misconstrues the role of DOE in the HCCP and the purpose and need which DOE is attempting to fulfill by cost sharing the project. The Federal need established by the CCT legislation and the Alaska state need reflected in the APUC process are not the same, and DOE does not depend on the APUC determination of need for power to conclude that the project is needed to meet DOE's goals and objectives. The goal of the CCT Program as established by Congress is to make available to the U.S. energy marketplace advanced and environmentally responsive technologies that will help alleviate pollution problems from coal utilization. DOE's purpose and need for cost sharing the HCCP is to generate data to help achieve that goal. AIDEA and GVEA's need to meet their goals of encouraging economic development and meeting power demand, respectively, are independent of DOE's need to meet CCT program goals. As discussed above, AIDEA and GVEA's needs are important in defining the alternatives available to DOE in meeting its goal, but they are not necessary for DOE to establish that the need to meet its goal exists.

Decision

DOE will implement the proposed action of providing approximately $110 million in cost-shared federal funding support for the construction and operation of two integrated clean coal technologies to be demonstrated in the

HCCP. The HCCP is intended to demonstrate the combined removal of SO_2, NO_x, both of which can contribute to acid rain, and particulate matter using advanced combustion and flue gas cleanup technologies. In doing so, the project would successfully demonstrate two promising technologies ready to be commercialized in the 1990s. The project is expected to generate sufficient data from design, construction, and operation to allow private industry to assess the potential for commercial application of these technologies to new or existing units. While it is possible that selecting no action would be environmentally preferable to the proposed action, it would not produce the data needed to further the Congressionally mandated goals and objectives of demonstrating clean coal technologies.

This decision to provide cost-shared funding for the proposed HCCP was made after careful review of the potential environmental impacts, especially any potential adverse impacts on DNPP, as analyzed in the EIS; consultation with DOI (including NPS, the Federal Land Manager for DNPP); and taking into consideration the Memorandum of Agreement for providing mitigation of potential impacts on DNPP from the operation of the proposed HCCP. The decision to provide cost-shared funding for the HCCP is being made contingent on the incorporation of the terms of the Memorandum of Agreement into the ADEC air quality permit, as provided in the Agreement.

Mitigation Action Plan

Section 1021.331(a) of the DOE regulations implementing NEPA (10 CFR part 1021) states that DOE shall prepare a Mitigation Action Plan that addresses mitigation commitments expressed in the ROD. A Mitigation Action Plan for the HCCP is being developed to ensure that DOE implements all mitigation commitments. Copies of the Mitigation Action Plan may be obtained from Earl W. Evans, Environmental Coordinator, Office of Clean Coal Technology, U.S. Department of Energy, Pittsburgh Energy Technology Center, P.O. Box 10940, Pittsburgh, PA 15236. Telephone (412) 892–5709.

Issued in Washington, DC, on March 10, 1994.

Marvin I. Singer,

Acting Assistant Secretary for Fossil Energy.

[FR Doc. 94–6563 Filed 3–18–94; 8:45 am]

BILLING CODE 6450–01–P

Financial Assistance Award; Intent To Award Grant to Weldcomputer Corp.

AGENCY: Department of Energy (DOE).

ACTION: Notice of unsolicited application of financial assistance award.

SUMMARY: The Department of Energy (DOE) announces that pursuant to 10 CFR 600.6(a)(2), it is making a discretionary financial assistance award based on acceptance of an unsolicited application meeting the criteria of 10 CFR 600.14(e)(1) to the Weldcomputer Corporation, Green Island, New York, under the Grant Number DE–FG01–94EE15588. The proposed grant will provide funding in the amount of $148,560. This amount is cost shared with DOE providing $99,760 and the Grantee providing $48,800. The purpose of the grant is to design hardware, design and develop software, and produce prototypes and subject them to performance testing to achieve reduced costs for welding controllers. The overall objective of this effort is to reduce the cost of the Weldcomputer (patentable Resistance Welder Adaptive Controller) and performance objectives of different commercial companies. Mr. Robert Cohen is the inventor of the Weldcomputer which is an adaptive controller for resistance welds and resistance spot welds. Mr. Cohen, the inventor and President of Weldcomputer, will be the Program Manager and Principal Investigator.

FOR FURTHER INFORMATION CONTACT: Please write the U.S. Department of Energy, Office of Placement and Administration, Attn: Linda S. Sapp, HR 531.23, 1000 Independence Avenue, SW., Washington, DC 20585.

SUPPLEMENTARY INFORMATION: The Department of Energy has determined in accordance with 10 CFR 600.14(f) that the application submitted by Weldcomputer Corporation is meritorious based on the general evaluation required by 10 CFR 600.14(d) and that the proposed project represents a unique idea, that would not be eligible for financial assistance under a recent, current, or planned solicitation. The Energy Related Invention Program (ERIP), has been structured since its beginning in 1975 to operate without competitive solicitations since Energy Related Inventions may be submitted to the National Institute of Standards and Technology for evaluation and subsequently to the Department for consideration for funding at any time. The program has never issued and has no plans to issue a competitive solicitation. It is anticipated that Weldcomputer Corporation should be able to use the Welder Adaptive Controller as a tool in better understanding the welding operations, and as an aid in penetrating a significant proportion of the welding process.

The anticipated term of the proposed grant award is 24 months from the effective date of award.

Issued in Washington, DC on March 10, 1994.

Scott Sheffield,

Director, Headquarters Operations Division "B", Office of Placement and Administration.

[FR Doc. 94–6564 Filed 3–18–94; 8:45 am]

BILLING CODE 6450–01–M

Availability of Small Business Cooperative Research and Development Agreement (CRADA)

AGENCY: Office of Technology Utilization, Office of Laboratory Management, Department of Energy (DOE).

ACTION: Notice of availability and opportunity for public comment.

SUMMARY: This notice announces the availability of the Department of Energy Small Business Cooperative Research and Development Agreement (CRADA). The Small Business CRADA is a set of terms and conditions which will be used for preparing CRADAs between Department of Energy laboratories and facilities and non-Federal participants. The Small Business CRADA is a greatly streamlined document designed to simplify the process of executing CRADAs, substantially reducing the time and cost of negotiations. The Small Business CRADA reflects input from Department of Energy Headquarters, Operations Office and Laboratory elements. The Small Business CRADA provides terms and conditions that are pre-approved and designed to be adopted in their entirety without modification. The terms and conditions in the Small Business CRADA are most appropriate for small dollar value partnerships with low potential for the development of new intellectual property, or in cases where software is not perceived as the primary output. In partnerships where the above conditions would not be met, the Department's newly developed Modular CRADA is the alternate vehicle. The Small Business CRADA is expected to be periodically reviewed and revised as a part of the Department of Energy's continuous improvement process. Comments from the public are encouraged.

ADDRESSES: A copy of the Small Business CRADA is available for inspection and reproduction at the

public reading room of the U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue SW., Washington, DC. The public reading room is open from 10 a.m. to 4 p.m.; you may contact reading room staff at (202) 586–6020. If you want a copy of the Small Business CRADA mailed to you directly, please contact DOE Public Affairs Office at the address below. Although this is not an announcement of a formal comment process, comments on the Small Business CRADA are welcome and may be sent to the address below.

FOR FURTHER INFORMATION OR TO COMMENT CONTACT: U.S. Department of Energy, PA–5, 1000 Independence Avenue SW., Washington, DC 20585, Phone: 202–586–5575, Fax: 202–586–7303.

SUPPLEMENTARY INFORMATION: The Small Business CRADA and guidelines are attached. Issued at Washington, DC, on March 9, 1994.

Antionette Grayson Joseph,

Acting Director, Office of Laboratory Management.

Supplemental Guidelines for Using the Department of Energy Small Business CRADA

• This Department of Energy (DOE) Cooperative Research and Development Agreement (CRADA) is designed to be a model offered to small businesses as a means for streamlining and simplifying the CRADA process for the small business. In order to ensure expedited CRADA development and approval, this document must be adopted in its entirety, as written, by both/all parties with no exceptions. This document is pre-approved by DOE.

• The Small Business CRADA will be offered to firms that meet the qualifications of a "small business" as defined by the U.S. Small Business Administration:

—Is independently owned and organized for profit and has its principal place of business located in the United States.

—Is at least 51 percent owned, or in the case of publicly owned business, at least 51 percent of its voting stock is owned by United States citizens or lawfully admitted permanent resident aliens.

—Has, including its affiliates, a number of employees not exceeding 500, and meets the other regulatory requirements found in 15 U.S.C. 632(a).

This CRADA, while designed primarily for the small business user, as defined above, does not exclude use by other partners who do not meet the small business criteria but who are willing to accept the full terms of this CRADA.

• The small business (or other potential partner) should be clearly advised that this CRADA must be adopted in its entirety, as written, by both/all parties and, at the same time, advised of the alternative to use the Modular CRADA if the total terms of the Small Business CRADA are not agreeable.

• This Small Business CRADA is limited to a dollar total value combined contribution of partner costs and DOE costs over the life of the CRADA not to exceed $150,000.

• This Small Business CRADA is not to be used when a purpose of the agreement relates to software.

• The entire package including appendices will be submitted to DOE for approval.

• Guidance for the Modular CRADA applies to clauses unchanged in the Small Business CRADA.

• For each project, a Statement of Work (SOW) that draws upon the Joint Work Statement, that details the nature, scope, roles, responsibilities, and costs of activities to be conducted by both parties together with a timeline with milestones and deliverables will be prepared and submitted to DOE for approval. The SOW will be incorporated into the CRADA as Appendix A.

• Requirements for the provision and timing of reports to DOE on efforts to commercialize Subject Inventions will be addressed in the Joint Work Statement (JWS). These requirements will satisfy the Department's requirements, as established, based on the Technology Transfer Committee Measurements and Evaluation Working Group recommendations.

Stevenson-Wydler (15 USC 3710) Small Business Cooperative Research and Development Agreement (Hereinafter "CRADA") No. _____

Between

_____

under its U.S. Department of Energy Contract No. _____ (hereinafter "Contractor") and

_____

(hereinafter "Participant") both being hereinafter jointly referred to as the "Parties"

Article I: Definitions

A. "Government" means the United States of America and agencies thereof.

B. "DOE" means the Department of Energy, an agency of the United States of America.

C. "Contracting Officer" means the DOE employee administering DOE's contract with the Contractor.

D. "Generated Information" means information produced in the performance of this CRADA.

E. "Proprietary Information" means information which is developed at private expense outside of this CRADA, is marked as Proprietary Information, and embodies (i) trade secrets or (ii) commercial or financial information which is privileged or confidential under the Freedom of Information Act (5 USC 552 (b)(4)).

F. "Protected CRADA Information" means Generated Information which is marked as being Protected CRADA Information by a Party to this CRADA and which would have been Proprietary Information had it been obtained from a non-federal entity.

G. "Subject Invention" means any invention of the Contractor or Participant conceived of or first actually reduced to practice in the performance of work under this CRADA.

H. "Intellectual Property" means patent applications, patents, and other forms of comparable property rights protected by Federal law and its foreign counterparts.

Article II: Statement of Work

Appendix A is the Statement of Work.

Article III: Funding and Costs

A. The Participant's estimated contribution is $_____ . The Government's estimated contribution, which is provided through the Contractor's contract with DOE, is $_____ , *subject to available funding.*

B. Neither Party shall have an obligation to continue or complete performance of its work at a cost in excess of its estimated cost, including any subsequent amendment.

C. Each Party agrees to provide at least _____ days' notice to the other Party if the actual cost to complete performance will exceed its estimated costs.

[D. For CRADAs which include funding on a funds-in basis, an advance payment provision will be negotiated consistent with current DOE Policy.]

Article IV: Personal Property

Any tangible personal property produced in conducting the work under this CRADA shall be owned by the Party paying for it. There will be no jointly funded property. Personal Property shall be disposed of as directed by the owner at the owner's expense.

Article V: Disclaimer

The Government, the participant, and the contractor make no express or

implied warranty as to the conditions of the research or any intellectual property or product made, or developed under this CRADA, or the ownership, merchantability or fitness for a particular purpose of the research or resulting product. Neither the Government, the participant, nor the contractor shall be liable for special, consequential or incidental damages.

Article VI: Hold Harmless

Except for any liability resulting from any negligent acts or omissions of Contractor, Participant agrees to hold harmless the Government and the Contractor for all damages, costs and expenses, including attorney's fees, arising from personal injury or property damage occurring as a result of the making, using or selling of a product, process or service by or on behalf of the Participant, its assignees or licensees, which was derived from the work performed under this CRADA.

Article VII: Proprietary Information

Each Party agrees to not disclose Proprietary Information provided by the other Party to anyone other than the providing Party without the written approval of the providing Party, except to Government employees who are subject to 18 USC 1905.

Article VIII: Obligations as to Protected CRADA Information

Each Party may designate and mark as Protected CRADA Information any qualifying Generated Information produced by its employees. For a period of _____ [not to exceed five years] from the date it is produced, the Parties agree not to further disclose such Information except as necessary to perform this CRADA or as requested by the DOE Contracting Officer to be provided to other DOE facilities for use only at those DOE facilities with the same protection in place.

Article IX: Cessation of Obligations Regarding Protected and Proprietary Information

The obligations relating to the disclosure or dissemination, or both, of Protected CRADA Information and Proprietary Information shall end if any such information becomes inadvertently publicly known or is developed independently by a Party's employees who did not have access to the information.

Article X: Rights in Generated Information

The Parties understand that the Government shall have unlimited rights and each of them shall have a right to use all Generated Information or information provided to the Parties under this CRADA which is not marked as being Protected CRADA Information or Proprietary Information.

Article XI: Export Control

Each party is responsible for its own compliance with such laws and regulations.

Article XII: Reports and Abstracts

The Parties agree to produce the following deliverables: an initial abstract suitable for public release; and a final report, to include a list of subject inventions. It is understood that the Contractor has the responsibility to provide this information at the time of its completion to the DOE Office of Scientific and Technical Information.

Use of the name of the other Party or its employees in any promotional activity, with reference to this CRADA, requires written approval of the other Party.

Article XIII: Rights to Inventions

The Parties agree to promptly disclose in writing to each other every Subject Invention in sufficient detail to comply with the provisions of 35 U.S.C. 112 well before any statutory bars may arise under 35 U.S.C. 102. Each Party shall have the first option to retain title to any inventions made by its employees during the work under this CRADA. If a Party elects not to retain title to any such invention of its employees, then the other Party shall have the option to elect to retain title to such inventions under this Agreement. The Parties acknowledge that the DOE may obtain title to each Subject Invention reported under this Article for which a patent application is not filed, a patent application is not prosecuted to issuance, or any issued patent is not maintained by any Party to this CRADA. The Government shall retain a non-exclusive, non-transferable, irrevocable, paid-up license to practice, or to have practiced, for or on its behalf all Subject Inventions under this CRADA throughout the world.

Article XIV: Reports of Invention Use

The Parties agree to submit, upon request of DOE, reports no more frequently than annually on the efforts to obtain utilization of any Subject Invention.

Article XV: DOE March-in-Rights

The Parties acknowledge that the DOE has certain march-in rights to any Subject Inventions in accordance with 48 CFR 27.304–1(g).

Article XVI: U.S. Competitiveness

The Parties agree that a purpose of this CRADA is to provide substantial benefit to the U.S. economy. In exchange for the benefits received under this CRADA, the Parties therefore agree to the following:

A. Products embodying Intellectual Property developed under this CRADA shall be substantially manufactured in the United States; and

B. Processes, services, and improvements thereof which are covered by Intellectual Property developed under this CRADA shall be incorporated into the Participant's manufacturing facilities in the United States either prior to or simultaneously with implementation outside the United States. Such processes, services, and improvements, when implemented outside the U.S., shall not result in reduction of the use of the same processes, services, or improvements in the United States.

Article XVIII: Force Majeure

Neither Party will be liable for unforeseeable events beyond its reasonable control.

Article XVIII: Disputes

The Parties will attempt to resolve any differences between them which may arise during the course of this CRADA. In the event that a dispute cannot be resolved between the Parties, the dispute may be resolved by a court of competent jurisdiction.

Article XIX: Entire CRADA and Modifications

This document and its Appendices represent the entire agreement reached between the Parties in performing the research described in the Statement of Work (Appendix A) and becomes effective on the date the last Party signs the document. This CRADA is pre-approved by DOE. Any agreement to materially change any terms or conditions of the Appendices shall be valid only if the change is made in writing, executed by the Parties hereto, and approved by DOE.

Article XX: Termination

This CRADA may be terminated by either Party with _____ days written notice to the other Party. Each party will be responsible for its own costs as a result of this termination. The confidentiality, use and/or non-disclosure obligations described in this CRADA shall survive any termination.

For Contractor:

By _____

Title _____

Date _____

For Participant:
By _____
Title _____
Date _____

[FR Doc. 94–6567 Filed 3–18–94; 8:45 am]
BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Project No. 2514–003 Virginia]

Appalachian Power Co.; Availability of Final Environmental Assessment

March 15, 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 F.R. 47897), the Office of Hydropower Licensing has reviewed the application for new license for the existing Byllesby-Buck Project, located in Carroll County, Virginia, and has prepared a Final Environmental Assessment (FEA) for the project. In the FEA, 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 FEA 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.

Lois D. Cashell,

Secretary.

[FR Doc. 94–6470 Filed 3–18–94; 8:45 am]
BILLING CODE 6717–01–M

[Project No. 2117–001 South Carolina]

South Carolina Public Service Authority; Availability of Environmental Assessment

March 15, 1994.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR part 380 (Order No. 486, 52 FR 47910), the Office of Hydropower Licensing (OHL) has reviewed the application for replacing an existing transmission line for the Clark Hill-Aiken Transmission Line Project. The transmission line is 27.6 miles long, originating at the switchyard of the Clark Hill Dam on the Savannah River and terminating at Santee-Coopers's Aiken No. 1 substation. The proposed new line parallels the existing line.

The staff of OHL's Division of Project Compliance and Administration has prepared an Environmental Assessment (EA) for the proposed action. In the EA, the staff concludes that the licensee's proposals 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 Reference and Information Center, room 3308, of the Commission's Offices at 941 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 94–6468 Filed 3–18–94; 8:45 am]
BILLING CODE 6717–01–M

[Project No. 2348–001 Wisconsin]

Wisconsin Power & Light Co.; Availability of Draft Environmental Assessment

March 15, 1994.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for a subsequent license for the existing Beloit Blackhawk Hydroelectric Project, located on the Rock River in Rock County, Wisconsin, in the city of Beloit, and has prepared a Draft Environmental Assessment (DEA) for the project. In the DEA, the Commission's staff has analyzed the existing and potential future environmental impacts of the project and has concluded that approval of the project, with appropriate environmental protective or enhancement measures, would not constitute a major federal action that would significantly affect quality of the human environment.

Copies of the DEA 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. For further information, contact Michael Strzelecki, Environmental Coordinator, at (202) 219–2827.

Lois D. Cashell,

Secretary.

[FR Doc. 94–6469 Filed 3–18–94; 8:45 am]
BILLING CODE 6717–01–M

[Docket Nos. TQ94–4–23–001 and TM94–6–23001]

Eastern Shore Natural Co.; Proposed Changes in FERC Gas Tariff

March 15, 1994.

Take notice that on March 8, 1994 Eastern Shore Natural Gas Company (ESNG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, certain revised tariff sheets included in appendix A attached to the filing. Such sheets are proposed to be effective February 1, 1994.

ESNG states that the above referenced tariff sheets are being filed pursuant to § 154.308 of the Commission's regulations and section 24 of the General Terms and Conditions of ESNG's FERC Gas Tariff to reflect changes in ESNG's GSS and LSS Storage Demand Charges in its jurisdictional rates. In response to an OPPR letter order issued February 25, 1994 in Docket Nos. TQ94–4–23–000 and TM94–6–23–000, et. al. ESNG was required to file within 15 days of the date of the OPPR order to track Transcontinental Gas Pipe Line Corporation's (Transco) currently effective rates which Transco refiled February 24, 1994 for GSS and LSS storage costs.

ESNG states that copies of the filing have been served upon its jurisdictional 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 Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR section 385.211). All such motions or protests should be filed on or before March 22, 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.

Lois D. Cashell,

Secretary.

[FR Doc. 94–6472 Filed 3–18–94; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. RP94–68–002]

Mississippi River Transmission Corp.; Proposed Changes in FERC Gas Tariff

March 15, 1994.

Take notice that on March 10, 1994, Mississippi River Transmission Corporation (MRT) tendered for filing as

part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, with a proposed effective date of January 1, 1994:

Sub. 2 Rev. Second Revised Sheet No. 5
Sub. 2 Rev. Second Revised Sheet No. 6
Sub. 2 Rev. Second Revised Sheet No. 10

MRT states that the tariff sheets reflected above are being filed, under protest, in compliance with the directive of Ordering Paragraph (B) of the Commission's February 24, 1994 order and that such sheets reflect GSRC surcharges resulting from the uniform systemwide allocation methodology required by the Commission in the above referenced docket.

MRT states that a copy of its filing has been served on each of MRT'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 Section 385.211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before March 22, 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.

Lois D. Cashell,

Secretary.

[FR Doc. 94–6471 Filed 3–18–94; 8:45 am]

BILLING CODE 6717–01–M

Office of Fossil Energy

[FE Docket No. 94–11–NG]

CanStates Marketing (U.S.) 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 CanStates Marketing (U.S.) Ltd. authorization to import up to 180 Bcf of natural gas from Canada over a two-year period beginning on the date of the first import.

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, March 8, 1994.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 94–6565 Filed 3–18–94; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No 94–12–NG]

Cibola Corp/ Order Granting Blanket Authorization To Import Natural Gas From Canada and Mexico

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 Cibola Corporation authorization to import up to a combined total of 50 billion cubic feet of natural gas from Canada and Mexico over a two-year term beginning on the date of first delivery.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, March 3, 1994.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 94–6566 Filed 3–18–94; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–211036; FRL–4767–4]

TSCA Section 21 Petition; Notice of Receipt

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the receipt of a petition submitted by the Environmental Health Coalition (EHC), the Comite Ciudadano Pro Restauracion del Canon del Padro (Comite Ciudadano), and the Southwest Network for Environmental and Economic Justice (SNEEJ), under section 21 of the Toxic Substances Control Act (TSCA) and requests comments on the petition. The petitioners request relief under sections 4, 6, 7, 11, 16, 17, 20, 21, and 26 of TSCA, under the environmental remediation provisions of the North American Free Trade Agreement (NAFTA), pursuant to the Executive Order of February 11, 1994 on Environmental Justice (Executive Order 12898), and such other relief as justice may require. This petition was submitted "in response" to EPA's **Federal Register** notice of January 26, 1994 requesting comments on the TSCA section 21 petition submitted by the Board of Supervisors of Imperial County, California. Under section 21, EPA must respond to the new petition by May 24, 1994.

DATES: To be of greatest use to EPA in responding to the petition, comments should be received on or before April 25, 1994. However, the Agency will accept comments received after that date.

ADDRESSES: Persons wishing to provide comments to the Agency should submit them to: TSCA Document Receipt Office (7407), Docket Number 211036, Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–G102, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Michelle Price, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, rm. EB–67, 401 M St., SW., Washington, DC 20460, (202) 260–3790.

SUPPLEMENTARY INFORMATION: On February 23, 1994, EPA received a petition under section 21 of TSCA from the EHC, Comite Ciudadano, and the SNEEJ. Section 21 of TSCA allows citizens to petition EPA to initiate a proceeding for the issuance, amendment, or repeal of a rule under section 4, 6, or 8 or an order under section 5(e) or 6(b)(2). EPA must respond to a petition within 90 days of receipt. If the Agency grants the petition, it must promptly commence an appropriate proceeding. If EPA denies the petition, it must publish in the **Federal Register** the reasons for the denial. If EPA denies, or fails to respond to the petition within 90 days, the petitioner may commence action in a United States (U.S.) district court to compel the Agency to initiate the rulemaking requested in the petition.

Section 20 of TSCA permits any person to sue in district court to restrain a violation of any section of TSCA, any rule promulgated under sections 4, 5, 6, or any order issued under section 5. Any such suit may be brought against the government entity or the private party alleged to be in violation. In addition, section 20 allows citizens to

bring suit against EPA to compel the Agency to perform any mandatory (non-discretionary) act or duty. To initiate a suit, citizens must provide both EPA and the person alleged to have committed the violation, with notice of their intent to bring suit 60 days before information, rulemaking and enforcement under TSCA affecting the exposure of the people of color of Baja California, whose interests in the relief under this action are inseparable from the interests of the people of color of Imperial County." The petition states that "any EPA action to remediate the hazardous chemical pollution of the New River must necessarily include action for relief to help people of color on both sides of the border, not just the people of Imperial County." The petitioners also state that they, in effect, represent "a single Latino population undivided by artificial borders, but sharing the disproportionate burden of environmental racism."

The petition raises a number of issues for EPA including factual, legal, policy, enforcement, and environmental justice issues. For example, the petitioners allege that "many companies are importing, exporting, and releasing toxic chemicals illegally in communities of color in both Southern California and Baja California by means other than dumping in the New River." They also state that "for years, hazardous chemicals have been released illegally as a direct result of manufacturing and processing facilities, in and near residential communities along the New River." The petitioners have requested that EPA initiate rulemaking action under TSCA sections 4 and 6 to address the problems in the New River area. Pursuant to sections 4, 20, and 21 of TSCA, the petitioners have also requested immediate compliance and enforcement action in the form of TSCA inspections and subpoenas under section 11 of TSCA. The petitioners state that these inspections and subpoenas must be directed at U.S., Mexican, and multinational chemical companies involved in the manufacturing, processing, importing, and exporting of chemicals and chemical waste affecting the New River, Imperial County, and Baja California. The petitioners also note that they intend to seek TSCA section 11 subpoenas "under a private attorney general action in Federal District Court" in the event that EPA fails to take adequate action.

The petitioners also request that EPA refer this matter to the NAFTA Regional Advisory Commission for oversight of the remedies and relief. In addition, they request that EPA coordinate with other agencies to take action with regard to the New River pursuant to the Executive Order on Environmental Justice signed by President Clinton on February 11, 1994.

EPA has initiated its review and evaluation process for this petition. EPA is evaluating the petitioners' request, and is also gathering and reviewing additional available materials, to determine what, if any, action is appropriate in response to the petition. In addition to either granting or denying the petition, EPA may decide to take additional actions under TSCA or other Federal statutes to address the concerns raised by the petitioners.

Persons commenting are encouraged to provide EPA with information regarding the nature of possible contamination of the New River, including available monitoring data or other information which might assist EPA in characterizing possible pesticide or industrial chemical pollution. Commenters are also encouraged to provide their views regarding the petitioners' description of the problem, the remedies sought by the petitioners, and the legal arguments put forth by the petitioners. In addition, persons commenting are encouraged to provide any information they may have on the import, export, or release of toxic chemicals into communities in either Southern California or Baja California. Persons who possess information they believe could be useful to the Agency in responding to this petition are encouraged to submit the information promptly.

EPA has established a public record for this section 21 petition (Docket Number 211036). This record includes a copy of the petition and all supplementary information submitted to the Agency by the petitioner. The Agency will also include in the record all comments and information received in response to this Notice, as well as other relevant material. EPA has also established an administrative record (Docket Number 211035 and Administrative Record Number 2194001) for the petition received from Imperial County. Both of these records are available for inspection from 12 noon to 4 p.m., Monday through Friday, except legal holidays, in the TSCA NCIC, rm. E–G102, 401 M St., SW., Washington, DC 20460.

List of Subjects

Environmental protection.

Dated: March 14, 1994.

Mark Greenwood,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. 94–6554 Filed 3–18–94; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

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: 3060–0405.

Title: Application for Authority to Construct or Make Changes in an FM Translator or FM Booster Station.

Form Number: FCC Form 349.

Action: Revision of currently approved collection.

Respondents: Business or other for-profit (including small businesses).

Frequency of Response: On occasion reporting requirement.

Estimated Annual Burden: 375 responses; 35.5 hours average burden per response; 13,313 hours total annual burden.

Needs and Uses: FCC Form 349 is used to apply for authority to construct a new FM translator or FM booster broadcast station, or to make changes in the existing facilities of such stations. Some clarifications/revisions have been made in the engineering section of the form which will enable the applicant to submit only information needed to process the form. A question has been added to identify the type of alternative signal delivery that qualified FM translator/booster stations will be using. In addition, the question regarding non-commercial educational applicants intending to operate on reserved channels has been eliminated. This question was only applicable to forms

filed before 10/1/92. These changes will not affect the burden associated with this form. On 9/18/92, the Commission adopted Memorandum Opinion and Order which eliminated the requirement that the broadcast applicant report pending litigation. The portion of the question with pending litigation has been eliminated. The data is used by FCC staff to ensure that the applicant meets basic statutory requirements and will not cause interference to other licensed broadcast services.

OMB Number: 3060–0407.

Title: Application for Extension of Broadcast Construction Permit or To Replace Expired Construction Permit.

Form Number: FCC Form 307.

Action: Revision of currently approved collection.

Respondents: Businesses or other for-profit (including small businesses).

Frequency of Response: On occasion reporting requirement.

Estimated Annual Burden: 1,374 responses; 2.25 hours average burden per responses; 3,092 hours total annual burden.

Needs and Uses: FCC Form 307 is used by licensees/permittees of broadcast stations to request an extension of time to construct a broadcast facility, or when applying for a construction permit to replace an expired permit. The application shall be filed at least 30 days prior to the expiration date of the construction permit if the facts supporting such application for extension are known to the applicant in time to permit such filing. In other cases, an application will be accepted upon a showing satisfactory to the FCC of sufficient reasons for filing within less than 30 days prior to the expiration date. On 9/18/93, the Commission adopted a Memorandum Opinion and Order which eliminated the requirement that broadcast applicants report pending litigation. The portion of the question with pending litigation has been eliminated. The form is being revised to identify transmitter type. At the present time there is no way to distinguish if the application is for an auxiliary transmitter or a main transmitter. The addition of these check boxes will eliminate FCC staff time spent on the research of application file numbers to determine transmitter type. The form is also being revised to indicate city/state instead of station location. This revision will clarify the information needed. These changes will not affect the burden associated with the form. The data is used by FCC staff to ensure that permittees are making a conscientious effort to construct an authorized station in order to bring service to the public.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–6459 Filed 3–18–94; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL RESERVE SYSTEM

BB&T Financial Corporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than April 14, 1994.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. BB&T Financial Corporation, Wilson, North Carolina, to merge with L.S.B. Bancshares, Inc., of South Carolina, Lexingrton, South Carolina, and thereby indirectly acquire The Lexington State Bank, Lexington, South Carolina and the Community Bank of South Carolina, Varnville, South Carolina.

B. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Commercial Investment Company, Inc., Ainsworth, Nebraska, to acquire 100 percent of the voting stock of Springview Bancorporation, Springview, Nebraska, and thereby indirectly acquire The First National Bank of Springview, Springview, Nebraska.

Board of Governors of the Federal Reserve System, March 15, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–6499 Filed 3–18–94; 8:45 am]

BILLING CODE 6210–01–F

Heartland Financial USA, Inc., et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than April 14, 1994.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Heartland Financial USA, Inc., Dubuque, Iowa, to acquire 100 percent of the voting shares of Keokuk Bancshares, Inc., Keokuk, Iowa, and thereby indirectly acquire First Community Bank, a Federal Savings Bank, Keokuk, Iowa, and thereby engage in operating a savings association pursuant to § 225.25(b)(9) of the Board's Regulation Y.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Kerndt Bank Services, Inc., Lansing, Iowa, to acquire Peters Insurance Agency, Lansing, Iowa, and thereby engage in general insurance agency activities in a town with a population of less than 5,000 people, pursuant to § 225.25(b)(8)(iii) of the Board's Regulatuion Y.

Board of Governors of the Federal Reserve System, March 15, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–6500 Filed 3–18–94; 8:45 am]

BILLING CODE 6210–01–F

Marvin S. Wool, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 11, 1994.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Marvin S. Wool, St. Louis, Missouri, to acquire 14 percent of the voting shares of Allegiant Bancorp, Inc., St. Louis, Missouri, and thereby indirectly acquire Allegiant State Bank, Kohoka, Missouri, and Allegiant Bank, St. Louis, Missouri.

B. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. William D. Grave, Dallas, Texas to acquire 15 percent, for a total of 24.99 percent of the voting shares of Texas Community Bancshares, Inc., Dallas, Texas, and thereby indirectly acquire First Lakewood National Bank, Dallas, Texas.

Board of Governors of the Federal Reserve System, March 15, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–6501 Filed 3–18–94; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b) (2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 022294 AND 030494

Name of acquiring person, name of acquired person, name of acquired entity	PMN	Date terminated
MCT, Inc., GTE Corporation, Contel of New Hampshire, Inc	94–0539	02/22/94
Morrison Knudsen Corporation, Theodore E. Nelson, Touchstone, Inc	94–0472	02/24/94
Robert M. Castello, Krelitz Industries, Inc., Krelitz Industries, Inc	94–0660	02/24/94
Paul G. Allen, Wembley plc (a British company), Pacer Cats Corporation	94–0729	02/24/94
Hecla Mining Company, Equinox Resources Ltd., Equinox Resources Ltd	94–0757	02/24/94
National Medical Enterprises, Inc., The Hillhaven Corporation, The Hillhaven Corporation	94–0775	02/24/94
The Renco Group, Inc., Fluor Corporation, St. Joe Minerals Corporation	94–0819	02/24/94
General Electric Company, Chrysler Corporation, Chrysler Systems, Inc	94–0829	02/24/94
K–III Communications Corporation, Gerald C. Phillips, Katherine Gibbs School (Incorporated), CT; MA; NJ; NY	94–0842	02/24/94
Healthsource Inc., Coordinated Medical Services of North Carolina, Inc., Coordinated Medical Services of North Carolina, Inc	94–0849	02/24/94
Staples, Inc., David H. Goldner, National Office Supply Company, Inc	94–0745	02/25/94
Staples, Inc., Evans and Judith Stern, National Office Supply Company, Inc	94–0746	02/25/94
Science Applications International Corporation, JHK & Associates, JHK & Associates	94–0752	02/25/94
R.B. Pamplin Corporation, Brentex Mills, Inc., Brentex Mills, Inc	94–0838	02/25/94
Berg Electronics Holdings Corp., American Telephone and Telegraph Company, AT&T Microelectronics Division	94–0850	02/25/94
Katharine Graham, H&C Communications, Inc., H&C Communications, Inc	94–0851	02/25/94
Overlook Health System, Inc., Harold Katz, Berkeley Heights Convalescent Center, Inc	94–0827	02/28/94
David Halpern, Protector of the Zabludowicz US Property, Citicorp, BW Hotel Realty Limited Partnership	94–0462	03/01/94
Reuters Holdings, PLC, Teknekron Software Systems, Inc., Teknekron Software Systems, Inc	94–0567	03/01/94
SUPERVALU INC., Sweet Life Foods, Inc., Sweet Life Foods, Inc	94–0773	03/01/94
Zurich Insurance Company, Trygg-Hansa SPP Holding AB, Home Holdings Inc	94–0793	03/01/94

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 022294 AND 030494—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN	Date terminated
GKH Investments, L.P., Saint Francis Hospital, Inc., Saint Francis Hospital, Inc	94–0806	03/01/94
Jon M. Huntsman, Texaco Inc., Texaco Chemical Company	94–0810	03/01/94
General Electric Company, Berkshire Fund, A Limited Partnership, LMR Acquisition Corporation	94–0826	03/01/94
Thomas-Davis Medical Centers, P.C., Gem Holding Corporation, Gem Holding Corporation	94–0845	03/01/94
J.P. Morgan & Co., Incorporated, Sparbanken Sverige AB, Sparbanken Sverige AB	94–0852	03/01/94
Hellman & Friedman Capital Partners II, L.P., Craig O. McCaw, Chico MSA Cellular, Inc	94–0858	03/01/94
Craig O. McCaw, Hellman & Friedman Capital Partners II, L.P., Butte County Cellular License Corporation	94–0859	03/01/94
S.C.R.-Sibelco S.A., Charles P. Gallagher, Applied Industrial Materials Corporation	94–0860	03/01/94
Berjaya Group Berhad, Roasters Corp., Roasters Corp	94–0866	03/01/94
Brinker International, Inc., On the Border Cafes, Inc., On the Border Cafes, Inc	94–0868	03/01/94
Douglas G. Carlston, Electronic Arts Inc., Electronic Arts Inc	94–0875	03/01/94
H. Wayne Huizenga, Joseph Robbie Trust, Miami Dolphins, Ltd	94–0878	03/01/94
United Water Resource Inc., Lyonnaise des Eaux-Dumez, GWC Corporation	94–0686	03/02/94
Lyonnaise des Eaux-Dumez, United Water Resources Inc., United Water Resources Inc	94–0725	03/02/94
Theodore Ammon, KTB Associates, Inc., KTB Associates, Inc	94–0880	03/02/94
The Multicare Companies, Inc., Providence Health Care, Inc., Providence Health Care, Inc	94–0883	03/02/94
Compuware Corporation, Eric Butlein, Computer People Unlimited, Inc	94–0872	03/03/94
Compuware Corporation, Richard L. Weiss, Computer People Unlimited, Inc	94–0873	03/03/94
Scott K. Ginsburg, Fairmont Communications Corporation, Bay Broadcasting Corporation	94–0877	03/03/94
The Peninsular And Oriental Steam Navigation Co, John J. Gogian, Pacific Cold Storage Inc	94–0884	03/03/94
ITT Corporation, CIGNA Corporation, First EQUICOR Life Insurance Company	94–0764	03/04/94
H. Wayne Huizenga, Sumner M. Redstone, Viacom Inc	94–0796	03/04/94
Thermo Electron Corporation, Baker Hughes Incorporated, Baker Hughes Incorporated	94–0800	03/04/94
IVAX Corporation, McGaw, Inc., McGaw, Inc	94–0822	03/04/94
Regency Health Services, Inc., Care Enterprises, Inc., Care Enterprises, Inc	94–0831	03/04/94
Automatic Data Processing, Inc., Peachtree Software, Inc., Peachtree Software, Inc	94–0861	03/04/94
The Brooklyn Union Gas Company, Anadarko Petroleum Company, Anadarko Petroleum Company	94–0879	03/04/94
Normandy Poseidon Limited, Reynolds Metals Company, Reynolds Australia Metals, Inc	94–0894	03/04/94
Cowles Media Company, Cyrille E. DeCosse, Cy DeCosse Incorporated	94–0898	03/04/94
HM/Jackson, L.P., Lukens Inc., Flex-O-Lite, Inc	94–0901	03/04/94
Hatfield Quality Meats, Inc., William Medford, M.D., Medford's, Inc	94–0908	03/04/94
Smith International, Inc., M–I Drilling Fluids Company, L.L.C., M–I Drilling Fluids Company, L.L.C	94–0912	03/04/94
Halliburton Company, M–I Drilling Fluids Company, L.L.C., M–I Drilling Fluids Company, L.L.C	94–0913	03/04/94

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Renee A. Horton, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, room 303, Washington, DC 20580, (202)326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 94–6533 Filed 3–18–94; 8:45 am]

BILLING CODE 6750–01–M

[File No. 931 0056]

Arizona Automobile Dealers Association; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, an Arizona association consisting of approximately 199 dealers from restricting, regulating, or interfering with truthful, non-deceptive comparative or price advertising or advertising concerning financing among members in the future.

DATES: Comments must be received on or before May 20, 1994.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Ralph Stone, FTC/San Francisco Regional Office, 901 Market St., suite 570, San Francisco, CA 94103. (415) 744–7920.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order To Cease and Desist

In the matter of Arizona Automobile Dealers Association, a corporation, File No. 931 0056.

The Federal Trade Commission, having initiated an investigation of certain acts and practices of the Arizona Automobile Dealers Association, a corporation, and it now appearing that the Arizona Automobile Dealers Association, hereinafter sometimes referred to as "AADA" or "proposed respondent," is willing to enter into an agreement containing an order to cease and desist from the acts and practices being investigated.

It is hereby agreed by and between AADA, by its duly authorized officer, and its attorney, and counsel for the Federal Trade Commission that:

1. AADA is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Arizona, with its office and principal place of business at 4701 North 24th Street, suite B–3, Phoenix, Arizona 85064–2717.

2. AADA admits all the jurisdictional facts set forth in the draft of Complaint here attached.

3. AADA waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered pursuant to this agreement; and

(d) All claims under the Equal Access to Justice Act, 5 U.S.C. 504.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the attached draft of Complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its Complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of Complaint here attached, or that the facts as alleged in the draft of Complaint, other than the jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdraw by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (a) issue its Complaint corresponding in form and substance with the draft of Complaint here attached and its decision containing the following Order to cease and desist in disposition of the proceeding and (b) make information public in respect thereto. When so entered, the Order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The Order shall become final upon service. Delivery by the U.S. Postal Service of the Complaint and decision containing the agreed-to Order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The Complaint may be used in construing the terms of the Order, and no agreement, understanding, representation, or interpretation not contained in the Order or the agreement may be used to vary or contradict the terms of the Order.

7. Proposed respondent has read the proposed Complaint and Order contemplated hereby. Proposed respondent understands that once the Order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the Order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

Order

I

It is ordered that, for purposes of this Order, the terms "respondent" or "AADA" mean the Arizona Automobile Dealers Association, its directors, committees, officers, delegates, representatives, agents, employees, successors, and assigns.

II

It is further ordered that AADA, directly or indirectly, or through any person or any corporate or other device, in or in connection with its activities as a trade association, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall forthwith cease and desist from:

A. Prohibiting, restricting, regulating, impeding, declaring unethical, interfering with, advising against, or discouraging: (1) Truthful, non-deceptive discount or price advertising or (2) any person or organization from otherwise engaging in truthful, non-deceptive discount or price advertising;

B. Prohibiting, restricting, regulating, impeding, declaring unethical, interfering with, advising against, or discouraging truthful, non-deceptive advertising concerning the terms or availability of consumer credit;

C. Prohibiting, restricting, regulating, impeding, declaring unethical, interfering with, advising against, or discouraging: (1) Truthful, non-deceptive disparaging or comparative advertising or (2) any person or organization from otherwise engaging in truthful, non-deceptive disparaging or comparative advertising; and

D. Inducing, suggesting, urging, encouraging, or assisting any non-governmental person or organization to take any action that if take by respondent would violate this Order; Provided That nothing contained in this Order shall prohibit AADA from formulating, adopting, disseminating to its members, and enforcing reasonable ethical guidelines governing the conduct of its members with respect to advertising, including unsubstantiated representations, that AADA reasonably believes would be false or deceptive within the meaning of Section 5 of the Federal Trade Commission Act.

III

It is further ordered that AADA shall:

A. Within thirty (30) days after the date this order becomes final, remove from its Standards for Advertising Motor Vehicles, and from any other existing policy statement or guideline, any provision, interpretation or policy statement that is inconsistent with the provisions of part II of this Order including, but not limited to sections 4, 5, 6, and 11;

B. Within thirty (30) days after the date this Order becomes final, publish in Topics or in any successor publication, (a) this Order, (b) the accompanying Complaint, (c) any revision of the Standards for Advertising Motor Vehicles or any other existing policy statement or guideline of AADA made pursuant to part III.A. of this Order, and (d) a complete revised version of the Standards for Advertising Motor Vehicles.

C. Within thirty (30) days after the date this Order becomes final, distribute by first-class mail a copy of this Order and the Complaint to each of its members;

D. For a period of five (5) years after the date this Order becomes final, provide each new member who joins AADA with a copy of the Order and Complaint within thirty (30) days of membership in AADA;

E. Within sixty (60) days after the date this Order becomes final, and annually thereafter for a period of five (5) years on the anniversary of the date this Order became final, file with the Secretary of the Commission a verified written report setting forth in detail the manner and form in which AADA has complied with and is complying with this Order; and

F. For a period of five (5) years after this Order becomes final, maintain and make available to Commission staff for inspection and copying, upon reasonable notice, all documents that relate to the manner and form is which AADA has complied, and is complying with this Order.

IV

It is further ordered that AADA notify the Commission at least thirty (3) days prior to any change in AADA, such as dissolution or reorganization resulting in the emergence of a successor corporation or association, or any other change in the corporation or association which may affect compliance obligations arising out of this Order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed consent order from the Arizona Automobile Dealers Association ("AADA").

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

Description of the Complaint

A complaint prepared for issuance by the Commission along with the proposed order alleges that the members of AADA agreed to restrict truthful, non-deceptive advertising. More specifically, the complaint alleges that AADA adopted, published, and enforced its Standards for Advertising Motor Vehicles that: (1) Prohibits discount advertising; (2) restricts the advertising of consumer credit terms; and (3) prohibits disparaging advertising.

The complaint alleges that AADA's agreement to restrict advertising injured consumers by depriving them of truthful information pertinent to the purchase of new automobiles and trucks.

Description of the Proposed Consent Order

The proposed order would prohibit AADA from restricting: Truthful, non-deceptive discount or price advertising; truthful, non-deceptive advertising concerning the terms or availability of consumer credit; and truthful, non-deceptive disparaging or comparative advertising. It would further prohibit AADA from inducing or encouraging any non-government person or organization from taking an action that violates the order.

The proposed order would permit AADA to adopt and enforce reasonable ethical guidelines governing the conduct of its members with respect to advertising, including unsubstantiated representations, that AADA reasonably believes would be false or deceptive within the meaning of Section 5 of the Federal Trade Commission Act.

The proposed order would require AADA to make its Standards for Advertising Motor Vehicles consistent with the order and revoke any interpretations that conflict with the order. It would also require AADA to distribute the order to its members, publish the complaint and order in its monthly newsletter, file compliance reports, retain certain documents, and notify the Commission of certain changes in its corporate structure.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

The proposed consent order has been entered into for settlement purposes only and does not constitute an admission by AADA that the law has been violated as alleged in the compliant.

Donald S. Clark,

Secretary.

[FR Doc. 94–6536 Filed 3–18–94; 8:45 am]

BILLING CODE 6750–01–M

[File No. 931 0085]

Community Associations Institute; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a Virginia-based association, whose members are managers of residential community associations, from interfering in any way with the truthful advertising and solicitation efforts of its members in the future, and would require it to remove any code of ethics provisions inconsistent with this prohibition.

DATES: Comments must be received on or before May 20, 1994.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Michael McNeely, FTC/S–3308, Washington, DC 20580. (202) 326–2904.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order To Cease and Desist

In the Matter of The Community Associations Institute, a corporation.

The Federal Trade Commission having initiated an investigation of certain acts and practices of the Community Associations Institute, a corporation, and it now appearing that the Community Associations Institute, hereinafter sometimes referred to as "CAI" or "proposed respondent," is willing to enter into an agreement containing an order to cease and desist from engaging in certain acts and practices being investigated, *It is hereby agreed* by and between CAI, by its duly authorized officer, and its attorney, and counsel for the Federal Trade Commission that:

1. CAI is a corporation organized, existing and doing business under and by virtue of the laws of the District of Columbia, with its principal office and place of business located at 1630 Duke Street, Alexandria, Virginia 22314.

2. CAI admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. CAI waives:

(a) Any further procedural steps:

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter

may either withdraw its acceptance of this agreement and so notify proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by CAI that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules of Practice and Procedure, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint attached hereto may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the draft complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after the order becomes final.

Order

I

It is ordered that, for purposes of this order, the terms "respondent" or "CAI" mean the Community Associations Institute, its trustees, councils, committees, boards, divisions, officers, representatives, delegates, agents, employees successors, and assigns.

II

It is further ordered that respondent, directly or indirectly, or through any person or any corporate or other device, in or in connection with its activities as a professional association in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, forthwith cease and desist from:

A. Prohibiting, restricting, regulating, impeding, declaring unethical, interfering with, or advising against truthful, non-deceptive advertising and solicitation, including, but not limited to: general mailings to condominium or homeowner associations, solicitation targeting specific condominium or homeowner associations, telephone or personal solicitation designed to attract current clients of another manager, communicating with condominium or home owners, quoting prices for services before being asked to do so, and offering to provide free services; or

B. Inducing, suggesting, urging, encouraging, or assisting any non-governmental person or organization to take any action that if taken by respondent would violate this order;

Provided that nothing contained herein shall prohibit respondent from formulating, adopting, disseminating to its component societies and to its members, and enforcing reasonable ethical guidelines governing the conduct of its members with respect to advertising, including unsubstantiated representations, that respondent reasonably believes would be false or deceptive within the meaning of section 5 of the Federal Trade Commission Act.

III

It is further ordered that respondent shall:

A. Within thirty (30) days after the date this order becomes final:

1. Remove any current code of ethics provision that is inconsistent with the provisions of Part II of this order; and

2. Revoke any interpretation or policy statement, including any report regarding "Marketing Versus Unethical Solicitation" that is inconsistent with the provisions of Part II of this order.

B. Maintain Article XII, Section 12, of the CAI Bylaws as amended and adopted on June 21, 1993, and revoke, during its recertification process, the charter of any local chapter unless and until the chapter certifies that it will ensure compliance with and the integrity of said Bylaw provision.

C. Cease and desist for a period of one (1) year from maintaining or continuing respondent's affiliation with any local chapter or other organization of homeowner association managers within one hundred and twenty (120) days after respondent learns or obtains information that would lead a reasonable person to conclude that said organization has engaged, after the date this order becomes final, in any act or practice that if engaged in by CAI would be prohibited by Paragraph II of this order; unless prior to the expiration of the 120 day period said organization informs respondent by verified written statement of an officer that the organization has ceased and will not resume such act or practice, and respondent has no grounds to believe otherwise.

D. Within thirty (30) days after respondent takes any action pursuant to Part III.B or III.C above, notify the Federal Trade Commission of such action and provide all documentation related thereto.

E. Within thirty (30) days after the date this order becomes final, distribute by United States mail an announcement in the form shown in Appendix A to this order (hereinafter "Appendix A") to each Professional Community Association Manager each member of the CAI Association Management Specialist and Chief Executive Officers of Management Companies committees, and each local chapter, and use its best efforts to encourage each chapter to publish Appendix A in its newsletter

F. Within ninety (90) days after the date this order becomes final, publish in *Community Management* and *Common Ground*, or any successor publications: (1) This order, (2) the accompanying compliant, (3) Appendix A, and (4) any Code of Ethics provision, interpretation, policy statement, or other document that CAI revises pursuant to Part III.A above.

G. Within one hundred and twenty (120) days after the date this order becomes final, and annually for five (5) years thereafter on the anniversary date of this order, file with the Secretary of the Federal Trade Commission a verified written report setting forth in detail the manner and form in which respondent has complied and is complying with this order.

H. For a period of five (5) years after the date this order becomes final, maintain and make available to the Federal Trade Commission staff for inspection and copying, upon reasonable notice, records adequate to describe in detail any action taken in connection with the activities covered by this order.

I. Notify the Federal Trade Commission at least thirty (30) days prior to any proposed changes in respondent, such as dissolution of reorganization resulting in the emergence of a successor corporation or association, or any other change in the corporation or association which may affect compliance obligations arising out of this order.

Appendix A

Dear Member: This letter is to inform you that, without admitting liability or any wrongdoing, we have voluntarily entered into an agreement with the Federal Trade Commission that resulted in the entry of a consent order on [enter date]. Although the consent order required that CAI take specific actions with regard to CAI's ethics provisions and by-laws, CAI had already taken some of those actions before entry of the order. In June, 1993, CAI repealed the Professional Courtesy provision of the various CAI Codes of Ethics, and amended the by-laws to provide that all ethics provisions which relate to advertising or solicitation would be limited to prohibition of false or deceptive advertising by members, and that CAI would not otherwise limit or control advertising or soliciting practices.

In accordance with the terms of the order, you are hereby notified that, among other requirements of the order, CAI may not prohibit or restrict its members from engaging in any advertising or solicitation that is truthful and nondeceptive, by any means, including through provisions in the Code of Professional Ethics for PCAMS, the AMS Code of Professional Ethics, and the CEO–MC Code of Ethics. In particular, CAI may not interfere if its members solicit or advertise truthfully and nondeceptively, including, but not limited to, engaging in any of the following activities:

1. solicitation targeting specific condominium or homeowner associations;
2. telephone or personal solicitation designed to attract clients of another manager;
3. communicating with owners;
4. quoting prices for services before being asked to do so;
5. offering to provide free services; and
6. sending general mailings to condominium or homeowner associations.

Similarly, the order bars local chapters from interfering with members' advertising and solicitation activities, including, but not limited to, the type listed above.

The order contains a proviso permitting CAI and its chapters to adopt and enforce reasonable ethical guidelines prohibiting advertising, including unsubstantiated representations, that they reasonably believe would be false or deceptive within the meaning of Section 5 of the Federal Trade Commission Act.

The order does not bar CAI from taking action against any member that a court or state regulatory agency has found engaged in tortious interference with contract.

For more specific information, members should refer to the FTC Order itself. CAI will provide any member with a copy of the order and accompanying complaint upon request.

Counsel
Community Associations Institute

Analysis of Proposed Consent Order T Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed consent order from the Community Associations Institute ("CAI").

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

Description of Complaint

A complaint prepared for issuance by the Commission along with the proposed order alleges that CAI members, particularly "Professional Community Association Manager" ("PCAM") members, of CAI agreed to restrict truthful, nondeceptive solicitation. More specifically, the complaint alleges that CAI adopted and maintained Section B.4 of its Code of Professional Ethics for PCAMS, which requires PCAMS to "(1) exhibit professional courtesy by not interfering with contractual relationships between other professional managers and their clients and (2) give notice to other professional managers of any contracts with their clients to the extent that such notice is useful and does not interfere with the ability to compete fully." The complaint further alleges that CAI circulated interpretations that declared that certain truthful, nondeceptive solicitation violated this Code of Professional Ethics provision. It also alleges that CAI and some of its local chapters enforced this provision to discourage truthful, nondeceptive solicitation and otherwise suppressed such solicitations.

The complaint alleges that CAI's agreement to restrict solicitation injured consumers by depriving them of truthful information pertinent to the availability of a professional residential community association manager and of the benefits of competition among professional residential community association managers.

Description of the Proposed Consent Order

The proposed order would prohibit CAI from restricting truthful, non-deceptive advertising and solicitation, including, but not limited to, general mailings to condominium or homeowner associations, solicitations targeting specific condominium or homeowner associations, telephone or personal solicitation designed to attract current clients of another manager, communicating with condominium or homeowners, quoting prices for services before being asked to do so, and offering to provide free services. It would further prohibit CAI from inducing or encouraging any non-governmental person to take an action that violates the order.

The proposed order would permit CAI to enforce reasonable ethical guidelines governing the conduct of its members with respect to advertising and solicitation, including unsubstantiated representations, that respondent reasonably believes would be false or deceptive within the meaning of Section 5 of the Federal Trade Commission Act.

The proposed order further requires CAI, as part of its annual chapter review program, to deny recertification to any local chapter that does not certify that it will comply with the order. Under the order, CAI must cease and desist for one year from maintaining or continuing its affiliation with any chapter or other organization after CAI leans of any order violation.

The proposed order would require CAI to make all of its codes of ethics consistent with the order and revoke any interpretations that conflict with the order. It would also require CAI to distribute the order to its local chapters, PCAMs, and other committee members; publish the order and related documents in certain CAI publications; file compliance reports; retain certain documents; and notify the Commission of certain changes in its corporate structure.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

The proposed consent order has been entered into for settlement purposes only and does not constitute an admission by CAI that the law has been violated as alleged in the complaint.

Donald S. Clark,

Secretary.

[FR Doc. 94–6537 Filed 3–18–94; 8:45 am]

BILLING CODE 6750–01–M

[File No. 902 3383]

Nissan Motor Corporation in U.S.A.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, a California-based corporation to disclose clearly and prominently in each advertisement either any significant restrictions that apply to obtaining a promotional benefit in connection with a test-drive offer, or that there are significant restrictions that apply to obtaining the benefit, and would prohibit the respondent from misrepresenting any conditions, restrictions or limitations on any promotional benefit it offers consumers in the future.

DATES: Comments must be received on or before May 20, 1994.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Phillip Broyles, Michael Milgrom or Melissa Sternlicht, FTC/Cleveland Regional Office, 668 Euclid Ave., suite 520–A, Cleveland, Ohio 44114. (216) 522–4210.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order To Cease and Desist

In the Matter of: Nissan Motor Corporation in U.S.A., a corporation.

The Federal Trade Commission having initiated an investigation of certain acts and practices of Nissan Motor Corporation in U.S.A., a corporation ("proposed respondent"), and it now appearing that proposed respondent is willing to enter into an agreement containing an Order to Cease and Desist from the use of the acts or practices being investigated,

It is hereby agreed by and between proposed respondent, by its duly authorized officer and its attorney and counsel for the Federal Trade Commission that:

1. Proposed respondent is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 18501 South Figueroa Street, Carson, California 90248 (Mailing Address: Post Office Box 191, Gardena, California 90248–0191).

2. Proposed respondent admits all the jurisdictional facts set forth in the draft Complaint here attached.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's Decision contain a statement of findings of fact and conclusion of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered pursuant to this Agreement; and

(d) All claims under the Equal Access to Justice Act.

4. This Agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this Agreement is accepted by the Commission, it, together with the draft Complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information with respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this Agreement and so notify proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its Complaint (in such form as the circumstances may require) and Decision, in disposition of the proceeding.

5. This Agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the attached draft Complaint, or that the facts alleged in the draft complaint, other than the jurisdictional facts, are true.

6. This Agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of section 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its Complaint corresponding in form and substance with the draft Complaint and its Decision containing the following Order to Cease and Desist in disposition of the proceeding, and (2) make information public with respect thereto. When so entered, the Order to Cease and Desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The Order shall become final upon service. Delivery by the United States Postal Service of the Complaint and Decision containing the agreed-to Order to proposed respondent's address as stated in this Agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The Complaint attached hereto may be used in construing the terms of the Order. No agreement, understanding, representation, or interpretation not contained in the Order or the Agreement may be used to vary or contradict the terms of the Order.

7. Proposed respondent has read the proposed Complaint and Order contemplated hereby. Proposed respondent understands that once the Order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the Order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

Order

Definitions

1. "Promotional benefit" as used herein shall mean any prize, award or consideration, including, but not limited to, money, favorable credit terms and optional equipment packages, having a bona fide retail value over $25.

2. "Clearly and prominently" as used herein shall mean as follows:

(a) In a television or videotape advertisement, the disclosure shall be presented simultaneously in both the audio and video portions of the advertisement. The audio disclosure shall be delivered in a volume and cadence and for a duration sufficient for an ordinary consumer to hear and comprehend it. The video disclosure shall be of a size and shade, and shall appear on the screen for a duration, sufficient for an ordinary consumer to read and comprehend it.

(b) In a print advertisement, the disclosure shall be in close proximity to

the representation that triggers the disclosure in at least (12) point type.

(c) In a radio advertisement, the disclosure shall be delivered in a volume and cadence and for a duration sufficient for an ordinary consumer to hear and comprehend it.

I

It is ordered that respondent Nissan Motor Corporation in U.S.A., a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of any motor vehicle in or affecting commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, that persons who test drive a Nissan motor vehicle can readily obtain a promotional benefit when significant restrictions prevent consumers from readily obtaining that promotional benefit without disclosing clearly and prominently in each advertisement in which the representation is made either the significant restrictions or that there are significant restrictions that apply to obtaining the promotional benefit.

II

It is further ordered that respondent Nissan Motor Corporation in U.S.A., a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of any motor vehicle in or affecting commence, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, in any manner, directly or by implication, the existence, nature or extent of any condition, restriction or limitation on any promotional benefit offered to consumers.

III

It is further ordered that, for three (3) years from the date that the advertisements are last disseminated, respondent shall maintain and, upon request, make available to the Commission for inspection and copying:

(A) Copies of all advertisements subject to Paragraph I or II of this Order;

(B) Copies of all communications to affiliated dealers and all information and other materials supplied by respondent to the dealer in connection with any representation subject to Paragraphs I or II of this Order; and

(C) All correspondence received from consumers, whether received by respondent or by an agent of respondent, related to any promotional benefit program advertised in a manner subject to Paragraphs I or II of this Order.

IV

It is further ordered that respondent shall, within sixty (60) days of service of this Order, distribute a copy of this Order to each of its operating divisions and to each officer and other person responsible for the preparation or review of advertising material including outside advertising agencies, and to a representative of each of its affiliated dealers and shall secure from each such person a signed statement acknowledging receipt of a copy of this Order.

V

It is further ordered that respondent shall notify the Commission at least thirty (30) days prior to the effective date of any proposed change in the corporation such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of this Order.

VI

It is further ordered that respondent shall, within sixty (60) days after service of this Order, file with the Commission a report, in writing, setting forth in detail the manner in which it has complied with this Order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Nissan Motor Corporation in U.S.A., a marketer of new automobiles.

The proposed consent order has been placed on the public record for sixty (60) days for the reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The Commission's complaint charges that the proposed respondents disseminated advertisements for the Nissan Stanza Challenge Program, a promotional program in which consumers were invited to drive the Nissan Stanza and receive $100 if, after driving the Stanza, they bought one of two competing cars—either a Toyota Camry or a Honda Accord.

The complaint charges that Nissan represented that consumers could readily obtain the $100 when, in fact, in order to obtain it, the consumer could not purchase the competing vehicle on the same day as the test drive nor more than seven days thereafter, and had to purchase, take delivery and submit detailed proof of purchase to Nissan within the seven day time period. Therefore, the Commission charged that the representation that the $100 could be readily obtained was false and misleading.

The Commission also charged that the existence of the restrictions mentioned above would have been material to consumers in deciding whether to test drive the Stanza or otherwise take part in the program. Therefore, failure to disclose that the program had significant restrictions was deceptive.

The proposed consent order contains provisions designed to remedy the violations charged and to prevent the respondent from engaging in similar acts and practices in the future. Part I of the proposed order prohibits Nissan from representing that consumers who test drive a Nissan vehicle can readily obtain a promotional benefit, when significant restrictions prevent consumers from obtaining the promotional benefit, unless Nissan also discloses either (1) the restrictions that apply, or (2) that significant restrictions apply to obtaining the promotional benefit.[1] Part II of the order prohibits Nissan from misrepresenting the existence, nature, or extent of any condition, restriction or limitation on any promotional benefit offered to consumers.

The remainder of the proposed order consists of standard recordkeeping and compliance provisions.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of

[1] The proposed order defines "promotional benefit" as any prize, award, or consideration, including but not limited to, money, favorable credit terms and optional equipment packages, having a bona fide retail value over $25.

the agreement and proposed order, or to modify in any way their terms.

Donald S. Clark,

Secretary.

Joint Dissenting Statement of Chairman Janet D. Steiger and Commissioner Dennis A. Yao in Nissan Motor Corporation of USA, File No. 902–3383

We dissent from issuance of this proposed consent order with Nissan Motor Corp. Because the proposed order does not sufficiently remedy one of the alleged law violations, it may give implicit approval to the use of seemingly attractive promotional offers that many consumers simply cannot utilize because of limitations such as severe time restrictions or extremely difficult documentation requirements.

Through advertisements for the Nissan Stanza "Challenge Program" Nissan ran a promotional program inviting consumers to come to a Nissan dealership, test drive the Nissan Stanza and receive $100 if, after driving the Stanza, they bought either a Toyota Camry or a Honda Accord. The advertising expressly stated that there was "no catch" to this offer. What consumers were not told was that, in order to obtain the $100, it was necessary to purchase and take delivery of the Camry or Accord and submit detailed proof of purchase (including documents not usually retained by consumers after purchase) to Nissan, all within seven days (but not on the same day as the test drive). The complaint alleges that the failure to disclose that the program had such significant restrictions was deceptive, and that Nissan's explicit advertising claim that the offer had "no catch" falsely represented that consumers could readily obtain the $100 payment.

In our view, the proposed consent order may do little to remedy the failure to disclose allegation. Part I of the proposed order prohibits Nissan from representing, directly or by implication, that persons who test drive a Nissan can "readily obtain" a promotional benefit—when significant restrictions prevent consumers from readily obtaining that benefit—unless Nissan also discloses either those restrictions or that significant restrictions apply. Since paragraph 5 of the complaint uses the same term, "readily obtain," to characterize the express "no catch" claim in Nissan's ad, and paragraph 4 of the complaint only references the advertisement with an express "no catch" claim, the order could be interpreted to require disclosure only when language similar to "no catch" or "no catches" is used.

To suggest otherwise—namely that the order requires disclosure any time Nissan offers a promotion and uses very general language such as "Come on in and get a [benefit]"—would read out of the order the "readily obtain" limiting language. Consequently, although we understand that some would read the order differently, the proposed order might be interpreted as standing for the proposition that advertisements need not contain any disclosure of the nature or even existence of limiting conditions, no matter how onerous, unusual, or unexpected, unless the advertiser uses language similar to a "no catches" claim.

Moreover, even when an affirmative expression such as "no catches" is used in making an offer, the order would allow an advertiser to disclose only that significant restrictions apply to the offer, not what those restrictions are or where the consumer can obtain additional information about them. Although reasonable minds can differ on whether a disclosure that "significant restrictions" apply would adequately inform consumers when ready availability is implied in an advertisement, such a disclosure for an express "no catches" claim is manifestly contradictory. This order would seem to allow advertisers to claim to consumers that there are no catches in connection with the offer, so long as the ad elsewhere discloses that there are significant restrictions. The use of such contradictory statements in the same advertisement conflicts with Commission precedent. See Commission Statement on Deception, 103 F.T.C. 110, 180–81.

Finally, the proposed order does not contain a point of sale disclosure requirement. Consequently, even if consumers understand the disclosure of "significant restrictions" as overriding the express "no catches" claim, there is no sure way of learning about the restrictions.

We do not suggest advertisers must disclose every limitation on their offers in advertising. Consumers generally expect that offers have reasonable time limits and other conditions. This order may suggest, however, that even severe restrictions—i.e., those that make the offer impractical or impossible for many consumers to redeem—need not be disclosed in an adequate fashion. Such an approach is not without cost to consumers—especially in cases, such as this one, where consumers usually shop for the product by visiting sales locations and, consequently, where such offers could induce them to make a special visit.

Separate Statement of Commissioner Mary L. Azcuenaga, in Which Commissioners Deborah K. Owen and Roscoe B. Starek, III, Join, in Nissan Motor Corporation of USA File No. 902–3383

I write to respond to the concerns expressed in my colleagues' joint dissenting statement about how the consent order in this matter might be interpreted and what it would seem to allow in connection with other promotional advertisements. Like other consent orders, this order was negotiated in response to particular facts and circumstances. Although the order identifies conduct the Commission will not allow, no legal inference properly can be drawn that conduct not mentioned in the complaint and order has been approved. The legal standards by which promotional advertisements are measured are well established in sources having precedential value. As always, advertisers would be well-advised to consult these sources to determine the legal standards to which they must conform.

[FR Doc. 94–6534 Filed 3–18–94; 8:45 am]

BILLING CODE 6750–01–M

[File No. 922 3330]

Samick Music Corporation; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a California subsidiary of a Korean piano manufacturer from misrepresenting the composition of any of its piano soundboards or any other piano parts in the future, and would require the respondent to pay, to the U.S. Treasury, $266,000 as a disgorgement remedy.

DATES: Comments must be received on or before May 20, 1994.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Bennett Rushkoff, FTC/H–200, Washington, DC 20580. (202) 326–3439.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order To Cease and Desist

In the Matter of: Samick Music Corporation, a corporation.

The Federal Trade Commission having initiated an investigation of certain acts and practices of Samick Music Corporation, a corporation, and it now appearing that Samick Music Corporation, hereinafter sometimes referred to as proposed respondent, is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed by and between Samick Music Corporation, by its duly

authorized officer, and its attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent Samick Music Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 18521 Railroad Street, City of Industry, California 91748.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

4. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, together with the draft of complaint contemplated thereby, it will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw this acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft complaint here attached, or that the facts as alleged in the draft complaint, other than jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or to contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and the order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It is ordered that respondent Samick Music Corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale, or distribution of any piano in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, forthwith cease and desist from misrepresenting, directly or by implication, the composition of piano soundboards or any other piano parts.

II

It is further ordered that, pursuant to 15 U.S.C. 57(b), respondent, its successors and assigns, shall pay a refund of Two Hundred Sixty-Six Thousand Dollars ($266,000), which, in view of the impracticality of distributing the refund to consumers, shall be paid to the United States Treasury. Such payment shall be by two cashier's checks or certified checks made payable to the Treasurer of the United States, the first such check, in the amount of One Hundred Thirty-Two Thousand Dollars ($132,000), to be tendered to the Commission within six months of the date of service of this Order, and the second such check, in the amount of One Hundred Thirty-Four Thousand Dollars ($134,000), to be tendered to the Commission within twelve months of the date of service of this Order.

III

It is further ordered that respondent shall maintain for a period of three (3) years, and upon request make available to the Commission for inspection and copying, all promotional, advertising or other materials disseminated by respondent which make any representation concerning the composition of soundboards in pianos advertised, sold, distributed or offered for sale or distribution by respondent; all consumer complaints concerning the composition of soundboards in pianos advertised, sold, distributed or offered for sale or distribution by respondent; and accurate records of all materials relied upon by respondent to substantiate any representation concerning the composition of soundboards in pianos advertised, sold, distributed or offered for sale or distribution by respondent.

IV

It is further ordered that respondent shall notify the Commission at least thirty (30) days period to any proposed change in respondent, including but not limited to dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries, that may affect compliance obligations arising out of the Order.

V

It is further ordered that respondent shall within thirty (30) days after service of this Order, distribute this Order to each of its officers, directors, managers and all personnel responsible for the preparation or review of promotional material.

VI

It is further ordered that respondent shall, within sixty (60) days after service of this Order, file with the Commission a report, in writing, setting forth in detail the manner in which it has complied with this Order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Samick Music Corporation, of City of Industry, California.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of

the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The complaint attached to the proposed consent order alleges that Samick Music Corporation's representations, disseminated in promotional materials, that the soundboards in its pianos were "solid spruce" or "spruce" were false and misleading, because many such soundboards were actually composed of outer layers of spruce with inner layers made of another type or types of wood. The complaint alleges that this practice is a violation of Section 5 of the Federal Trade Commission Act.

The proposed consent order prohibits Samick Music Corporation from misrepresenting, directly or by implication, the composition of piano soundboards or any other piano parts. The proposed consent order also contains a disgorgement remedy in the form of a $266,000 refund, which, in view of the impracticality of distributing the refund to consumers, shall be payable to the U.S. Treasury.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 94–6535 Filed 3–18–94; 8:45 am]

BILLING CODE 6750–01–M

[Dkt. 9258]

W.D.I.A. Corporation, et al.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, an Ohio based information corporation and two of its officers from furnishing any consumer report for any purposes not permitted under the Fair Credit Reporting Act, and would require the respondents to take certain steps to ensure subscribers have permissible purposes for accessing consumer reports in the future. In addition, the respondents would be required to maintain a toll-free telephone number available to consumers who have questions regarding the purpose for which a consumer report on them was furnished.

DATES: Comments must be received on or before May 20, 1994.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Ronald Isaac or David Grimes, Jr., FTC/S–4429, Washington, DC 20580. (202) 326–3231 or 326–3171.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 3.25(f) of the Commission's Rules of Practice (16 CFR 3.25(f)), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been field with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

W.D.I.A. Corporation, a corporation, and Mark W. Hanna, and Janice L. Campanello, individually and as officers of said corporation

Agreement Containing Consent Order To Cease and Desist

[Docket No. 9258]

The agreement herein, by and between W.D.I.A. Corporation, a corporation, by its duly authorized officer, and Mark W. Hanna and Janice L. Campanello, individually and as officers of said corporation, hereinafter sometimes referred to as respondents, and their attorney, and counsel for the Federal Trade Commission, is entered into in accordance with the Commission's Rule governing consent order procedures. In accordance therewith the parties hereby agree that:

1. Respondent W.D.I.A. Corporation, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio, with its office and principal place of business located at 7721 Hamilton Avenue, in the City of Cincinnati, State of Ohio 45321.

Respondents Mark W. Hanna and Janice L. Campanello are officers of said corporation. They formulate, direct and control the policies, acts and practices of said corporation, and their business address is the same as that of said corporation.

2. Respondents have been served with a copy of the complaint issued by the Federal Trade Commission charging them with violations of sections 604, 607(a), and 613 of the Fair Credit Reporting Act and section 5(a) of the Federal Trade Commission Act, and have filed answers to said complaint denying said charges.

3. Respondents admit all the jurisdictional facts set forth in the Commission's complaint in this proceeding.

4. Respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of the law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) any claim under the Equal Access to Justice Act.

5. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If the agreement is accepted by the Commission it will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the respondents, in which event it will take such action as it may consider appropriate, or issue and serve its decision, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in the draft of complaint here attached, or that the facts are alleged in the draft complaint, other than jurisdictional facts, are true.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 3.25(f) of the Commission's Rules, the Commission may without further notice to respondents, (1) issue its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing

the agreed-to order to respondents' address as stated in this agreement shall constitute service. Respondents waive any right they might have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or to contradict the terms of the order.

8. Respondents have read the complaint and the order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

For the purpose of this Order, the following definitions apply:

"Person," "consumer," "consumer report," "consumer reporting agency," and "employment purposes" are defined as set forth in section 603(b), (c), (d), (f), and (h), respectively, of the Fair Credit Reporting Act ("FCRA"), 15 U.S.C. 1681a(b), 1681a(c), 1681(d), 1681a(f), and 1681a(h);

"Subscriber" means any person who is approved for or obtains a consumer report from respondents;

"Mixed-use subscriber" means a subscriber who in the ordinary course of business typically has both permissible and impermissible purposes for ordering consumer reports; and

"Permissible purpose" means any of the purposes listed in section 604 of the FCRA, 15 U.S.C. 1681b, or as it might be amended in the future, for which a consumer reporting agency may lawfully furnish a consumer report.

I

It is ordered that respondents, W.D.I.A. Corporation, a corporation, its successors and assigns, and its officers, and Mark W. Hanna and Janice L. Campanello, individually and as officers of said corporation, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the furnishing of any consumer report, do forthwith cease and desist from:

1. Furnishing any consumer report under any circumstances not permitted by Section 604 of the FCRA.

2. Failing to maintain reasonable procedures designed to limit the furnishing of consumer reports to the purposes listed under section 604 of the FCRA, as required by section 607(a) of the FCRA. Such procedures shall include but not be limited to respondents doing or continuing to do the following:

a. With respect to prospective subscribers, before furnishing a consumer report to any such subscriber, and with respect to current mixed-use subscribers, no later than six months after the date of this Order: (i) Obtaining from each subscriber an initial written certification stating the nature of the subscriber's business and all purposes for which the subscriber plans to obtain consumer reports from respondents. Each certification under this provision must be dated and signed, must bear the printed or typed name of the person signing it, and must state that the person signing it has direct knowledge of the facts certified and supervisory responsibility for obtaining consumer reports from respondents.

(ii) Determining, based on the information in the subscriber's written certification, and any other factors of which respondents are aware or, under the circumstances, should reasonably ascertain, that each subscriber has a permissible purpose under section 604 for the types of reports the subscriber plans to obtain. Respondents shall create and maintain a record of the basis for this determination.

(iii) Verifying (1) the business identity of the subscriber; (2) that the subscriber is engaged in the business certified and has a permissible purpose for obtaining consumer reports; and (3) with respect to prospective subscribers, that the subscriber maintains reasonable procedures designed to prevent access to consumer reports by unauthorized persons. Respondents shall conduct an on-site visual inspection of the business premises of each subscriber that respondents have not otherwise verified (*e.g.*, through a previous on-site visual inspection of the business premises or through business directories, state or local regulatory authorities, or other reliable sources) to be a legitimate business having a "permissible purpose" for the information reported.

(iv) Providing each subscriber a summary of the permissible purposes for obtaining consumer reports under section 604 of the FCRA that is substantially identical to the summary attached to this Order as exhibit A.

(v) Informing each subscriber in writing that the FCRA imposes criminal penalties up to $5,000 and a year in prison against anyone who knowingly and willfully obtains information on a consumer from a consumer reporting agency under false pretenses.

b. With respect to both current and prospective subscribers: (1) Requiring, any time a subscriber requests a consumer report for employment purposes pursuant to section 604(3)(B) of the FCRA, that the subscriber identify and certify that purpose, unless the subscriber has previously certified that purpose to respondents as the only purpose for which it requests consumer reports.

(ii) Requiring, any time a subscriber requests a consumer report for a "legitimate business need" pursuant to section 604(3)(E) of the FCRA, that the subscriber identify and certify that business need. Such identification must be made in specific terms. Provided however, that a landlord requesting a consumer report in connection with rental of an apartment need not certify each request for a consumer report if the landlord has previously certified that it will obtain consumer reports solely for that purpose.

(iii) Requiring each mixed-use subscriber to identify and certify the applicable purpose(s) each time it requests a consumer report. For example, to identify the specific credit purpose for requesting a report under section 604(3)(A) of the FCRA, it would suffice for an attorney subscriber collecting a debt for a client to specify that as his or her purpose.

(iv) Disclosing the following message, or one substantially identical to it, on the computer screen each time a subscriber transmits requests by computer for consumer reports: "The Federal Fair Credit Reporting Act imposes criminal penalties up to $5,000 and a year in prison against anyone who knowingly and willfully obtains information on a consumer from a consumer reporting agency under false pretenses."

(v) Verifying that each mixed-use subscriber is using consumer reports solely for permissible purposes by sending a letter by first class mail, postage prepaid, to each consumer on whom a consumer report is furnished to a mixed-use subscriber, no later than three (3) business days after furnishing the consumer report. Respondents shall send the letter to the consumer's current address in an envelope bearing respondents' company name and its return mailing address, and stating "PLEASE FORWARD". The letter shall disclosure the following information in a form substantially similar to exhibit B: (1) That respondents have furnished a consumer report on the consumer to the person identified by the name and address stated in the letter;

(2) The identity of the end user of the report (*i.e.*, the person on whose behalf

the subscriber obtained the report) if known and if different from the person to whom respondents furnished the consumer report;

(3) The purpose identified for requesting the consumer report; and

(4) That should the consumer have questions concerning the purpose for which the consumer report was furnished, the consumer may call respondents at the toll-free ("800") telephone number stated in the letter or may write to respondents at the address stated in the letter.

(vi) Maintaining a toll-free telephone number available for consumers to call at least six hours each business day, during times to be stated in the letter required by subparagraph I.2.b.(v). Calls to that number shall be answered by an employee of respondents or by a recording. If a recording is used, within 10 seconds after it begins, it shall clearly instruct the consumer what to do if calling about the purpose for which the consumer's consumer report was furnished. Consumers who indicate they are calling about the purpose for which their consumer report was furnished shall be promptly referred to an employee of respondents, if available. If no employee is available, the recorded message shall clearly instruct the consumer to leave a message stating the consumer's name and telephone number, and the consumer's comments or questions about the purpose for which the consumer report was furnished. The recording tape shall allow at least one minute for the consumer to record a message.

(vii) Returning promptly and in good faith all telephone calls from consumers inquiring about the purpose for which their consumer report was furnished, making at least two attempts to reach the consumer. If a consumer does not answer when called, respondents shall leave a message, if possible, including a name and telephone number for the consumer to call to speak to an individual at respondents' office. When responding to these consumers' calls, respondents shall elicit and record information from the consumers bearing on whether any subscriber may have obtained a consumer report for a purpose not permitted under section 604 of the FCRA or for a purpose different from that identified by the subscriber at the time the report was obtained. Respondents shall train their employees to comply with the procedures set forth in this subparagraph.

(viii) Requiring each subscriber to provide on an annual basis certification updating the information previously provided on the nature of the subscriber's business and all purposes for which the subscriber plans to obtain consumer reports from respondents, and also requiring the subscriber to explain the reasons for any change in the stated purposes for obtaining consumer reports. The certification for each subscriber shall be obtained either in writing and be dated and signed and bear the printed or typed name of the person signing it, or it shall be obtained by computer. If the certification is obtained by computer, the person executing it must enter on the computer screen the information described above, and the person's name, direct dial office telephone number, and occupational title. The computer certification request may appear in a form substantially similar to exhibit C.

(ix) Terminating access to any consumer report as to any subscriber who: (1) Respondents learn, through the procedures described in subparagraphs I.2.b.(v), (vi) and (vii), or otherwise, has obtained, after the effective date of this order, a consumer report for any purpose other than a permissible purpose, unless that subscriber obtained such report through inadvertent error—i.e., a mechanical, electronic, or clerical error that the subscriber demonstrates was unintentional and occurred notwithstanding the maintenance of procedures reasonably designed to avoid such errors; or

(2) respondents have reasonable grounds to believe will not use the report solely for permissible purposes.

3. Furnishing any consumer report for employment purposes that contains public record information on a consumer that is likely to have an adverse effect upon the consumer's ability to obtain employment without notifying the consumer, at the time such report is furnished, that public record information concerning the consumer is being reported, and providing the name and address of the person to whom such report is being furnished, as provided in section 613(1) of the FCRA. The notice may be provided to the consumer in a form substantially similar to exhibit D. Respondents are not required to provided this notification if they have either (1) received written confirmation directly or indirectly from the consumer reporting agency that supplied the consumer report that the agency provides such notification to the consumer and they have notified that agency that the report is being provided for employment purposes, or (2) received written confirmation from the consumer reporting agency that it maintains strict procedures designed to insure that such public record information is complete and up to date, as provided in section 613(2) of the FCRA.

It is further ordered that respondents, and their successors and assigns, shall maintain for five (5) years and upon request make available to the Federal Trade Commission for inspection and copying, documents demonstrating compliance with the requirements of this Order. Such documents shall include, but are not limited to, all subscriber applications and certifications, all reports prepared in connection with on-site investigations of subscribers' businesses, all written records of respondents' determinations that its subscribers have permissible purposes for obtaining consumer reports, documents reflecting respondents' mailing of letters notifying consumers when consumer reports on them are furnished and all documents pertaining to respondents' receipt and treatment of consumers' written and oral responses to those letters, and all instructions given to employees regarding compliance with the provisions of this Order.

III

It is further ordered that respondents, and their successors and assigns, shall deliver a copy of this Order, or a synopsis therefore approved by the Federal Trade Commission, to all present and future personnel, agents, or representatives having sales, advertising, or policy responsibilities with respect to the subject matter of this order.

IV

It is further ordered that respondents shall notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation that might affect compliance obligations arising out of the order.

V

It is further ordered that each individual respondent named herein promptly notify the Federal Trade Commission of the discontinuance of his or her present business or employment and of his or her affiliation with a new business or employment. In addition, for a period of ten (10) years from the date of service of this order, the respondent shall promptly notify the Commission of each affiliation with a new business or employment whose activities include assembling or

evaluating information on consumers or furnishing consumer reports or access to consumer reports to third parties, or of his or her affiliation with a new business or employment in which his or her own duties and responsibilities involve such activities. Such notice shall include the respondent's new business address and a statement of the nature of the business or employment in which the respondent is newly engaged as well as a description of his or her duties and responsibilities in connection with the business or employment. The expiration of the notice provision of this paragraph shall not affect any other obligation arising under this Order.

VI

It is further ordered that respondents shall, within sixty (60) days of service of this Order upon them, file with the Federal Trade Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

Exhibit A to the Order

Important Notice for Subscribers

The federal Fair Credit Reporting Act permits consumer reporting agencies to provide consumer reports only for certain purposes. Any subscriber who uses false pretenses to obtain a consumer report may be the subject of criminal prosecution. It is also a law violation for us to give you a consumer report unless your purpose for obtaining it is permissible under the Act. This means that you must always tell us the true reason for requesting a consumer report. If the reason is not a permissible one under the Act, we are required by law to deny your request. Listed below are the only purposes that Section 604 of the Act permits.

(1): Pursuant to court order, or a subpoena issued by a federal grand jury.

(2): Pursuant to the written instructions of the consumer on whom the report is sought.

(3)(A): For use in connection with a credit transaction involving the consumer. Evaluating a consumer's credit application or reviewing or collecting on a credit account are all permissible purposes for obtaining a consumer report. It is not permissible for a creditor to obtain a report on a consumer unless the consumer has applied for credit or has an existing credit relationship with the creditor. Location or litigation purposes are never permissible unless they involve collection of the consumer's credit account.

(3)(B): For use in employment decisions involving the consumer. An employer (or its agent) may obtain a consumer report in order to evaluate a consumer who has applied for employment or to evaluate a consumer for promotion, reassignment or retention.

(3)(C): For use in connection with underwriting of insurance involving the consumer. Underwriting includes issuance or renewal of insurance, and its amount and terms. Consumer reports may not be obtained for insurance claims purposes.

(3)(D): For use in connection with a consumer's eligibility for a license or benefit granted by a governmental agency that is required to consider the applicant's finances in the process.

(3)(E): For use in connection with a business transaction involving the consumer. This section provides a strictly limited basis for obtaining a consumer report. To qualify, the business transaction must involve some benefit for which the consumer has applied. A consumer's application to rent an apartment or open a checking account would qualify, as would a consumer's request to pay for goods by check. The business transaction must not involve credit, employment, or insurance—those purposes are permissible only if they meet the standards of (3) (A)–(C).

Consumer Reports Will be Provided Only for These Purposes

Exhibit B to the Order

W.D.I.A. Corporation
National Credit Information Network
Post Office Box 31221
Cincinnati, Ohio 45231–0221

Date of Report: [Insert date report furnished]
Reference: Consumer credit report provided to . . .
Company: [Insert name, address and telephone number of subscriber who received report]

Dear Consumer: The National Credit Information Network has provided a copy of your consumer credit report to the company listed above, at its request.

This consumer credit report is to be used for the purpose listed below: [List purpose identified by report recipient]

Should you have questions regarding the reason the above company requested a copy of your consumer credit report, feel free to contact: National Credit Information Network, Post Office Box 31221, Cincinnati, Ohio 45231–0221.

You may elect to call us at (800) 374–1400, Mon-Fri., 9 a.m. to 12 Noon E.S.T. or Mon-Fri., 1 p.m. to 4 p.m. E.S.T.

[If end user is known, state the following:]

This report was requested on behalf of : [Identify end user]

Respectfully submitted,

Consumer Notification Department, National Credit Information Network.

Exhibit C to the Order

Annual Certification for Access to Consumer Credit Reports

Please answer the following:

State the nature of your business and describe what it actually does>
Enter all purposes, separated by commas, for which you plan to obtain consumer credit reports>
Please state whether your purposes for obtaining consumer credit reports have changed from a year ago, and, if so, explain the reasons for the changes>
Enter your:
Name>
Official business title>
Direct dial telephone number >

Do you certify, to the best of your knowledge, that the above is true and accurate?

Yes I do —or— No I do not

Exhibit D to the Order

W.D.I.A. Corporation
National Credit Information Network
Post Office Box 31221
Cincinnati, Ohio 45231–0221

Date of Report: [Insert date report furnished]
Reference: Consumer credit report provided to . . .
Company: [Insert name, address and telephone number of subscriber who received report]

Dear Consumer: The National Credit Information Network has provided a copy of your consumer credit report to the company listed above, at its request.

This consumer credit report is to be used for employment purposes.

The consumer credit report furnished contained public record information.

Should you have questions concerning the reason the above company requested a copy of your consumer credit report, feel free to contact: National Credit Information Network, Post Office Box 31221, Cincinnati, Ohio 45231–0221.

You may elect to call us at (800) 374–1400, Mon–Fri., 9 a.m. to 12 Noon E.S.T. Mon–Fri., 1 p.m. to 4 p.m. E.S.T.

[If end user is known, state the following:]

This report was requested on behalf of: [Identify end user]

Respectfully submitted,

Consumer Notification Department, National Credit Information Network.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from W.D.I.A. Corporation, a corporation, and its officers, Mark W. Hanna and Janice L. Campanello ("the respondents").

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

Respondents' business involves the purchase of information on individual consumers from consumer reporting agencies and the resale of that information to third parties. Firms engaged in this type of business are sometimes called "information brokers," or "resellers." The complaint accompanying the proposed order alleges that in connection with their buying and selling of consumer reports, the respondents engaged in acts and

practices violating sections 604, 607(a), and 613 of the Fair Credit Reporting Act.

The Fair Credit Reporting Act requires that consumer reporting agencies, such as information brokers, maintain procedures designed to protect consumers' privacy. According to the complaint, the respondents have violated section 604 of the Fair Credit Reporting Act by regularly furnishing consumer reports to persons under circumstances in which the respondents have no reason to believe that the reports will be used for any of the purposes permitted under that section of the Act.

The complaint alleges, for example, that respondents furnish consumer reports to certain types of subscribers (respondents' customers), such as attorneys and private investigators, who typically have impermissible as well as permissible purposes for the consumer reports they obtain. Such subscribers are known as "mixed use" users. According to the complaint, in many instances, respondents do not have reason to believe that these reports have been requested for a permissible purpose. The complaint also cites as a violation of section 604 respondents' furnishing or consumer reports to new subscribers without having made a reasonable effort to verify the purposes for which these subscribers will use the reports.

The complaint further alleges that through the conduct discussed above, respondents have violated section 607(a) of the Fair Credit Reporting Act by failing to maintain reasonable procedures designed to limit the furnishing of consumer reports to the purposes listed under section 604.

Additionally, the compliant alleges that the respondents regularly furnish consumer reports for employment purposes that contain public record information that is likely to adversely affect a consumer's ability to obtain employment, but when furnishing these reports, the respondents do not notify the subject consumers that respondents are reporting public record information about them, nor do they tell the consumer the names and address of the persons to whom the respondents have furnished the reports. Because, the complaint alleges, the respondents do not have procedures to insure that the public record information they are reporting is complete and up to date, the respondents' failure to provide the notice violates section 613 of the Fair Credit Reporting Act.

The consent order contains provisions designed to ensure that the respondents do not engage in similar unlawful acts and practices in the future.

Part I of the order requires the respondents to cease and desist from furnishing any consumer report under any circumstances not permitted by section 604 of the Fair Credit Reporting Act.

Part I also requires the respondents to maintain reasonable procedures to limit the furnishing of consumer reports to the purposes listed in section 604, as required by section 607(a) of the Fair Credit Reporting Act, and mandates specific procedures that must be followed to accomplish this objective. These include measures to verify the identities of new subscribers, the nature of their business, and the purposes for which they seek to obtain consumer reports. Also included is a procedure for notifying consumers when respondents furnish consumer reports to mixed-use users to ensure that such subscribers are using consumer reports for permissible purposes. The specific procedures set forth in Paragraph 2 of Part I are not necessarily mandated by the Fair Credit Reporting Act's "reasonable procedures" requirement but are considered by the Commission to be appropriate remedial relief in this case to prevent recurrence of the alleged violations.

Part I of the order further requires that any time respondents furnish consumer reports for employment purposes that contain public record information that is likely to adversely affect a consumer's ability to obtain employment, they must notify the consumer, at the time the report is furnished, that public record information about the consumer is being reported and provide the name and address of the person to whom the report is being furnished, as is required by section 613(1) of the Fair Credit Reporting Act. The order permits the respondents to forego providing this notification if they have either received written confirmation from the consumer reporting agency that compiled the consumer report that the agency provides such notification to the consumer, or have received written confirmation from the agency that it maintains strict procedures designed to ensure the public record information it reports is complete and up to date, as required by section 613(2).

Part II of the order requires the respondents and their successors and assigns to maintain documents demonstrating compliance with the order for five (5) years and to make such documents available to the Commission upon request.

Part III of the order requires the respondents to deliver a copy of the order to all present and future employees, agents, or representatives having responsibilities related to the respondents' compliance with the order.

Part IV of the order requires the respondents to notify the Commission at least thirty (30) days before any proposed change in the structure of the respondent corporation that might affect compliance with the order.

Part V of the order requires the individual respondents to promptly notify the Commission of the discontinuance of their present business or employment and of their affiliation with a new one. Also, for ten (10) years from the date the order is served, the individual respondents must promptly notify the Commission of their affiliation with new business or employment whose activities include the assembling or evaluating of consumer information or the furnishing of consumer reports or access to consumer reports to third parties, or in which their own duties or responsibilities involve such activities.

Part VI of the order requires the respondents to file a written report with the Commission within sixty (60) days after service of the order detailing the manner and form in which they have complied with the order.

The purpose of this analysis is to facilitate public comment on the proposed order, and is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 94–6538 Filed 3–18–94; 8:45 am]

BILLING CODE 6750–01–M

GENERAL SERVICES ADMINISTRATION

Availability for a Draft Environmental Impact Statement Proposed Federal Courthouse, Seattle, WA

The General Services Administration (GSA) hereby gives notice a Draft Environmental Impact Statement (EIS) has been prepared in accordance with the National Environmental Policy Act (NEPA) for a proposed new Federal Courthouse to be located in the city of Seattle, King County, Washington. The DEIS is being made available March 25, 1994. GSA is the lead Federal agency for the preparation of the EIS. The DEIS evaluates two build alternatives as well as the no action alternative.

Written comments on the alternatives, impacts, and mitigation measures should be sent no later than May 9, 1994 to GSA's EIS subconsultant, Dames & Moore, Inc., 2025—1st Avenue, suite 500, Seattle, Washington, 98121.

Comments will also be accepted at a public meeting to be held on April 19, 1994, at the Henry M. Jackson Federal Building, Auditorium, 915 Second Avenue, Seattle, Washington. The meeting will be held at 6:30 p.m. Representatives of GSA and Dames & Moore will receive comments from interested parties regarding the proposed project, the environmental analysis and proposed mitigation measures. All comments received will be made a part of the administrative record for the DEIS and will be evaluated as part of the Final EIS review process.

For further information contact Ms. Donna M. Meyer, General Services Administration, Public Buildings Service, Planning Staff (10PL), 400 15th Street, SW., Auburn, Washington 98001. Telephone number (206) 931–7675.

Dated: March 11, 1994.

L. Jay Pearson,

Regional Administrator (10A).

[FR Doc. 94–6555 Filed 3–18–94; 8:45 am]

BILLING CODE 6820–23–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 94N–0081]

Animal Drug Export; Spectinomycin

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Abbott Laboratories has filed an application requesting approval for the export of the bulk animal drug substance spectinomycin sulfate tetrahydrate to Switzerland.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of food animal drugs under the Drug Export Amendments of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Puyot, Center for Veterinary Medicine (HFV–130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1646.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of drugs that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Abbott Laboratories, North Chicago, IL 60064, has filed application requesting approval for the export of the bulk animal drug substance spectinomycin sulfate tetrahydrate to Switzerland. The product is approved for use in the manufacture of certain veterinary drugs. The application was received and filed in the Center for Veterinary Medicine on March 8, 1994, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by March 31, 1994, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.44).

Dated: March 14, 1994.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 94–6509 Filed 3–18–94; 8:45 am]

BILLING CODE 4160–01–F

Health Resources and Services Administration

[RIN–0905–ZA09 PN#2183]

Grants To Improve Emergency Medical Services and Trauma Care in Rural Areas

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of availability of grant funds.

SUMMARY: The Health Resources and Services Administration announces that up to $480,000 is available in fiscal year 1994 for grants to public and private nonprofit entities for the purpose of carrying out research and demonstration projects with respect to improving the availability and quality of emergency medical services and trauma care in rural areas. These grants are authorized by section 1204 of the Public Health Service Act, as amended. Funds are appropriated under Public Law 103–112.

DATES: To receive consideration, grant applications must be received by the close of business May 20, 1994. Applications will meet the deadline if they are either: (1) Received on or before the deadline date; or (2) postmarked on or before the deadline date and received in time for submission to the review committee. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks will not be accepted as proof of timely mailing. Hand delivered applications must be received by 5 pm on May 20, 1994. Applications received after the deadline will be returned.

FOR FURTHER INFORMATION CONTACT: Additional information relating to technical or program issues may be obtained from Mrs. Diane McMenamin, Deputy Director, Division of Trauma and Emergency Medical Systems, Bureau of Health Resources Development, Parklawn Building, room 11A–22, 5600 Fishers Lane, Rockville, Maryland 20857; 301–443–3401. Grant applications and additional information regarding business, administrative, or fiscal issues related to the awarding of grants under this notice may be requested from the Grants Management Officer (GMO), Ms. Glenna Wilcom, Parklawn Building, room 7–15, 5600 Fishers Lane, Rockville, Maryland 20857; 301–443–2280. Applicants for grants will use Form PHS 5161–1 (revised 7/92), approved under OMB Control Number 0937–0189. Previous editions of this form will not be

accepted. Completed applications should be sent to the GMO.

SUPPLEMENTARY INFORMATION:

Background and Objectives

The program provides assistance to public and private nonprofit organizations for the purpose of carrying out research and demonstration projects to improve the availability and quality of emergency medical services (EMS) and trauma care in rural areas. As mandated by legislation, applications must address one or more of the following five topics:

1. Innovative uses of communications technologies which will enhance system access and transmission of patient management information.
2. Model curricula for training EMS personnel, including first responders, emergency medical technicians, paramedics, and emergency nurses and physicians. The curricula may address the assessment, resuscitation, stabilization, treatment, and transport of seriously injured patients, especially the problems of long transports to the appropriate facility; or the management and operation of an EMS system.
3. Techniques for making EMS training (both original certification and continuing education) more accessible to emergency medical personnel in rural areas.
4. Protocols and other agreements to improve access to prehospital care and transport of injured patients to the appropriate facilities.
5. Evaluation of the effectiveness of EMS and system protocols.

The program is not designed simply to provide access to health resources critically needed in rural communities. As such, a proposal should not be oriented towards the acquisition of new EMS or trauma care equipment, personnel, or other resources. Rather, as a research and demonstration program, proposed projects must address a specific outcome related to the five topics listed above, describe an innovative approach to test the outcome, and specify a methodology to evaluate the impact of the approach on the desired outcome. The outcome of these projects should have broad implications which can be translated to other rural areas.

The Public Health Service urges applicants to submit workplans that address specific objectives of Healthy People 2000. Potential applicants may obtain a copy of Healthy People 2000 (Full Report: Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report: Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325; 202 783–3238.

Program Priorities

The legislation requires that a preference be given to applicants providing services in any rural area identified by a State for which:

1. There is no system of access to EMS through the telephone number 9–1–1; or
2. There is no basic life-support system; or
3. There is no advanced life-support system.

This preference means that approved applications providing services in such rural areas will be funded before approved applications providing services in other rural areas. In order to receive preference under this legislative provision, the applicant must include with the application a certification by the State EMS Office that the proposed services or study of such services will be provided in rural areas meeting one or more of the above listed program priorities.

The definition of basic or advanced life-support systems must be consistent with the definition generally recognized by the State.

The program is interested in funding research and demonstration projects aimed at addressing the impact of EMS and trauma care services, or the lack thereof, on Native American reservations and surrounding counties, and other special populations residing in rural environments. The program may choose to fund approved applications addressing this issue rather than other approved applications with higher scores.

Availability of Funds

Up to $480,000 is available for this program. Approximately 2–5 grants will be funded ranging from $50,000 to $150,000 per year, pending the availability of funds. Project periods may be requested for up to two years. Grants to support projects beyond the first budget year will be contingent upon the availability of funds and satisfactory progress in meeting the project's objectives. Applicants are required to submit in the initial application budgets for each proposed project year.

Eligible Applicants

Any public or private nonprofit entity may apply. Although the applicant is not required to be located in a rural area, the applicant must provide services and otherwise perform a research and demonstration activity in a rural area(s). In order to meet the rural requirement, an area must be located: (1) outside a Metropolitan Statistical Area (MSA) as defined by the Office of Management and Budget; or (2) in a rural census tract within an MSA. If the city or county name does not appear on the MSA list, the area would meet the definition of rural under the first definition in this program. However, if the city or county name does appear on the MSA list, the applicant may contact the applicable regional Census Bureau office to determine the census tract for the area. If the census tract for the area appears on the list of approved rural census tracts, the applicant is eligible to apply under the second rural definition in this program. A list of the cities and counties that are designated as being within an MSA, rural census tracts for each county, and telephone numbers for regional offices of the Census Bureau will be included with the application.

Application Evaluation Criteria

Grant applications will be evaluated by an objective review committee according to the following:

1. Applicant's demonstrated experience and qualifications to complete the project proposed and to perform a research and demonstration project.
2. Adequacy of documentation in support of the need and justification for the research and demonstration project, the importance of the evaluation outcome to rural EMS and trauma care, and the extent to which the applicant utilizes innovative and creative methods to implement and improve EMS/trauma systems in rural areas, including Native Americans and other special populations.
3. Appropriateness and adequacy of the work plan, methodologies, and schedule for organizing and completing the project within the 2 year timeframe, including adequate commitment and participation of the affected rural area if the applicant is not located in a rural area.
4. Extent to which the proposed project and the outcome would have broad implications and be capable of replication in other rural areas with similar needs and characteristics, including cost-effectiveness.
5. Coordination with the State EMS Office and, where appropriate, with any program of emergency medical services for children in the State; and the extent to which the proposed project demonstrates coordination and consistency with the State EMS and trauma care system in place or in the planning phase.
6. Reasonableness of the budget proposed and the cost efficiency of the project relative to service versus administrative costs.
7. Demonstrated understanding of the problems with rural EMS and trauma

care and of the effectiveness of measures proposed to improve these problems.

Allowable Costs

The basis for determining the allowability and allocability of costs charged to PHS grants is set forth in 45 CFR part 74, Subpart Q, and 45 CFR part 92. The four separate sets of cost principles prescribed for recipients of grants for public and private nonprofit entities are: OMB Circular A–87 for State and local governments; OMB Circular A–21 for institutions of higher education; 45 CFR part 74, Appendix E for hospitals; and OMB Circular A–122 for nonprofit organizations.

Reporting Requirements

A successful applicant under this notice will submit quarterly reports in accordance with provisions of the general regulations which apply under 45 CFR part 74, Subpart J, Monitoring and Reporting of Program Performance, with the exception of State and local governments to which 45 CFR part 92, Subpart C reporting requirements will apply.

Public Health System Impact Statement

This program is subject to the Public Health System Reporting Requirements. Reporting requirements have been approved by the Office of Management and Budget—0937–0195. Under these requirements, the community-based non-governmental applicant must prepare and submit a Public Health System Impact Statement (PHSIS). The PHSIS is intended to provide information to State and local health officials to keep them apprised of proposed health services grant applications by community-based non-governmental organizations within their jurisdictions.

Community-based non-governmental applicants are required to submit the following information to the head of the appropriate State and local health agencies in the area(s) to be impacted no later than the Federal application receipt due date:

a. A copy of the face page of the application (SF 424)

b. A summary of the project PHSIS, not to exceed one page, which provides:

(1) A description of the population to be served,

(2) A summary of the services to be provided,

(3) A description of the coordination planned with the appropriate State or local health agencies.

Executive Order 12372

Grants awarded under this notice are subject to the provisions of Executive Order 12372, which sets up a system for State and local government review of proposed Federal assistance applications. Applicants (other than federally recognized Indian tribes) should contact their State Single Point of Contact (SPOC) as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposals serving more than one State, the applicant is advised to contact the SPOC of each affected State. A current list of SPOCS is included in the application kit. The SPOC has 60 days after the application deadline date to submit comments. The granting agency does not guarantee to "accommodate or explain" State recommendations received after that date.

The OMB Catalog of Federal Domestic Assistance Number for this program is 93.952.

Dated: January 25, 1994.

William A. Robinson,

Acting Administrator.

[FR Doc. 94–6465 Filed 3–18–94; 8:45 am]

BILLING CODE 4160–15–P

Health Resources and Services Administration Advisory Council; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of April 1994:

Name: Council on Graduate Medical Education.

Time: April 13–14, 1994, 8:30 a.m.

Place: Crown Plaza Holiday Inn, Regency Room, 1750 Rockville Pike, Rockville, MD 20857. Open for entire meeting.

Purpose: Provides advice and recommendations to the Secretary and to the Committees on Labor and Human Resources, and Finance of the Senate and the Committees on Energy and Commerce and Ways and Means of the House of Representatives, with respect to (A) the supply and distribution of physicians in the United States; (B) current and future shortages of physicians in medical and surgical specialties and subspecialties; (C) issues relating to foreign medical graduates; (D) appropriate Federal policies regarding (A), (B), and (C) above; (E) appropriate efforts to be carried out by medical and osteopathic schools, public and private hospitals and accrediting bodies regarding matters in (A), (B), and (C) above; (F) deficiencies in the needs for improvements in, existing data bases concerning supply and distribution of, and training programs for physicians in the United States.

Agenda: The Council will be discussing the plan for 1994–1995, the governance and structure of the proposed national physician workforce commission, and draft Physician Assistants and Managed Care findings and recommendations. Informal workgroups will be meeting on the afternoon of April 13.

Anyone requiring information regarding the subject Council should contact Marc L. Rivo, M.D., M.P.H., Executive Secretary, telephone (301) 443–6190; or F. Lawrence Clare, M.D., M.P.H., Deputy Executive Secretary, telephone (301) 443–6326, Council on Graduate Medical Education, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, room 4C–25, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Agenda Items are subject to change as priorities dictate.

Dated: March 15, 1994.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 94–6498 Filed 3–18–94; 8:45 am]

BILLING CODE 4160–15–P

National Institutes of Health

National Institute of General Medical Sciences; Meeting of the National Advisory General Medical Sciences Council

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Advisory General Medical Sciences Council, National Institute of General Medical Sciences, National Institutes of Health, on May 18–20, 1994, Building 31, Conference Room 10, Building 31, Bethesda, Maryland.

This meeting will be open to the public on May 18, from 12 noon to 5:30 p.m. in Conference Room 10, for the discussion of program policies and issues; and from 8:30 a.m. to 2 p.m. on May 19, for opening remarks, report of the Acting Director, NIGMS, and other business of the Council. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public on May 19 from 2 p.m. to 5:30 p.m., and on May 20 from 8:30 a.m. until adjournment, for the review, discussion, and evaluation of individual grant applications. The discussions of these applications could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Ann Dieffenbach, Public Information Officer, National Institute of General Medical Sciences, National

Institutes of Health, Building 31, room 4A52, Bethesda, Maryland 20892, telephone: 301–496–7301, FAX 301–402–0224, will provide a summary of the meeting and a roster of council members. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Mrs. Dieffenbach in advance of the meeting. Dr. W. Sue Shafer, Executive Secretary, NAGMS Council, National Institutes of Health, Westwood Building, room 938, Bethesda, Maryland 20892, telephone: 301–594–7751 will provide substantive program information upon request.

(Catalog of Federal Domestic Assistance Program Nos. 93.821, Biophysics and Physiological Sciences; 93–859, Pharmacological Sciences; 93.862, Genetics Research; 93.863, Cellular and Molecular Basis of Disease Research; 93.880, Minority Access Research Careers [MARC]; and 93.375, Minority Biomedical Research Support [MBRS].)

Dated: March 15, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–6571 Filed 3–18–94; 8:45 am]

BILLING CODE 4140–01–M

National Library of Medicine; Meeting of the Board of Scientific Counselors, National Center for Biotechnology Information, National Library of Medicine

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Center for Biotechnology Information, National Library of Medicine 12–13, 1994.

The meeting on April 13 will be open to the public from 9 a.m. to 3 p.m. in the Board Room of the Library, 8600 Rockville Pike, Bethesda, Maryland, for the review of research and development programs and preparation of reports of the National Center for Biotechnology Information. Attendance by the public will be limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Dr. David Lipman at 301–496–2475.

There will be two closed portions as follows: On April 12, the Board will meet from 7 to approximately 10 p.m., at the Bethesda Hyatt, Bethesda, Maryland, and on April 13, from 3 to approximately 5 p.m. in the Board Room of the National Library of Medicine.

In accordance with provisions set forth in section 552b(c)(6), Title 5, U.S.C., and section 10(d) of Public Law 92–463, the closed portions of the meeting will be closed for the consideration of personnel qualifications and performance of individual investigators and similar items, the disclosure of which would constitute an unwarranted invasion of personal privacy.

The Executive Secretary, Dr. David J. Lipman, Director, National Center for Biotechnology Information, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, telephone (301) 496–2475, will furnish summaries of the meeting, rosters of committee members, and substantive program information.

Dated: March 15, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–6569 Filed 3–18–94; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Deafness and Other Communication Disorders; Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Institute on Deafness and Other Communication Disorders Special Emphasis Panel.

The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications, contract proposals, and/or cooperative agreements. These applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such a patentable material, and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Panel: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel.

Dates of Meeting: April 26, 1994.

Time of Meeting: 8:00 am until adjournment.

Place of Meeting: Contact Dr. Semmes for place of meeting.

Agenda: Review of applications received in response to RFA DC–94–001, Early Cellular Response to Injury of the Vestibular System.

Contact Person: Dr. Marilyn Semmes, Acting Chief, Scientific Review Branch, NIDCD, Executive Plaza South, room 400C, Bethesda, Maryland 20892, (301) 496–8683.

(Catalog of Federal Domestic Assistance Program No. 93.173 Biological Research Related to Deafness and Other Communicative Disorders)

Dated: March 15, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–6572 Filed 3–18–94; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Deafness and Other Communication Disorders; Meetings of the National Deafness and Other Communication Disorders Advisory Council and Its Planning Subcommittee

Pursuant to Public Law 92–463, notice is hereby given of the meetings of the National Deafness and Other Communication Disorders Advisory Council and its Planning Subcommittee on May 18–20, 1994, at the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland. The meeting of the full Council will be held in Conference Room 6, Building 31C, and the meeting of the subcommittee will be in Conference Room 7, Building 31C.

The meeting of the Planning Subcommittee will be open to the public on May 18 from 2 pm until 3 pm for the discussion of policy issues. The meeting of the full Council will be open to the public on May 19 from 8:30 am until recess for a report from the Institute Director and discussion of extramural policies and procedures at the National Institutes of Health and the National Institute on Deafness and Other Communication Disorders and on May 20 from 8:30 am to approximately 9:30 am for a report on extramural programs of the Division of Communication Sciences and Disorders.

In accordance with the provisions set forth in section 552b(c)(4) and 552(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting of the Planning Subcommittee on May 18 will be closed to the public from 3 pm to adjournment. The meeting of the full Council will be closed to the public on May 20 from approximately 9:30 am until adjournment. The closed portions of the meetings will be for the review, discussion, and evaluation of individual grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Further information concerning the Council and Subcommittee meetings may be obtained from Dr. Earleen F. Elkins, Executive Secretary, National

Deafness and Other Communication Disorders Advisory Council, National Institute on Deafness and Other Communication Disorders, National Institutes of Health, Executive Plaza South, room 400C, Bethesda, Maryland 20892, 301–496–8693. A summary of the meetings and rosters of the members may also be obtained from her office. For individuals who plan to attend and need special assistance such as sign language interpretation or other reasonable accommodations,please contact Dr. Elkins at least two weeks prior to the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.173 Biological Research Related to Deafness and Other Communication Disorders)

Dated: March 15, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–6570 Filed 3–18–94; 8:45 am]

BILLING CODE 4140–70–M

Consensus Development Conference On Ovarian Cancer: Screening, Treatment, and Follow-Up

Notice is hereby given of the NIH Consensus Development Conference on "Ovarian Cancer: Screening, Treatment, and Follow-up," which will be held April 5–7, 1994, in the Masur Auditorium of the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892. This conference is sponsored by the National Cancer Institute and the NIH Office of Medical Applications of Research. The conference begins at 8:30 a.m. on April 5 and 6 and at 9 a.m. on April 7.

Each year approximately 20,000 women are diagnosed with ovarian cancer. It is the leading cause of death from gynecologic malignancies; 12,000 deaths occur each year secondary to ovarian cancer.

Because diagnosis at early stages is difficult, major efforts are underway to identify appropriate screening tests for ovarian cancer. Advances in imaging and in the development of serum markers suggest that screening for ovarian cancer may one day be possible. In addition, minimal-access surgical techniques, specifically laparoscopy, may increase in importance for diagnosing and identifying the stages of ovarian cancer.

Recent studies have sought to define the benefit of adjuvant chemotherapy and radiotherapy in patients with early-stage ovarian cancer. Adjuvant platinum-based chemotherapy given after surgery has been shown to be effective in prolonging disease-free survival. A new class of chemotherapeutic agents, the taxenes, have also demonstrated activity in patients with ovarian cancer.

In certain situations, conservative surgery, which preserves an individual's fertility, may be safe. Success in primary debulking surgery in patients with advanced disease appears to confer a survival benefit. The role of salvage therapy, including surgery and chemotherapy, in patients with persistent or recurrent ovarian cancer has not yet been defined. How best to maintain the patient's quality of life with advanced ovarian cancer remains an issue of critical importance.

One in a continuing series of NIH Consensus Development Conferences, this conference will examine what is known about screening, prevention, diagnosis, and treatment of ovarian cancer. The conference will bring together epidemiologists, obstetrician/gynecologists, and gynecologic, medical, and radiation oncologists as well as representatives of the public to review available data and make recommendations both for current management and for future research.

Following 1½ days of presentations and discussion by the audience, an independent, non-Federal consensus panel will weigh the scientific evidence and write a draft statement in response to the following key questions:

- What is the current status of screening and prevention in ovarian cancer?
- What is the appropriate management of early-stage ovarian cancer?
- What is the appropriate management of advanced epithelial ovarian cancer?
- What is the appropriate follow-up after primary therapy?
- What are the directions for future research?

On the final day of the meeting, the consensus panel chairman will read the draft statement to the conference audience and invite comments and questions.

This is the 96th Consensus Development Conference held by NIH since the establishment of the Consensus Development Program in 1977.

Advance information on the conference program and conference registration materials may be obtained from: Laura Hazan, Technical Resources, Inc., 3202 Tower Oaks Blvd., suite 200, Rockville, Maryland 20852, (301) 770–3153.

The consensus statement will be submitted for publication in professional journals and other publications. In addition, the consensus statement will be available beginning April 7, 1994, from the NIH Consensus Program Information Service, P.O. Box 2577, Kensington, Maryland 20891, phone 1–800–NIH–OMAR (1–800–644–6627).

Dated: March 11, 1994.

Ruth L. Kirschstein,

Deputy Director, NIH.

[FR Doc. 94–6575 Filed 3–18–94; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Meeting

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the Division of Research Grants Behavioral and Neurosciences Special Emphasis Panel.

The meeting will be closed in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications in the various areas and disciplines related to behavior and neuroscience. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Office of Committee Management, Division of Research Grants, Westwood Building, National Institutes of Health, Bethesda, Maryland 20892, telephone 301–594–7265, will furnish summaries of the meeting and roster of panel members.

Meeting To Review Individual Grant Applications

Scientific Review Administrator: Ms. Carol Campbell (301) 594–7165.

Date of Meeting: April 6, 1994.

Place of Meeting: Westwood Bldg, Room 306B, NIH, Bethesda, MD Telephone Conference.

Time of Meeting: 9 a.m.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 15, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–6574 Filed 3–18–94; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Meeting

Pursuant to Public Law 92–463, notice is hereby given of meeting of the

Division of Research Grants Behavioral and Neurosciences Special Emphasis Panel.

The meeting will be closed in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications in the various areas and disciplines related to behavior and neuroscience. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Office of Committee Management, Division of Research Grants, Westwood Building, National Institutes of Health, Bethesda, Maryland 20892, telephone 301–594–7265, will furnish summaries of the meeting and roster of panel members.

Meeting to Review Individual Grant Applications

Scientific Review Administrator: Dr. Anita Sostek (301) 594–7358.

Date of Meeting: April 4, 1994.

Place of Meeting: Westwood Bldg, Rm319C, NIH, Bethesda, MD, Telephone Conference.

Time of Meeting: 3 p.m.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 15, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–6573 Filed 3–18–94; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–050–334A–02]

Idaho; Closure of Public Lands to Use During Designated Hours

AGENCY: Bureau of Land Management, Interior.

ACTION: Closure of public land between 10 p.m. and 5 a.m.

SUMMARY: Public and State land located on the north side of the Snake River, in Jerome County, Idaho, is closed to public use between the hours of 10 p.m. and 5 a.m., year round.

The closed area is generally described as:

That parcel of land located east of Highway 93, south of Interstate 84, north of the Snake River and west of the Hansen Bridge

The described area is the site of growing crime, especially during late evening hours. Reported incidents of illegal dumping, the stripping of stolen cars, drug transactions, homeless camps, and under-age parties involving drug and alcohol consumption, have increased steadily over past years.

The purpose of the closure is to provide for public safety, resource protection, and crime prevention. The area will be signed to identify the closure. Law enforcement personnel will enforce the closure regularly.

Exceptions from this closure may be approved by the Authorized Officer. Exemptions may be approved for federal, state, and local government personnel on official duty, emergency service personnel including medical, search and rescue, utility services, and other licensed or permitted individuals.

The authority for this closure is 43 CFR 8364.1, Closure and Restriction Orders. Failure to comply with this order will subject violators to the penalties provided in 43 CFR 8360.0–7.

FOR FURTHER INFORMATION AND APPLICATION FOR EXCLUSION APPROVAL CONTACT: Robert D. Cordell, Bennett Hills Resource Area Manager, P.O. Box 2–B, Shoshone, Idaho, 83352. Telephone (208) 886–2206.

Dennis Schulze,

Acting District Manager.

[FR Doc. 94–6617 Filed 3–17–94; 10:42 am]

BILLING CODE 4310–GG–M

NATIONAL SCIENCE FOUNDATION

Collection of Information Submitted for OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting a notice of information collection that will affect the public. Interested persons are invited to submit comments by April 19, 1994. Comments may be submitted to:

(A) *Agency Clearance Officer:* Herman G. Fleming, Division of Personnel and Management, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, or by telephone (703) 306–1243. Copies of materials may be obtained at the above address or telephone.

Comments may also be submitted to: (B) *OMB Desk Officer:* Office of Information and Regulatory Affairs, ATTN: Dan Chenok, Desk Officer, OMB, 722 Jackson Place, room 3208, NEOB, Washington, DC 20503.

Title: Statement of Financial Status.

Affected Public: Individuals, Financial agencies or employees.

Respondents/Reporting Burden: 5 respondents annually: 1 hour per response.

Abstract: The purpose of this form is to determine a person's ability to repay a debt to the United States. It may also be used to establish an installment payment plan for repayment of the debt.

Dated: March 15, 1994.

Herman G. Fleming,

Reports Clearance Officer.

[FR Doc. 94–6489 Filed 3–18–94; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Subcommittee Meeting on Planning and Procedures

The ACRS Subcommittee on Planning and Procedures will hold a meeting on Wednesday, April 6, 1994, room P–422, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and matters the release of which would represent a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Wednesday, April 6, 1994—2 p.m. until 4:30 p.m.

The Subcommittee will discuss proposed ACRS activities, practices and procedures for conducting the Committee business, and organizational and personnel matters relating to ACRS and its staff. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as

far in advance as practicable so that appropriate arrangements can be made.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted therefor can be obtained by contacting the cognizant ACRS staff person, Dr. John T. Larkins (telephone (301/492–4516) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual five days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: March 15, 1994.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 94–6557 Filed 3–18–94; 8:45 am]

BILLING CODE 7590–01–M

Uranium Mill Facilities: Availability of Draft Final Staff Technical Position on Alternate Concentration Limits for Title II Uranium Mills

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: The Nuclear Regulatory Commission (NRC) is announcing the availability of its "Draft Final Staff Technical Position on Alternate Concentration Limits for Title II Uranium Mills." This Draft Final Technical Position offers guidance for preparing and reviewing applications for the establishment of alternate concentration limits (ACLs) at Title II uranium mill tailings sites, pursuant to Criterion 5 of appendix A to 10 CFR part 40.

The Draft Final Staff Technical Position represents a revised and updated version of NRC's Draft Technical Position on ACLs, which was announced in the **Federal Register** on June 30, 1988 (53 FR 24820). The revisions were made largely in response to comments that NRC received on the Draft Technical Position. A revision deserving mention in this notice is the omission of the maximum annual individual risk permitted, which had been indicated in the Draft Technical Position to be approximately 1×10^{-6}, with this value representing the combined total risk from radiological and nonradiological hazardous constituents. A value for the maximum risk level in the current draft is pending the results of ongoing discussions between the staffs from the U.S. Environmental Protection Agency and NRC on the maximum risk level that should be permitted. However, the staff considers the maximum risk level to be more of a staff review standard than a guide to the licensees; therefore, the omission of the maximum risk level from the current draft of the Technical Position is not considered a limitation for preparing and submitting ACL applications by the licensees. The staff intends to use this Draft Final Technical Position to review ACL applications by licensees.

ADDRESSES: Requests for copies of the Draft Final Technical Position should be addressed to Anne E. Garcia, Repository Licensing & QA Project Directorate, Division of High Level Waste, Office of Nuclear Material Safety and Safeguards, Mailstop 4–H–3 OWFN, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: (301) 504–2438.

FOR FURTHER INFORMATION CONTACT: Comments and requests for further information on the Draft Final Staff Technical Position should be transmitted to Latif S. Hamdan, Uranium Recovery Branch, Division of Low-Level Waste and Decommissioning, Office of Nuclear material Safety and Safeguards, Mailstop 5–E–4 OWFN, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: (301) 504–2528. Comments will be received through April 29, 1994.

Dated at Rockville, Maryland this 14th day of March, 1994.

For The Nuclear Regulatory Commission.

Joseph J. Holonich,

Acting Chief, Uranium Recovery Branch, Division of Low-Level Waste Management and Decommissioning, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 94–6556 Filed 3–18–94; 8:45 am]

BILLING CODE 7590–01–M

[IA 94–002]

William K. Headley; Order Requiring Notice to Certain Employers and Prospective Employers and Notification of NRC of Certain Employment in NRC-Licensed Activities (Effective Immediately)

I

William K. Headley is currently involved in NRC-licensed activities as an employee at Morgan County Memorial Hospital, Martinsville, Indiana. Morgan County Memorial Hospital (the licensee) is the holder of Byproduct Material License No. 13–17449–01 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR parts 30 and 35. The license authorizes the possession and use of byproduct material for medical use as described in 10 CFR 35.100, 35.200 and 35.300.

II

On September 28, 1993, the NRC conducted an inspection at the licensee's facility. During the inspection, the NRC identified irregularities in the licensee's records of routine daily area radiation and weekly area radiation and contamination surveys conducted by Mr. Headley. During discussions with the NRC inspector, Mr. Headley admitted to deliberately falsifying the survey records and to deliberately failing to perform the required daily, and some of the required weekly, surveys for the past two and one half years. On October 26, 1993 the NRC conducted an enforcement conference in the Region III Office with the licensee and Mr. Headley. During the enforcement conference, Mr. Headley reaffirmed his statements regarding his deliberate failure to perform required surveys and his deliberate falsification of survey records to make it appear that they had been performed when, in fact, they had not. Mr. Headley stated that one of the reasons for his actions was his full workload and his perceived need to save time by not doing some activities that he considered of minimal safety significance.

III

As discussed above, Mr. Headley deliberately failed to conduct surveys required by 10 CFR 35.70 and, in violation of 10 CFR 30.9, deliberately created survey records required to be maintained by licensees pursuant to 10 CFR 35.70 and which he knew to be false. Further, in violation of 10 CFR 30.10, Mr. Headley, an employee of the licensee, has engaged in deliberate misconduct that has caused the licensee to be in violation of 10 CFR 35.70 and 10 CFR 30.9.

The NRC must be able to rely on the Licensee and its employees to comply with NRC requirements, including the requirement to maintain records that are complete and accurate in all material respects. Mr. Headley's actions have raised serious doubt as to whether he can be relied upon to comply with NRC requirements and to provide complete and accurate information to the NRC.

The licensee has counseled Mr. Headley that further failures on his part will result in the licensee's removal of him from licensed activities and may result in his termination by the licensee. The licensee has also issued a letter of reprimand to Mr. Headley. Further, the

licensee has instituted procedures to ensure that each survey is observed by the Department Head or designee.

Given the deliberate nature of Mr. Headley's conduct over an extensive period of time, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public will be protected, if Mr. Headley were permitted at this time to become involved in licensed activities, other than those licensed activities performed at Morgan County Memorial Hospital, without providing specific notice to the NRC and the employing licensee as described above. Therefore, the public health, safety, and interest require that Mr. Headley be required to: (1) Provide a copy of this Order to any employer or prospective employer, other than Morgan County Community Hospital, engaged in licensed activities to assure that such employer is aware of Mr. Headley's previous history, and (2) notify the NRC of any involvement in licensed activities, other than those conducted at Morgan County Memorial Hospital, to assure that the NRC can continue to monitor the status of Mr. Headley's compliance with the Commission's requirements. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of the conduct described above is such that the public health, safety, and interest require that this Order be immediately effective.

IV

Accordingly, pursuant to sections 81, 161b, 161c, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR 30.10, it is hereby *ordered*, effective immediately, that:

1. Should William K. Headley seek employment involving NRC-licensed activities during the two year period from the date of this Order, Mr. Headley shall provide a copy of this Order to the prospective employer at the time that Mr. Headley is soliciting or negotiating employment so that the person is aware of the Order prior to making an employment decision.

2. For a two year period from the date of this Order, William K. Headley shall, within 10 business days of his acceptance of an employment offer involving NRC-licensed activities, provide notice to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, of the name, address, and telephone number of the employer.

3. If William K. Headley is currently involved in NRC-licensed activities at any employer other than Morgan County Community Hospital, Mr. Headley shall, within 30 days of the date of this Order, provide a copy of this Order to any such employer and provide notice to the Director, Office of Enforcement, at the address in 2. above, of the name, address, and telephone number of any such employer.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstrations by Mr. Headley of good cause.

V

In accordance with 10 CFR 2.202, William K. Headley must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which William K. Headley or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Chief, Docketing and Service Section, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, U.S. Nuclear Regulatory Commission, Region III, 801 Warrenville Road, Lisle, Illinois 60532–4351, and to William K. Headley if the answer or hearing request is by a person other than William K. Headley. If a person other than William K. Headley requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by William K. Headley or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), William K. Headley, or any other person adversely affected by this Order, may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. An answer or a request for hearing shall not stay the immediate effectiveness of this order.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland this 14th day of March 1994.

Hugh L. Thompson, Jr.,

Deputy Executive Director for Nuclear Materials Safety, Safeguards and Operations Support.

[FR Doc. 94–6558 Filed 3–18–94; 8:45 am]

BILLING CODE 7590–01–M

[IA 94–001]

In the Matter of Hartsell S. Phillips, Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately)

I

Hartsell S. Phillips is employed by Logan General Hospital, Logan, West Virginia. Logan General Hospital (Licensee) holds License No. 47–19919–01 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Parts 30 and 35. The license authorizes possession and use of byproduct material in accordance with the conditions specified therein. Mr. Phillips has been employed by the Licensee since approximately June 1991 as the Chief technologist, Radiation Safety Officer (RSO), and Chairman of Radiation Safety Committee with responsibilities involving compliance with NRC requirements for radiation protection. Mr. Phillips was removed as Chairman of the Radiation Safety Committee on January 1, 1994, and removed as RSO on February 18, 1994. On February 22, 1994, the Licensee informed the NRC that it has suspended, subject to termination, Mr. Phillips on February 18, 1994, based on information the Licensee had received through interviews with its staff and other information developed by the Licensee.

II

On December 7–8, 1993, an NRC inspection was conducted at the Licensee's facility in Logan, West Virginia. As a result of information developed during that inspection, an investigation by the Office of Investigations (OI) was initiated in January 1994. Although this investigation is continuing, OI interviews of Licensee personnel and review of documents provided by OI reveal that nuclear medicine technologists under Mr. Phillips' supervision and at his direction, and Mr. Phillips himself, deliberately increased radiopharmaceutical dosages administered to patients above the dosages prescribed by the authorized user and set forth in the Licensee's procedures manual, and falsified the dosage records of those patients by making them appear as if the prescribed dosages had been administered. The OI interviews indicate that this practice of increasing dosages and of falsifying records continued for an extended period of time. The exact number of patients affected in not clear, but involved numerous administrations.

In addition, Mr. Phillips falsified records and directed nuclear medicine technologists under his supervision to falsify records relating to: training of nuclear medicine technologists, required by 10 CFR 19.12; daily dose calibrator constancy checks, required by 10 CFR 35.50(b)(1); daily and weekly surveys in nuclear medicine areas, required by 10 CFR 35.70 (a), (b), and (e); and surveys related to the receipt and shipment of licensed material, required by 10 CFR 20.205(d) and License Condition 16. Specifically, these records indicated that the training, checks and surveys had been performed when in fact they had not been performed. The records falsification occurred for an extended period of time and may have been as long as 15 months during 1992 and 1993, and involved the falsification of records for surveys and training in nuclear medicine required during this period of time. The investigation also revealed that Mr. Phillips specifically instructed one nuclear medicine technologist to deny having falsified records and advised others to be untruthful when questioned by NRC inspectors.

III

Although the NRC investigation is continuing, based on the above, Mr. Phillips engaged in deliberate misconduct, a violation of 10 CFR 30.10, which caused the Licensee to be in violation of a number of NRC requirements including: (1) Administration of radiopharmaceutical doses that differed from the prescribed doses, required by 10 CFR 35.25 and License Condition 16; (2) failure to provide training to nuclear medicine technologists, required by 10 CFR 19.12; (3) failure to perform the daily constancy checks of the doses calibrator, required by 10 CFR 35.50(b)(1); (4) failure to perform the required daily and weekly contamination and radiation surveys, required by 10 CFR 35.70 (a), (b), and (e); (5) failure to perform the required surveys for radioactive material receipt, required by 10 CFR 20.205(d) and License Condition 16; and (6) failure to maintain accurate and complete records involving NRC-licensed activities (i.e., records of dose calibrator constancy checks (10 CFR 35.50(e)), radiation and contamination surveys (10 CFR 35.70 (a), (b), and (h), and 10 CFR 20.401 (b) and (c)), required by 10 CFR 30.9. Mr. Phillips also deliberately provided NRC inspectors information he knew to be inaccurate which was material to the NRC, also in violation of 10 CFR 30.10, which caused the Licensee to be in violation of 10 CFR 30.9.

As the RSO for the Licensee, Mr. Phillips was responsible, pursuant to 10 CFR 35.21(a), for ensuring that radiation safety activities were being performed in accordance with approved procedures and regulatory requirements, including the administration of radiopharmaceuticals, performance of required surveys, and keeping of required records which evidence compliance with Commission requirements. The NRC must be able to rely on the Licensee and its employees to comply with NRC requirements, including the requirement to provide information and maintain records that are complete and accurate in all material respects. Mr. Phillips engaged in deliberate misconduct, a violation of 10 CFR 30.10(a)(1), causing the Licensee to be in violation of NRC requirements, as noted above, and submitted to the NRC information he knew to be incomplete or inaccurate, a violation of 10 CFR 30.10(a)(2).

Mr. Phillips' deliberate misconduct has raised serious doubt as to whether he can be relied upon to comply with NRC requirements and to provide complete and accurate information to the NRC. In addition, Mr. Phillips' deliberate misconduct caused this Licensee to violate numerous Commission requirements and his deliberate false statements to Commission officials demonstrate conduct that cannot, and will not, be tolerated.

Consequently, in light of the numerous violations caused by Mr. Phillips' conduct, the length of time the noncompliances existed, and the deliberate nature of Mr. Phillips' actions, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public would be protected if Mr. Phillips were permitted at this time to be involved in any NRC-licensed activities. Therefore, the public health, safety and interest require, pending further action by the NRC, that Mr. Phillips be prohibited from involvement in licensed activities. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of the conduct described above is such that the public health, safety and interest require that this Order by immediately effective.

IV

Accordingly, pursuant to Sections 81, 103, 161b, 161i, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR 30.10, and 10 CFR 150.20, IT IS hereby *ordered*, effective immediately, that:

Pending further action by the NRC, Hartsell S. Phillips is prohibited from participation in any respect in NRC-licensed activities. For the purposes of this paragraph, NRC-licensed activities include licensed activities of: (1) An NRC licensee, (2) an Agreement State licensee conducting licensed activities in NRC jurisdiction pursuant to 10 CFR 150.20, and (3) an Agreement State licensee involved in distribution of products that are subject to NRC jurisdiction.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstration by Mr. Phillips of good cause.

V

In accordance with 10 CFR 2.202, Hartsell S. Phillips must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Hartsell S. Phillips or other person adversely affected relies and the reasons why the Order should not have been issued. Any answer or request for hearing shall be submitted to

the Secretary, U.S. Nuclear Regulatory Commission, Attn: Chief, Docketing and Service Section, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region II, Suite 2900, 101 Marietta Street, NW, Atlanta, Georgia 30323, and to Hartsell S. Phillips, if the answer or hearing request is by a person other than Hartsell S. Phillips. If a person other than Hartsell S. Phillips requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Hartsell S. Phillips or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), Hartsell S. Phillips, or any other person adversely affected by this Order, may, in addition to demanding a hearing, at the same time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. An answer or a request for hearing shall not stay the immediate effectiveness of this order.

Dated at Rockville, Maryland this 10th day of March 1994.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support.

[FR Doc. 94–6559 Filed 3–18–94; 8:45 am]

BILLING CODE 7590–01–M

RESOLUTION TRUST CORPORATION

Coastal Barrier Improvement Act; Property Availability; Royal Palm Golf Estates, Collier County, FL; Summit Hill One, Bexar County, TX

AGENCY: Resolution Trust Corporation.

ACTION: Notice.

SUMMARY: Notice is hereby given that the properties known as Royal Palm Golf Estates, located near Naples, Collier County, Florida, and Summit Hill One, located near San Antonio, Bexar County, Texas, are affected by Section 10 of the Coastal Barrier Improvement Act of 1990 as specified below.

DATES: Written notices of serious interest to purchase or effect other transfer of all or any portion of these properties may be mailed or faxed to the RTC until June 20, 1994.

ADDRESSES: Copies of detailed descriptions of these properties, including maps, can be obtained from or are available for inspection by contacting the following person:

Royal Palm Golf Estates:

Mr. Bruce Dunning, Resolution Trust Corporation, Kansas City Field Office, 4900 Main Street, suite 200, Kansas City, MO 64112, (800) 365–3342; Fax (816) 561–0882

Summit Hill One:

Mr. Steven Reid, Resolution Trust Corporation, Dallas Field Office, 3500 Maple Avenue, Reverchon Plaza, suite 300, Dallas, TX 75219, (800) 782–4674; Fax (214) 443–6574

SUPPLEMENTARY INFORMATION: The Royal Palm Golf Estates property, also known as Naples Shores Country Club, is located along U.S. Highway 41 (Tamiami Trail) 5.5 miles southeast of SR–951 and 1.5 miles northwest of CR–92 near Naples, Florida. The site contains wetlands, habitat for the Federally-endangered Florida panther, and is adjacent to the Collier Seminole State Park. The Royal Palm Golf Estates property consists of approximately 170 acres of undeveloped land platted for a combination of residential, commercial, and agricultural uses.

The Summit Hill One Property is located approximately 10 miles southwest of San Antonio, Texas, at the northeast corner of the intersection of Interstate Loop 410 and Old Pearsall Road. The site is within the boundary of the Edwards Aquifer, a Sole Source Aquifer designated by the U.S. Environmental Protection Agency, and is adjacent to the Miller's Pond recreational area. The Summit Hill One property consists of approximately 61 acres of undeveloped land and has a slight slope downward from the southwest portion to the north and northwest portion of the property. These properties are covered properties within the meaning of section 10 of the Coastal Barrier Improvement Act of 1990, Public Law 101–591 (12 U.S.C. 1441a–3).

Written notice of serious interest in the purchase or other transfer of all or any portion of these properties must be received on or before June 20, 1994 by the Resolution Trust Corporation at the appropriate address stated above.

Those entities eligible to submit written notices of serious interest are:

1. Agencies or entities of the Federal government;

2. Agencies or entities of State or local government; and

3. "Qualified organizations" pursuant to section 170(h)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 170(h)(3)).

Written notices of serious interest must be submitted in the following form:

Notice of Serious Interest

Re: [insert name of property]

Federal Register Publication Date:

_____

[insert **Federal Register** publication date]

1. Entity name.

2. Declaration of eligibility to submit Notice under criteria set forth in the Coastal Barrier Improvement Act of 1990, P.L. 101–591, section 10(b)(2), (12 U.S.C. 1441a–3(b)(2)), including for qualified organizations a determination letter from the United States Internal Revenue Service regarding the organization's status under section 501(c)(3) of the U.S. Internal Revenue Code (26 U.S.C. 170(h)(3)).

3. Brief description of proposed terms of purchase or other offer for all or any portion of the property (e.g., price, method of financing, expected closing date, etc.).

4. Declaration of entity that it intends to use the property for wildlife refuge, sanctuary, open space, recreational, historical, cultural, or natural resource conservation purposes (12 U.S.C. 1441a–3(b)(4)), as provided in a clear written description of the purpose(s) to which the property will be put and the location and acreage of the area covered by each purpose(s) including a declaration of entity that it will accept the placement, by the RTC, of an easement or deed restriction on the property consistent with its intended conservation use(s) as stated in its notice of serious interest.

5. Authorized Representative (Name/Address/Telephone/Fax).

List of Subjects: Environmental protection.

Dated: March 14, 1994.

Resolution Trust Corporation.

William J. Tricarico,

Assistant Secretary.

[FR Doc. 94–6487 Filed 3–18–94; 8:45 am]

BILLING CODE 6714–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–33757; File No. SR–Amex–94–07]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the American Stock Exchange, Inc. Relating to the Modification of Trading Hours for the EUROTOP 100 Index

March 11, 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 March 7, 1994, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend Amex Rule 1 in order to modify the trading hours for the Amex's EUROTOP 100 Index.

The text of the proposed rule change is available at the Office of the Secretary, the Amex, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

In October 1992, the Exchange began trading standardized options on the EUROTOP 100 Index ("E–100"). The E–100 measures the collective performance of the most actively traded stocks on Europe's major stock exchanges. This broad-based index is calculated continuously from 5 a.m. to 11:30 a.m. Eastern Standard Time (11 a.m. to 5:30 p.m. Central European time). The Exchange's trading hours for options on the E–100 are from 8:30 a.m. to 4:15 p.m. (New York time). The one hour earlier opening was adopted in hopes of attracting European investors as well as to conform more closely with trading hours for futures contracts on the E–100 traded at the New York Commodity Exchange ("COMEX"), which begins trading at 7:30 a.m. (New York time).

However, in the aftermath of the bombing of the World Trade Center in February 1993, the COMEX curtailed trading hours for all of its products and has continued to cease trading the E–100 futures contract at 11:30 a.m. (New York time), since such time corresponds with the cessation of trading of the underlying component securities in the European markets. The exchange now proposes to modify the trading hours for its E–100 options to cease trading at 11:30 a.m. as well, since these hours will correspond more closely to the current trading hours for E–100 futures contract at the COMEX.

The Exchange believes that its current trading hours for E–100 options expose both the specialists and market makers to undue risk after both the underlying component securities and the E–100 futures contract have stopped trading, since they are unable effectively to hedge their market risk.

Once the proposal is approved, the Exchange intends to give its membership two weeks notice of the change in E–100 trading hours. An information circular advising the membership of the new closing time of 11:30 a.m. would be sent by facsimile to the Exchange's contacts at the major options firms, mailed to recipients of the Exchange's options related information circulars, and made available to subscribers of the Options News Network.

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act in general, and furthers the objectives of section 6(b)(5) in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Amex does not believe that the proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to the self-regulatory organization consents, the Commission will: (A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing also will be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–94–07 and should be submitted by April 11, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[1]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–6479 Filed 3–18–94; 8:45 am]

BILLING CODE 8010–01–M

[1] 17 CFR 200.30–3(a)(12) (1993).

[Release No. 34–33756; File No. SR–MSTC–94–02]

Self-Regulatory Organizations; Midwest Securities Trust Company; Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Legal Expert Service

March 11, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on January 21, 1994, Midwest Securities Trust Company ("MSTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by MSTC. 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 proposed rule change establishes a fee for participants who use MSTC's Legal Expert System and adds an interpretation under MSTC's Rules that describes the Legal Expert System and MSTC's liability in connection with the information provided by the Legal Expert System.

Additions are italicized.

Article II

Rule 1. Delivery and Withdrawal of Securities

Sec. 1. Delivery of Securities

** * * Interpretations and Policies*

01. In order to assist Participants in determining whether certain Securities that Participants intend to deliver for deposit are in good deliverable form, Participants may use the Corporation's Legal Expert System. The Legal Expert System is a menu-driven computer program that identifies all documentation necessary to effect a legal transfer. While the Legal Expert System is designed to provide the best available information with respect to the covered subject matter, occasional errors in content may occur. As a result, the Corporation makes no representation regarding the accuracy of information provided. The Corporation also makes no other warranty or representation, either express or implied, and the Corporation does not warrant the accuracy, completeness, performance, currentness, merchantability, or fitness for a particular purpose of the Legal Expert System or the information contained therein. The Corporation shall not be liable to any Participant or any other person or entity for any damage caused in whole or in part by Participants' use of the Legal Expert System. In no event will the Corporation be liable as a result of Participants' reliance upon information contained in the Legal Expert System or for any consequential, incidental, indirect, punitive, special or similar damages, even if advised of the possibility of such damages.

The Legal Expert System should be used with the understanding that the Corporation is not engaged in rendering legal or other professional advice. If legal advice or other expert assistance is required, the services of a competent professional person should be sought.[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, MSTC 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. MSTC 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 purpose of the proposal is to establish a fee for use of the Legal Expert System and to add an interpretation that describes MSTC's liability arising from the information provided by the Legal Expert System. Section 1 of rule 1 under article II of MSTC's rules governs the deposit of securities at MSTC and requires that all deposits be in good deliverable form. Currently, if a participant is not familiar with all the documentation that is required to effect a legal transfer of a security to be deposited at MSTC, the participant may call MSTC and informally inquire as to what documentation is needed in order for the intended deposit to be in good deliverable form. Alternatively, the participant may do research and try to ascertain this information on their own. While participants usually submit all the required documentation, when incorrect, erroneous, or incomplete documentation is provided, the processing of the deposit is delayed. The Legal Expert System is designed to automate these inquiry process so that the information on the documentation required for good deliverable form and legal transfer is available from one source.

Specifically, the Legal Expert System is a menu-driven computer program that allows participants to inquire as to the documentation necessary to effect a legal transfer. The Legal Expert System utilizes standard industry criteria based on individual state regulations and provides specific requirements for good deliverable form in a user-friendly format. The Legal Expert System provides self-help information to the novice user who is not familiar with good delivery requirements. The self-help narratives guide the participant through the Legal Expert System by providing information and examples for each certificate classification.

The Legal Expert System provides the participant with a main menu and submenus for specific transfer situations. The participant is prompted to answer basic questions about the certificate and transfer situation to determine the necessary good delivery requirements for the specific state. The participant is then able to view what documentation will be needed so that he or she can gather the required documents for deposit with MSTC.

The interpretation that has been added to MSTC's Rules provides a disclaimer and describes MSTC's liability for the information the Legal Expert System provides. Specifically, the interpretation acknowledges that although MSTC will try to provide accurate information, occasional errors in content may occur. Thus, MSTC expressly limits its liability as to the content of the information provided. Additionally, MSTC reminds participants that it is not engaged in the business of rendering legal advice.

The proposed rule change is consistent with section 17A of the Act in that it facilitates the prompt and accurate clearance and settlement of securities transactions and provides for the equitable allocation of reasonable fees and other charges among participants using MSTC's facilities.

(B) Self-Regulatory Organization's Statements on Burden on Competition

MSTC believes that no burden will be placed on competition as a result of the proposed rule change.

(C) Self-Regulatory Organization's Statement of Comments on the Proposed Rule Change Received From Members, Participants, or Others

MSTC neither solicited nor received written comments on the proposed rule change.

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] The disclaimer of liability language included in the Interpretations and Policies 01 does not in any way effect MSTC's obligations and responsibilities with respect to and in connection with the deliverance and safekeeping of securities. Letter from David T. Rusoff, Foley & Lardner [counsel for MSTC], to Jerry W. Carpenter, Branch Chief, Division of Market Regulation, Commission (March 10, 1994).

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

The proposed rule change (1) establishes a due, fee, or other charge imposed by MSTC and (2) effects a change in an existing service that does not adversely affect the safeguarding of securities or funds in the custody or control of MSTC or for which MSTC is responsible and does not significantly affect the respective rights or obligations of MSTC or persons using the service. Therefore, the proposed rule change has become effective pursuant to 19(b)(3)(A)(ii) of the Act[3] and subparagraphs (e)(2) and (e)(4) of Rule 19b–4 thereunder.[4] At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. 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 submissions, 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 Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of MSTC. All submissions should refer to File No. SR–MSTC–94–02 and should be submitted by April 11, 1994.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–6480 Filed 3–18–94; 8:45 am]

BILLING CODE 8010–01–M

[3] 15 U.S.C. 78s(b)(3)(A)(ii) (1988).

[4] 17 CFR 240.19b–4(e) (2) & (4) (1993).

[5] 17 CFR 200.30–3(a)(12) (1993).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2697; Amdt. 2]

California; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended, effective March 10, 1994, to extend the termination date for filing applications for physical damage until May 17, 1994 as a disaster area as a result of damages caused by an earthquake and aftershocks on January 17, 1994 and continuing.

All other information remains the same, i.e., the termination date for filing applications for economic injury is October 17, 1994.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: March 14, 1994.

Bernard Kulik,

Assistant Administrator for Disaster Assistance.

[FR Doc. 94–6560 Filed 3–18–94; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2700]

Idaho; Declaration of Disaster Loan Area

Nez Perce County and the contiguous counties of Latah, Clearwater, Lewis, and Idaho in the State of Idaho constitute a disaster area as a result of damages caused by a fire which occurred on March 1, 1994 in the City if Lewiston. Applications for loans for physical damage may be filed until the close of business of May 9, 1994 and for economic injury until the close of business on December 12, 1994 at the address listed below:

U.S. Small Business Administration, Disaster Area 4 Office, P.O. Box 13795, Sacramento, CA 95853–4795.

or other locally announced locations. In addition, applications for physical and economic injury from small business located in the contiguous counties of Whitman and Asotin in the State of Washington and Wallowa in the State of Oregon may be filed until the specified date at the above location.

This interest rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	7.250
Homeowners Without Credit Available Elsewhere	3.625
Businesses With Credit Available Elsewhere	7.700
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	7.125
For Economic Injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000

The number assigned to this disaster in Idaho for physical damage is 270005 and for economic injury the number is 819900. In the State of Washington the numbers are 270105 for physical and 820000 for economic injury and for the State of Oregon the numbers are 270205 for physical and 820100 for economic injury.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: March 10, 1994.

Erskine B. Bowles,

Administrator.

[FR Doc. 94–6561 Filed 3–18–94; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 94–018]

The Boat Safety Account of the Aquatic Resources Trust Fund: Fiscal Year 1994 Financial Assistance

AGENCY: Coast Guard, DOT.

ACTION: Notice of availability.

SUMMARY: The Coast Guard is seeking to enter into financial assistance agreements with national nonprofit public service organizations for national boating safety activities. The Coast Guard has fiscal year 1994 funds available to subsidize selected national boating safety activities. This announcement seeks proposals for all types of projects that will promote boating safety on a national level.

DATES: Proposals must be received by May 13, 1994.

ADDRESSES: Application packages may be obtained from and proposals submitted to Commandant (G–NAB–5), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001.

FOR FURTHER INFORMATION CONTACT: Mr. Ladd Hakes, Office of Navigation Safety and Waterway Services, U.S. Coast Guard (G–NAB–5/Room 1608), 2100 Second Street SW., Washington, DC 20593–0001; (202) 267–0954.

SUPPLEMENTARY INFORMATION: Title 26, United States Code, section 9504

establishes the Boat Safety Account of the Aquatic Resources Trust Fund. The Coast Guard may award up to 5 percent of the available funds to national nonprofit public service organizations for national boating safety activities. Up to $1,987,500 is available for the fiscal year ending September 30, 1994. Eighteen awards totaling $1,862,500 were made in fiscal year 1993; awards ranged from $15,000 to $280,000. Nothing in this announcement should be construed as committing the Coast Guard to dividing available funds among qualified applicants or awarding any specified amount.

It is anticipated that several awards will be made by the Chief, Office of Navigation Safety and Waterway Services, U.S. Coast Guard. Applicants must be responsible, nongovernmental, nonprofit public service organizations and must establish that their activities are, in fact, national in scope. Specific information on organization eligibility, proposal requirements, award procedures, and financial administration procedures may be obtained by contacting the person listed in FOR FURTHER INFORMATION CONTACT.

Some general areas of particular interest include:

—Boating accident studies and analyses.

—Projects to research, design and develop training aids for boating education programs, including films, tapes, books, classroom materials and other items.

—Projects to design and develop boating safety education media and materials (films, tapes, books) for use by the boating public, including the boater, marine enforcement personnel, and the boating industry.

—Projects to support national boating safety media efforts (e.g., National Safe Boating Week, education seminars and public service announcements).

—Technical or engineering projects to research suspected safety problems on specific boat or associated equipment types.

This list should not constrain submission of proposals addressing other boating safety concerns. Innovative approaches are welcome. Discussions of specific projects of interest to the Coast Guard will be included in the application package which may be obtained as stated in ADDRESSES, above. The Boating Safety Financial Assistance Program is listed in section 20.005 of the Federal Domestic Assistance Catalog.

Dated: March 15, 1994.

R.C. Houle,

Acting Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 94–6520 Filed 3–18–94; 8:45 am]

BILLING CODE 4910–14–M

[CGD09–94–001]

Notice of National Environmental Policy Act Activity

AGENCY: Coast Guard, DOT.

ACTION: Notice; Intent to prepare an environmental impact statement (EIS).

SUMMARY: The Coast Guard is preparing an EIS for the Ninth Coast Guard District icebreaking activity on the Great Lakes. In addition, the Coast Guard will consider the U.S. Army Detroit District Corps of Engineers final EIS, EIS supplements, and EIS studies on Operations, Maintenance, and Minor Improvements of the Federal Facilities at Sault Ste. Marie, Michigan. Additionally, the Coast Guard has signed Memorandums of Agreements (MOAs) on winter navigation operations (August 1993) and participation in EIS studies (October 1993) with the Detroit District Corps of Engineers, U.S. Fish and Wildlife Service, and the Michigan Department of Natural Resources. To assist us in determining relevant issues for the EIS we will hold a public scoping meeting.

DATES: A public scoping meeting will be held on March 31, 1994, at 10 a.m. in room 2045 of the Ninth Coast Guard District 1240 East Ninth Street, Cleveland, Ohio. Scoping comments must be received by April 15, 1994.

ADDRESSES: Comments, questions, or requests should be sent to Gary Nelson, U.S. Coast Guard Civil Engineering Unit, room 2179, 1240 East Ninth Street, Cleveland, Ohio, 44199–2060.

FOR FURTHER INFORMATION CONTACT: Gary Nelson, U.S. Coast Guard, (216) 522–3934 Ext. 635. Anyone wishing to make a presentation at the scoping meeting is requested to call this number and give the following information: name; organization, (if any); address; and the estimated amount of time needed to comment, (10 minute time-limit goal).

SUPPLEMENTARY INFORMATION:

Proposed Action

The preparation of an EIS and a scoping meeting for Ninth Coast Guard District icebreaking activity on the Great Lakes.

Alternatives

Project alternatives are identified in the Corps EIS supplements.

Request for Comments

In accordance with the National Environmental Policy Act, as amended, and Coast Guard policy encouraging all interested or affected parties to participate in the early consultation process, the Coast Guard requests scoping comments. Scoping involves determining the scope of issues to be addressed and identifying significant issues for in-depth analysis in the environmental document. The scoping process includes public participation to integrate information regarding public needs and concerns into the environmental document.

Agencies and the public are encouraged to provide written comments. These comments should specifically describe environmental issues or topics which the commentator believes the document should address. Comments should be mailed to the Coast Guard address listed above no later than April 15, 1994.

Background and Discussion

In a letter received on February 26, 1993, the Michigan Department of Natural Resources advised the Commander of the Ninth Coast Guard District of concerns over the environmental impact of ship transits through the St. Marys River during the period of March 21 to April 1. April 1 is the nominal date for the opening of the locks at Sault Ste. Marie, which allows large commercial shipping access to the St. Marys River from Lake Superior. Recent environmental impact statement supplements and studies by the United States Army Corps of Engineers indicate that March 21 is the optimal opening date. [See U.S. Army Corps of Engineers Draft Environmental Impact Statement, Opening Operations of the Lock Facilities on 21 March (February 1993), Supplement III to the Final Environmental Impact Statement, Operations, Maintenance, and Minor Improvements of the Federal Facilities at Sault Ste. Marie, Michigan (July 1977)].

The environmental analysis of Great Lakes icebreaking activities will address concerns raised by the U.S. Fish and Wildlife Service, the Michigan Department of Natural Resources, and the public. The EIS will examine hazardous material spill response on the Great Lakes, icebreaking lane frequency (number, locations, size, dates, times), number of Coast Guard vessels involved in icebreaking (size, turbulence), water

quality, channel depth, endangered and threatened species, and other relevant key issues discovered in ongoing environmental studies.

In accordance with an agreement reached June 29, 1993 with the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service, and the Michigan Department of Natural Resources, the Commander of the Ninth Coast Guard District has established a temporary change to the speed regulations, as a precautionary measure, in order to minimize any possible damage to the environment. The speed limit is reduced by 2 statute miles per hour in the area between Munuscong Lake Lighted Buoy 8 and Lake Nicolet Light 80, upbound, and between Lake Nicolet Lighted Buoy 80 and Munuscong Lake Light 9, downbound. The Light 9 checkpoint has been added to extend the reduced speed limit area past Winter Point, thereby protecting the sensitive environment between Winter Point and Light 9. Speed limits apply to the average speed between established reporting points. The temporary final rule addressing vessel speed changes in the St. Marys River was published in the **Federal Register**, and is effective through April 15, 1994.

Drafting Information

The drafter of this notice is Gary Nelson, U.S. Coast Guard, Civil Engineering Unit, Cleveland, Ohio.

Dated: March 8, 1994.

Rudy K. Peschel,

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

[FR Doc. 94–6512 Filed 3–18–94; 8:45 am]

BILLING CODE 4910–14–M

[CGD 94–022]

Chemical Transportation Advisory Committee (CTAC) Subcommittee on Tank Filling Limits

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: The Subcommittee on Tank Filling Limits of the Chemical Transportation Advisory Committee (CTAC) will meet to review and discuss the proposed guidelines for evaluating the adequacy of type C tank vent systems for loading tanks on those gas carriers wishing to use increased filling limits, as now allowed under Chapters 8 and 15 of the International Gas Carrier Codes. The meeting will be open to the public.

DATES: The meeting will be held on May 3, 1994, from 9 a.m. to 5 p.m. Written material should be submitted no later than April 27, 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 Dr. Michael Parnarouskis, Commandant (G–MTH–1), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001.

FOR FURTHER INFORMATION CONTACT: Dr. Michael Parnarouskis, 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.

The Twenty-second Session of the International Maritime Organization's (IMO) Subcommittee on Bulk Chemicals (BCH) agreed that gas carriers desiring to use the increased tank filling limits that were approved during that session would be required to verify the adequacy of their tank venting systems. In order to provide information to Administrations on how these vent system evaluations should be carried out, the BCH agreed that guidelines should be developed. The Society of International Gas Tanker and Terminal Operators (SIGTTO) agreed to chair a working group that would develop these guidelines and submit them to the Twenty-fourth Session of BCH for approval and adoption. Copies of the guidelines will be submitted to all members of the CTAC Tank Filling Limits Subcommittee for review and comment. The purpose of this meeting is to discuss the comments provided by the CTAC members and to develop a U.S. position on the guidelines in preparation for the Twenty-fourth Session of BCH which will be held in September 1994.

Dated: March 10, 1994.

J.F. McGowan,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security & Environmental Protection.

[FR Doc. 94–6516 Filed 3–18–94; 8:45 am]

BILLING CODE 4910–14–M

[CGD 94–021]

Towing Safety Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given of a meeting of the Towing Safety Advisory Committee (TSAC) and work groups. The meetings will be open to the public.

DATES: Meetings of the TSAC work groups will be held on Thursday, May 5, 1994. These meetings are scheduled to run from 9:30 a.m. to 4 p.m. The Towing Safety Advisory Committee meeting will be held on Friday, May 6, 1994, from 8 a.m. to 12 noon.

ADDRESSES: The meetings will be held at U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC, in room 2415.

FOR FURTHER INFORMATION CONTACT: LTJG Bob Gillan, Commandant (G–MTH–4), U.S. Coast Guard, 2100 Second Street SW., Washington, DC, telephone (202)–267–2997.

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 for the Committee meeting follows:

1. Work Group Reports
   a. Model Company Concept
   b. Training Standards for Entry-Level;
   c. Improve Timeliness and Effectiveness of Regulation Input
2. Other Topics of Discussion

With advance notice, and at the discretion of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present oral statements should notify the TSAC Assistant Executive Director 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 material should be submitted to the Executive Director by April 15, 1994

Dated: March 10, 1994.

J.F. McGowan,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 94–6515 Filed 3–18–94; 8:45 am]

BILLING CODE 4910–14–M

Federal Aviation Administration

Proposed Advisory Circular; Weld Repair of Aluminum Crankcases and Cylinders of Piston Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability of proposed advisory circular and request for comments.

SUMMARY: This notice announces the availability of, and requests comments

on, a proposed Advisory Circular (AC), No. 33–6, Weld Repair of Aluminum Crankcases and Cylinders of Piston Engines. The AC provides information and guidance concerning an acceptable method, but not the only method, for the development of process specifications for weld repairs on crankcases and cylinders of piston engines, as required by Federal Aviation Regulations (FAR) Part 33.

It addresses development of weld repairs; provides guidance to clarify the areas which should be addressed by an applicant's repair procedure, and/or substantiating data when seeking an approval for weld repair; and includes information on critical areas of welding, qualifications of welders, inspection techniques, the thermal processes, and technical data required.

DATES: Comments must be received on or before June 6, 1994.

ADDRESSES: Send all comments on the proposed AC to the Federal Aviation Administration, Attn: Engine and Propeller Standards Staff, ANE–110, Engine and Propeller Directorate, Aircraft Certification Service, 12 New England Executive Park, Burlington, Massachusetts 01803–5299.

FOR FURTHER INFORMATION CONTACT: Locke Easton, Engine and Propeller Standards Staff, ANE–110, at the above address, telephone (617) 238–7113, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

A copy of the subject AC may be obtained by contacting the person named above under **FOR FURTHER INFORMATION CONTACT.** Interested persons are invited to comment on the proposed AC, and to submit such written data, views, or arguments as they desire. Commenters must identify the subject of the AC, and submit comments in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Engine and Propeller Directorate, Aircraft Certification Service, before issuance of the final AC.

Background

This AC was formulated to provide guidelines for applicant in the development of repair procedures for weld repairs on crankcases and cylinders of piston engines.

It addresses development of weld repairs which are not contained in the engine manufacturer's "Instructions for Continued Airworthiness" (Maintenance Manual). It provides guidance to clarify the areas which should be addressed by an applicant's repair procedure, and/or substantiating data when seeking an approval for weld repair on crankcases or cylinders.

This AC also includes information on critical areas of welding, qualifications of welders, inspection techniques, the thermal processes, and technical data required; and references industry and military specifications which are acceptable for use by repair stations as approved data.

This advisory circular, published under the authority granted to the Administrator by 49 U.S.C. 106(g), 49 U.S.C. App. 1354(a), 1421 and 1423, provides guidance for the development of process specifications for weld repairs on crankcases and cylinders of piston engines.

Issued in Burlington, Massachusetts, on March 9, 1994.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 94–6529 Filed 3–18–94; 8:45 am]

BILLING CODE 4910–13–M

Flight Service Station at Eagle, Colorado; Notice of Closing

Notice if hereby given that on or about April 4, 1994, the flight service station at Eagle, Colorado, will be closed. Services to the aviation public formerly provided by this facility will be provided by the automated flight service station in Denver, Colorado. This information will be reflected in the FAA Organization Statement the next time it is issued. Section 313(a) of the Federal Aviation Act of 1958, as amended, 72 Stat. 752; 49 U.S.C. App. 1354(a).

Issued in Seattle, Washington, on March 10, 1994.

Frederick M. Issaac,

Regional Administrator, Northwest Mountain Region.

[FR Doc. 94–6530 Filed 3–18–94; 8:45 am]

BILLING CODE 4910–13–M

Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly notice of PFC approvals and disapprovals. In February 1994, there were 11 applications approved.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IV of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158). This notice is published pursuant to paragraph (d) of section 158.29.

PFC Applications Approved

Public Agency: Department of Port Control, Cleveland, Ohio.

Application Number: 94–02–U–00–CLE.

Application Type: Use PFC Revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $34,000,000.

Charge Effective Date: November 1, 1992.

Estimated Charge Expiration Date: October 1, 1995.

Class of Air Carriers Not Required To Collect PFC's: No change from previously approved application of September 1, 1992, for PRC collection at Cleveland Hopkins International Airport.

Brief Description of Projects Approved for Use Only: Land acquisition/resident relocation.

Decision Date: February 2, 1994.

FOR FURTHER INFORMATION CONTACT: Dean C. Nitz, Detroit Airports District Office, (313) 487–7300.

Public Agency: City of Lewiston and Nez Perce County, Lewiston, Idaho.

Application Number: 94–01–I–00–LWS.

Application Type: Impose PFC Revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $229,610.

Earliest Permissible Charge Effective Date: May 1, 1994.

Estimated Charge Expiration Date: March 1, 1997.

Class of Air Carriers Not Required To Collect PFC's: Air taxi/commercial operators who enplane passengers in limited, irregular, special service operations such as air ambulance services, non-stop sightseeing flights that begin and end at the airport and are concluded within a 25-mile radius of the airport, and other limited, irregular, special service operations.

Determination: Approved. Based on information submitted by the public agency, the FAA has determined that the proposed class accounts for less than 1 percent of the total enplanements at Lewiston-Nez Perce County Airport.

Brief Description of Projects Approved for Collection Only: Terminal building expansion/renovation/remodeling, Taxiway pavement rehabilitation.

Decision Date: February 3, 1994.

FOR FURTHER INFORMATION CONTACT: Sandra Simmons, Seattle Airports District Office, (206) 227–2656.

Public Agency: Capital Region Airport Commission, Richmond, Virginia.

Application Number: 94–01–C–00–RIC.

Application Type: Impose and Use PFC Revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $30,976,072.

Earliest Permissible Charge Effective Date: May 1, 1994.

Estimated Charge Expiration Date: August 1, 2005.

Class of Air Carriers Not Required To Collect PFC'S: On-demand air taxi/commercial Part 135 operators.

Determination: Approved. Based on information submitted by the public agency, the FAA has determined that the proposed class accounts for less than 1 percent of Richmond International Airport's total annual enplanements.

Brief Description of Projects Approved for Collection and Use: Midfield taxiway and north extension L midfield taxiway, Snow removal trucks, Rehabilitate taxiway A north, construct new partial parallel taxiway A north, Rehabilitate taxiway F and extend taxiway to runway 2/20, Rehabilitate taxiway S, Terminal area drainage improvements.

Brief Description of Project Approved in Part for Collection and Use: Reimburse local share of Airport Improvement Program (AIP) projects:

Three snow plows, eight ground frequency radios, one multipurpose snow removal machine,
Overlay runway 16/34 and overruns, rehabilitate runway 16/34 centerline lighting and touchdown zone lighting, overlay taxiway R, construct service road, and update airport layout plan,
Master plan study,
Airport rescue and firefighting vehicle,
Engineering design for cargo expansion,
Access control systems design, airfield guidance sign design, terminal apron drainage design, wetlands delineation.
Expand cargo apron construction, phase I,
Cargo apron, phase II,
Controlled security access system, updated airfield guidance sign system.

Determination: Approved in part. The funds received by the public agency from the State are not eligible for reimbursement with PFC revenue.

Brief Description of Projects Approved in Part for Collection Only: Airfield drainage improvements.

Determination: Approved in part. The approved amount was reduced from the requested amount to coincide with the amount shown in the application as alternative uses for PFC revenue.

Decision Date: February 4, 1994.

FOR FURTHER INFORMATION CONTACT: Robert Mendez, Washington Airports District Office, (703) 285–2303.

Public Agency: Dubuque Airport Commission, Dubuque, Iowa.

Application Number: 94–02–C–00–DBQ.

Application Type: Impose and Use PFC Revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $203,420.

Estimated Charge Effective Date: May 1, 1994.

Estimated Charge Expiration Date: February 1, 1996.

Class of Air Carriers Not Required To Collect PFC'S: None.

Brief Description of Projects for Collection and Use: 1992 snow removal truck—utility truck, 1991 snow removal truck, Airport layout plan, Aircraft rescue and firefighting (ARFF) radio system, Airport operation area (AOA) signage relocation, Airfield beacon, Airline terminal heating, ventilating, and air conditioning system, Snowblower, AOA signage update, Audio television training equipment, Nonrevenue parking lot, 1993 snow removal truck, 1994 snow removal truck.

Brief Description of Project Disapproved: Air service study.

Determination: Disapproved. The FAA has determined that this project does not meet the AIP eligibility criteria in accordance with paragraph 406 of FAA Order 5100.38A. This paragraph addresses the eligibility of master planning elements. The FAA has determined that the project is to provide the Dubuque Airport Commission with recommendations on ways to market Dubuque Regional Airport.

Decision Date: February 9, 1994.

FOR FURTHER INFORMATION CONTACT: Ellie Anderson, Central Region Airports Division, (816) 426–4728.

Public Agency: City of Lubbock, Lubbock, Texas.

Application Number: 94–02–U–00–LBB.

Application Type: Use PFC Revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $10,699,749.

Charge Effective Date: October 1, 1993.

Estimated Charge Expiration Date: February 1, 2000.

Class of Air Carriers Not Required To Collect PFC'S: Previously approved in the July 9, 1993, decision.

Brief Description of Projects Approved for Use: Runway 17R runway protection zone land acquisition, Airport land acquisition, Part 150 study, Commercial apron and taxiway, Acquire airfield operations equipment.

Decision Date: February 15, 1994.

FOR FURTHER INFORMATION CONTACT: Ben Guttery, Southwest Region Airports Division, (817) 222–5614.

Public Agency: Dallas/Fort Worth International Airport Board, Dallas/Fort Worth, Texas.

Application Number: 94–01–C–00–DFW.

Application Type: Impose and Use PFC Revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $115,000,000.

Earliest Permissible Charge Effective Date: May 1, 1994.

Estimated Charge Expiration Date: March 1, 1996.

Class of Air Carriers Not Required To Collect PFC's: All air taxi/commercial operators operating under a certificate authorizing transport of passengers for hire under part 135 that file FAA form 1800–31; and air carriers operating under a certificate authorizing transport of passengers for hire under FAR part 121, 125, or 129, providing service from Dallas/Fort Worth International Airport (DFW) that enplane 5,000 or fewer passengers.

Determination: Approved. Based on information submitted by the public agency, the FAA has determined that the proposed classes account for less than 1 percent of DFW's total annual enplanements.

Brief Description of Project Approved for Collection and Use: Design and construct runway 16/34 East and related development/land acquisition and noise mitigation.

Decision Date: February 17, 1994.

FOR FURTHER INFORMATION CONTACT: Ben Guttery, Southwest Region Airports Division, (817) 222–5614.

Public Agency: Western Reserve Port Authority, Vienna, Ohio.

Application Number: 94–01–C–00–YNG.

Application Type: Impose and Use PFC Revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $351,180.

Earliest Permissible Charge Effective Date: May 1, 1994.

Estimated Charge Expiration Date: July 1, 1996.

Class of Air Carriers Not Required To Collect PFC's: Air taxi.

Determination: Approved. Based on information submitted by the public agency, the FAA has determined that the proposed class accounts for less than 1 percent of Youngstown-Warren Regional Airport's total annual enplanements.

Brief Description of Project Approved for Collection and Use: Terminal area access road rehabilitation and signage, Airline terminal roof reconstruction, Airport security system, Reconstruction and overlay of runway 5–23, Americans with Disabilities Act barrier removal study, Construct electrical vault rehabilitation and wind direction indicator, Purchase snow removal equipment, Prepare passenger hold room modifications, Purchase disabled passenger lift and mobile passenger stairs, Prepare passenger facility charge application.

Brief Description of Projects Disapproved: Purchase airside pavement sealer,

Determination: Disapproved. This project involves the purchase of an airside pavement rehabilitator sealer. Based on the description and purpose of this type of equipment, the FAA has categorized this project as a maintenance item. Maintenance items are ineligible under the AIP program and therefore, not PFC eligible.

Airline terminal building interior rehabilitation.

Determination: Disapproved. This project involves the rehabilitation and painting of walls and doors in the main waiting room of the terminal. Based on the description in the application, the FAA has categorized this project as a maintenance item which is ineligible under the AIP program and therefore, not PFC eligible.

Brief Description of Project Withdrawn: Runway 5 approach drainage and grading improvements.

Determination: The Western Reserve Port Authority withdrew this project by letter dated November 18, 1993.

Decision Date: February 22, 1994.

FOR FURTHER INFORMATION CONTACT: Dean C. Nitz, Detroit Airports District Office, (313) 487–7300.

Public Agency: Bureau of Aviation and Ports Windsor Locks, Connecticut.

Application Number: 94–03–U–00–BDL.

Application Type: Use PFC Revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $12,030,000.

Charge Effective Date: October 1, 1993.

Estimated Charge Expiration Date: September 1, 1995.

Class of Air Carriers Not Required To Collect PFC's: No change from previously approved application of July 9, 1993.

Brief Description of Project Approved for Use: New aircraft ramp, Terminal B roadway system, Peak Mountain lights, Design of glycol collection system.

Decision Date: February 22, 1994.

FOR FURTHER INFORMATION CONTACT: Priscilla Soldan, New England Region Airports Division, (617) 238–7614.

Public Agency: Port of Oakland, Oakland, California.

Application Number: 94–02–C–00–OAK.

Application Type: Impose and Use PFC Revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $8,999,000.

Earliest Permissible Charge Effective Date: May 1, 1994.

Estimated Charge Expiration Date: April 1, 1995.

Class of Air Carriers Not Required To Collect PFC's: Air taxi/commercial operators filing FAA Form 1800–31.

Determination: Based on information submitted in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Oakland International Airport.

Brief Description of Projects Approved for Collection and Use: General terminal improvements in Terminal One, Upgrade and apply sealer to aircraft ramps (phase II), Relocate and improve taxiway 2, Overlay Airport Drive (phase III), Upgrade fire alarm system, Improvements to Earhart Road, Runway extension engineering planning and environmental study, Airport signage and access planning study, In water ARFF facilities, Interactive training, Install two replacement current regulators.

Brief Description of Projects Disapproved: Install security system at east end of runway 11/29 dike.

Determination: Disapproved. This project does not meet the requirements of section 158.15(b). Paragraph 563 of FAA Order 5100.38A limits AIP eligibility for security projects to the minimum equipment and facilities needed to meet Part 107 requirements. The FAA has determined that this project is not eligible.

Land records management for airport terminal facilities.

Determinations: Diaspproved. This project involves the management of terminal records, which is an administrative or operational function. The FAA has determined that this project does not enhance safety, security, or capacity, mitigate noise impacts, or furnish opportunities for enhanced competition between or among carriers. Therefore, this project is not PFC eligible.

Decision Date: February 23, 1994.

FOR FURTHER INFORMATION CONTACT: Joseph R. Rodriquez, San Francisco Airports District Office, (415) 876–2805.

Public Agency: County of Muskegon, Muskegon, Michigan.

Application Number: 94–01–C–00–MKG.

Application Type: Impose and Use PFC Revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $5,013,088.

Earliest Permissible Charge Effective Date: May 1, 1994.

Estimated Charge Expiration Date: May 1, 2019.

Class of Air Carriers Not Required To Collect PFC's: Air taxis.

Determination: Approved. Based on information submitted by the public agency, the FAA has determined that the proposed class accounts for less than 1 percent of Muskegon County Airport's total annual enplanements.

Brief Description of Project Approved for Collection and Use: Terminal area improvements.

Decision Date: February 24, 1994.

FOR FURTHER INFORMATION CONTACT: Dean C. Nitz, Detroit Airports District Office, (313) 487–7300.

Public Agency: Guam Airport Authority, Agana, Guam.

Application Type: Impose and Use PFC Revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $258,408,107.

Estimated Charge Effective Date; June 1, 1994.

Estimated Charge Expiration Date: July 1, 2021.

Class of Air Carriers Not Required to Collect PFC's: Part 135 air taxi/commercial operators.

Determination: Based on information submitted by the public agency, the FAA has determined that the proposed class accounts for less than 1 percent of Antonio B. Won Pat Guam International Air Terminal's total annual enplanements.

Brief Description of Projects Approved-In-Part for Collection and Use: Terminal renovation/construction.

Determination: Approved-in-part. Several elements of this project have been determined ineligible under AIP criteria including: interior landscaping; the furniture, fixtures, and equipment; risk insurance; and contingencies.

Reconfigure airport access road.

Determination: Approved-in-part. Two elements of this project have been determined ineligible under AIP criteria. They are the risk insurance and contingencies.

Reconstruct terminal apron.

Determination: Approved-in-part. Several elements of this project have been determined ineligible under AIP criteria. They include: preconditioned air; 400 Hertz power; potable water; risk insurance; and contingencies.

Decision Date: February 25, 1994.

FOR FURTHER INFORMATION CONTACT: David Wellhouse, Honolulu Airports District Office, (808) 541–1243.

Issued in Washington, DC on March 10, 1994.

Ellis A. Ohnstad,

Acting Manager, Airports Financial Assistance Division.

CUMULATIVE LIST OF PFC APPLICATIONS PREVIOUSLY APPROVED

State, application number, airport and city	Date approved	Level of PFC	Total approved net PFC revenue	Earliest charge effective date	Estimated charge expiration date*
Alabama:					
92–01–I–00–HSV., Huntsville Intl-Carl T Jones Field, Huntsville	03/06/1992	$3	$19,002,366	06/01/1992	11/01/2008
93–02–U–00–HSV., Huntsville Intl-Carl T Jones Field, Huntsville	06/03/1993	3	0	09/01/1993	11/01/2008
92–01–C–00–MSL., Muscle Shoals Regional, Muscle Shoals	02/18/1992	3	104,100	06/01/1992	02/01/1995
Arizona:					
92–01–C–00–FLG., Flagstaff Pulliam, Flagstaff	09/29/1992	3	2,463,581	12/01/1992	01/01/2015
93–01–C–00–YUM., Yuma MCAS/Yuma International, Yuma	09/09/1993	3	1,678,064	12/01/1993	06/01/2003
California:					
92–01–C–00–ACV., Arcata, Arcata	11/24/1992	3	188,500	02/01/1993	05/01/1994
93–01–C–00–CIC., Chico Municipal, Chico	09/29/1993	3	137,043	01/01/1994	06/01/1997
92–01–C–00–IYK., Inyokern, Inyokern	12/10/1992	3	127,500	03/01/1993	09/01/1995
93–01–C–00–LGB., Long Beach-Daugherty Field, Long Beach	12/30/1993	3	3,533,766	03/01/1994	03/01/1998
93–01–C–00–LAX., Los Angeles International, Los Angeles	03/26/1993	3	360,000,000	07/01/1993	07/01/1998
93–01–C–00–MRY., Monterey Peninsula, Monterey	10/08/1993	3	3,960,855	01/01/1994	06/01/2000
92–01–C–00–OAK., Metropolitan Oakland International, Oakland	06/26/1992	3	12,343,000	09/01/1992	05/01/1994
93–01–I–00–ONT., Ontario International, Ontario	03/26/1993	3	49,000,000	07/01/1993	07/01/1998
92–01–C–00–PSP., Palm Springs Regional, Palm Springs	06/25/1992	3	81,888,919	10/01/1992	11/01/2032
92–01–C–00–SMF., Sacramento Metropolitan, Sacramento	01/26/1993	3	24,045,000	04/01/1993	03/01/1996
92–01–C–00–SJC., San Jose International, San Jose	06/11/1992	3	29,228,826	09/01/1992	08/01/1995
93–02–U–00–SJC., San Jose International, San Jose	02/22/1993	3	0	05/01/1993	08/01/1995
93–03–C–00–SJC., San Jose International, San Jose	06/16/1993	3	16,245,000	08/01/1995	05/01/1997
92–01–C–00–SBP., San Luis Obispo County-McChesney Fif, San Luis Obispo	11/24/1992	3	502,437	02/01/1993	02/01/1995
92–01–C–00–STS., Sonoma County, Santa Rosa	02/19/1993	3	110,500	05/01/1993	04/01/1995
91–01–I–00–TVL., Lake Tahoe, South Lake Tahoe	05/01/1992	3	928,747	08/01/1992	03/01/1997
Colorado:					
92–01–C–00–COS., Colorado Springs Municipal, Colorado Springs	12/22/1992	3	5,622,000	03/01/1993	02/01/1996
92–01–C–00–DVX., Denver International (New), Denver	04/28/1992	3	2,330,734,321	07/01/1992	01/01/2026
93–01–C–00–EGE., Eagle County Regional, Eagle	06/15/1993	3	572,609	09/01/1993	04/01/1998
93–01–C–00–FNL., Fort Collins-Loveland, Fort Collins	07/14/1993	3	207,857	10/01/1993	06/01/1996
92–01–C–00–GJT., Walker Field, Grand Junction	01/15/1993	3	1,812,000	04/01/1993	03/01/1998
93–01–C–00–GUC., Gunnison County, Gunnison	08/27/1993	3	702,133	11/01/1993	03/01/1998
93–01–C–00–HDN., Yampa Valley, Hayden	08/23/1993	3	532,881	11/01/1993	04/01/1997
93–01–C–00–MTJ., Montrose County, Montrose	07–29–1993	3	1,461,745	11–01–1993	02–01–2009
93–01–C–00–PUB., Pueblo Memorial, Pueblo	08–16–1993	3	1,200,745	11–01–1993	08–01–2010
92–01–C–00–SBS., Steamboat Springs/Bob Adams Field, Steamboat Springs	01–15–1993	3	1,887,337	04–01–1993	04–01–2012
92–01–C–00–TEX., Telluride Regional, Telluride	11–23–1992	3	200,000	03–01–1993	11–01–1997
Connecticut:					
93–01–C–00–HVN., Tweed-New Haven, New Haven	09–10–1993	3	2,490,450	12–01–1993	06–01–1999
93–02–I–00–BDL., Bradley International, Windsor Locks	07–09–1993	3	0	10–01–1993	
Florida:					
93–01–C–00–DAB, Daytona Beach Regional, Daytona Beach	04–20–1993	3	7,967,835	07–01–1993	11–01–1999
92–01–C–00–RSW., Southwest Florida International, Fort Myers	08–31–1992	3	252,548,262	11–01–1992	06–01–2014
93–02–U–00–RSW., Southwest Florida International, Fort Myers	05–10–1993	3	0	11–01–1992	06–01–2014
93–01–C–00–JAX., Jacksonville International, Jacksonville	01–28–1994	3	12,258,255	05–01–1994	07–01–1997
92–01–C–00–EYW., Key West International, Key West	12–17–1992	3	945,937	03–01–1993	12–01–1995
92–01–C–00–MTH., Marathon, Marathon	12–17–1992	3	153,556	03–01–1993	06–01–1995
92–01–C–00–MCO., Orlando International, Orlando	11–27–1992	3	167,574,527	02–01–1993	02–01–1998
93–02–C–00–MCO., Orlando International, Orlando	09–24–1993	3	12,957,000	12–01–1993	02–01–1998
93–01–I–00–PFN., Panama City-Bay County International, Panama City	12–01–1993	3	7,422,988	02–01–1994	10–01–2007

CUMULATIVE LIST OF PFC APPLICATIONS PREVIOUSLY APPROVED—Continued

State, application number, airport and city	Date approved	Level of PFC	Total approved net PFC revenue	Earliest charge effective date	Estimated charge expiration date*
92–01–C–00–PNS., Pensacola Regional, Pensacola	11–23–1992	3	4,715,000	02–01–1993	04–01–1996
92–01–I–00–SRQ., Sarasota-Bradenton International, Sarasota	06–29–1992	3	38,715,000	09–01–1992	09–01–2005
92–01–I–00–TLH., Tallahassee Regional, Tallahassee	11–13–1992	3	8,617,154	02–01–1993	12–01–1998
93–02–U–00–TLH., Tallahassee Regional, Tallahassee	12–30–1993	3	0	02–01–1993	06–01–1998
93–01–C–00–TPA., Tampa International, Tampa	07–15–1993	3	87,102,000	10–01–1993	09–01–1999
93–01–C–00–PBI., Palm Beach International, West Palm Beach	01–26–1994	3	38,801,096	04–01–1994	04–01–1999
93–01–C–00–CSG., Columbus Metropolitan, Columbus	10–01–1993	3	534,633	12–01–1993	06–01–1995
91–01–C–00–SAV., Savannah International, Savannah	01–23–1992	3	39,501,502	07–01–1992	03–01–2004
92–01–I–00–VLD., Valdosta Regional, Valdosta	12–23–1992	3	260,526	03–01–1993	10–01–1997
Idaho:					
93–01–C–00–SUN., Friedman Memorial, Hailey	06–29–1993	3	188,000	09–01–1993	09–01–1997
92–01–C–00–IDA., Idaho Falls Municipal, Idaho Falls	10–30–1992	3	1,500,000	01–01–1993	01–01–1998
92–01–C–00–TWF., Twin Falls—Sun Valley Regional, Twin Falls	08–12–1992	3	270,000	11–01–1992	05–01–1998
Illinois:					
93–01–C–00–MDW., Chicago Midway, Chicago	06–28–1993	3	79,920,958	09–01–1993	08–01–2001
93–01–C–00–ORD., Chicago O'Hare International, Chicago	06/28/1993	3	500,418,285	09/01/1993	10/01/1999
92–01–I–00–RFD., Greater Rockford, Rockford	07/24/1992	3	1,177,348	10/01/1992	10/01/1996
93–02–U–00–RFD., Greater Rockford, Rockford	09/02/1993	3	0	12/01/1993	10/01/1996
92–01–I–00–SPI., Capital, Springfield	3/27/1992	3	562,104	06/01/1992	02/01/1994
93–02–U–00–SPI., Capital, Springfield	04/28/1993	3	0	06/01/1992	02/01/1994
93–03–I–00–SPI., Capital, Springfield	11/24/1993	3	4,585,443	06/01/1992	02/01/2006
Indiana:					
92–01–C–00–FWA., Fort Wayne International, Fort Wayne	04/05/1993	3	26,563,457	07/01/1993	03/01/2015
93–01–C–00–IND., Indianapolis International, Indianapolis	06/28/1993	3	117,344,750	09/01/1993	07/01/2005
Iowa:					
93–01–C–00–DSM Des Moines Municipal, Des Moines	11/29/1993	3	6,446,507	03/01/1994	04/01/1997
92–01–I–00–DBQ., Dubuque Regional, Dubuque	10/06/1992	3	148,500	01/01/1993	05/01/1994
93–01–C–00–SUX., Sioux Gateway, Sioux City	03/12/1993	3	204,465	06/01/1993	06/01/1994
Kentucky:					
93–01–C–00–LEX., Blue Grass, Lexington	08/31/1993	3	12,378,791	11/01/1993	05/01/2003
93–01–C–00–PAH., Barkley Regional, Paducah	12/02/1993	3	386,550	03/01/1994	12/01/1998
Louisiana:					
92–01–I–00–BTR., Baton Rouge Metropolitan, Ryan Field, Baton Rouge	09/28/1992	3	9,823,159	12/01/1992	12/01/1998
93–02–U–00–BTR., Baton Rouge Metropolitan, Ryan Field, Baton Rouge	04/23/1993	3	0	12/01/1992	12/01/1998
93–01–C–00–MSY., New Orleans International/Moisant Fi, New Orleans	03/19/1993	3	77,800,372	06/01/1993	04/01/2000
93–02–U–00–MSY., New Orleans International/Moisant Fi, New Orleans	11/16/1993	3	0	06/01/1993	04/01/2000
93–01–I–00–SHV., Shreveport Regional, Shreveport	11/19/1993	3	33,050,278	02/01/1994	02/01/2019
Maine:					
93–01–C–00–PWM., Portland International Jetport, Portland	10/29/1993	3	12,233,751	02/01/1994	05/01/2001
Maryland:					
92–01–I–00–BWI., Baltimore-Washington International, Baltimore	07/27/1992	3	141,866,000	10/01/1992	09/01/2002
Massachusetts:					
93–01–C–00–BOS., General Edward L Logan International, Boston	08/24/1993	3	598,800,000	11/01/1993	10/01/2011
92–01–C–00–ORH., Worcester Municipal, Worcester	07/28/1992	3	2,301,382	10/01/1992	10/01/1997
Michigan:					
92–01–C–00–DTW., Detroit Metropolitan-Wayne County, Detroit	09/21/1992	3	640,707,000	12/01/1992	06/01/2009
92–01–I–00–ESC., Delta County, Escanaba	11/17/1992	3	158,325	02/01/1993	08/01/1996
93–01–C–00–FNT., Bishop International, Flint	06/11/1993	3	32,296,450	09/01/1993	09/01/2030
92–01–I–00–GRR., Kent County International, Grand Rapids	09/09/1992	3	12,450,000	12/01/1992	05/01/1998
92–01–C–00–CMX., Houghton County Memorial, Hancock	04/29/1993	3	162,986	07/01/1993	01/01/1996
93–01–C–00–IWD., Gogebic County, Ironwood	05/11/1993	3	74,690	08/01/1993	10/01/1998
93–01–C–00–LAN., Capital City Lansing	07/23/1993	3	7,355,483	10/01/1993	03/01/2002
92–01–00–MQT., Marquette County, Marquette	10/01/1992	3	459,700	12/01/1992	04/01/1996
92–01–C–00–PLN., Pellston Regional—Emmet County, Pellston	12/22/1992	3	440,875	03/01/1993	06/01/1995
Minnesota:					
93–01–C–00–BRD., Brainerd-Crow Wing County Regional, Brainerd	05/25/1993	3	43,000	08/01/1993	12/31/1995
92–01–C–00–MSP., Minneapolis-St Paul International, Minneapolis	03/31/1992	3	66,355,682	06/01/1992	08,01,1994

CUMULATIVE LIST OF PFC APPLICATIONS PREVIOUSLY APPROVED—Continued

State, application number, airport and city	Date approved	Level of PFC	Total approved net PFC revenue	Earliest charge effective date	Estimated charge expiration date*
Mississippi:					
91–01–C–00–GTR., Golden Triangle Regional, Columbus	05/08/1992	3	1,693,211	08/01/1992	09/01/2006
92–01–C–00–GPT., Gulfport-Biloxi Regional, Gulfport-Biloxi	04/03/1992	3	384,028	07/01/1992	12/01/1993
93–02–C–GPT., Gulfport-Biloxi Regional, Gulfport-Biloxi	11/02/1993	3	607,817	07/01/1992	12/01/1995
92–01–C–00–PIB, Hattiesburg-Laurel Regional, Hattiesburg-Laurel	04/15/1992	3	119,153	07/01/1992	01/01/1998
93–01–C–00–JAN., Jackson International, Jackson	02/10/1993	3	1,918,855	05/01/1993	04/01/1995
92–01–C–00–MEI, Key Field, Meridian	08/21/1992	3	122,500	11/01/1992	06/01/1994
93–02–C–00–MEI., Key Field, Meridian	10/19/1993	3	155,223	11/01/1992	08/01/1996
Missouri:					
93–01–C–00–SGF., Springfield Regional, Springfield	08/30/1933	3	1,937,090	11/01/1933	10/01/1996
92–01–C–00–STL., Lambert-St Louis International, St Louis	09/30/1992	3	84,607,850	12/01/1992	03/01/1996
Montana:					
93–01–C–00–BIL., Billings-Logan International, Billings	01/26/1994	3	5,622,136	04/01/1994	05/31/2002
93–01–C–00–BZN., Gallatin Field, Bozeman	05/17/1993	3	4,198,000	08/01/1993	06/01/2005
92–01–C–00–GTF., Great Falls International, Great Falls	08/28/1992	3	3,010,900	11/01/1992	07/01/2002
93–02–U–00–GTF., Great Falls International, Great Falls	05/25/1993	3	0	11/01/1992	07/01/2002
92–01–C–00–HLN., Helena Regional, Helena	01/15/1993	3	1,056,190	04/01/1993	12/01/1999
93–01–00–FCA., Glacier Park International, Kalispell	09/29/1993	3	1,211,000	12/01/1993	11/01/1999
92–01–C–00–MSO., Missoula International, Missoula	06/12/1992	3	1,900,000	09/01/1992	08/01/1997
Nevada:					
91–01–C–00–LAS., Mc Carran International, Las Vegas	02/24/1992	3	944,028,500	06/01/1992	02/01/2014
93–02–C–00–LAS., Mc Carran International, Las Vegas	06/07/1993	3	36,500,000	06/01/1992	09/01/2014
93–01–C–00–RNO., Reno Cannon International, Reno	10/29/1993	3	34,263,607	01/01/1994	05/01/1999
New Hampshire:					
92–01–C–00–MHT., Manchester, Manchester	10/13/1992	3	5,461,000	01/01/1993	03/01/1997
New Jersey:					
92–01–C–00–EWR., Newark International, Newark	07/23/1992	3	84,600,000	10.01.1992	08/01/1995
New York:					
93–01–I–00–ALB., Albany County, Albany	12/03/1993	3	40,726,364	03/01/1994	04/01/2005
93–01–C–00–BGM., Binghamton Regional/Edwin A Link FIE, Binghamton	08/18/1993	3	1,872,264	11/01/1993	11/01/1997
92–01–I–00–BUF., Greater Buffalo International, Buffalo	05/29/1992	3	189,873,000	08/01/1992	03/01/2026
92–01–I–00–ITH., Tompkins County, Ithaca	09/28/1992	3	1,900,000	01/01/1993	01/01/1999
92–01–C–00–JHW., Chautauqua County/Jamestown, Jamestown	03/19/1993	3	434,822	06/01/1993	06/01/1996
92–01–C–00–JFK., John F Kennedy International, New York	07/23/1992	3	109,980,000	10/01/1992	08/01/1995
92–01–C–00–LGA., Laguardia, New York	07/23/1992	3	87,420,000	10/01/1992	08/01/1995
92–01–C–00–PLB., Clinton County, Plattsburgh	04/30/1993	3	227,830	07/01/1993	01/01/1998
92–01–C–00–HPN., Westchester County, White Plains	11/09/1992	3	27,883,000	02/01/1993	06/01/2022
North Carolina:					
93–01–C–00–ILM., New Hanover International, Wilmington	11/02/1993	3	1,505,000	02/01/1994	08/01/1997
North Dakota:					
92–01–C–00–GFK., Grand Forks International, Grand Forks	11/16/1992	3	1,016,509	02/01/1993	02/01/1997
93–01–C–00–MOT., Minot International, Minot	12/15/1993	3	1,569,483	03/01/1994	03/01/1999
Ohio:					
92–01–C–00–CAK., Akron-Canton Regional, Akron	06/30/1992	3	3,594,000	09/01/1992	08/01/1996
92–01–C–00–CLE., Cleveland-Hopkins International, Cleveland	09/01/1992	3	34,000,000	11/01/1992	11/01/1995
92–01–I–00–CMH., Port Columbus International, Columbus	07/14/1992	3	7,341,707	10/01/1992	03/01/1994
93–01–I–00–CMH., Port Columbus International, Columbus	07/19/1993	3	16,270,256	02/01/1994	09/01/1996
93–01–U–00–CMH., Port Columbus International, Columbus	10/27/1993	3	0	10/01/1992	09/01/1996
93–01–C–00–TOL., Toledo Express, Toledo	06/29/1993	3	2,750,896	09/01/1993	09/01/1996
Oklahoma:					
92–01–C–00–LAW., Lawton Municipal, Lawton	05/08/1992	3	334,078	08/01/1992	01/01/1996
92–01–I–00–TUL., Tulsa International, Tulsa	05/11/1992	3	9,717,000	08/01/1992	08/01/1995
93–02–U–00–TUL., Tulsa International, Tulsa	10/18/1993	3	0	02/01/1994	08/01/1995
Oregon:					
93–01–C–00–EUG., Mahlon Sweet Field, Eugene	08/31/1993	3	3,729,699	11/01/1993	11/01/1998
93–01–C–00–MFR., Medford-Jackson County, Medford	04/21/1993	3	1,066,142	07/01/1993	11/01/1995
93–01–C–00–OTH., North Bend Municipal, North Bend	11/24/1993	3	182,044	02/01/1994	01/01/1998
92–01–C–00–PDX., Portland International, Portland	04/08/1992	3	17,961,850	07/01/1992	07/01/1994
93–01–C–00–RDM., Roberts Field, Redmond	07/02/1993	3	1,191,552	10/01/1993	03/01/2000
Pennsylvania:					
92–01–I–00–ABE., Allentown-Bethlehem-Easton, Allentown	08/28/1992	3	3,778,111	11/01/1992	04/01/1995
92–01–C–00–AOO., Altoona-Blair County, Altoona	02/03/1993	3	198,000	05/01/1993	02/01/1996
92–01–C–00–ERI., Erie International, Erie	07/21/1992	3	1,997,885	10/01/1992	06/01/1997
93–01–C–00–JST., Johnson-Cambria County, Johnstown	08/31/1993	3	307,500	11/01/1993	02/01/1998
92–01–I–00–PHL., PHILADELPHIA INTERNATIONAL, PHILADELPHIA	06/29/1992	3	76,169,000	09/01/1992	07/01/1995

CUMULATIVE LIST OF PFC APPLICATIONS PREVIOUSLY APPROVED—Continued

State, application number, airport and city	Date approved	Level of PFC	Total approved net PFC revenue	Earliest charge effective date	Estimated charge expiration date*
93-02-U-00-PHL., PHILADELPHIA INTERNATIONAL, PHILADELPHIA	05/14/1993	3	0	08/01/1993	07/01/1995
92-01-C-00-UNV., UNIVERSITY PARK, STATE COLLEGE	08/28/1992	3	1,495,974	11/01/1992	07/01/1997
93-01-C-00-AVP., WILKES-BARRE/SCRANTON INTERNATIONAL, WILKES-BARRE/SCRANTON	09/24/1993	3	2,369,566	12/01/1993	06/10/1997
Rhode Island:					
93-01-C-00-PVD., THEODORE F GREEN STATE, PROVIDENCE	11/30/1993	3	103,885,286	02/01/1994	08/01/2013
South Carolina:					
93-01-C-00-CAE., COLUMBIA METROPOLITAN, COLUMBIA	08/23/1993	3	32,969,942	11/01/1993	09/01/2008
93-01-C-00-49J., HILTON HEAD, HILTON HEAD ISLAND	11/19/1993	3	1,542,300	02/01/1994	03/01/1999
Tennessee:					
93-01-C-00-TYS., MC GHEE TYSON, KNOXVILLE	10/06/1993	3	5,681,615	01/01/1994	01/01/1997
92-01-I-00-MEM., MEMPHIS INTERNATIONAL, MEMPHIS	05/28/1992	3	26,000,000	08/01/1992	12/01/1994
93-01-C-00-MEM., MEMPHIS INTERNATIONAL, MEMPHIS	01/14/1994	3	24,026,000	04/01/1994	10/01/1999
92-01-C-00-BNA., NASHVILLE INTERNATIONAL, NASHVILLE	10/09/1992	3	143,358,000	01/01/1993	02/01/2004
Texas:					
93-02-C-00-AUS., ROBERT MUELLER MUNICIPAL, AUSTIN	06/04/1993	2	6,189,300	11/01/1993	06/01/1995
93-01-C-00-CRP., CORPUS CHRISTI INTERNATIONAL, CORPUS CHRISTI	12/29/1993	3	5,540,745	03/01/1994	01/01/1998
93-01-C-00-ILE., KILLEEN MUNICIPAL, KILLEEN	10/20/1992	3	243,339	01/01/1993	11/01/1994
93-01-I-00-LRD., LAREDO INTERNATIONAL, LAREDO	07/23/1993	3	11,983,000	10/01/1993	09/01/2013
93-01-C-00-LBB., LUBBOCK INTERNATIONAL, LUBBOCK	07/09/1993	3	10,699,749	10/01/1993	02/01/2000
92-01-I-00-MAF., MIDLAND INTERNATIONAL, MIDLAND	10/16/1992	3	35,529,521	01/01/1993	01/01/2013
93-01-C-00-SJT., MATHIS FIELD, SAN ANGELO	02/24/1993	3	873,716	05/01/1993	11/01/1998
93-01-C-00-TYR., TYLER POUNDS FIELD, TYLER	12/20/1993	3	819,733	03/01/1994	07/01/1998
Virginia:					
92-01-I-00-CHO., CHARLOTTESVILLE-ALBEMARLE, CHARLOTTESVILLE	06/11/1992	2	255,559	09/01/1992	11/01/1993
92-02-U-00-CHO., CHARLOTTESVILLE-ALBEMARLE, CHARLOTTESVILLE	12/21/1992	2	0	09/01/1992	11/01/1993
93-03-U-00-CHO., CHARLOTTESVILLE-ALBEMARLE, CHARLOTTESVILLE	10/20/1993	2	0	01/01/1994	11/01/1993
93-01-C-00-IAD., WASHINGTON DULLES INTERNATIONAL, WASHINGTON, DC	10/18/1993	3	199,752,390	01/01/1994	11/01/2003
93-01-C-00-DCA., WASHINGTON NATIONAL, WASHINGTON, DC	08/16/1993	3	166,739,071	11/01/1993	11/01/2000
Washington:					
93-01-C-00-BLI., BELLINGHAM INTERNATIONAL, BELLINGHAM	04/29/1993	3	366,000	07/01/1993	07/01/1994
93-01-C-00-PSC., TRI-CITIES, PASCO	08/03/1993	3	1,230,731	11/01/1993	11/01/1996
93-01-C-00-CLM., WILLIAM R FAIRCHILD INTERNATIONAL, PORT ANGELES	05/24/1993	3	52,000	08/01/1993	08/01/1994
92-01-C-00-SEA., SEATTLE-TACOMA INTERNATIONAL, SEATTLE	08/13/1992	3	28,847,488	11/01/1992	01/01/1994
93-02-C-00-Sea., Seattle-Tacoma International, Seattle	10/25/1993	3	47,500,500	01/01/1994	01/01/1996
93-01-C-00-Geg., Spokane International, Spokane	3/23/1993	3	15,272,000	06/01/1993	12/01/1999
93-01-I-00-Alw., Walla Walla Regional, Walla Walla	08/03/1993	3	1,187,280	11/01/1993	11/01/2014
93-01-C-00-Eat., Pangborn Field, Wenatchee	05/26/1993	3	280,500	08/01/1993	10/01/1995
92-01-C-00-Ykm., Yakima Air Terminal, Yakima	11/10/1992	3	416,256	02/01/1993	04/01/1995
West Virginia					
93-01-C-00-Crw., Yeager, Charleston	05/28/1993	3	3,256,126	08/01/1993	04/01/1998
93-01-C-00-Ckb., Benedum, Clarksburg	12/29/1993	3	105,256	04/01/1994	04/01/1996
92-01-C-00-Mgw., Morgantown Muni-Walter L. Bill Hart, Morgantown	09/03/1992	3	55,500	12/01/1992	01/01/1994
Wisconsin:					
92-01-C-00-Grb., Austin Straubel International, Green Bay	12/28/1992	3	8,140,000	03/01/1993	03/01/2003
93-01-C-00-Msn., Dane County Regional-Truax Field, Madison	06/22/1993	3	6,746,000	09/01/1993	03/01/1998
93-01-I-00-Cwa., Central Wisconsin, Mosinee	08/10/1993	3	7,725,600	11/01/1993	11/01/2012
93-01-C-00-Rhi., Rhinelander-Oneida County, Rhinelander	08/04/1993	3	167,201	11/01/1993	04/01/1996
Wyoming:					
93-01-C-00-Cpr., Natrona County International, Casper	06/14/1993	3	506,144	09/01/1993	10/01/1996
93-01-C-00-Cys., Cheyenne, Cheyenne	07/30/1993	3	742,261	11/01/1993	08/01/2000
93-01-I-00-Gcc., Gillette Campbell County, Gillette	06/28/1993	3	331,540	09/01/1993	09/01/1999
93-01-C-00-Jac., Jackson Hole, Jackson	05/25/1993	3	1,081,183	08/01/1993	02/01/1996
Guam:					

CUMULATIVE LIST OF PFC APPLICATIONS PREVIOUSLY APPROVED—Continued

State, application number, airport and city	Date approved	Level of PFC	Total approved net PFC revenue	Earliest charge effective date	Estimated charge expiration date*
92–01–C–00–Ngm., Agana Nas, Agana	11/10/1992	3	5,632,000	02/01/1993	06/01/1994
Puerto Rico:					
92–01–C–00–Bqn., Rafael Hernandez, Aguadilla	12/29/1992	3	1,053,000	03/01/1993	01/01/1999
92–01–C–00–Pse., Mercedita, Ponce	12/29/1992	3	866,000	03/01/1993	01/01/1999
92–01–C–00–Sju., Luis Munoz Marin International, San Juan	12/29/1992	3	49,768,000	03/01/1993	02/01/1997
93–02–U–00–Sju., Luis Munoz Marin International, San Juan	12/14/1993	3	0	03/01/1994	02/01/1997
Virgin Islands:					
92–01–I–00–Stt., Cyril E King, Charlotte Amalie	12/08/1992	3	3,871,005	03/01/1993	02/01/1995
92–01–I–00–Stx., Alexander Hamilton, Christiansted St Croix	12/08/1992	3	2,280,465	03/01/1993	05/01/1995

*The estimated charge expiration date is subject to change due to the rate of collection and actual allowable project costs.

[FR Doc. 94–6406 Filed 3–18–94; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

March 14, 1994.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Comptroller of the Currency

OMB Number: 1557–0190.

Form Number: None.

Type of Review: Extension.

Title: (MA)—Real Estate Lending and Appraisals (12 CFR part 34).

Description: These information collections are required by statute to regulate real estate lending and holding by national banks. The information is required by statute and is used by the OCC to insure bank compliance and insure safe and sound bank operation. National banks are the affected public.

Respondents: Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Recordkeepers: 3,600.

Estimated Burden Hours Per Recordkeeper: 74 hours, 30 minutes

Frequency of Response: Quarterly.

Estimated Total Recordkeeping Burden: 268,200 hours.

Clearance Officer: John Ference (202) 874–4697, Comptroller of the Currency, 250 E Street SW., Washington, DC 20219.

OMB Reviewer: Gary Waxman (202) 395–7340, Office of Management and Budget, room 3208, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 94–6474 Filed 3–18–94; 8:45 am]

BILLING CODE 4810–33–M

Public Information Collection Requirements Submitted to OMB for Review

March 14, 1994.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Office of Thrift Supervision

OMB Number: 1550–0003.

Form Number: OTS Form 366.

Type of Review: Extension.

Title: Criminal Referral Reporting/ Recordkeeping Requirement.

Description: Information must be reported to the OTS, Justice and the U.S. Attorney whenever a crime is suspected at an OTS-regulation thrift institution. The information is used to determine if further investigation is warranted. In addition, the information must be maintained for ten years at the affected institution for use by the OTS.

Respondents: Businesses or other for-profit, Federal agencies or employees.

Estimated Number of Respondents/ Recordkeepers: 1,440.

Estimated Burden Hours Per Respondent/Recordkeeper: 30 minutes.

Frequency of Response: Other (whenever a crime is suspected).

Estimated Total Reporting/ Recorkeeping Burden: 5,472 hours.

Clearance Officer: Colleen Devine (202) 906–6025, Office of Thrift Supervision, 2nd Floor, 1700 G. Street, NW., Washington, DC 20552.

OMB Reviewer: Gary Waxman (202) 395–7340, Office of Management and Budget, room 3208, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 94–6475 Filed 3–18–94; 8:45 am]

BILLING CODE 4810–25–M

Public Information Collection Requirements Submitted to OMB for Review

March 14, 1994.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

U.S. Customs Service

OMB Number: 1515–0007.

Form Number: CF 7506.

Type of Review: Extension.

Title: Warehouse Withdrawal Conditionally Free of Duty and Permit.

Description: CF 7506 is an application and permit to withdraw goods from a warehouse without paying duties or taxes. The form also covers several types

of withdrawals from a Customs Bonded Warehouse, subject to Customs controls.

Respondents: Businesses or other for-profit.

Estimated Number of Respondents/ Recordkeepers: 73.

Estimated Burden Hours Per Respondent: 10 minutes.

Recordkeeper: 59 hours.

Frequency of Response: On occasion.

Estimated Total Reporting/ Recordkeeping Burden: 16,476 hours.

OMB Number: 1515–0063.

Form Number: CF 5129.

Type of Review: Extension.

Title: Crew Member's Declaration.

Description: This form is used to accept and record importations of merchandise by crew members, enforce agriculture quarantines, currency reporting laws and enforce revenue collections laws.

Respondents: Individuals or households.

Estimated Number of Respondents: 5,968,351.

Estimated Burden Hours Per Respondent: 3 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 298,418 hours.

Clearance Officer: Ralph Meyer (202) 927–1552, U.S. Customs Service, Paperwork Management Branch, room 6316, 1301 Constitution Avenue, NW., Washington, DC 20229.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 94–6476 Filed 3–18–94; 8:45 am]

BILLING CODE 4820–02–M

Public Information Collection Requirements Submitted to OMB for Review

March 14, 1994.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0143.

Form Number: IRS Form 2290 and Schedule 1.

Type of Review: Extension.

Title: Heavy Vehicle Use Tax Return.

Description: Form 2290 is used to compute and report the tax imposed by section 4481 on the highway use of certain motor vehicles. The information is used to determine whether the taxpayer has paid the correct amount of tax.

Respondents: Individuals or households, Farms, Businesses or other for-profit, Non-profit institutions, Small businesses or organizations.

Estimated Number of Respondents/ Recordkeepers: 486,000.

Estimated Burden Hours Per Respondent/Recordkeeper

Recordkeeping	35 hr., 23 min.
Learning about the law or the form	12 min.
Preparing, copying and sending the form to the IRS	47 min.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 17,675,820 hours.

OMB Number: 1545–0202.

Form Number: IRS Forms 5310 and 6088.

Type of Review: Revision.

Title: Application for Determination Upon Termination (5310); Distributable Benefits from Employee Pension Benefit Plans (6088).

Description: Employers who have qualified deferred compensation plans can take an income tax deduction for contributions to their plans. IRS uses the data on Forms 5310 and 6088 to determine whether a plan still qualifies and whether there is any discrimination in benefits.

Respondents: Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents/ Recordkeepers: 30,000.

ESTIMATED BURDEN HOURS PER RESPONDENT/RECORDKEEPER

	Form 5310	Form 6088
Recordkeeping	49 hrs., 16 min.	7 hrs., 10 min.
Learning about the law of the form	3 hrs., 55 min.	42 min.
Preparing, copying, assembling, and sending the form to the IRS	7 hrs., 17 min.	51 min.

Frequency of Response: On occasion.

Estimated Total Reporting/ Recordkeeping Burden: 1,037,850 hours.

OMB Number: 1545–0233.

Form Number: IRS Form 7004.

Type of Review: Revision.

Title: Application for Automatic Extension of Time to File Corporation Income Tax Return.

Description: Form 7004 is used by corporations and certain nonprofit institutions to request an automatic 6-month extension of time to file their income tax returns. The information is needed by IRS to determine whether Form 7004 was timely filed so as not to impose a late filing penalty in error and also to insure that the proper amount of tax was computed and deposited.

Respondents: Farms, Businesses or other for-profit, Non-profit institutions, Small businesses or organizations.

Estimated Number of Respondents/ Recordkeepers: 1,097,748.

ESTIMATED BURDEN HOURS PER RESPONDENT/RECORDKEEPER:

Recordkeeping	5 hrs., 30 min.
Learning about the law or the form	46 min.
Preparing the form	1 hr., 49 min.
Copying, assembling, and sending the form to the IRS	16 min.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 9,177,173 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 94–6477 Filed 3–18–94; 8:45 am]

BILLING CODE 4830–01–M

Internal Revenue Service

Privacy Act of 1974, as Amended; System of Records

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed amendment of a Privacy Act System of Records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Treasury Department, Internal Revenue Service, gives notice of a proposed amendment to the system of records entitled Individual Master File (IMF)—Treasury/IRS 24.030. The system notice was last published in its entirety in the **Federal Register**, Vol. 57, page 14040, April 17, 1992.

The purpose of this amendment is to add a routine use to allow the disclosure of taxpayer identity information to payors of reportable payments subject to the backup withholding provisions authorized by I.R.C. Section 3406(b). This amendment also increases the types of individuals within the category of individuals covered by this system of records, as well as reflect the on-line access to Taxpayer Identification Numbers (TINs) and name controls by authorized users (i.e., filers of information documents subject to the backup withholding provisions).

DATES: Comments must be received no later than April 15, 1994. The amendment to this system of records will be effective April 25, 1994, unless comments are received which result in a contrary determination.

ADDRESSES: Comments should be sent to the Office of the Assistant Chief Counsel (Income Tax and Accounting—CC:IT&A:01), Internal Revenue Service, 1111 Constitution Avenue, NW., Room 5238, P.O. Box 7604, Ben Franklin Station, Attn: CC:Corp:T:R (IA–8–92), Washington, DC 20044. Comments will be made available for inspection and copying in the Freedom of Information Reading Room, Internal Revenue Service, Office of Disclosure, 1111 Constitution Avenue, NW., Washington, DC 20224, upon request.

FOR FURTHER INFORMATION CONTACT: For information on the operating systems specifications, contact Frances Drummond, Programmer/Systems Administrator, Office of the Assistant Commissioner (Information Systems Management), Internal Revenue Service, P.O. Box 1208, Route 9 & Needy Road, Martinsburg, West Virginia 25401 or telephone (304) 263–8700 (not a toll-free call); or, for general information, Delores Schmidt, Senior Program Analyst, Office of the Assistant Commissioner (Collection), Information Reporting Program, Internal Revenue Service, 1111 Constitution Avenue, NW., Room 2013, Washington, DC 20224 or telephone (202) 622–3487 (not a toll-free call).

SUPPLEMENTARY INFORMATION: The proposed changes will enable the implementation of the TIN Matching Program. Participation in the program will initially be limited to 200 randomly selected participants plus some non-randomly selected Federal agencies. A criteria for selection in this program is that each of these participants will have previously filed information documents pursuant to the backup withholding provisions in I.R.C. 3406. The participants in the prototype program will be able to match the TIN and name control of any payee who may receive a reportable payment under the backup withholding provisions prior to filing the relevant information return with the IRS. Under the program, prior to filing an information return, a payor of a reportable payment as defined in section 3406(b) of the Internal Revenue Code of 1986 may contact, via their own computer and modem, the Internal Revenue Service (IRS) concerning the TIN and name control furnished by a payee of that payment. Upon receiving the inquiry, the Service will advise the payor whether the name control and TIN combination provided by the payor matches a name control and TIN combination retained on the Service's Individual Master File.

Before undertaking major and costly steps to implement a full-scale program, the Service wants to measure the costs and benefits of this program. Accordingly, the Service plans to commence with up to a two-year prototype (i.e., pilot project). Under the prototype, payors will be given a unique identifiable Personal Identification Number (PIN) and a user code for access to the Service's stand-alone computer. The Service's computer will have a data base of all Employer Identification Numbers (EINs) and Social Security Numbers (SSNs). The prototype will respond to an inquiry only when there is a "no-match". This "no-match" response to an inquiry will only state that there is no existing match with IRS records. No other information will be provided. This program will expire two years after the implementation date of the prototype.

The records in this program are part of the Individual Master File (IMF) system of records—Treasury/IRS 24.030. The specific changes to this system of records are consistent with the purpose of this system to make relevant disclosures concerning tax administration.

Dated: March 15, 1994.

G. Dale Seward,

Acting Deputy Assistant Secretary (Administration).

Treasury/IRS 24.030

SYSTEM NAME:

Individual Master File (IMF), Returns Processing—Treasury/IRS.

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Description of the change: Replace current text with the following text:

Individuals who file and/or are included on Federal Individual Income Tax Returns (*i.e.*, Forms 1040, 1040A, and 1040EZ); individuals who file other information filings; and power of attorney notifications for individuals.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Description of the change: Replace current text with the following text:

Disclosure of returns and return information may be made only as provided by: (1) 26 U.S.C. 3406, and (2) 26 U.S.C. 6103.

* * * * *

[FR Doc. 94–6543 Filed 3–18–94; 8:45 am]

BILLING CODE 4830–01– M

Sunshine Act Meetings

Federal Register
Vol. 59, No. 54
Monday, March 21, 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).

FEDERAL ENERGY REGULATORY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: March 9, 1994, 59 FR 11833.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: March 16, 1994, 10:00 a.m.

CHANGE IN THE MEETING: The following Docket Number has been added to Item CAG–5 on the Agenda scheduled for March 16, 1994.

Item No., Docket No., and Company

CAG–5—RP94–67–000, Southern Natural Gas Company

Lois D. Cashell,

Secretary.

[FR Doc. 94–6636 Filed 3–17–94; 11:12 am]

BILLING CODE 6717–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

INSTITUTE OF MUSEUM SERVICES

SUMMARY: This notice sets forth the agenda of a forthcoming meeting of the National Museum Services Board. This notice also describes the functions of the Board. Notice of this meeting is required under the Government through the Sunshine Act (Public Law 94–409) and regulations of the Institute of Museum Services, 45 CFR 1180.84.

TIME/DATES: 9:00 a.m. to 2 p.m., Friday, April 8, 1994.

STATUS: Open.

ADDRESS: Nancy Hanks Center at the Old Post Office Pavilion, 1100 Pennsylvania Avenue, NW., Main Floor—Room M07, Washington, DC 20506, 202/606–8536.

FOR FURTHER INFORMATION CONTACT: S. William Laney, Executive Assistant to the National Museum Services Board, Institute of Museum Services, 1100 Pennsylvania Avenue, NW., Room 510, Washington, DC 20506—(202) 606–8536.

SUPPLEMENTARY INFORMATION:

The National Museum Services Board is established under the Museum Services Act, Title II of the Arts, Humanities, and Cultural Affairs Act of 1976, Public Law 94–462. The Board has responsibility for the general policies with respect to the powers, duties, and authorities vested in the Institute under the Museum Services Act.

The meeting of Friday, April 8, 1994 will be open to the public.

If you need special accommodations due to a disability, please contact: Institute of Museum Services, 1100 Pennsylvania Avenue, NW., Washington, DC 20506—(202) 606–8536—TDD (202) 606–8636 at least seven (7) days prior to the meeting date.

NATIONAL MUSEUM SERVICES BOARD

April 8, 1994—Meeting Agenda

I. NMSB Chairman's Report and Approval of Minutes from November 19, 1993 Meeting
II. Guest Address to the Board
III. Agency Director's Report
IV. Agency Agenda Reports: Programs
V. Agency Agenda Reports: Appropriations/ Reauthorization
VI. Agency Agenda Reports: Legislative Other/Public Affairs

Dated: March 10, 1994.

Linda Bell,

Director of Policy, Planning and Budget, National Foundation on the Arts and the Humanities, Institute of Museum Services.

[FR Doc. 94–6688 Filed 3–17–94; 2:23 pm]

BILLING CODE 7036–01–M

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of March 21, 1994.

A closed meeting will be held on Thursday, March 24, 1994, at 11 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Beese, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Thursday, March 24, 1994, at 11 a.m., will be:

Institution of injunctive actions.
Institution of administrative proceedings of an enforcement nature.
Settlement of injunctive actions.
Settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Steve Luparello (202) 272–2100.

Dated: March 16, 1994.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–6599 Filed 3–17–94; 8:53 am]

BILLING CODE 8010–01–M

federal register

Monday
March 21, 1994

Part II

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

Funding Availability for FY 1994 for Housing Counseling; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

[Docket No. N-94-3709; FR-3604-N-01]

Funding Availability for FY 1994 for Housing Counseling

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice of Funding Availability (NOFA) for Fiscal Year (FY) 1994 for Housing Counseling.

SUMMARY: This Notice announces the availability of funding for FY 1994 for HUD-approved housing counseling agencies to provide housing counseling to homebuyers, homeowners, and renters as set forth in HUD Handbook No. 7610.1 REV-3, dated June 1993 (the Handbook). An applicant must, as of the date of issuance of the Request for Grant Application (RFGA) based on this NOFA, be a HUD-approved housing counseling agency, and must be able and willing to provide, at a minimum: (1) Delinquency and default counseling to renters and homeowners; (2) related counseling under HUD's single family mortgage assignment program; and (3) fair housing counseling to inform renters and owners of their rights and responsibilities under the Fair Housing Act. Except for fair housing counseling, exemptions from counseling requirements are applicants approved by HUD to provide ONLY tenant counseling or Home Equity Conversion Mortgage counseling, or prepurchase counseling, including the counseling of tenants to purchase their rental unit. An applicant agency may offer any other aspect(s) of counseling set forth in the Handbook, including Home Equity Conversion Mortgage counseling. Housing counseling services not covered by the Handbook do not qualify for eligibility for funding under this NOFA.

In the body of this document is information concerning: the purpose of this NOFA; eligibility for funding; available funding; award criteria; and the application process, including how to apply for funding, and how eligibility for funding will be determined and awards will be made.

DATES: The application due date (date and time) will be specified in the application kit (Request for Grant Application—RFGA). In no event, however, will applications be due before April 20, 1994. The application due date specified in the RFGA will provide applicants with at least 30 days to prepare and submit their applications. The 30-day (or more) response period will begin to run from the first date upon which the RFGA is made available. The RFGA will be available on, or soon after, the date of publication of this NOFA from the Regional Contracting Officer in the HUD Regional Office that serves the area in which the applicant agency is located. (See the list of HUD Regional Offices that follows this NOFA.) Please see Section II of this NOFA for further information on what constitutes proper submission of an application.

The application deadline, as specified in the RFGA, will be firm. In the interest of fairness to all competing applicants, HUD will treat as ineligible for consideration any application that is not received on or before the application deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems.

FOR FURTHER INFORMATION CONTACT: Thomas Miles, Program Advisor, Single Family Servicing Division, Department of Housing and Urban Development, room 9178, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 708-1672 (voice), or (202) 708-3938 (TDD number). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this NOFA have been approved by the Office of Management and Budget (OMB) under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)), and assigned OMB control number 2535-0084.

I. Purpose and Substantive Description

A. Authority and Background

1. Authority

Sec. 106, Housing and Urban Development Act of 1968 (12 U.S.C. 1701x); secs. 235, 237 and 255 of the National Housing Act (12 U.S.C. 1715z, 1715z-2, 1715z-20); and HUD Handbook 7610.1, REV-3 dated June 1993.

2. Background

Section 106 of the Housing and Urban Development Act of 1968 (section 106) authorizes HUD to provide a program of housing counseling services to designated homeowners and tenants. The program authorized by section 106 (Housing Counseling Program) is divided into two distinct components: the housing counseling services and requirements provided under section 106(a), and those services and requirements provided under section 106(c).

Section 106(a) authorizes HUD to provide counseling and advice to tenants and homeowners with respect to property maintenance, financial management and such other matters as may be appropriate to assist tenants and homeowners in improving their housing conditions and in meeting the responsibilities of tenancy and homeownership. With respect to homeowners, section 106(a) states that the above-described services shall be provided to:

(1) Homeowners with HUD-insured mortgages;

(2) First-time homebuyers with guaranteed loans under section 502(h) of the Housing Act of 1949 (home loans guaranteed by the Farmers Home Administration);

(3) Homeowners with loans guaranteed or insured under chapter 37 of title 38, United States Code (home loans insured or guaranteed by the Department of Veterans Affairs).

Additionally, under section 106(a)'s authorization to HUD to provide counseling and advice to tenants and homeowners as may be appropriate to assist them to improve their housing conditions (see section 106(a)(1)(iii)), HUD-approved counseling agencies are permitted under section 106(a), and encouraged by HUD, to conduct community outreach activities and provide counseling to individuals with the goals of increasing the awareness of homeownership opportunities and improving the access of low- and moderate-income households to sources of mortgage credit and homeownership opportunities. HUD believes that this type of counseling activity is a key element to the revitalization and stabilization of low-income and minority neighborhoods, and encourages HUD-approved counseling agencies to conduct this type of counseling activity.

Section 106(c), as amended by section 162 of the Housing and Community Development Act of 1992 (Pub. L. 102-550, approved October 28, 1992) authorizes homeownership counseling only (no tenant counseling) and defines a homeowner eligible for counseling under this section to mean:

(1) A homeowner whose home loan is secured by property that is the principal residence of the homeowner, who is unable to correct a home loan delinquency within a reasonable time

(section 106(c) defines "home loan" as a loan secured by a mortgage or lien on residential property); and

(2) An applicant for a mortgage if the applicant is a first-time homebuyer who meets the requirements of section 303(b)(1) of the National Affordable Housing Act (see 42 U.S.C. 12852) and the mortgage involves a principal obligation (including such initial service charges, appraisal, inspection, and other fees as the Secretary of HUD shall approve) in excess of 97 percent of the appraised value of the property and is to be insured pursuant to section 203 of the National Housing Act.

Under the Housing Counseling Program, HUD contracts with public or private organizations to provide the housing counseling services authorized by section 106(a) and section 106(c). When the Congress makes funds available to assist the Housing Counseling Program, HUD announces the availability of such funds, and invites applications from eligible agencies, through a notice published in the **Federal Register**. An agency that is approved by HUD as a housing counseling agency does not automatically receive funding. The agency must apply for such funding under a Request for Grant Application (RFGA) issued by HUD through its Regional Offices. The purpose of the housing counseling program is to promote and protect the interests of HUD, HUD-approved and other mortgagees, and housing consumers participating in HUD and other housing programs.

B. Allocation Amounts

1. Total Available Funding

A total amount of $12,000,000 was appropriated for housing counseling by the HUD Appropriations Act of 1994 (Pub. L. 103–124, approved October 28, 1993).

Of the $12,000,000, HUD will use $125,000 to help resolve a litigation matter in Boston, Massachusetts, that involves housing counseling; $227,000 to continue operation of the toll-free telephone number in FY 1994 by which persons may call and find out about HUD-approved counseling agencies operating in their area; $250,000 to provide training for the Home Equity Conversion Mortgage (HECM) Program; $2,084,000 to train and certify individuals as housing counselors; $380,330 to continue the prepurchase counseling and foreclosure prevention counseling demonstration, which was implemented in FY 1992, and is being carried out in Chicago, Illinois, and Atlanta, Georgia; and up to $50,000 to monitor and report on lenders compliance with the statutory requirement to notify delinquent homeowners (within 45 days of the delinquency) of the availability of housing counseling services. HUD will make the remaining $8,883,670 available for the counseling services specified in the Act.

2. Allocation of Funds to Regional Offices

HUD Headquarters will allocate the $8,883,670 available for housing counseling services to its ten Regional Offices. The basis for the allocation is the percentage of HUD-insured single family mortgage defaults within each Region, compared to the nationwide total. Under this plan, the Regions are required, insofar as possible, to award grants in relation to the number of defaults within HUD Field Office jurisdictions. The amounts allocated to the Regions for Fiscal Year 1994 (based on the $8,883,670) are as follows:

Region	Defaults	Percentage*	$ Allocation
I	2,643	1.63	144,786
II	13,518	8.34	740,525
III	18,292	11.28	1,002,048
IV	39,577	24.40	2,168,055
V	27,192	16.77	1,489,596
VI	22,742	14.02	1,245,822
VII	4,397	2.71	240,871
VIII	5,510	3.40	301,841
IX	25,402	15.66	1,391,537
X	2,895	1.79	158,592
Totals	162,168	100	8,883,670

(* Percentages have been rounded.)

3. Grant Awards by HUD Regional Offices

Regional Offices will make an equitable award of allocated housing counseling funds to eligible HUD-approved housing counseling agencies based upon documented need in relation to:

a. The amount of funds available; and

b. The number of successful applicants. (A determination of a "successful" applicant is based on the applicant's ability to meet the award criteria, as specified in Section I.D of this NOFA.)

4. Announcement of Awards

In accordance with the requirements of section 103 of the Department of Housing and Urban Development Reform Act of 1989 (HUD Reform Act) and HUD's implementing regulations at 24 CFR part 4, no award information will be made available to applicants or other persons not authorized to receive this information during the period of HUD review and evaluation of the applications. However, applicants that are declared ineligible or late will be notified. In accordance with section 102(a)(4)(c) of the HUD Reform Act, HUD will notify the public, by notice published in the **Federal Register**, of award decisions made by HUD under this funding.

5. Payment to Grantee by HUD

HUD will pay each grantee for each counseling unit. To determine the amount of counseling unit payment, HUD will use the applicant's direct-labor hourly rate for its housing counselors. To that rate, HUD will add 140 percent of the rate to cover operating costs to calculate the applicant's cost to deliver a "counseling unit." Thus, the per unit payment will be one-half of the sum of (1) the direct-labor hourly rate plus (2) 140 percent of the rate. The basis for this calculation is further explained in the following paragraph.

This payment method represents a major change in the way HUD will arrive at the amount of payment per

counseling unit. Based on its survey of approved counseling agencies, HUD found that it takes, on average, one-half hour to generate a counseling unit. The applicant must provide the direct labor hourly rate requested in the RFGA. To this rate, HUD will add the 140% to cover operating costs, multiply this enhanced rate by 50%, and multiply the result times the number of counseling units. Whatever funds are requested by the applicant may be changed by HUD before the award of the grant based on the applicant's past performance, HUD's forecasts of need in a given area, and the total funds available for a given Region. This is why submission of the workload report and the direct labor reports with the application, as required to be submitted by the RFGA, are critical to determining the amount of the grant the applicant will receive.

A counseling unit is defined as a documented face-to-face, written, or telephonic contact between:

a. The grantee's housing counselor and a client; or

b. The grantee's housing counselor and a mortgagee, landlord, service agency, creditor, credit reporting agency, governmental agency, realtor or employer, acting on behalf of a client, which results in an action or decision that:

(1) Identifies, clarifies, or assists in meeting or meets the client's housing need; or

(2) Assists in resolving or resolves the client's housing problem.

(See HUD Handbook 7610.1 REV–3, dated June 1993, paragraph 1–7 on page 1–6 for a definition of "client," "housing need," and "housing problem.")

C. Eligible Applicants

1. Eligible applicants include public and private nonprofit entities with a current approval by HUD as a housing counseling agency, under the provisions of HUD Handbook No. 7610.1 REV–3 dated June 1993, or its earlier versions. Current approval includes agencies that are on record at the applicable HUD Field Office as having been approved as a HUD counseling agency as of the date of issuance of the RFGA based on this NOFA. Agencies for which HUD has withdrawn this approval or have indicated in writing their withdrawal from the counseling program are NOT eligible. Agencies with "conditional" re-approvals are NOT eligible unless they satisfy HUD's requirements for removal of the "conditional" approval by the due date of applications for funding under this notice.

2. Applicants that fall into any one of the following categories will be ineligible for funding under this NOFA:

a. The Department of Justice has brought a civil rights suit against the applicant and the suit is pending;

b. There has been an adjudication of a civil rights violation in an civil action brought against the applicant by a private individual, unless the applicant is operating in compliance with a court order, or implementing a HUD-approved compliance agreement designed to correct the areas of noncompliance;

c. There are outstanding findings of noncompliance with civil rights statutes, Executive Orders or regulations as a result of formal administrative proceedings, or the Secretary has issued a charge against the applicant under the Fair Housing Act, unless the applicant is operating under a conciliation or compliance agreement designed to correct the areas of noncompliance; or

d. HUD has deferred application processing by HUD under title VI of the Civil Rights Act of 1964, the Attorney General's Guidelines (28 CFR 50.3) and the HUD title VI regulations (24 CFR 1.8) or under section 504 of the Rehabilitation Act of 1973 and the HUD section 5604 regulations (24 CFR 8.57).

D. Award Criteria

1. General Criteria

HUD, through its Regional Contracting Officers, will award housing counseling grants in Fiscal Year 1994 to selected eligible agencies. Within each Region, an eligible agency is a HUD-approved housing counseling agency that is:

a. located within the Region's geographical jurisdiction; and

b. provides, or proposes to provide, housing counseling within that Region. (Application eligibility and grant authority do NOT cross regional boundaries.)

2. Award Amount Evaluation Criteria

Applications for funding under this NOFA will be reviewed, and grants will be awarded on the basis of the following criteria. Items a through d must be submitted by the applicant, as required by the RFGA. Items e through k are based on information maintained by HUD. (The RFGA contains a checklist of the items to be submitted by the applicant.)

a. The direct-labor hourly rate (DLHR) is the rate the applicant pays its bona-fide full-time and/or part-time housing counselors for delivering housing counseling to clients under HUD housing counseling grants. The rate or rates to be submitted are those in effect as of the date of the Request for Grant Application (RFGA) based on this Notice of Funding Availability (NOFA).

(1) A "bona fide" housing counselor is a person hired specifically to deliver housing counseling to the applicant's clients either as a sole responsibility or in conjunction with other related professional assignments.

(2) The terms "counseling" and "client" are specifically defined in paragraphs 1–7A and 1–7B of HUD's Housing Counseling Program Handbook 7610.1 REV–3 dated June 1993.

(3) "Direct-labor hourly rate" does Not include fringe benefits, overhead, and other employee-related costs. See Section I.B.5, "Payment to Grantee by HUD," in this NOFA.

b. The number of "clients" each housing counselor counseled during the twelve months immediately preceding the date of the RFGA based on this NOFA. This includes all "clients" as defined in HUD Housing Counseling Handbook 7610.1 REV–3 dated June 1993 regardless of whether they were counseled under a HUD housing counseling grant.

c. The applicant's documented client workload* (* "Workload" refers to the number of clients, as defined in HUD Handbook No. 7610.1 REV–3, dated June 1993, and reported by the applicant on Form HUD–9902, Housing Counseling Agency Fiscal Year Activity Report, dated June 1993, for the period October 1, 1992, through September 30, 1993. Workload documentation submitted on any other version of form HUD–9902 is unacceptable and will not be used by HUD under this grant award activity. Applicants may obtain copies of the form from any HUD Regional or Field Office.)

d. Grant amount requested by the grantee for FY 1994.

e. If the applicant had a previous HUD housing counseling grant, the extent to which the applicant expended those funds under the most recent grant. The amount of funds expended under the most recent grant may determine the amount of funds awarded the applicant for FY 1994.

f. Client workload total for all applicants within a HUD Regional Office.

g. Amount of housing counseling funds allocated to the HUD Regional Office by Headquarters;

h. Payment of grantees by HUD on a per housing counseling unit basis as set forth in Section I.B.5 of this NOFA.

i. Regional Offices' documented need for housing counseling services within the areas served by the applicants.

j. HUD's assessment of the applicant's previous performance as a HUD-

approved housing counseling agency (i.e. Biennial Performance Review), including the submission of the required report on FORM HUD–9902.

k. In the case of previous grantees, the applicant's performance under such grants in accordance with the terms of the grant agreement, including the submission of the specific reports required under the grant agreement.

II. Application Process

A. Obtaining and Submitting Applications

Applicants for grants may obtain copies of the Request for Grant Application (RFGA) from the Regional Contracting Officer in the HUD Regional Office that serves the area in which the applicant agency is located. The RFGA contains the application submission address. A list of the Regional Offices and their addresses follows the text of this NOFA.

B. Application Deadline

The RFGA contains the application due date and contains the time by which the HUD Regional Office must receive a grant application. (Please see the "Dates" section at the beginning of this NOFA for further information on the application due date.) "Submit" means delivery to the HUD Regional Office specified in the RFGA and by the application due date and time specified in the RFGA. A proper submission in response to the RFGA must conform to the specifications in the RFGA. HUD will not accept changes made by applicants to the document (i.e., forms, certifications and assurances) except for those specified in Section IV.A of this NOFA.

III. Checklist of Application Submission Requirements

An applicant must submit the following items. An applicant must submit three sets of each item, as specified below, with supporting documentation ONLY as specified in the RFGA. Applicants must limit the submission of material to that required by the individual form, certification or assurance. HUD will not consider extraneous material and will discard it. The RFGA also contains a checklist of the application submission requirements.

1. Standard Form 424, Application for Federal Assistance.

2. Standard Form 424B, Assurances—Non-construction Programs.

3. Certification of a Drug-Free Workplace, in accordance with the Drug-Free Workplace Act of 1988, and HUD's regulations at 24 CFR part 24, subpart F

4. Anti-Lobbying certification in accordance with section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352), and the regulations at 24 CFR part 87, if applicable. (See Section V of this NOFA concerning "Federal Lobbying Restrictions: The Byrd Amendment.")

5. Form HUD–2880, Applicant/Recipient Disclosure/Update Report, as required under subpart C of 24 CFR part 12, Accountability in the Provision of HUD Assistance.

6. Disclosure of Lobbying Activities on SF–LLL must be used to disclose lobbying with other than Federally appropriated funds at the time of application, if the applicant deems it applicable.

7. Each applicant will be required to submit, at a minimum, and as provided in the RFGA, assurances regarding the applicant's housing counseling program to the effect that:

a. The applicant agency received its approval by HUD prior to the date of issuance of the applicable RFGA, and currently has approval from HUD. If a Biennial Performance Review has not been made by the HUD Field Office, then a prior approval constitutes a current approval.

b. The applicant agency provided housing counseling to clients* during the period October 1, 1992, through September 30, 1993, as indicated on the applicant's Form HUD–9902, Housing Counseling Agency Fiscal Year Activity Report, for that period. The applicant must submit with their response to the RFGA a copy of the above-mentioned Form HUD–9902. (* See HUD Handbook 7610.1 REV–3, dated June 1993, for a definition of "client.")

c. HUD has or has not conducted a performance review of the applicant agency's housing counseling program; whether, as a result of the review, HUD re-approved the agency unconditionally or conditionally; whether, if HUD granted a conditional approval because of certain agency performance deficiencies, the applicant agency corrected the deficiencies to HUD's satisfaction.

d. If the applicant agency received a counseling grant from HUD during HUD's fiscal year 1990, 1991, or 1992, the agency complied with all grant requirements.

e. The applicant agency submitted all reports required during the most recent report year under the Handbook, and the grant document, if any.

f. The number of clients listed as the applicant's documented housing counseling client workload for 1992 is correct.

g. The agency can and will commence counseling services immediately upon receipt of the award of a counseling grant to the applicant agency.

h. The applicant will provide, at a minimum, the following types of counseling (Exceptions from items (1) and (2) below are agencies approved by HUD to perform only Home Equity Conversion Mortgage (HECM) counseling, tenant counseling, or prepurchase counseling):

(1) Delinquency and default counseling to home buyers and homeowners, and delinquency counseling to renters; and

(2) Mortgage assignment counseling to mortgagors with HUD-insured mortgages having potential for assignment to HUD under the assignment program.

(3) Fair housing counseling to inform renters and owners of their rights and responsibilities under the Fair Housing Act.

i. The agency had an independent financial audit during the past twenty-four (24) months.

j. The applicant administers its housing counseling program in accordance with title VI of the Civil Rights Act of 1964, the Fair Housing Act, Executive Order 11063, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and the implementing regulations for these authorities, and all other applicable nondiscrimination and equal opportunity statutes and regulations.

k. The applicant provides its service without any conflict of interest on the part of the applicant, including its staff, that might compromise the agency's ability to represent fully the best interests of the client in accordance with HUD Handbook 7610.1 REV–3, dated June 1993.

l. The applicant's clients reside in the U.S. Postal Service ZIP Code areas listed by the applicant.

IV. Corrections to Deficient Applications

Immediately after the deadline for submission of applications, applications will be screened to determine whether all items were submitted. Applicants will be given an opportunity to cure nonsubstantive deficiencies in their applications. The applicant must submit corrections within 14 calendar days from the date of HUD's deficiency notification or the application will not be considered.

A. Curable Deficiencies

The kinds of deficiencies which can be cured after the submission date for applications include failure to submit or

failure to include the required signature(s) on the following documents or certifications: Standard Form 424B, Assurances—Non-Construction Programs; Certification of Drug-free Workplace; Anti-Lobbying Certification.

B. Noncurable Deficiencies

Failure to submit: 1. A completed and signed Standard Form 424, Application for Federal assistance.

2. A signed Housing Counseling Program assurance and all of its required documentation. Failure to submit these items will be considered a non-response to the RFGA.

Note: HUD will not notify applicants who fail to submit any of the above two required items. Failure to submit the documents constitutes a non-response to the RFGA.

V. Other Matters

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations 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 during business hours in the Office of the Rules Docket Clerk, Office of General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

Federalism Executive Order

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that this Notice of Fund Availability will not have substantial, direct effects on States, on their political subdivisions, or on their relationship with the Federal Government, or on the distribution of power and responsibilities between them and other levels of government. Specifically, the purpose of the funding under this notice is to provide grants to public and non-profit private agencies that assist and advise housing consumers about how to develop competence and responsibility in meeting their housing needs.

Family Executive Order

The General Counsel, as the Designated Official under Executive Order 12606, the Family, has determined that this document may have potential for significant beneficial impact on family formation, maintenance, and general well-being to the extent that the activities of grantees will provide families with the counseling and advice they need to avoid rent delinquencies or mortgage defaults, and to develop competence and responsibility in meeting their housing needs. Since the impact on the family is considered beneficial, no further review under the Order is necessary.

Prohibition Against Lobbying Activities: The Byrd Amendment

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) (the "Byrd Amendment"), and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of Federal contracts, grants, or 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 prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance exceeding $100,000, and applicants for Federal commitments exceeding $150,000 must certify that no Federal funds have been or will be spent on lobbying activities in connection with the assistance.

Indian Housing Authorities (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.

Prohibition Against Lobbying of HUD Personnel

Section 13 of the Department of Housing and Urban Development Act (42 U.S.C. 3537b) contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department and those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

HUD's regulation implementing section 13 is codified at 24 CFR part 86. If readers are involved in any efforts to influence the Department in these ways, they are urged to read the final rule, particularly the examples contained in Appendix A of the rule. Appendix A of this rule contains examples of activities covered by this rule.

Any questions concerning the rule should be directed to the Office of Ethics, Room 2158, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington DC 20410. Telephone: (202) 708–3815 (voice/TDD). This not a toll-free number. Forms necessary for compliance with the rule may be obtained from the local HUD office.

Prohibition Against Advance Disclosure of Funding Decisions

HUD's regulations implementing section 103 of the Department of Housing and Urban Development Reform Act (HUD Reform Act) are codified at 24 CFR part 4 and apply to the funding competition announced today. The requirements of part 4 continue to apply until the announcement of the selection of successful applicants.

HUD employees involved in the review of applications and in the making of funding decisions are restrained by part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted by 24 CFR part 4. (See also section I.B.4 of this NOFA.)

Applicants who have questions should contact the HUD Office of Ethics (202) 708–3815 (voice/TDD). (This is not a toll-free number.)

Accountability in the Provision of HUD Assistance

HUD's regulation implementing section 102 of the HUD Reform Act is codified at 24 CFR part 12. Section 102 contains a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. On January 16, 1992 (57 FR 1942), following publication of the final rule, HUD published additional information that gave the public (including applicants for, and recipients of, HUD assistance) further information on the implementation, public access, and disclosure requirements of section 102. The requirements of section 102 are applicable to assistance awarded under this NOFA.

HUD will ensure documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its quarterly **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.6(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942) for further information on these requirements.

Catalog of Federal Domestic Assistance Program The Catalog of Federal Domestic Assistance Program number is 14.169.

Dated: March 11, 1994.

Nicolas P. Retsinas,

Assistant Secretary for Housing—Federal Housing Commissioner.

HUD Regional Offices

Address all inquiries to U.S. Department of Housing and Urban Development, Attention: Regional Contracting Officer, in the Regional Office that serves your State. Telephone numbers are NOT toll-free.

Region I—Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont
Thomas P. O'Neill, Jr. Federal Building, 10 Causeway Street, Room 375, Boston, MA 02222–1092, (617) 565–5234

Region II—New Jersey, New York
26 Federal Plaza, New York, NY 10278–0068, (212) 264–6500

Region III—Delaware, Maryland, Pennsylvania, Virginia, Washington (D.C.), West Virginia
Liberty Square Building, 105 South 7th Street, Philadelphia, PA 19106–3392, (215) 597–2560

Region IV—Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, Puerto Rico, South Carolina, Tennessee
Richard B. Russell Federal Building, 75 Spring Street S.W., Atlanta, GA 30303–3388, (404) 331–5136

Region V—Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin
Ralph H. Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–5680

Region VI—Arkansas, Louisiana, New Mexico, Oklahoma, Texas
1600 Throckmorton, Post Office Box 2905, Fort Worth, TX 76113–2905, (817) 885–5401

Region VII—Iowa, Kansas, Missouri, Nebraska
Gateway Tower II, 400 State Avenue, Kansas City, KS 66101–2406, (913) 551–5462

Region VIII—Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming
Executive Tower Building, 1405 Curtis Street, Denver, CO 80202–2349, (303) 844–4513

Region IX—Arizona, California, Hawaii, Nevada
Phillip Burton Federal Building, and U.S. Court House, 450 Golden Gate Avenue, Post Office Box 36003, San Francisco, CA 94102–3448, (415) 556–4752

Region X—Alaska, Idaho, Oregon, Washington
Federal Office Building, 909 First Avenue, Suite 200, Seattle, WA 98104–1000, (206) 220–5101

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Monday
March 21, 1994

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants: Determination of Critical Habitat for Four Colorado River Endangered Fishes; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB91

Endangered and Threatened Wildlife and Plants; Determination of Critical Habitat for the Colorado River Endangered Fishes: Razorback Sucker, Colorado Squawfish, Humpback Chub, and Bonytail Chub

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service designates critical habitat for four species of endemic Colorado River Basin fishes: Razorback sucker (*Xyrauchen texanus*), Colorado squawfish (*Ptychocheilus lucius*), humpback chub (*Gila cypha*), and bonytail chub (*Gila elegans*). These species are listed as endangered under the Endangered Species Act of 1973, as amended. The critical habitat designated is located primarily on Federal land and, to a lesser extent, on tribal, State, and private lands. The designation provides additional protection required under section 7 of the Act with regard to activities that require Federal agency action. The Service designates 3,168 km (1,980 mi) of critical habitat for the four Colorado River endangered fishes in portions of Colorado, Utah, New Mexico, Arizona, Nevada, and California. The areas designated for each species also overlap some areas designated for the other species.

EFFECTIVE DATE: April 20, 1994.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours at the office of the Field Supervisor, Ecological Services, U.S. Fish and Wildlife Service, 2060 Administration Building, 1745 West 1700 South, Salt Lake City, Utah 84104.

FOR FURTHER INFORMATION CONTACT: Reed E. Harris, Field Supervisor, at the above address, telephone 801/975–3630.

SUPPLEMENTARY INFORMATION:

Background

The four endangered fishes are endemic to the Colorado River Basin (Basin), which consists of portions of seven Western States. The Basin drains approximately 627,000 km^2 (242,000 mi^2) within the United States and has been politically divided into an Upper and Lower Basin. The Upper Basin consists of portions of the States of Colorado, New Mexico, Utah, and Wyoming. The Lower Basin consists of portions of the States of Arizona, California, and Nevada. An additional 5,000 km^2 (2,000 mi^2) of the Basin lies within Mexico.

Historically, the native fish fauna of the Basin was dominated by the minnow (cyprinids) and sucker (catostomids) families (Minckley et al. 1986). The four species of concern, the razorback sucker (*Xyrauchen texanus*), Colorado squawfish (*Ptychocheilus lucius*), humpback chub (*Gila cypha*), and bonytail chub (*Gila elegans*) are listed as endangered under the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*). These fishes are threatened with extinction due to the cumulative effects of environmental impacts that have resulted in habitat loss (including alterations to natural flows and changes to temperature and sediment regimes), proliferation of nonnative introduced fish, and other man-induced disturbances (Miller 1961; Minckley 1973; U.S. Fish and Wildlife Service [USFWS] 1987; Carlson and Muth 1989).

Natural Colorado squawfish populations survive only in the Upper Basin, where their numbers are relatively high only in the Green River Basin of Utah and Colorado (compared with other rivers in the Upper Basin) (Tyus 1991). Razorback sucker and bonytail chub populations throughout the Basin consist predominately of old adult fish. Populations persist primarily because of the longevity of these species (USFWS 1990a; Minckley et al. 1991), although some experimental and augmentation programs have stocked fish in the Basin. Humpback chub populations in the Little Colorado River, Black Rocks, and Westwater Canyon in the Colorado River appear relatively stable in number of fish, but declines have occurred in other locations (USFWS 1990b).

The historical ranges of the four endangered fishes have been fragmented by construction of dams and water diversions throughout the Basin (Carlson and Muth 1989). The Fish and Wildlife Service (Service) believes that it is important to the survival and recovery of these species to maintain and reestablish populations in geographically distinct areas within their historic range that provide varying thermal, chemical, geological, and physical parameters required for maintenance of genomes.

Conservation of these four species will require the identification and management of water resources and habitat components that are considered important to any fish species, such as spawning areas, nursery grounds, and interactions with predators and competitors. However, because the four endangered fishes are present in such low numbers, basic life history and habitat use information has been difficult to obtain. Changes to the historical Colorado River Basin ecosystem that have resulted in a lack of reproduction and/or recruitment have been hypothesized as factors in their endangerment (USFWS 1990a, 1990b, 1991; Minckley et al. 1991). In this case, not only would a lack of successful recruitment lead to small numbers of fish, but over time, remnant stocks may lose genetic diversity. Ultimately, extinction could result because the loss of genetic diversity may make populations less able to adjust to environmental change.

Habitats and Status of Endangered Fish

Affected Environment

The four Colorado River endangered fishes evolved in the Colorado River Basin (Basin) and were adapted to the natural environment that existed prior to the beginning of large-scale water development and introduction of nonnative species. This natural environment was characterized by highly fluctuating seasonal and annual flows, distinctly different habitat types (i.e., whitewater, lower gradient and meandering main channels, off-channel backwaters, and others) and varying water quality (i.e., sediment load, temperature, salinity, etc.). Recent population declines and disappearances of endemic Basin fish species from much of their former range have been associated with the onset of rapid and widespread anthropogenic changes to the natural environment. The cumulative environmental impact of these changes has resulted in alteration of the physical and biological characteristics of many rivers in the Basin. These impacts presumably occurred so rapidly that the fish could not adapt to them (Carlson and Muth 1989). Dams and diversions have fragmented former fish habitat and restricted fish movement. As a result, genetic interchange (emigration and immigration of individuals) between some fish populations is no longer possible. High flood flows were once normal in the Basin and provided food and nutrient exchange between river channels and shallow-water flood plain habitats. These high flows are now controlled by numerous dams. As a result of these dams, major changes also have occurred in water quality, quantity, temperature, sediment load

and nutrient transport, and other characteristics of the aquatic environment (Carlson and Muth 1989). The altered river conditions that have resulted now provide suitable habitats for introduced, nonnative fish. Some of these nonnative fish species have flourished in the Basin (Minckley et al. 1982; Tyus et al. 1982; Carlson and Muth 1989). These physical and biological changes have impacted the river environment to the extent that no completely unaltered habitat remains in the Basin for the four Colorado River endangered fish species.

Razorback Sucker

This species once was abundant and widely distributed in rivers of the Basin (Jordan and Evermann 1896; Minckley 1973). In the Lower Basin, the razorback sucker remains in the Colorado River from the Grand Canyon to near the border with Mexico. With the exception of the relatively large stock of razorback suckers remaining in Lake Mohave (an estimated 25,000 individuals), these populations are small and recruitment is virtually nonexistent (Minckley et al. 1991). The formerly large Lower Basin populations have been virtually extirpated from other riverine environments (Minckley et al. 1991). In the Upper Basin, this species remains in the lower Yampa and Green Rivers, mainstream Colorado River, and lower San Juan River (Tyus et al. 1982; Minckley et al. 1991; Platania et al. 1991); however, there is little indication of recruitment in these remnant stocks. The largest extant riverine population occurs in the upper Green River Basin. It consisted of only about 1,000 fish in 1989 (Lanigan and Tyus 1989); recent information suggests that this population may have declined to less than 500 fish (USFWS unpublished data). In the absence of conservation efforts, it is presumed that all wild populations in the Basin would soon be lost as old fish die without sufficient natural recruitment.

Reproduction and habitat use of razorback suckers has been studied in Lower Basin reservoirs, especially in Lake Mohave. Fish reproduction has been visually observed along reservoir shorelines for many years. The fish spawn over mixed substrates that range from silt to cobble and at water temperatures ranging from 10.5 to 21° C (51 to 70° F) (reviewed by Minckley et al. 1991).

Habitat use and spawning behavior of adult razorback suckers in riverine habitats has been studied by radiotelemetry in the Green River Basin (Tyus and Karp 1990) and in the upper Colorado River (Osmundson and Kaeding 1989). Fish in the Green River Basin spawn in the spring with rising water levels and increasing temperatures. Razorback suckers move into flooded areas in early spring and begin spawning migrations to specific locations as they become reproductively active, and spawning occurs over rocky runs and gravel bars (Tyus and Karp 1990).

In nonreproductive periods, adult razorback suckers occupy a variety of habitat types, including impounded and riverine areas, eddies, backwaters, gravel pits, flooded bottoms, flooded mouths of tributary streams, slow runs, sandy riffles, and others (reviewed by Minckley et al. 1991). Summer habitats used include deeper eddies, backwaters, holes, and midchannel sandbars (Osmundson and Kaeding 1989; Tyus and Karp 1990; Minckley et al. 1991). During winter, adult razorback suckers use main channel habitats that are similar to those used during other times of the year, including eddies, slow runs, riffles, and slackwaters (Osmundson and Kaeding 1989; Valdez and Masslich 1989; Tyus and Karp 1990).

Habitats used by young razorback suckers have not been fully described because of the low number of young fish present in the Basin. However, most studies indicate that the larvae prefer shallow, littoral zones for a few weeks after hatching, then disperse to deeper water areas (reviewed by Minckley et al. 1991). Laboratory studies indicated that in a riverine environment, the larvae enter stream drift and are transported downstream (Paulin et al. 1989).

Based on available data, Tyus and Karp (1989) and Osmundson and Kaeding (1989) considered that cumulative environmental impacts from interactions with nonnative fish, high winter flows, reduced high spring flows, seasonal changes in river temperatures, and lack of inundated shorelines and bottom lands are factors that potentially limit the survival, successful reproduction, and recruitment of this species.

Colorado Squawfish

This species is the only living representative of the genus *Ptychocheilus* endemic to the Basin. Fossils from the Mid-Pliocene epoch (about 6 million years ago) indicate that early *Ptychocheilus* had physical characteristics that were similar to modern forms. Native populations of the Colorado squawfish are now restricted to the Upper Basin in Wyoming, Colorado, Utah, and New Mexico. Colorado squawfish populations have been extirpated from the Lower Basin.

Colorado squawfish spawning has been documented in canyons in the Yampa and Green Rivers (Tyus 1991). This reproduction is associated with declining flows in June, July, or August and average water temperatures ranging from 22 to 25 °C (72 to 77 °F) depending on annual hydrology. River mile 130 on the Colorado River, near the Colorado-Utah State line, also has been identified as a spawning site, and radio-tagged adults have moved to a specific 0.2 km (0.1 mi) area in four different years (Osmundson and Kaeding 1989; USFWS unpublished data 1992–1993). In the mainstream Colorado River, McAda and Kaeding (1991) stated that spawning occurs at many locations. They also suggested that Colorado squawfish spawning in the Colorado River may have been adversely impacted by construction of mainstream dams and a 48 percent reduction in peak discharge. On the San Juan River, a spawning reach has been identified between river mile 133.4 and 129.8, near the confluence of the Mancos River (Ryden and Pfeifer 1993).

After spawning, adult Colorado squawfish utilize a variety of riverine habitats, including eddies, backwaters, shorelines, and others (Tyus 1990). During winter, adult Colorado squawfish use backwaters, runs, pools, and eddies, but are most common in shallow, ice-covered shoreline areas (Osmundson and Kaeding 1989; Wick and Hawkins 1989). In spring and early summer, adult squawfish use shorelines and lowlands inundated during typical spring flooding. This natural lowland inundation is viewed as important for their general health and reproductive conditioning (Osmundson and Kaeding 1989; Tyus 1990). Use of these habitats presumably mitigates some of the effects of winter stress, and aids in providing energy reserves required for migration and spawning. Migration is an important component in the reproductive cycle of Colorado squawfish. Tyus (1990) hypothesized that migration cues, such as high spring flows, increasing river temperatures, and chemical inputs from flooded lands and springs, may be important to successful reproduction.

In the Green River Basin, larval Colorado squawfish emerge from spawning substrates and enter the stream drift as young fry (Haynes et al. 1989). The larval fish are actively or passively transported downstream for about 6 days, traveling an average distance of 160 km (100 mi) to reach nursery areas in lower gradient reaches (Tyus and Haines 1991). These areas are nutrient-rich habitats that consist of

ephemeral along-shore embayments that develop as spring flows decline.

Humpback Chub

Remains of humpback chub have been found in archaeological sites dated to about 4000 B.C. (USFWS 1990b). This Colorado River native fish was not described as a species until 1946 (Miller 1946). This has been attributed to its presently restricted distribution in remote, white water canyons (USFWS 1990b). The historical abundance and distribution of the species is not well known. In the Lower Basin, the humpback chub occurs in the Little Colorado and Colorado Rivers in the Grand Canyon. This population is the largest remaining in the Basin. In the Upper Basin, humpback chub are found in the Black Rocks/Westwater Canyon and Cataract Canyon of the Colorado River, Desolation and Gray Canyons of the Green River, and Yampa and Whirlpool Canyons in Dinosaur National Monument, Green and Yampa Rivers (USFWS 1990b).

Humpback chub in reproductive condition are usually captured in May, June, or July, depending on location. Spawning occurs soon after the highest spring flows when water temperatures approach 20° C (68° F) (Karp and Tyus 1990; USFWS 1990b). The importance of spring flows and proper temperatures for humpback chub is stressed by Kaeding and Zimmerman (1983), who implicated flow reductions and low water temperatures in the Grand Canyon as factors curtailing successful spawning of the fish and increasing competition from other species.

Populations of humpback chub are found in river canyons, where they utilize a variety of habitats, including pools, riffles, and eddies. Most of the existing information on habitat preferences has been obtained from adult fish in the Little Colorado River, the Grand Canyon, and the Black Rocks of the Colorado River (Holden and Stalnaker 1975; Kaeding and Zimmerman 1983; Kaeding et al. 1990). In these locations, the fish are found associated with boulder-strewn canyons, travertine dams, pools, and eddies. Some habitat-use data also are available from the Yampa River Canyon where the fish occupy similar habitats and also use rocky runs, riffles, rapids, and shoreline eddies (Karp and Tyus 1990). This diversity in habitat use suggests that the adult fish are adapted to a variety of habitats, and studies of tagged fish indicated that they move between habitats, presumably in response to seasonal habitat changes and life history needs (Kaeding and Zimmerman 1983; Karp and Tyus 1990). Reduced spring peak flows, availability of shoreline eddy and deep canyon habitats, and competition and predation by nonnative fish were reported as potential limiting factors for humpback chub in the Yampa River (Tyus and Karp 1989). The impact of hybridization with other species is currently being evaluated.

Bonytail Chub

The bonytail chub (also known as the bonytail) is the rarest native fish in the Basin. Historically reported as widespread and abundant in rivers throughout the Basin (Jordan and Evermann 1896), its populations have been greatly reduced. The fish is presently represented in the wild by a low number of old fish (i.e., ages of 40 years or more), and recruitment is virtually nonexistent. In the Lower Basin, a small population persists in the Colorado River in Lake Mohave, and there are recent records from Lake Havasu (USFWS 1990a). In the Upper Basin, recent captures have been from Dinosaur National Monument on the Yampa River, Desolation and Gray Canyons on the Green River, and Black Rocks and Cataract Canyon on the Colorado River (Kaeding et al. 1986; Tyus et al. 1987; Valdez 1990; USFWS 1990a).

The bonytail chub is adapted to mainstream rivers, where it has been observed in pools and eddies (Minckley 1973; Vanicek 1967). In reservoirs, the fish occupies a variety of habitat types (Minckley 1973). In Lake Mohave, Wagner (1955) observed the fish in eddy habitats. Spawning requirements have never been documented in a river, but Vanicek and Kramer (1969) reported that spawning occurred in June and July at water temperatures of about 18° C (64° F). The available data suggest that habitats required for conservation of the bonytail chub include, river channels, and flooded, ponded, or inundated riverine habitats that would be suitable for adults and young, especially if competition from nonnative fishes is reduced (USFWS 1990a).

Previous Federal Actions

Listing Chronology

The Colorado squawfish and humpback chub were listed as endangered species on March 11, 1967 (32 FR 4001) and the bonytail chub was listed as endangered on April 23, 1980 (45 FR 27713). Critical habitat for these species was not designated at the time of their listing. On May 16, 1975, the Service published a notice of its intent to determine critical habitat for the Colorado squawfish and the humpback chub, and other species (40 FR 21499). On September 14, 1978, the Service proposed 1,002 km (623 mi) of the Colorado, Green, Gunnison, and Yampa Rivers as critical habitat for the Colorado squawfish (43 FR 41060). The proposal was for 1,002 km (623 mi) of the Colorado, Green, Gunnison, and Yampa Rivers. This proposal was later withdrawn (44 FR 12382; March 6, 1979) to comply with the 1978 amendments to the Act (16 U.S.C. 1531 *et seq.*).

The razorback sucker was first proposed for listing as a threatened species on April 24, 1978 (43 FR 17375). The proposal was withdrawn on May 27, 1980 (45 FR 35410), to comply with provisions of the 1978 amendments to the Act. These provisions required the Service to include consideration of designating critical habitat in the listing of species, to complete the listing process within 2 years from the date of the proposed rule, or withdraw the proposal from further consideration. The Service did not complete the listing process within the 2-year deadline.

On March 15, 1989, the Service received a petition from the Sierra Club, National Audubon Society, The Wilderness Society, Colorado Environmental Coalition, Southern Utah Wilderness Alliance, and Northwest Rivers Alliance to list the razorback sucker as endangered. The Service made a positive finding in June 1989 and subsequently published a notice in the **Federal Register** on August 15, 1989 (54 FR 33586). This notice also stated that the Service was completing a status review and was seeking additional information until December 15, 1989. A proposed rule to list the razorback sucker as endangered was published in the **Federal Register** on May 22, 1990 (55 FR 21154).

The final rule listing the razorback sucker as an endangered species was published on October 23, 1991 (56 FR 54957), but critical habitat was not proposed. In the final rule, the Service concluded that critical habitat was not determinable at the time of listing and questioned whether it was prudent to designate critical habitat.

On October 30, 1991, the Service received a 60-day notice of intent to sue from the Sierra Club Legal Defense Fund. The subject of the notice was the Service's failure to designate critical habitat concurrent with listing of the razorback sucker pursuant to section 4(b)(6)(c) of the Act. The Sierra Club Legal Defense Fund followed this with a second notice of intent to sue dated January 30, 1992. At a meeting on December 6, 1991, the Service concluded that designation of critical

habitat was prudent and determinable and therefore in compliance with the Act. The Service had no alternative but to designate critical habitat for the razorback sucker. Because the intent of the Act is "* * * to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved * * *," the Service also decided to propose critical habitat for the Colorado squawfish, humpback chub, and bonytail chub. The four endangered Colorado River fish species coexist in the Basin and much of their habitat overlaps.

On May 7, 1992, the Sierra Club Legal Defense Fund on behalf of the Colorado Wildlife Federation, Southern Utah Wilderness Alliance, Four Corners Action Coalition, Colorado Environmental Coalition, Taxpayers for the Animas River, and Sierra Club filed a lawsuit in the U.S. District Court (Court), Colorado, against the Service for failure to designate critical habitat for the razorback sucker. On August 18, 1992, a motion for summary judgment was filed requesting the Court to order publication of a final rule to designate critical habitat within 90 days. On October 27, 1992, the Court ruled that the Service had violated the Act by failing to designate critical habitat when the razorback sucker was listed. The Court ordered the Service to publish a proposed rule within 90 days designating critical habitat for the razorback sucker using presently available information, and to publish a final rule at the earliest time permitted by the Act and its regulations. To take no action towards designation of critical habitat would continue to place the Service in violation of the Act and was not a feasible alternative.

The Service published the proposed rule to designate critical habitat on January 29, 1993 (58 FR 6578). At that time, the Service had not completed an economic analysis or a biological support document. The Service published the Draft Biological Support Document for public review on September 15, 1993, and reopened the public comment period (58 FR 48351). On September 21, 1993, the Court held a hearing on the Sierra Club Legal Defense Fund "Motion For A Timetable For Publication Of Final Rule" on the designation of critical habitat. On November 19, 1993, the Court directed the Service (1) not to submit an interim final rule, (2) to provide a 60-day comment period for the economic analysis, (3) to provide notice of the exclusion process and request comments, and (4) to publish the final rule by March 15, 1994.

Notice of availability of the Economic Analysis, an Overview of the Proposed Critical Habitat Designation, and a request for public comments were made in the **Federal Register** on November 12, 1993 (58 FR 5997), and in a November 9, 1993, letter sent to interested parties. The public comment period closed on January 11, 1994. On January 18, 1994, the Service conducted the exclusion process, assessing all the information pertinent to a decision to exclude areas from designation as critical habitat for economic or other relevant reasons.

Recovery Planning

Recovery plans have been written for three of the four listed Colorado River fishes. The Colorado Squawfish Recovery Plan was approved on March 16, 1978, and revised on August 6, 1991 (USFWS 1991). The Humpback Chub Recovery Plan was approved on August 22, 1979, with a first revision on May 15, 1984, and a second revision on September 19, 1990 (USFWS 1990b). The Bonytail Chub Recovery Plan was approved on May 16, 1984, with a revised plan approved September 4, 1990 (USFWS 1990a). Recovery goals contained in these recovery plans have been used in identifying and evaluating critical habitat for these three species. A recovery plan for the razorback sucker has not been completed.

Determination of Critical Habitat

Definition of Critical Habitat

"Critical habitat," as defined in section 3(5)(A) of the Act, means: "(i) the specific areas within the geographical area occupied by the species at the time it is listed * * *, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed * * *, upon a determination by the Secretary that such areas are essential for the conservation of the species."

The term "conservation," as defined in section 3(3) of the Act, means: "* * * the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary." In the case of critical habitat, conservation represents the areas required to recover a species to the point of delisting (i.e., the species is recovered and is removed from the list of endangered and threatened species). In this context, critical habitat preserves options for a species' eventual recovery. Section 3(5)(C) further states that: "Except in those circumstances determined by the Secretary, critical habitat shall not include the entire geographical area which can be occupied by the threatened or endangered species."

Role of Critical Habitat in Species Conservation

The designation of critical habitat will not, by itself, lead to recovery but is one of several measures available to contribute to conservation of a species. Critical habitat helps focus conservation activities by identifying areas that contain essential habitat features (primary constituent elements) regardless of whether or not the areas are currently occupied by the listed species. Such designations alert Federal agencies, States, the public, and other entities about the importance of an area for the conservation of a listed species. Critical habitat also identifies areas that may require special management or protection. Areas designated as critical habitat receive protection under section 7 of the Act with regard to actions carried out, funded, or authorized by a Federal agency that are likely to adversely modify or destroy critical habitat. Section 7 requires that Federal agencies consult on their actions that may affect critical habitat and insure that their actions are not likely to destroy or adversely modify critical habitat.

Designation of an area as critical habitat only affects Federal actions that may occur in the area. Designation does not create a management plan for a listed species. Designation does not automatically prohibit certain actions, establish numerical population goals, prescribe specific management actions (inside or outside of critical habitat), nor does it have a direct effect on habitat not designated as critical habitat. However, critical habitat may provide added protection for areas designated and thus assist in achieving recovery.

Areas Outside of Critical Habitat

Areas outside of critical habitat that contain one or more of the primary constituent elements may still be important for conservation of a species. Also, some areas do not contain all of the constituent elements and may have those missing elements restored in the future. Such areas also may be important for the long-term recovery of the species even if they were not designated as critical habitat. Areas not designated as critical habitat also may be of value in maintaining ecosystem integrity and supporting other species,

indirectly contributing to recovery of a species.

Areas outside of critical habitat are still subject to section 7 consultation on whether or not an action is likely to jeopardize the continued existence of a species, and section 9 "take" prohibitions for an action that may affect Colorado River endangered fishes or their habitat. The Service anticipates that the importance of areas outside of critical habitat to the conservation of the Colorado River endangered fishes will be addressed through section 7, section 9, and section 10 permit processes, the recovery planning process, and other appropriate State and Federal laws.

Primary Constituent Elements

In determining which areas to designate as critical habitat for a species, the Service considers those physical and biological attributes that are essential to species conservation (i.e., constituent elements). Such physical and biological features are stated in 50 CFR 424.12 and include, but are not limited to, the following items: (1) Space for individual and population growth and for normal behavior;

(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 historical geographical and ecological distributions of a species.

In addition, the Act stipulates that the areas containing these elements may require special management considerations or protection.

Detailed descriptions and the biological basis for the constituent elements were presented in the Draft Biological Support Document (Maddux et al. 1993). In considering the biological basis for determining critical habitat, the Service focused on the primary physical and biological elements essential to the conservation of the species. The primary constituent elements are interrelated in the life history of these species. This relationship was a prime consideration in the designation of critical habitat. The Service is required to list the known primary constituent elements together with a description of any critical habitat that is designated.

The primary constituent elements determined necessary for survival and recovery of the four Colorado River endangered fishes include, but are not limited to:

Water

This includes a quantity of water of sufficient quality (i.e., temperature, dissolved oxygen, lack of contaminants, nutrients, turbidity, etc.) that is delivered to a specific location in accordance with a hydrologic regime that is required for the particular life stage for each species.

Physical Habitat

This includes areas of the Colorado River system that are inhabited or potentially habitable by fish for use in spawning, nursery, feeding, and rearing, or corridors between these areas. In addition to river channels, these areas also include bottom lands, side channels, secondary channels, oxbows, backwaters, and other areas in the 100-year flood plain, which when inundated provide spawning, nursery, feeding and rearing habitats, or access to these habitats.

Biological Environment

Food supply, predation, and competition are important elements of the biological environment and are considered components of this constituent element. Food supply is a function of nutrient supply, productivity, and availability to each life stage of the species. Predation and competition, although considered normal components of this environment, are out of balance due to introduced nonnative fish species in many areas.

Additional Selection Criteria for the Razorback Sucker

Because a recovery plan for the razorback sucker has not been completed, additional selection criteria were developed to assist the Service in making a determination of areas to propose as critical habitat. Previous Service findings, published and unpublished literature sources, and discussions with individual members of the Colorado River Fishes Recovery Team were utilized to develop the constituent elements and additional selection criteria.

Adult razorback suckers have displayed a degree of versatility in their ability to survive and spawn in different habitats. However, razorback sucker populations continue to decline and are considered below the survival level. Thus, as versatile as the adult life stage of razorback sucker appears to be in selecting spawning habitat, there has been little or no recruitment of young to the adult population. Therefore, special consideration was given to habitats required for reproduction and recruitment.

The following selection considerations were used by the Service to help determine areas necessary for survival and recovery of the razorback sucker.

1. Presence of known or suspected wild spawning populations, although recruitment may be limited or nonexistent.

2. Areas where juvenile razorback suckers have been collected or which could provide suitable nursery habitat (backwaters, flooded bottom lands, or coves).

3. Areas presently occupied or that were historically occupied that are considered necessary for recovery and that have the potential for reestablishment of razorback suckers.

4. Areas and water required to maintain rangewide fish distribution and diversity under a variety of physical, chemical, and biological conditions.

5. Areas that need special management or protection to insure razorback survival and recovery. These areas once met the habitat needs of the razorback sucker and may be recoverable with additional protection and management.

The primary constituent elements were identified throughout the historical range of the Colorado River endangered fishes. In addition, the five selection considerations described above also were used to evaluate potential razorback sucker critical habitat areas. The critical habitat designations were based on the primary constituent elements, published and unpublished sources of information, Service reports and other findings, recovery plans (for Colorado squawfish, humpback chub, and bonytail chub), the additional selection considerations, and the Service's preliminary recovery goals for the razorback sucker.

Adjustments to Boundaries

The 100-year flood plain is generally included as part of the critical habitat designation; however, only those portions of the flood plain that contain the constituent elements are considered part of critical habitat. Specific areas in the flood plain must be evaluated on a case-by-case basis to determine if the areas constitute critical habitat. The Service stresses that, although critical habitat may only be seasonally occupied by the fish, such habitat remains important for their conservation. Protection of such seasonally occupied habitats contributes to the conservation of the species.

As a result of obtaining additional biological information and review of comments received during the public

comment period, the Service has determined that some areas are not required for the survival and recovery of the fishes because they do not contain the constituent elements, meet the additional selection criteria, or are not in historical habitat. In addition, other areas may contain constituent elements but may contribute little to the prospect of recovery for one or more of the four fishes. Some of these areas are within sections of designated critical habitat and will be evaluated on a case-by-case basis. Five stream sections are separable and have been removed from consideration as part of critical habitat because of a lack of biological importance. These five areas are:

- Davis Dam to the upstream end of Topock Marsh on the mainstem Colorado River (AZ, CA, NV) (bonytail chub)
- Bonita and Eagle Creeks, tributaries to the Gila River (AZ) (razorback sucker)
- Cherry and Canyon Creeks, tributaries to the Salt River (AZ) (razorback sucker)
- Sycamore, Oak, and West Clear Creeks, tributaries to the Verde River (AZ) (razorback sucker)
- The Verde River from Sullivan Lake to Perkinsville (AZ) (razorback sucker)

The Service reiterates that any or all of these sections could contribute to the recovery of one or more of the fishes; however, they do not provide a primary recovery area and are considered only marginally important. The Service also notes that some of these areas may not have been historical habitat for the razorback sucker, a further indication that these areas may have only limited value in the recovery of these fishes.

Economic Impacts

Introduction

Section 4(b)(2) of the Act directs the Secretary of the Interior (Secretary) to consider economic and other relevant impacts in determining whether to exclude proposed areas from the final designation of critical habitat. The Service, as delegated by the Secretary, may exclude areas from critical habitat designation when the benefits of exclusion outweigh the benefits of inclusion, provided that exclusion will not result in extinction of a species. An economic analysis (Brookshire et al. 1994) was conducted on the consequences of this action (critical habitat designation).

The study region for the economic analysis includes the seven States of the Basin: Arizona, California, Colorado, New Mexico, Nevada, Utah, and Wyoming. The timeframe chosen for the study, 1995 through 2020, encompasses the time period projected for the recovery of the endangered fishes.

Linkages between the biological requirements for recovering the endangered fishes and economic activities in the region formed the basis for the economic analysis. As an index of these biological requirements, adjustments made in the operations of Federal reservoirs in the Basin and/or mitigation of nonflow related activities along the river's 100-year flood plain were included. The effects of recovery efforts on future water depletions in the Basin also were taken into consideration. The direct and indirect impacts of these possible changes on current and prospective economic activities were then estimated for each State, the region, and the national economy.

It is impossible to predict the outcome of future section 7 consultations involving endangered fishes in the Basin. If the Upper Basin and San Juan Recovery Implementation Programs (RIP) do not show sufficient and timely progress in recovering the endangered fishes, some planned water developments may be modified, scaled back, delayed, or foregone. This assumption provides an upper bound on the potential magnitude of economic impacts associated with the critical habitat designation. If the RIP's are successful in achieving their objectives, many of the negative economic impacts can be avoided.

Economic Modeling

Two types of economic effects are of interest when considering the economic impacts of critical habitat designations: regional economic impacts and national economic efficiency impacts. Regional economic impacts refer to the direct and indirect impacts of the critical habitat designations on specific geographic regions, such as States or other subregions of the country.

Regional economic impacts were analyzed using input-output (I–O) models that organize the basic accounting relationships that describe the production sector of the economy (Brookshire et al. 1993). The I–O method is based on the assumption that all sectors of the economy are related, and the production of a good or service can be described by a recipe whose ingredients are the outputs from other sectors of the economy. The primary inputs are labor, capital, and other raw resources. Through its multiplier analysis, the I–O model is capable of generating estimates of the changes in output for economic sectors, changes in employment, and changes in income due to the critical habitat designation. The models report total impacts resulting from interactions among the sectors of the economy.

National economic efficiency impacts refer to the overall net impacts on the national economy after the effects of interregional transfers have been accounted for. The goal of a national efficiency analysis is to determine whether an action would have an overall positive or negative impact on the national economy.

National economic efficiency impacts were analyzed in this study using a Computable General Equilibrium (CGE) model. The CGE model captures the economic interactions of consumers, the production sectors, and the government sectors. The CGE model also analyzes resource reallocations (e.g., changes in river flows as represented by increased or decreased hydroelectric generation) in a manner such that the net effects, not just the total effects, are calculated. Given this capability, the CGE model is able to estimate net national efficiency impacts.

Modeling Approach

A separate I–O model was developed for each State, and focused on the direct and indirect impacts generated by the critical habitat designation (Brookshire et al. 1993). In most cases, impacts in a given State generated impacts in neighboring States. Thus, it was necessary to investigate potential offsetting impacts. As a result, an I–O model was constructed that investigated the impacts of the entire region (all seven States). In addition to the State and regional I–O models, a CGE model was developed for the economies of the seven-State area and the rest of the United States. This model provided a comprehensive aggregate assessment of the national economic efficiency impacts.

Economic activity for the models was estimated using Impact Analysis for Planning (IMPLAN) 1982 data sets that were updated and projected through the year 2020, using data from the Bureau of Economic Analysis of the U.S. Department of Commerce. The IMPLAN data set contains 528 economic sectors that were aggregated to 20 sectors (Brookshire et al. 1994).

Without Fish and With Fish Scenarios

Two scenarios were used to evaluate economic activities associated with the critical habitat designation (Brookshire et al. 1994). The "without fish" economic scenario consisted of projections of the level of economic activities that would be observed over the study period if no action was taken to recover the endangered fishes. The

"with fish" scenario was constructed by analyzing potential changes in economic activity that may occur due to the critical habitat designations and/or other protection and recovery efforts for endangered fish.

Economic Setting

Economic Output

Economic output measures the value of all goods and services produced and/or consumed in a regional economy. The seven State Basin region generates about $1.3 trillion annually in economic output. This output is dominated by the combined manufacturing and the finance, insurance, and real estate sectors, which produce 18.4 percent and 14.9 percent of total output, respectively. The recreation services sector produces 7.7 percent of the total output and the combined agricultural sectors are responsible for 3.0 percent of the total output (Brookshire et al. 1993).

Employment

Approximately 22.0 million people are employed in the Basin economy. The largest employment sectors within the Basin States are the public sector (16.9 percent of total employment), and the combined manufacturing sector (15.4 percent of total employment). The recreation services sector is also a very significant part of total employment at 10.5 percent. Combined agricultural employment is approximately 4.3 percent of total employment (Brookshire et al. 1993).

State and Regional Economic Impacts

Three conclusions were obtained from the economic analysis (Table 1): First, regional economic impacts associated with critical habitat designation are positive for the Basin. Second, the State-level impacts are not distributed evenly over States in the Basin. Finally, the percent deviation in the economy from the "without fish" scenario is small.

TABLE 1.—ANNUALIZED IMPACTS ($1991 MILLIONS) OF CRITICAL HABITAT DESIGNATION IN EACH STATE AND THE COLORADO RIVER BASIN. PARENTHESES ( ) = PERCENT CHANGE IN THE STATE AND REGIONAL ECONOMIES DUE TO DESIGNATION. (AFTER BROOKSHIRE ET AL. 1994)

State	Output (% change)	Earning (% change)	Indirect business taxes (% change)	Personal income taxes (% change)
Arizona	−1.049 (.0008)	−0.201 (.0004)	−0.048 (.0006)	−0.050 (.0004)
California	+16.751 (.0013)	+2.880 (.0007)	+0.521 (.0008)	+0.720 (.0007)
Colorado	−0.848 (.0006)	+0.850 (.0020)	−0.111 (.0020)	+0.213 (.0020)
Nevada	+7.014 (.0148)	+3.369 (.0164)	+0.582 (.0182)	+0.842 (.0164)
New Mexico	−12.273 (.0279)	−1.511 (.0110)	−0.586 (.0204)	−0.378 (.0110)
Utah	−3.628 (.0060)	−0.718 (.0039)	−0.281 (.0090)	−0.180 (.0040)
Wyoming	−0.359 (.0020)	−0.048 (.0008)	−0.023 (.0020)	−0.012 (.0008)
Basin	+6.470 (.0003)	+3.704 (.0006)	+0.136 (.0002)	+1.049 (.0006)

The projected impacts on the economies of various States ranged from about −$12.273 million in New Mexico to about +$16.751 million in California measured as annualized values (Table 1). However, projected negative impacts that could occur in the various State economies were so small when compared to the base economies that they are probably nonexistent, ranging from 0.0008 percent in Arizona to 0.0279 percent in New Mexico. Some States could experience small but positive impacts (e.g., California and Nevada).

Impacts on earnings, indirect business taxes, and personal income taxes are organized in the same way as those for output (Table 1). The conclusions expressed for output hold also for the earnings, indirect business taxes, and personal income taxes impacts (Brookshire et al. 1994).

Employment

Table 2 presents State and regional incremental impacts on employment over the 25-year period of the study. The values in the table represent the deviation in employment, measured as jobs, between the without fish and with fish scenarios. As with other aspects of the economy, employment impacts are both positive and negative both across States and over time. For New Mexico, the employment impact is approximately 2 jobs foregone in 1995 and this figure rises to 613 jobs foregone by the year 2020. On the other hand, for California there is a gain of approximately 20 jobs in 1995 and this positive impact increases to a projected 1,162 jobs by 2020. For the Basin as a whole, the employment impacts are positive through the study period. In 1995, the projected gain is approximately 60 jobs. By 2020, the gains in employment are projected to be approximately 393 jobs.

TABLE 2.— IMPACTS OF THE CRITICAL HABITAT DESIGNATION ON EMPLOYMENT IN EACH STATE AND THE COLORADO RIVER BASIN. EMPLOYMENT IMPACTS REPRESENT JOBS FOREGONE OR GAINED IN THE FUTURE THROUGH THE YEAR 2020. (AFTER BROOKSHIRE ET AL. 1994)

State	1995	2000	2005	2010	2015	2020
Arizona	−1.85	−4.68	−7.77	−12.08	−18.86	−25.83
California	+19.99	+92.57	+258.48	+475.86	+781.18	+1161.93

TABLE 2.— IMPACTS OF THE CRITICAL HABITAT DESIGNATION ON EMPLOYMENT IN EACH STATE AND THE COLORADO RIVER BASIN. EMPLOYMENT IMPACTS REPRESENT JOBS FOREGONE OR GAINED IN THE FUTURE THROUGH THE YEAR 2020. (AFTER BROOKSHIRE ET AL. 1994)—Continued

State	1995	2000	2005	2010	2015	2020
Colorado	+8.91	+5.16	−6.93	−19.69	−36.86	−55.60
Nevada	+34.86	+71.52	+108.03	+143.22	+177.25	+208.69
New Mexico	−2.17	−27.98	−110.71	−239.60	−415.21	−612.64
Utah	−10.91	−22.30	−34.56	−47.71	−61.06	−74.13
Wyoming	−0.40	−1.40	−2.41	−3.45	−4.35	−5.22
Colorado River Basin	+59.94	+116.15	+178.70	+230.02	+294.76	+392.67

National Economic Impacts

The results below are from the Computable General Equilibrium model and represent economic output for the Basin (Table 3). Although the projected national economic impacts were positive for all variables, there is almost no change in the regional economy.

TABLE 3.—RESULTS OF COMPUTABLE GENERAL EQUILIBRIUM MODEL FOR THE COLORADO RIVER BASIN. (AFTER BROOKSHIRE ET AL. 1994)

Variable	Economic impact	Percent change in economy
Regional Product.	+$7.92 million	0.0013
Employment	+710 jobs	0.0047
Earnings	+$6.62 million	0.0017
Govt Revenue	+$3.20 million	0.0016

Exclusion Process

Background

Pursuant to section 4(b)(2) of the Act, critical habitat is designated by using the best scientific data available, and in full consideration of economic and other impacts of designation. The determination on whether to exclude a reach or portion of a reach considers: (1) The benefits of including that reach, (2) the benefits of excluding a reach, and (3) the effect of that reach, or the cumulative effect of excluding more than one reach, on the probability of species extinction. If the exclusion of a river reach or portion of a reach would result in the eventual extinction of a species, the exclusion is prohibited under the Act.

Exclusion of an area as critical habitat would eliminate the protection provided under the destruction or adverse modification provision of section 7 for critical habitat. However, it would not remove the need to comply with other requirements of the Act for that area, such as the "likely to jeopardize" prohibition of section 7 consultation (for Federal actions) and section 9 (take). Section 7 consultation requirements apply to Federal actions regardless of whether or not critical habitat is designated for a particular area.

The Service determined whether the benefits of inclusion of critical habitat areas would outweigh the benefits of their exclusion, by using five sequential steps:

Step 1—Identify areas that meet the definition of critical habitat in section 3(5) of the Act and that are considered essential to the conservation of the species. This was accomplished, and the areas needed for conservation were published in the proposed rule to designate critical habitat on January 29, 1993 (58 FR 6578). Justifications for these areas were presented in the Draft Biological Support Document, which was made available to the public on September 15, 1993 (58 FR 48351).

Step 2—Conduct an economic analysis to determine the anticipated economic consequences of designating areas as critical habitat. A draft report on the economic analysis was completed and made available to the public for comment on November 12, 1993 (58 FR 59979).

Step 3—Develop economic criteria or thresholds to help identify those areas that would be significantly affected by the critical habitat designation. Comments were requested from the public to aid in developing the criteria (November 12, 1993; 58 FR 59979).

Step 4—Compile the biological information that should be considered to determine whether excluding an area would result in extinction. Primary consideration was given to information contained in published recovery plans. The Service determined whether exclusion of an area will result in the extinction of a species.

Step 5—Conduct the exclusion process. The Service has evaluated which areas, if any, should be excluded due to economic or other relevant impacts. Prior to this evaluation, economic criteria in the form of thresholds (Step 3) were developed to provide a method by which the severity of economic impacts could be assessed. Those areas that exhibited economic impacts above the thresholds were then examined to determine if the biological threshold of extinction would be exceeded (Step 4) if the specific area in question was dropped from consideration as critical habitat.

Benefits and Costs of Designation

A public sector analysis examined the allocation of scarce resources regarding economic efficiency and distribution or equity (Brookshire et al. 1993, 1994). The efficiency criterion addressed whether designating areas as critical habitat produces greater net benefits than costs. The equity criterion looks at the resulting distribution of gains and losses. The Act requires the Service to protect threatened and endangered species for all citizens, now and in the future. This mandate falls under the national economic efficiency concern, where policy adjustments seek to minimize economic efficiency losses for society while preserving endangered species.

The Service does not have a mandated requirement to conduct an efficiency-based benefit-cost analysis when carrying out its resource protection activities. This is particularly true for species listing activities under the Act, where economic considerations are explicitly prohibited. During critical habitat designation, however, consideration of benefits and costs can occur when "economic and other relevant impacts" are specifically included as part of the process of final determination.

The economic analysis (Brookshire et al. 1994) only addressed market-related benefits and costs. No attempt was made to estimate nonmarket values associated with the preservation of the endangered fishes. However, the Service recognizes that the benefits of preservation are positive. The extant literature addressing the value of wildlife resources documents positive benefits for consumptive and nonconsumptive uses of wildlife species. The legislative history of the Act indicates that

Congress believed that the "worth" or value of a species is incalculable and invaluable. This is supported by the Supreme Court interpretation of the Act in *TVA* v. *Hill*, 437 U.S. 153, 178 (1978). This concept is applicable to the Basin as it represents one of the most distinctive collections of flora and fauna in North America.

The economic analysis and data used during the exclusion process addressed impacts to: river basin or sub-basin by State, each State as a whole, the region, and the Nation. Direct and indirect impacts on employment, wages, and State and Federal revenues from business and personal income taxes also were considered during the exclusion process.

Threshold of Significant Economic Impact

To establish the threshold for significant economic impact, impacts were evaluated in the context of the normal fluctuations of the economy (Brookshire et al. 1994). Over the period 1959–1991, the growth rate of the national economy (measured as percentage change in Gross Domestic Product) varied from −2.2 percent to 6.2 percent. The mean growth rate was 2.85 percent (with a standard deviation (SD) of 2.26 percent). Over the same period, the average unemployment rate was 5.95 percent (SD=1.52 percent). Impacts that lie within this range are within the normal fluctuations of the economy and are able to be absorbed by the economy. A conservative threshold for significant impacts would be a 1 percent SD from the projected baseline. If changes in employment or output due to critical habitat at a State level exceed this threshold, then that area of critical habitat should be considered for economic exclusion.

Various flow and nonflow impacts were evaluated in the economic analysis (Brookshire et al. 1993, 1994). Impacts associated with providing flows for fishes, including reoperation of mainstream dams, constituted the greatest monetary impacts. Flows in one reach may be dependent on the flows from reaches upstream. Therefore, even though a reach may be excluded for economic reasons, those economic impacts may not disappear due to downstream flow requirements of the fish. Thus, the smallest unit examined for economic impact was an individual river except for the mainstem Colorado River, which was by river reach.

Many of the critical habitat reaches were designated for more than one of the endangered fishes. Therefore, some reaches were needed for the eventual recovery of one species, and also needed to prevent extinction of another. The dual nature of many of the designated reaches and other issues made the exclusion process complex.

Conservation and Extinction as Factors in Designating Critical Habitat

The Act defines "conservation" to include the use of all means necessary to bring about the recovery of an endangered or threatened species. Section 7(a)(2) prohibitions against the destruction or adverse modification of critical habitat apply to actions that would impair survival and recovery of a listed species. As a result of the link between critical habitat and recovery, these prohibitions should protect the value of critical habitat until recovery. Survival and recovery, mentioned in the definitions of adverse modification and jeopardy, are conceptually related. The survival of a species may be viewed, in part, as a progression between extinction and recovery of the species. The closer a species is to recovery, the greater the certainty of its continued survival. The terms "survival" and "recovery" differ by the degree of confidence about the ability of a species to persist in nature over a given period.

Critical habitat consists of areas that contain elements that are essential to the conservation of a listed species. Critical habitat identifies areas that should be considered in the conservation effort and provides additional protection to those areas through section 7 consultation. Critical habitat is designated to contribute to a species' conservation; however, not all areas proposed as critical habitat may be necessary to prevent extinction. Consequently, some areas or portions of areas may be excluded due to economic considerations, provided that such exclusions would not result in the extinction of the species.

In its designation of critical habitat for the four Colorado River fishes, the Service has identified habitat required for recovery of each species and delineated reaches that contain habitat features needed for spawning, rearing, feeding, and migration. Species conservation is related to a number of factors, such as the number of individuals, the amount of habitat, the condition of the species and its habitat, the species' reproductive biology, and the genetic composition of the remaining populations. Through its previous efforts (e.g., section 7 consultation, research), the Service also has identified biologically important areas that still support these endangered fish. Additionally, important reaches have been identified in recovery plans for the Colorado squawfish, humpback chub, and bonytail chub. The Recovery Implementation Programs in the Upper Colorado River and San Juan River Basins have also identified essential reaches for these species. Although all areas proposed are important to conservation, those areas currently supporting the largest remaining populations may be key to the long-term survival of these species. Additionally, the physical and ecological relationships between these areas are an important consideration.

Extinction of the four Colorado River fishes would most likely occur as a result of the presence and continued introductions of nonnative fishes, significant changes in the hydrologic cycle, increased fragmentation and channelization of their habitat, and decreased water quality. Although a single action could result in extinction, the cumulative reduction in suitable habitat resulting from many actions also could lead to species extinction. Because these species are long-lived, the specific effects of some impacts are difficult to establish. Therefore, the exclusion analysis focuses not only on specific rivers and/or reaches, but also on their relationship to other reaches in evaluating whether or not extinction would be probable if a reach were excluded. Such factors as: (1) Current population status, (2) habitat quality (e.g., presence of spawning sites, nursery areas, and condition of the habitat), (3) geographical distribution of the populations, (4) genetic variability within the population, and (5) the relationship between critical habitat units were considered.

In order to determine river reaches required to prevent extinction (ensure survival) of these fishes, the Service relied upon available biological information and approved recovery plans. Information relating to the species' biological and ecological needs, such as habitat, reproduction, rearing, and genetics, was used in determining if an area was needed to prevent extinction of the species. Where enough information was available, specific recovery plans presented downlisting and delisting criteria. Downlisting criteria were generally equated to the survival level; delisting criteria were related to the recovery level. Because no recovery plan has been prepared for the razorback sucker, reaches required for its survival (downlisting) and recovery (delisting) may change as a recovery plan is developed by the Service and the Colorado River Fishes Recovery Team.

Exclusion

After considering the economic and other factors that may be pertinent to

any decision to exclude areas from designation as critical habitat, including information provided during the public comment period, the Service determined that no exclusions were justified due to economic and other relevant impacts.

Critical Habitat Designation

Critical habitat for each species is shown by State in Figure 1 and summarized in Table 4. The 100-year flood plain delineates the lateral boundary of the critical habitat for the razorback sucker and Colorado squawfish. This boundary encompasses the productive areas adjacent to the rivers, including the confluence of smaller tributaries and other habitats that provide essential fish habitat when inundated.

Figure 1. Map of combined critical habitat for the four Colorado River endangered fishes.

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TABLE 4.—RIVER KILOMETERS (MILES) OF CRITICAL HABITAT FOR FOUR ENDANGERED COLORADO RIVER FISHES

State	Razorback sucker	Colorado squawfish	Humpback chub	Bonytail chub	Total [1]
Colorado	349	583	95	95	583
	(217)	(362)	(59)	(59)	(362)
Utah	1107	1168	224	224	1172
	(688)	(726)	(139)	(139)	(728)
New Mexico	63	97	.....	.....	97
	(39)	(60)	.....	.....	(60)
Arizona	832	.....	291	.....	832
	(517)	.....	(181)	.....	(517)
AZ/Nevada	209	.....	.....	103	209
	(130)	.....	.....	(64)	(130)
AZ/California	214	.....	.....	80	294
	(133)	.....	.....	(50)	(183)
Basin Total [2]	2776	1848	610	502	3188
	(1724)	(1148)	(379)	(312)	[3] (1980)

[1] Total—Distances include all overlapping critical habitat reaches by State for all four Colorado River endangered fish.
[2] Basin Total—Distances include total extent of critical habitat by species for the entire Basin.
[3] Total Basin Total—Note that the sum of critical habitat by species is greater than actual river distance due to extensive overlap.

Razorback Sucker

The Service is designating 15 reaches of the Colorado River system as critical habitat for the razorback sucker. These reaches total 2,776 km (1,724 mi) as measured along the center line of the river within the subject reaches (Table 4). This represents approximately 49 percent of the historical habitat for the species. In the Upper Basin, critical habitat is designated for portions of the Green, Yampa, Duchesne, Colorado, White, Gunnison, and San Juan Rivers. Portions of the Colorado, Gila, Salt, and Verde Rivers are designated in the Lower Basin. These reaches flow through a variety of landownerships, both public and private. The amount of critical habitat for the razorback sucker by landownership in kilometers of shoreline is presented in Table 5.

TABLE 5.—OWNERSHIP OF SHORELINE IN KILOMETERS (MILES) FOR CRITICAL HABITAT FOR THE ENDANGERED COLORADO RIVER FISHES [1]

Ownership [2]	Razorback sucker	Colorado squawfish	Humpback chub	Bonytail chub
NPS	1,955	900	545	676
	(1,215)	(559)	(338)	(420)
BLM	1,140	1,119	203	114
	(708)	(695)	(126)	(71)

TABLE 5.—OWNERSHIP OF SHORELINE IN KILOMETERS (MILES) FOR CRITICAL HABITAT FOR THE ENDANGERED COLORADO RIVER FISHES [1]—Continued

Ownership [2]	Razorback sucker	Colorado squawfish	Humpback chub	Bonytail chub
USFS	380 (236)	0	0	0 .....
USFWS	159 (99)	35 (22)	0	40 (25)
Tribal	894 (555)	451 (280)	444 (276)	97 (60)
State Lands	63 (39)	79 (49)	1 (<1)	40 (25)
Private	960 (596)	1,112 (691)	27 (17)	37 (23)
Total	5,551 (3,448)	3,696 (2,296)	1,220 (758)	1,005 (624)

[1] The river distances shown in this table were compiled using total shoreline kilometers (assuming 1 kilometer of river centerline has 2 kilometers of shoreline) for each critical habitat reach. There is considerable overlap of critical habitat reaches between species; thus, total miles of designated critical habitat for all four Colorado River endangered fish cannot be obtained from this table.

[2] NPS—National Park Service; BLM—Bureau of Land Management; USFS—U.S. Forest Service; USFWS—U.S. Fish and Wildlife Service.

Colorado Squawfish

The Service designates six reaches of the Colorado River System as critical habitat for the Colorado squawfish. These reaches total 1,848 km (1,148 mi) as measured along the center line of each reach (Table 4). This represents about 29 percent of the historical habitat of this species. Critical habitat is designated in portions of the Colorado, Green, Yampa, White, and San Juan Rivers in the Upper Basin. There is no critical habitat designated for this species in the Lower Basin. The approximate number of shoreline miles of critical habitat by landownership for the Colorado squawfish is presented in Table 5.

Humpback Chub

The Service designates seven reaches of the Colorado River system as critical habitat for the humpback chub. These reaches total 610 km (379 mi) as measured along the center line of the subject reaches (Table 4). This represents approximately 28 percent of the historical habitat of the species. Critical habitat for the humpback chub is designated for portions of the Colorado, Green, and Yampa Rivers in the Upper Basin and the Colorado and Little Colorado Rivers in the Lower Basin. The approximate extent of critical habitat by landownership of shoreline for the humpback chub is presented in Table 5.

Bonytail Chub

The Service is designating seven reaches of the Colorado River system as critical habitat for the bonytail chub. These reaches total 499 km (312 mi) as measured along the center line of the subject reaches (Table 4). This represents approximately 14 percent of the historical habitat of the species. Critical habitat for the bonytail chub is designated for portions of the Colorado, Green, and Yampa Rivers in the Upper Basin and the Colorado River in the Lower Basin. The approximate extent of critical habitat for the bonytail chub is presented by landownership of shoreline in Table 5.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, local and private groups, and individuals. The Act provides for possible land and water acquisitions in cooperation with States and requires that recovery actions be carried out for all listed species. The requirements for Federal agencies with respect to protection of designated critical habitat of a federally listed species and prohibitions against taking are discussed below.

The Recovery Implementation Program for Endangered Fish Species in the Upper Colorado River Basin (RIP) is a cooperative effort to recover the endangered fish in the Upper Basin (Green and Colorado Rivers only) while providing for water development to proceed in a manner compatible with applicable State and Federal laws. The RIP was implemented in January 1988 by a Cooperative Agreement signed by the Governors of Colorado, Utah, and Wyoming; the Secretary of the Interior; and the Administrator of the Western Area Power Administration. The process for conducting section 7 consultations on water projects was outlined in the RIP and further clarified by an October 15, 1993, final agreement on section 7 consultation.

The RIP provides the reasonable and prudent alternative to avoid the likelihood of jeopardy to the continued existence of the endangered fishes due to depletion impacts of new projects, and all existing or past impacts related to historical projects (with the exception of the discharge of pollutants by historical projects). Program participants also intend that the RIP will provide the reasonable and prudent alternative that will avoid the likely destruction or adverse modification of critical habitat currently being designated for the endangered fishes. A Recovery Action Plan (RIPRAP) that identifies specific actions and time frames needed to recover the endangered fishes was developed by the RIP. The RIPRAP will be used by the Service in determining if the RIP is achieving sufficient progress as a reasonable and prudent alternative to jeopardy. The RIP intends to analyze and amend the RIPRAP as appropriate, so that it can serve as the reasonable and prudent alternative to avoid the likely destruction or adverse modification of critical habitat. The Service considers that the RIP has made sufficient progress to serve as a reasonable and prudent alternative to jeopardy for projects that deplete less than 3.7 cubic hectometers (hm^3)(3,000 acre-feet). For projects depleting more than 3.7 hm^3 (3,000 acre-feet), the Service identifies actions in the RIPRAP that must be completed to avoid jeopardy.

As a result of reasonable and prudent alternatives to the Animas-LaPlata Project provided in the Biological

Opinion issued on October 25, 1991 by the Service, the Bureau of Reclamation agreed to fund 7 years of research and to develop a Recovery Implementation Program for the San Juan River. On October 24, 1991, a Memorandum of Understanding was signed by the Service, the Bureau of Reclamation, the Bureau of Indian Affairs, States of Colorado and New Mexico, the Ute Mountain Indian Tribe, the Southern Ute Indian Tribe, and the Jicarilla Apache Indian Tribe to set forth certain agreements and to establish a San Juan Recovery Implementation Program (SJRIP). The SJRIP provides the basis for the recovery of the endangered fishes of the San Juan River.

The 7-year research effort focuses on observing the biological response of endangered fish populations to habitat conditions after the reoperation of Navajo Dam to meet the needs of the Colorado squawfish and razorback sucker. The recovery elements define the major categories of activities that will be conducted to recover endangered fish species and maintain the native fish community in the San Juan River Basin. Intensive studies are being conducted by the SJRIP to determine the relative abundance and distribution of endangered fishes and other native and nonnative fishes. Modification and loss of habitat, fish poisoning, and nonnative fishes have contributed to the decline of the Colorado squawfish and razorback sucker in the San Juan River Basin. Regulating structures, such as Navajo Dam, can be operated to control river flow and temperatures to affect the quantity and quality of habitats in certain river reaches during periods when they are most critical to endangered fish species. After determining appropriate flow needs, the Biology Committee of the SJRIP, with input from the Bureau of Reclamation, will recommend specific flow regimes to the Service. It is anticipated that the water for habitat improvement will be provided by the reoperation of Navajo Dam.

The Bureau of Reclamation has agreed that it will operate Navajo Dam to provide a more natural hydrograph, if the research shows this type of hydrograph is beneficial to recovery of endangered species and the native fish community. If habitat and flow needs are identified that cannot be met by reoperation of Navajo Dam, additional sources of water to meet those needs will be identified on a case-specific basis. The success of the SJRIP is contingent upon the legal protection of water released for habitat flows pursuant to Federal, State, and tribal laws.

To date, 15 years of research and $18 million have been spent in fish stocking and research on these fish species in the Lower Basin. A combined research and management effort continues in the Lower Basin. This effort involves researchers from Arizona State University, Arizona Game and Fish Department, Nevada Department of Wildlife, California Fish and Game Department, Bureau of Reclamation, Bureau of Land Management, and the Service. These groups are currently developing protected grow-out areas in lakes Mohave and Havasu for razorback sucker and bonytail. To date, this effort has shown great potential. Additionally, there was a 10-year effort to restore razorback suckers and Colorado squawfish into the Gila River drainage.

An extensive research program has been initiated as part of the Glen Canyon Environmental Studies (GCES) to determine life history and ecology of the humpback chub in the Grand Canyon. The humpback chub was one of the initial species listed under the Act. In 1978, the Service issued a jeopardy Biological Opinion on the existing operation of Glen Canyon Dam, but needed further research to determine what actions are needed to benefit the listed fish. At that time, limited information existed on the distribution, abundance, life history, and habitat use for the Grand Canyon populations in the Colorado River mainstem and its associated tributaries. The inception of these studies is an outcome of the initial GCES/Phase I effort and Service conservation measures developed as part of long-term recovery effort for the species. The research program involves a coordinated effort among four principal entities (Arizona State University, Arizona Game and Fish Department, Bureau of Reclamation, and the Service), each addressing specific study objectives. This program is part of the short-term experimental research for the Glen Canyon Dam Environmental Impact Statement. A commitment to a long-term research and monitoring program exists and will function as a conduit for the culmination of additional information generated through the endangered species research.

Relationship of Critical Habitat to Other Provisions of the Act

Introduction

The purpose of the Act, as stated in section 2(b), is to provide a means to conserve the ecosystems upon which endangered and threatened species depend, and to provide a program for the conservation of listed species. Section 2(c)(1) of the Act states that "* * * all Federal departments and agencies shall seek to conserve endangered species and threatened species and shall utilize their authorities in furtherance of the purposes of this Act." Conservation requirements of species listed as endangered or threatened under the Act include recovery actions, requirements for Federal protection, and prohibitions against certain practices.

The Act provides for the conservation of listed species through several mechanisms, such as section 5 (land acquisition); section 6 (Federal grants to States, and research); section 7 (requiring Federal agencies to further the purposes of the Act by carrying out conservation programs, and insuring that Federal actions will not likely jeopardize the continued existence of the listed species or result in the destruction or adverse modification of critical habitat); section 9 (prohibition of taking of listed species); and section 10 (permits for scientific purposes or to enhance propagation and survival of listed species and habitat conservation planning on non-Federal lands).

Critical habitat designation is primarily intended to identify the habitat needed for survival and recovery. Such designation is not a management or conservation plan, and designation of critical habitat does not offer specific direction for managing habitat. That type of direction, as well as any change in management priorities, will come through the administration of other parts of the Act (e.g., section 7, section 10 permit process, and recovery planning) and through development of management plans for specific species or areas. However, the designation of critical habitat in an area can result in additional protection for that area through administration of section 7 of the Act.

Recovery Planning

Recovery plans developed under section 4(f) of the Act guide much of the Service's recovery activities and promote conservation and eventual delisting of species. Recovery plans address the steps needed to recover a species throughout its range and provide a mechanism for implementation. Recovery plans provide guidance, which may include population goals, and usually include identification of areas in need of protection or special management. Recovery plans can include management recommendations for areas proposed or designated as critical

habitat. Recovery plans for the Colorado River endangered fishes may be modified to include specific recommendations for managing critical habitat. A recovery plan is not a regulatory document, but a plan may identify recommendations for implementing actions and managing critical habitat on Federal lands, and considerations for management of critical habitat on other land.

In compliance with section 7(a)(1) of the Act, Federal agencies should incorporate recommendations and goals provided within recovery plans for these species into land and water management plans. Biologically sound plans offer opportunities for resolving conflicts between development interests and endangered species conservation and provide a basis for present and future management decisions. Valid and acceptable management prescriptions contained in land and water development plans can help guide the Service and other agencies in managing critical habitat for the Colorado River endangered fishes and other listed and nonlisted species.

Section 7 Consultation

Section 7(a)(2) of the Act applies only to Federal agencies and requires them to insure that activities they authorize, fund, or carry out are not likely to destroy or adversely modify critical habitat. This Federal responsibility accompanies, and is in addition to the requirement in section 7(a)(2) of the Act that Federal agencies insure that their actions are not likely to jeopardize the continued existence of any listed species. Jeopardy is defined in the section 7 regulations (50 CFR 402.02) as any action that would be expected to appreciably reduce the likelihood of survival and recovery of a species in the wild by reducing its numbers, reproduction, or distribution. Destruction or adverse modification of critical habitat is defined at 50 CFR 402.02 as a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. The regulations also state that such alterations include, but are not limited to, alterations destroying or adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical. The requirement to consider potential adverse modification of critical habitat is necessary and in addition to the review necessary to evaluate the likelihood of jeopardy in a section 7 consultation.

As required by 50 CFR 402.14, a Federal agency must consult with the Service if one of its actions may affect either a listed species or its critical habitat. Federal action agencies are responsible for determining whether or not to consult with the Service. The Service will review agencies' determinations on a case-by-case basis and may or may not concur with the agencies' determination of "no effect" or "may affect" for critical habitat, as appropriate. Section 7 consultation is initiated by a Federal agency when its actions may affect critical habitat by impacting any of the primary constituent elements or reduce the potential of critical habitat to develop these elements. The consultation also would take into consideration Federal actions outside of critical habitat that also may impact a critical habitat reach (e.g., water management, water quality, water depletions, and nonnative fish stocking or introductions). Though a Federal action may not destroy or adversely modify critical habitat, it still may affect one or more of the Colorado River endangered fishes and their habitat and could be subject to consultation under section 7 of the Act to determine the likelihood of jeopardy to the species.

A number of Federal entities fund, authorize, or carry out actions that may affect areas the Service has designated as critical habitat. Among these are the Western Area Power Administration, Federal Energy Regulatory Commission, Fish and Wildlife Service, Bureau of Land Management, National Park Service, Bureau of Indian Affairs, Bureau of Mines, Bureau of Reclamation, Forest Service, Corps of Engineers, Army, Air Force, Environmental Protection Agency, Housing and Urban Development, Federal Emergency Management Agency, and Federal Highway Administration.

Basis for Section 7 Analysis

Designation of critical habitat focuses on the primary constituent elements within the defined areas and the contribution of these elements to the species' recovery, based on consideration of the species' biological needs and factors that contribute to survival and recovery. The evaluation of actions that may affect critical habitat for the Colorado River endangered fishes should consider the effects of the action on any of the factors that were the basis for determining the habitat to be critical. These include the primary constituent elements of water, physical habitat, and biological environment, as well as the contribution of the reach and the local sites to recovery. The desired outcome of section 7 compliance should be to avoid further reductions in the capability of the habitat to support Colorado River endangered fishes (e.g., the type of activities that led to listing, such as depletions, predation, competition, fragmentation, and habitat degradation).

For wide-ranging species, such as the Colorado River endangered fishes, where multiple critical habitat reaches are designated, each reach has a local and a rangewide role in contributing to the conservation of the species. The loss of a single piece of habitat may not jeopardize the continued existence of the species, but it may reduce the ability of critical habitat to contribute to recovery. In some cases, the loss of a site containing a primary constituent element could result in local population instability. This could have a detrimental effect on the reach or that portion of the reach where the loss occurred and could preclude recovery or reduce the likelihood of survival of the species. Each critical habitat reach is dependent upon conditions in adjacent reaches, whether or not those reaches were designated critical habitat. Consideration must therefore be given to Federal actions that would take place both within and outside of a critical habitat reach. Degradation of a critical habitat reach, regardless of the source of that degradation, may impact the survival and recovery of the species.

The level of disturbance a particular critical habitat reach could withstand and still fulfill its intended purpose is variable for each species and each area of the Basin. Any proposed activity will need to be reviewed in the context of affected species, habitat condition, and project location. Because of the habitat overlap among these species, it may be difficult to completely separate out the effects of a particular action on any one species.

The designation of seasonally unoccupied habitat to provide for the conservation (recovery) of a listed species adds another dimension to the analysis. Because listed species are not always present in these habitats, it may not be possible to reach a "jeopardy" finding for actions affecting that habitat. However, it may be possible to conclude "destruction or adverse modification" for a species if designated critical habitat is affected and its value for conservation of the species is diminished.

Examples of Proposed Actions

For any final regulation that designates critical habitat, section 4(b)(8) of the Act requires a brief description and evaluation of those activities (public or private) that may

adversely modify such habitat or may be affected by such designation.

Destruction or adverse modification of critical habitat is defined as a direct or indirect alteration that appreciably diminishes the value of critical habitat for both survival and recovery of a listed species. Some activities may disturb or remove the primary constituent elements within designated critical habitat for the Colorado River endangered fishes. These activities may include, among others, actions that would reduce the volume and timing of water, destroy or block off spawning and nursery habitat, prevent recruitment, adversely impact food sources, contaminate the river, or increase predation by and competition with nonnative fish. In contrast, other activities may have no effect on the critical habitat's primary constituent elements. Activities such as recreation (boating, hiking, hunting, etc.), some types of farming, and properly managed livestock grazing may not adversely modify critical habitat.

Areas designated as critical habitat for the Colorado River endangered fishes support a number of existing and proposed commercial and noncommercial activities. Some of the commercial and governmental activities that may destroy or adversely modify critical habitat include construction and operation of hydroelectric facilities, irrigation, flood control, bank stabilization, oil and gas drilling, mining, grazing, stocking or introduction of nonnative fishes, municipal water supplies, and resort facilities. Commercial activities not likely to destroy or adversely modify critical habitat include nonconsumptive activities such as river float trips, guided sport fishing, and excursion boat tours. Noncommercial activities are largely associated with private recreation and are not considered likely to adversely affect critical habitat. Such activities include boating, fishing, and various activities associated with nature appreciation. However, it must be emphasized that section 7 of the Act only applies to Federal actions (projects, permits, loans, etc.) and that each Federal action must be evaluated on a case-by-case basis.

Some activities could be considered a benefit to Colorado River endangered fishes habitat, such as the Colorado River and San Juan River Recovery Implementation Programs and, therefore, would not be expected to destroy or adversely modify critical habitat. Examples of activities that could benefit critical habitat in some cases include protective measures such as instream flow protection, development of backwater or cove habitat that benefits native species, or eradication of nonnative fish. However, these activities should be evaluated on a case-by-case basis.

Federal actions related to fisheries management in general require close evaluation by the Service. The introduction or stocking of nonnative fish may require evaluation under section 7 for both the jeopardy and adverse modification standards and to determine whether it would constitute taking under section 9. Although the significance of predation on eggs, larvae, and juvenile endangered fish species by nonnative fish has not been quantified throughout the Basin, this impact has been documented for many species of endangered fishes in the Basin and is considered a key factor in their decline. Nonnative fishes may have other effects on individual fish and critical habitat through competition, changes in habitat, and incidental mortality.

Endangered fish research and management activities are likely to affect individual fish or improve the quality and usefulness of habitat for the endangered fishes. These types of activities are addressed through the section 10 permit process, which includes a section 7 evaluation to determine the effects of the action.

Reasonable and Prudent Measures

In cases where destruction or adverse modification is indicated (with or without the likelihood of jeopardy), a portion of the economic impacts may result from complying with terms and conditions in the incidental take statement of a Biological Opinion. An incidental take statement is provided in a biological opinion if the Service anticipates incidental loss of individuals of the species as a result of habitat alteration resulting from a Federal action. The incidental take statement outlines the number of individuals and/or amount of habitat the Service anticipates will be lost due to the Federal action. The Service then identifies reasonable and prudent measures necessary to minimize such take and sets forth terms and conditions that the Federal agency and/or applicant must comply with to implement the reasonable and prudent measures. In some cases, the requirements to minimize incidental take (terms and conditions) may be similar to reasonable and prudent alternatives developed under an adverse modification or jeopardy finding.

Reasonable and Prudent Alternatives

If the Service concludes in a biological opinion that an action would likely result in the destruction or adverse modification of critical habitat, the Service is required to provide reasonable and prudent alternatives, if any, to the proposed action in its biological opinion. By definition, reasonable and prudent alternatives allow the intended purpose of the proposed action to go forward while avoiding the conditions that would adversely modify critical habitat. To increase the potential for identifying such alternatives, the Service recommends that the agencies initiate discussions early in the planning process before plans have advanced to the point where alternatives may not be as feasible. If discussions are initiated early, more opportunities to reduce impacts may be available. If an adverse modification was anticipated, examples of possible reasonable and prudent alternatives provided in a biological opinion include those noted in Table 6.

TABLE 6.—EXAMPLES OF POSSIBLE REASONABLE AND PRUDENT ALTERNATIVES

Example Alternatives
Relocate the proposed activity to another location within or outside of critical habitat to avoid destruction or adverse modification of habitat.
Modify the project (physically/operationally) to avoid adverse modification of critical habitat.
Provide offsetting measures to either Colorado River endangered fishes or the critical habitat area by actions such as: A. acquiring water or securing water rights for Colorado River endangered fishes from other sources to offset a proposed depletion; B. implementing water conservation measures so that no net loss of water occurs; C. enhancing constituent element areas so that a net benefit to Colorado River endangered fishes occurs, i.e., acquiring bottom lands and removal or large-scale reductions of nonnative fish within a critical habitat reach; or D. undertaking other recovery actions identified in recovery plans, Recovery Implementation Programs, or other approved management plans or activities.

Some reasonable and prudent alternatives may only require minor modifications to construction and/or operational plans. As an example, a proposed boat ramp may need to be relocated a short distance to avoid impacting a spawning or nursery area. Projects resulting in more significant impacts may require major changes to the original proposal. A large irrigation diversion project, as an example, may be likely to affect most of the constituent elements of a critical habitat reach and

also impact adjacent and downstream reaches. The Service may recommend reduction in the scope of the project, seasonal timing constraints on depletions and operation, and reservoir releases to provide required instream flows.

Expected Impacts of Designation

The Service anticipates that the factors described in this rule and the Draft Biological Support Document will be used as a basis for determining the environmental impacts of various activities on critical habitat. The Service also will use Recovery Action Plans developed within the Recovery Implementation Programs of the Upper Basin and the San Juan River Basin and recovery plans for the razorback sucker (when developed), Colorado squawfish, humpback chub, and bonytail chub during consultation to evaluate actions within a critical habitat reach. The Service also will use new information as it becomes available.

Federal actions proposed in critical habitat reaches may or may not adversely modify critical habitat, depending on the current condition of the area and the degree of impact anticipated from implementation of the project. The potential level of allowable impacts or habitat reduction in critical habitat reaches will be determined on a case-by-case basis during section 7 consultation.

Summary of Public Comment

The Service published the proposed rule to designate critical habitat on January 29, 1993 (58 FR 6578). At that time, the Service requested comments on all aspects of the proposal including the scope of impacts and benefits of the designation. A public comment period was opened from January 29, 1993, to March 30, 1993. On March 5, 1993, the public comment period was extended to April 15, 1993 (58 FR 12573). During this initial 75-day comment period, 686 written or oral comments were received by the Service. During the comment period, the Service held public hearings on the proposed rule at San Bernardino, California, on March 29, 1993; Phoenix, Arizona, on March 30, 1993; and Denver, Colorado, on March 31, 1993. In addition to the announcement of the public hearings in the **Federal Register** (58 FR 12573), notices were published in the following newspapers: Wyoming—Casper Star-Tribune; Colorado—Denver Post, Rocky Mountain News, Northwest Colorado Press, Grand Junction Daily Sentinel, Durango Herald; Utah—Salt Lake Tribune, Deseret News, Ogden Standard-Examiner, Sun Advocate, Moab Times-Independent, Vernal Express, Southern Utah News; Arizona—The Arizona Republic, Today's Daily News, Eastern Arizona Courier, Arizona Daily Sun, Lake Powell Chronicle, Yuma Daily Sun; New Mexico—Farmington Times, Santa Fe New Mexican, Albuquerque Journal; Nevada—Las Vegas Review Journal; California—San Diego Union Tribune and San Bernardino Sun.

On September 15, 1993, the Service released the Draft Biological Support Document to the public for comment (58 FR 48351). The comment period on the proposed designation was reopened. On November 12, 1993, the Service published a notice announcing the availability of the Economic Analysis, the Overview Document, the closing date for public comment, a request for information to be used during the exclusion process and development of economic exclusion criteria, and the dates and locations of additional public hearings (58 FR 59979). The public comment period on the proposed rule, the Draft Biological Support Document, and the Economic Analysis ended on January 11, 1994. Public hearings were held on: November 29, 1993, in Salt Lake City, Utah, and Las Vegas, Nevada; November 30, 1993, in Cheyenne, Wyoming, and Globe, Arizona; December 1, 1993, in Grand Junction, Colorado, and Flagstaff, Arizona; December 2, 1993, in Farmington, New Mexico; and December 3, 1993, in San Bernardino, California. In addition to the announcement in the **Federal Register** and notices in newspapers, a letter was sent to all interested parties announcing the dates of the public hearings and January 11, 1994, as the closing date for public comment. During this comment period 399 written or oral comments were received. Issues presented by the public during the comment periods are discussed below.

Economic and biological information received during the comment periods was reviewed and considered. In cases where the information or data provided was determined to be valid, changes were made in the economic analysis or to the boundaries of the critical habitat designation. Significant economic data received from the public were incorporated into the economic models prior to the exclusion process. Many economic comments received were used to improve the accuracy and readability of the Economic Analysis.

Of the 1,085 written and oral statements received during the public comment periods, 599 were form letters that provided little additional information on the proposed designation. Fifty respondents stated their support for the critical habitat designation, 947 expressed their opposition, and the remainder were neutral. A summary of the issues brought forth from these comments and the Service's response is provided below.

Administrative Issues

Issue 1: Numerous respondents stated that the comment period for the Draft Biological Support Document, Overview Document, and Economic Analysis was not of sufficient length to allow adequate review; respondents suggested 120 days or more for adequate review. Respondents suggested that public hearings should be held in more locations including all areas potentially impacted by the proposed designation.

Service Response: On any proposal to designate critical habitat, the Service is required to provide a minimum comment period of 60 days. When a comment period is reopened, it is generally for up to 30 days. The Service opened a 60-day comment period on the proposed rule to designate critical habitat for the four endangered Colorado River fishes. The comment period was extended for an additional 15 days.

Because the Draft Biological Support Document and Economic Analysis were not complete at the time of the proposed rule, the Service reopened the comment period for an additional 60 days rather than the more usual 30 days. Therefore, in total the comment period was 192 days. A longer comment period was not possible because of the court order to publish a final rule by March 15, 1994.

Three public hearings were held after publication of the proposed rule, and an additional eight public hearings were held to receive comment on the proposal including the economic analysis; one in each of the seven Basin States and an additional hearing in Arizona. Any additional hearings would not have met fiscal and time constraints of the critical habitat designation.

Issue 2: A few respondents suggested that the Service publish a revised proposed rule to allow for additional public comment before making a final decision or that the Service should prepare a draft final rule and make that available to the public before finalizing the critical habitat designation.

Service Response: The standard rulemaking process requires preparation of a proposed rule followed by a final rule. Publishing a revised proposed rule or a draft final rule is not required unless revisions are necessary that will result in an increased regulatory burden in the revised rule. Furthermore, on November 19, 1993, the Court directed the Service not to publish an interim

final rule. Publishing the Draft Biological Support Document and Economic Analysis for public comment provided additional opportunities for public involvement. All comments received on the Draft Biological Support Document and the Economic Analysis were analyzed, considered, and where appropriate those comments were considered during the exclusion process and included in the final rule.

Issue 3: Some respondents questioned whether critical habitat should have been proposed without first completing the biological and economic analyses and stated that it was difficult to comment on the proposed rule until these documents were made available to the public.

Service Response: Designation of critical habitat normally would have allowed preparation of the Draft Biological Support Document and Economic Analysis prior to publishing the proposed rule. The Service argued in court that the biological support information and economic analysis should be completed for release with the proposed rule. However, a court order compelled the Service to focus exclusively on development of the proposed rule. The Service recognized that the sequence would make substantive comments on the proposed rule difficult to prepare. For this reason the Service provided an Overview, a Draft Biological Support Document, and an Economic Analysis for public review and comment prior to preparation of a final rule. The Service considered all public comments on these documents and the proposed rule during the exclusion process and final rule preparation.

Issue 4: Many respondents stated that the Service should prepare an Environmental Impact Statement (EIS) and comply with the National Environmental Policy Act (NEPA) because the designation would have significant impact on the human environment.

Service Response: The United States District Court for the District of Oregon in *Douglas County* v. *Manuel Lujan* (Civil No. 91–6423–HO) ruled that critical habitat designations should be analyzed under NEPA. However, such decision is stayed pending appeal to the Ninth Circuit.

The 1981 Sixth Circuit Court decision in *Pacific Legal Foundation* v. *Andrus* (657 F.2d 829) held that an EIS is not required for listings under the Act. The decision noted that preparing an EIS on a listing action would not further the goals of NEPA or the Act. The Service believes that the reasoning behind this decision is sound and that preparing an EIS on the proposed critical habitat designation would not further the goals of NEPA or the Act. The NEPA documentation should be done on management plans and activities that involve critical habitat; section 7 consultation is conducted on those actions. Additionally, the Service believes that the Draft Biological Support Document and Economic Analysis provide the public and decision makers the same information that is generally supplied in a NEPA document (environmental impact statement or environmental assessment).

Issue 5: Many respondents were concerned that critical habitat designation would result in "takings" of water rights and other private property.

Service Response: The Service prepared a "Takings Implications Assessment" under provisions of Executive Order 12630 to address this issue. The Service has concluded that the promulgation of the rule designating critical habitat will not take water rights or other private property. Although there may be cases where land or water use may be conditioned, it is unlikely that use would be prohibited. Moreover, the Service does not anticipate any takings implications associated with other Federal agency actions resulting from the designation and if there were to be any, it is unlikely that they would be significant.

Issue 6: Tribal representatives stated that tribal lands are sovereign and therefore should not be designated.

Service Response: The Endangered Species Act of 1973, as amended, applies to any entity or individual subject to the jurisdiction of the United States. No area or entity within the boundaries of the United States is exempt from the Act. The Act requires that the Service base designation of critical habitat on the best scientific information, taking into consideration economic and other relevant impacts, and that areas be excluded only if the benefits of exclusion outweigh the benefits of inclusion. The Act does not provide for categorical exemption of tribal lands from critical habitat designation, or other provisions, when scientific studies indicate the lands contain important habitat. Section 9 prohibits take of listed fish or wildlife on private and tribal lands, including destruction of habitat that results in the take of such wildlife. Section 7 applies to any Federal agency that authorizes, funds or carries out actions that are likely to jeopardize the continued existence of a species or destroy or adversely modify critical habitat. This includes Federal actions involving tribal lands that may affect critical habitat.

Issue 7: Representatives of tribal governments stated that designating critical habitat on tribal lands violates the Federal Government's trust responsibility.

Service Response: As stated above, the Endangered Species Act of 1973, as amended, applies to all areas of the United States, including tribal lands. The Service does not agree that inclusion of tribal lands violates the Federal Government's trust responsibility. Mere designation of critical habitat does not affect tribal lands unless a Federal action is likely to destroy or adversely modify critical habitat. The requirement to consider adverse modification of critical habitat is an incremental section 7 consideration above and beyond review to evaluate jeopardy and incidental take of the species. The Service will work with tribes to develop reasonable and prudent alternatives for any adverse modification finding and to live up to the Federal Government's trust responsibility and to maintain compliance with the Act.

Issue 8: Several respondents stated that critical habitat should not be designated until a recovery plan is completed for the razorback sucker.

Service Response: The Act requires that critical habitat be designated concurrently with a species' listing or within 2 years of the proposal to list the species. Only if the Service determines that identification of critical habitat is "not prudent" (i.e., will not be of net benefit to the species) is designation not required by the Act. The Service has determined that critical habitat for these species is determinable and that designation is prudent. The Service proposed listing of the razorback sucker on May 22, 1990 (55 FR 21154); therefore, the designation of critical habitat for this species should have been completed by May 22, 1992. The Act also requires the Service to prepare a recovery plan for any listed species likely to benefit from one; although no timeframe is mandated, Service policy provides that such plans shall be completed within 30 months following listing. Therefore, the timeframes imposed by the Act usually necessitate the designation of critical habitat before a recovery plan can be approved. Finally, the Court has ordered designation by March 15, 1994.

Issue 9: A few respondents suggested that critical habitat should only have been designated for the razorback sucker and not for all four species at the same time.

Service Response: The Service was ordered by the Court to designate critical habitat for the razorback sucker

with no mention of the other three endangered Colorado River fish. However, because the intent of the Act is "* * * to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved * * *," the Service also decided to propose critical habitat for the Colorado squawfish, humpback chub, and bonytail chub. These fishes coexist in the Basin and much of their habitats overlap. However, for species that do not have a requirement to designate critical habitat, the Service may designate critical habitat at any time. The designation of critical habitat for four species in a single rule is more cost- and time-effective than designating critical habitat separately for each species.

Issue 10: The public believed that they should be more involved in the decision process and suggested that workgroups be established to designate critical habitat that involved affected groups.

Service Response: Through comments provided on the proposed rule, Draft Biological Support Document, and Economic Analysis, the public provided information considered by the Service in the decision process. The Service, acting through its economic contractors, obtained additional information from affected groups needed to complete the Economic Analysis. The process of asking for comments and holding hearings is the Service's standard procedure for involving the public in decision making regarding listing of species and designation of critical habitat.

Issue 11: Various groups involved in recovery efforts for the four fishes asked how critical habitat will relate to existing RIP's.

Service Response: Critical habitat is an inventory of habitat needed for survival and recovery and not a plan providing goals or guidance toward achieving recovery. The Recovery Implementation Programs for the Colorado and San Juan Rivers (RIP's) have, as their goal, recovery of these four fish species. Therefore, the designation of critical habitat is not in conflict with the stated goal of the RIP's. It is the intent of the Service that recovery actions under the auspices of the RIP's will serve as reasonable and prudent alternatives to adverse modification.

Issue 12: A few respondents believed that the designation included so much area that it would not be manageable.

Service Response: The Service's designation includes many miles of the Basin's major rivers covering the areas needed for the survival and recovery of the species involved. Extensive areas are required to meet all the life history requirements of these four fishes.

Issue 13: A few respondents stated that critical habitat designation is not "prudent and/or determinable."

Service Response: On October 27, 1992, the Court ruled that the Service had violated the Act in failing to designate critical habitat when the razorback sucker was listed. The Court ordered the Service to have a proposed rule designating critical habitat for the razorback sucker published by January 25, 1993, using presently available information and to have a more complete final rule published at the earliest time permitted by the Act and its regulations.

The language in the Act and Service regulations at 50 CFR 424.12 for determining prudency indicate that unless the designation will not be of net benefit to the species, it is prudent to designate critical habitat. If the Service finds that critical habitat is not determinable at the time, then it must collect the information needed to determine it and complete designation within 2 years of the proposed listing. The Service has determined that designation in this situation is both prudent and determinable.

Issue 14: Many respondents questioned the effect of critical habitat on existing water laws, compacts (including compact entitlements), treaties, etc., and indicated that the Service had ignored the "Law of the River."

Service Response: Critical habitat designation for the four fishes does not modify or nullify any existing State water law, compact agreement, or treaty. It is the Service's opinion that the Act, as well as other Federal statutes, are part of what is commonly referred to as the "Law of the River". Impacts to water development opportunities within any State are adequately addressed in the Economic Analysis.

It is the intent of the Service to fully consider State water law, interstate compact agreements, and treaties in protecting and recovering the four endangered fishes. As an example, the Service has worked to establish and to support the Upper Colorado River and San Juan River Recovery Implementation Programs, whose participants have committed to recover the four endangered fish consistent with State water laws and other agreements.

Issue 15: A few respondents believe that the economic impacts of listing the Colorado River fishes as endangered should be accounted for in the economic analysis as impacts of designating critical habitat.

Service Response: The listing of a threatened or endangered species is considered a different action than determination of critical habitat. At the time of listing, the Service considered biological factors in determining to list the four species as endangered. Regarding critical habitat, section 4(b)(2) of the Act places requirements on the Secretary to consider the economic impact and any other relevant impact of specifying any particular area as critical habitat. Economic impacts that result from other requirements of the Act that are distinct from critical habitat designation are not required to be considered during the economic analysis for critical habitat.

Issue 16: Some respondents were concerned the Service did not seek adequate consultation with affected groups.

Service Response: The Service provided all interested groups as much time to comment on the proposed designation as Court orders allowed. The timeframes required that existing information be used to develop the economic impact model. Economic information has been obtained from existing sources and also was requested at the time of publication of the proposed rule, Draft Biological Support Document, and the Economic Analysis.

Issue 17: Some individuals believed that private property should not be included in the designation.

Service Response: The Endangered Species Act applies to all areas within the United States and contains no biological or legal justification for the categorical exclusion of private lands from critical habitat designation. The Service designated critical habitat based on biological information regarding whether or not an area contains the primary constituent elements for critical habitat for the four fishes, after taking into account the economic costs associated with the critical habitat designation. Critical habitat designation only impacts private property if there is an action by a Federal agency (permit, funding or other action) that is likely to destroy or adversely modify critical habitat. The requirement to consider adverse modification of critical habitat is an incremental section 7 consideration above and beyond section 7 review to evaluate jeopardy and incidental take of the species.

Issue 18: A few agencies were concerned that critical habitat designation will increase administration/implementation costs of doing section 7 consultation.

Service Response: Section 7 consultation is already being done on all Federal projects and other activities in

river reaches proposed for designation as critical habitat, because all reaches are occupied by the endangered fishes. Many of the effects of designation on the physical and biological features of the habitat are already considered in the analysis of effects of the action to determine if the project is likely to jeopardize the continued existence of the species. For most projects, the additional analysis required to determine destruction or adverse modification of critical habitat would be small and would not significantly increase existing workloads.

Issue 19: Several respondents stated that the Service was in violation of the Endangered Species Act (Act) for designating critical habitat more than two years after species, and the Federal Land Policy Management Act (FLMA) for failure to comply with required procedures in implementing a major management action.

Service Response: On October 27, 1992, the Court ruled that the Service was in violation of the Act because critical habitat had not been designated concurrently with the listing of the razorback sucker. This designation of critical habitat for the Colorado River endangered fishes brings the Service into full compliance with the requirements of the Act. In addition, the Service has followed procedural requirements for the designation. The Act does not stipulate that critical habitat cannot be designated after the initial two year period has passed.

Designation of critical habitat is not a management action under the FLPMA, but an action required by section 4 the Act. Actions authorized, funded or carried out by Federal agencies must undergo section 7 consultation if they may affect a listed species or critical habitat. The Service will determine if such actions are likely to jeopardize the continued existence of these four endangered fishes or destroy or adversely modify their critical habitat. Plans developed under FLPMA would be subject to section 7 consultation if it is determined that the action may affect the endangered fishes or their habitat. Because the designation of critical habitat does not by itself create a management plan or automatically exclude certain activities, FLPMA does not apply to designation.

Issue 20: One respondent believed that providing a comment period after the Draft Biological Support Document/ Economic Analysis was made available did not allow for meaningful public comment on the rule.

Service Response: While the Service would have preferred that the Draft Biological Support Document and Economic Analysis be available to the public at the time the proposed rule was published, that was not possible because of the Court's order. Although not released concurrently with the proposed rule, the two documents were written to support it, and comments were requested on these documents and considered in the exclusion process and in preparation of the final rule.

Issue 21: Several letters requested that the Service provide for public comment on the balancing/exclusion process, including holding additional public hearings.

Service Response: The exclusion process is conducted immediately prior to preparing a final rule and does not provide for any additional public input. All available information is used in the exclusion process. This includes information obtained during the public comment period. Additional information supplied during the public comment period could change the economic costs to certain areas or provide additional biological information as to the significance of an area to the species. Information relating to the Exclusion Process was provided in the "Overview of the Critical Habitat Designation for the Colorado River Endangered Fish: Draft" published November 1993 (Fish and Wildlife Service, Salt Lake City) and made available to the public (58 FR 59979). That document stated that "* * * information and comments are welcome on the overall exclusion process, recommendations on economic criteria for use in the exclusion determination, any other benefits associated with exclusion, benefits of including proposed areas as critical habitat, and information on which areas, if excluded, would result in the extinction of any of the four endangered fishes."

Issue 22: A few respondents stated that there are no economic impacts from listing; therefore, all impacts associated with having endangered fish in the Basin should be attributed to critical habitat.

Service Response: Once a species is listed as endangered or threatened, protections under sections 7 and 9 of the Act come into force. Section 7 protections are based on the provisions in the Act that require all Federal agencies to insure that their actions do not jeopardize the continued existence of listed species. During formal consultation under the Act, reasonable and prudent alternatives contained in biological opinions require agencies to insure they do not violate the jeopardy standard. Also, implementation of reasonable and prudent alternatives in biological opinions may require additional costs. The reasonable and prudent measures and terms and conditions covering incidental take included in the biological opinion also may require the agency incur costs. The Act also provides direction for all Federal agencies to use their authorities to seek to recover threatened and endangered species in section 7(a)(1). Providing for recovery actions also incurs costs. These costs are all associated with listing of a species and are not critical habitat costs.

Issue 23: One letter stated a concern that the delay in designating critical habitat has harmed the endangered fishes.

Service Response: The Service does not believe that delay in designating critical habitat has contributed to the decline of any of these four fish species. All four fishes enjoy the protection of the Act by virtue of their listing and, in accordance with section 7(a)(4), publishing of the proposed critical habitat rule required Federal agencies and the Service to confer on potential impacts of any Federal action upon proposed critical habitat. Additionally, prior to the designation of critical habitat, Federal actions that may affect the endangered fish required review for possible jeopardy to the species under section 7 of the Act, which reflect to large degree, if not completely, the same issues presented by adverse modification of critical habitat.

Issue 24: Several respondents indicated that the Service should set recovery goals based on numbers of fish so that it is evident when recovery is achieved.

Service Response: Critical habitat designation is not a management or recovery plan. Critical habitat serves to identify those areas where conservation efforts should be concentrated but does not dictate what those efforts should be, or set goals to measure the success of such efforts.

Recovery goals are appropriately contained in recovery plans. Recovery plans generally identify specific actions needed for the conservation of the species. Criteria for downlisting or delisting contained in recovery plans function as goals to be met to achieve species conservation. In the development of recovery plans, species experts determine the level of specificity of these goals, based on the status of the species and its biology. Goals based on specific numbers of individuals are only set if the biology of the species warrant it and in cases where reliable population estimates can be made.

Biological Comments

Issue 25: Some respondents indicated that little or no historic information exists that these fish species were ever found in some areas proposed for designation. Some believed that razorback suckers were not native to Arizona's interior rivers but were introduced there.

Service Response: The Service selected river reaches for this designation that are part of the historical range of these species. Historical or recent records regarding the existence and/or presence of these fish exist for almost all of these areas. For those few that do not have a historical or recent record, information from species experts was used, in addition to examination of nearest known locations and of the predevelopment river system to determine if the species was likely to have been present. Historical records indicate that Arizona's interior rivers were inhabited by the razorback sucker, but razorback suckers were extirpated by the 1960's. Efforts to reintroduce razorback suckers in these areas continue. Convincing evidence was presented during the comment period that some areas proposed for designation were outside of historical range of the subject species. This resulted in a change in boundaries as discussed elsewhere in this final rule.

Issue 26: Many respondents were concerned that the razorback sucker is found in some river reaches only because of stocking (reintroduction) programs and that these programs may not have been successful.

Service Response: Natural populations of the razorback sucker were extirpated from historical habitats in the Gila, Salt, and Verde Rivers by the 1960's. During the late 1970's and into the 1980's, efforts were made to reestablish these populations using hatchery reared fish. These efforts have not been as successful as hoped, but the Service believes that some of the introduced fish have survived in these systems where the razorback historically was a native fish.

Issue 27: A few individuals believed that these species should be allowed to go extinct because they cannot adapt to changes in the river systems.

Service Response: The Act provides the means to conserve the ecosystems upon which endangered species and threatened species depend. In section 2(a), the Act finds that wildlife and plant species have intrinsic values (aesthetic, ecological, educational, historical, recreational, and scientific values) that are worth preserving for the benefit of all citizens. The Act charges Federal agencies with insuring that their actions do not jeopardize the continued existence of the species. To fulfill that responsibility, Federal actions that affect these fish must provide for the habitat and biological needs of the species. Allowing a species to go extinct because it has not adapted to rapid habitat changes caused by human development is not permissible under the Act.

Issue 28: Many respondents commented that the Service needs more biological data to determine critical habitat and therefore no areas should be designated.

Service Response: The Act specifies that "The Secretary shall designate critical habitat * * * on the basis of the best scientific data available * * *." The Service has determined that the quantity and quality of existing biological data for these species is adequate for designation of critical habitat. These fishes have been the subject of intense study for over 10 years and a significant amount of information has been collected. The Service is confident that the best available commercial and scientific data has been used as required by the Act and that data is more than adequate to determine critical habitat.

Issue 29: Numerous respondents stated that the designation of critical habitat would not benefit these species.

Service Response: Designation of critical habitat provides an avenue to recognize and inventory areas important for the survival and recovery of a species. It also provides additional protection under section 7 consultations, especially for those areas not continuously occupied by individuals of the species, or from the effects of Federal actions upstream of the critical habitat.

Issue 30: Several respondents stated that all habitat in the Basin has been degraded and therefore should not be designated as critical habitat. Degradation may include seasonal drying of the river or portions thereof, changes to temperature and silt/sediment load, changes to the historical hydrograph, construction of dams and reservoirs, and introduction of nonnative fishes.

Service Response: The Service agrees that there are no remaining pristine river systems in the Basin to designate as critical habitat. However, while physical changes to the habitat have occurred, the areas proposed for designation maintain or have the potential to continue to support populations of these species. The four Colorado River endangered fishes species are adaptable to many physical conditions, and their survival in modified habitats such as reservoirs is an example. Furthermore, management actions to restore areas of physical habitat also are possible, so degradation may not be permanent.

Issue 31: Numerous respondents stated that nonnative fish species have adversely affected the endangered species, that the Service was primarily responsible for their introduction, and that this effect is more important to the survival of these species than changes to physical habitat. These respondents maintained that the presence of nonnative fish species in an area should preclude that area from designation as critical habitat.

Service Response: The Service recognizes and is concerned about the problems with and implications of the presence of nonnative fish species in the Basin. There are no river systems in the Basin that do not have established populations of nonnative fish species. In areas with more natural habitat conditions, the native fish are better able to compete with nonnatives. Over time, as habitat is restored, management actions to provide for recruitment of native fish to local populations can be taken to eliminate or reduce the effects of nonnative fish. The Service has and must consider the impacts of stocking nonnative fish prior to doing so or funding such actions. In the Upper Colorado River Basin, the Service is working with State agencies and others to protect these endangered fishes by developing a stocking policy for nonnative fishes.

Issue 32: Respondents indicated that additional areas should be included in the designation. Additions were suggested for proposed reaches and to rivers currently not included in designation.

Service Response: The Administrative Procedure Act requires Federal agencies to provide appropriate notification of proposed actions prior to making final determinations. Therefore, the Service cannot adopt a final rule that is significantly more restrictive than the proposed rule without first offering the public an opportunity to comment on the differences. Notice and public comment may only be waived in special cases, such as emergencies or in instances where a proposed amendment makes only minor technical changes in a rule. Some of these additional areas may warrant designation, and the Service will consider designating them at a later date through the rulemaking process with proper notice and comment. These areas include the Little Colorado River up to Blue Springs for humpback chub, additional areas for

humpback chub in the Grand Canyon, the Lower Colorado River for Colorado squawfish, and the Duchesne River up to the confluence with the Uintah River for razorback sucker and Colorado squawfish.

Issue 33: Many respondents questioned the need to designate flood plain areas. Reasons provided include: the river is too regulated to allow floods; agricultural, mining, oil and gas, residential, transportation facilities, and municipal development has occurred; and there will be considerable economic impact. They stated that inclusion of flood plain is not biologically supportable. Others recommended alternate flood plain elevations.

Service Response: Large river systems are composed of the mainstream channels and adjacent habitats that are inundated during the higher water levels that are usually associated with spring flows. These seasonally flooded habitats are major contributors to the natural productivity of the river system by providing nutrient inputs and making terrestrial food sources available to aquatic organisms. The extent of flooded wetlands in the Colorado River has been reduced by the construction and operation of water resource development projects. The remaining flood plain areas have great importance for recovery of endangered fish.

Recent studies in the Colorado River system have shown that the life histories and welfare of native riverine fishes are linked with the maintenance of a natural or historical flow regimen (i.e., a hydrological pattern of high spring and low autumn-winter flows that vary in magnitude and duration, depending on annual precipitation patterns and runoff from snowmelt). Ichthyologists have predicted that stream regulation that results in loss of flooding will result in extirpation of native fish species in the Colorado River system.

Inundated flood plains (bottom land habitats) are important for razorback sucker, Colorado squawfish, and perhaps the bonytail and humpback chubs. Wooded bottom lands, side and secondary channels, oxbow lakes, and flood plain wetlands provide nutrients, food, cover, and other features necessary for various life stages of these fish. In order to delineate such areas in designating critical habitat, the Service used the 100-year flood elevation (100-year flood plain). In no way is this determination meant to include all land within the 100-year flood plain as critical habitat nor does it imply a specific frequency of flooding will be required as part of the rule. Only those areas that provide one or more of the constituent elements can be considered for inclusion as critical habitat. Areas within the 100-year flood plain that have been previously developed are not likely to provide constituent elements when flooded.

Issue 34: Several respondents believed that the four fish species do not have enough in common biologically (habitat use, life history, etc.) to be included in this single designation. It will be too difficult to manage all four fish together.

Service Response: The historical ranges of the four species overlap. While the specific habitat components required by each species may not be identical, historical conditions created a variety of acceptable habitats within a reach of the river. This variety of habitats enabled more than one of the four species to use the area. Because the fish naturally coexisted together over much of their ranges, management efforts to restore habitats will likely provide the diversity of habitat components needed to support these species without having to provide discrete and separate management programs.

Issue 35: Many respondents stated that the area proposed for designation was too large.

Service Response: The size of the critical habitat areas is required to ensure that the life history requirements for species can be met. Larval drift, migratory behavior, and the need to maintain genetic diversity within species necessitates large reaches of river be designated. The Draft Biological Support Document provided life history information that discusses in detail those aspects that influence the amount of habitat required for survival and recovery. The designation meets the intent of the Act in not designating the entire historic ranges of these species.

Issue 36: Several respondents maintained that management of these areas should be the responsibility of the land owning agency, tribal governments, or private property owners, and that other laws provide for the management of wildlife and fish, making designation of critical habitat unnecessary.

Service Response: Federal agencies are responsible under the Act to insure that their actions do not jeopardize the continued existence of or adversely modify or destroy the critical habitat of a listed species. They are required to consider the presence of these species in their management. No other Federal or State law provides this level of protection for these resources. Non-Federal entities (States, tribes, or individuals) are not bound to consider critical habitat unless they are receiving Federal funding or permits to undertake a management action on their lands. In that case, the Federal agency's responsibility is invoked.

Issue 37: Some letters indicated that the selection of boundaries appeared related to landmarks rather than strictly for biological reasons.

Service Response: Exact reach endpoints and/or boundaries were indeed chosen for landmarks recognizable to an on-the-ground observer. The Service believes that it is important that the boundaries of critical habitat be as evident as possible. While each reach may have been adjusted in a minor way to landmarks at the upper and lower termini, the biological basis for reach selection was not compromised.

Issue 38: A few respondents indicated that the designation of critical habitat will improve water quality

Service Response: Maintaining the flows, habitat, and chemical parameters required by these fish species may have an influence on the changes in water quality that can be allowed within the critical habitat area. It is not certain how much, if any, change to existing water quality would result.

Issue 39: Some respondents asked questions regarding the designation of reservoirs and regarding full pool elevation.

Service Response: Data indicates that adult razorback suckers and bonytail chubs can survive in reservoirs. Large populations of these fish can be maintained in reservoirs, allowing for maintenance of genetic variability and providing stock for reintroduction and research. The full pool level in a reservoir is defined as the water surface elevation at full capacity. This does not mean that reservoirs should be maintained at full pool elevations, but that habitat is protected regardless of reservoir pool elevation.

Issue 40: Some respondents believed that the flow requirements for fish used in the economic analysis had an inadequate biological base.

Service Response: The best available commercial and scientific data were used in developing the flow scenarios used in the economic analysis. Flows for several river reaches have been developed by the Service as part of project reviews or RIP activities. These flow recommendations have been published by the Service in reports or biological opinions. For those river reaches with no published flow recommendation, the Service developed flow scenarios using the best available hydrological and biological information.

Issue 41: Several respondents believed the Service did not address the

role of the Colorado River native fish eradication programs on listed fish in the San Juan and Green Rivers.

Service Response: The Draft Biological Support Document contains a section that describes State and Federal fish removal projects on the San Juan and Green Rivers These projects were an attempt to temporarily remove native and nonnative fishes from new reservoir storage pools prior to sportfish stocking. These projects were not expected to permanently eradicate those species nor were they intended to remove those species from entire river systems. These projects probably had little net effect on listed species.

Issue 42: Two respondents indicated that the Upper Basin Recovery Implementation Program was not a substitute for designation of critical habitat.

Service Response: The RIP is not a substitute for the designation of critical habitat; however, the ultimate goal of both the RIP and the designation is the recovery (delisting) of these endangered fish. It is the intent of the Service to analyze and amend the section 7 Agreement and Recovery Implementation Program Recovery Action Plan of the RIP, as needed, in order for it to be a reasonable and prudent alternative for the destruction or adverse modification of critical habitat for all activities addressed by the RIP.

Issue 43: Some respondents indicated that the additional selection criteria for razorback sucker were too broad.

Service Response: The additional criteria used to aid the Service in selecting areas for proposal as critical habitat for the razorback sucker were broad to account for the various habitat conditions, geographic areas, and life history requirements throughout the species' range. The species has been shown to use a variety of habitats depending on geographic location and other factors such as nonnative fish interactions that affect their habitat. Given the wide variety of habitats used by various life stages of razorback sucker, the Service does not believe the additional selection criteria were too broad.

Issue 44: One respondent indicated that the final rule should include specified flows as constituent elements.

Service Response: The Service does not believe it would be appropriate to have specific flows included as constituent elements because: (1) Flow recommendations based upon site- or river-specific research are unavailable for most critical habitat areas, and (2) even though flow recommendations could be made for some critical habitat areas, these flows must be evaluated and perhaps adjusted in the future. Including specific flows as constituent elements would require the rulemaking process be followed to make changes in recommended flows as research became available. This would create administrative delays to respond to fishery research recommendations. The flows used in Brookshire et al. (1993) were developed solely for use in the economic analysis. In reviewing the impacts of future Federal actions on critical habitat, the Service will use the best scientific and commercial information available at that time, as required by the Act.

Issue 45: Several respondents were concerned that the Service intended to poison all the rivers to remove nonnative fish and that the poison would harm people, animals, plants, and the soil. They also indicated their displeasure concerning the loss of sportfish to recover the endangered fish.

Service Response: As stated previously, the designation of critical habitat does not require any particular management action or actions to occur. Critical habitat serves to identify and inventory those areas where conservation activities should occur. In the development of any specific plan to implement conservation actions in a particular critical habitat reach, the agency involved is required to follow all Federal and State laws and regulations prior to implementing the action.

The Service has identified the introduction of nonnative fish species into the Basin as a significant cause of the decline of native fish species. It is likely that the implementation of conservation actions may result in proposals to reduce the numbers of nonnative fish in a particular area. Techniques to reduce nonnative fish numbers include netting, trapping, electrofishing, liberalization of creel limits and equipment restrictions, physical habitat alterations or restoration, as well as the use of toxicants.

The Service, or any other agency, is required to follow Federal and State laws and regulations in order to use fish toxicants. These laws and regulations are in place to protect nontarget organisms (including people, animals, plants, and soils) from adverse effects of the toxicant. Fish toxicants in use today have been used safely in rivers, ponds, and reservoirs for many years.

Issue 46: A few respondents stated that unoccupied areas should not be designated as critical habitat, but designated experimental nonessential.

Service Response: The Service did not include any unoccupied habitat in this designation of critical habitat. All areas designated have recently documented occurrences of these fish and/or are treated as occupied habitat in section 7 consultations. There are two experimental nonessential populations for the Colorado squawfish in the Salt and Verde Rivers in Arizona. It is hoped that the species can be reestablished in Arizona through work under this designation. Protection of the fishes and their habitat is greater under section 7 of the Act compared with those provided by the experimental nonessential population classification, which is intended to provide management flexibility.

Issue 47: Several respondents questioned why the San Juan River critical habitat for the razorback sucker ended at the Hogback Diversion and extended to Farmington, New Mexico, for the Colorado squawfish.

Service Response: Biological information on the razorback sucker indicates that this species has an affinity for low velocity habitats such as backwaters and secondary channels. The geomorphology of the San Juan River below the Hogback Diversion provides these types of habitats. Upstream of the Hogback Diversion, the river channel is more restricted with faster-flowing, deeper water habitats, and few backwaters or secondary channels are found. Thus, for the razorback sucker, the area upstream from the diversion did not sufficiently possess the primary constituent elements to justify its inclusion as being necessary for this species' conservation.

Biological information on the Colorado squawfish indicates that the adult fish use low velocity areas, but not as much as younger life stages. Adult Colorado squawfish often use more high-velocity or deep water river sections, similar to those available in the reach of the San Juan River above the Hogback Diversion upstream to Farmington, New Mexico. This reach has been identified in the Colorado Squawfish Recovery Plan as being needed for downlisting of this species.

Economic Issues

Issue 48: Many respondents raised questions regarding the level of geographic disaggregation in the economic analysis.

Service Response: The direct impacts of critical habitat designation were determined at the river reach level. Economic data were available at the county level in the IMPLAN data sets and formed the basis of the analysis. However, it is inappropriate to conduct the economic analysis at the county level or tribal lands level because the

direct impacts in almost all cases extended beyond those immediate boundaries. Further, the indirect effects were State-wide and region-wide.

Issue 49: Concern was expressed that tribal economics are distinctly different than surrounding economics in that factor mobility (such as employment) is limited.

Service Response: While it is true that there are fewer opportunities for displaced workers on tribal lands, very few of the direct impacts, other than the Navajo Indian Irrigation Project, are tied to tribal economics. In the case of the Navajo Tribe, the impacts are reported in the New Mexico results.

Issue 50: Small distributors and users of hydroelectric power expressed concerns regarding the computation of and the use of the electric power impacts in the economic analysis, as well as issues regarding sunk cost, thermal replacement (fuel substitution), and the amount of thermal replacement required.

Service Response: The electric impacts were computed by Stone and Webster Management Consultants, Inc., utilizing a model developed for the Glen Canyon Dam. The model development effort was funded by the Bureau of Reclamation. The Service chose to use this model after determining this was the most up-to-date and comprehensive model available. Shut-in hydroelectric capacity is treated as a sunk cost in the analysis following accepted economic theory. Gas and coal activities are projected to expand to provide thermal power replacement. Existing excess capacity in these sectors means that this expansion is a benefit to the regional economy. The analysis of Stone and Webster yielded a result that 121 megawatts of additional thermal generation capacity would be required to offset the reduction of hydrogeneration capacity.

The small systems impacts were not available for inclusion in the Economic Analysis released November 12, 1993. The economic analysis was updated to include impacts associated with small systems as well as large system impacts. The updated results were used in the exclusion process and are included in the final rule.

Issue 51: Public comments expressed concern that all economic sectors and impacts of designating critical habitat were not addressed in the economic analysis.

Service Response: All models used in the economic analysis are general equilibrium in nature. That is, all impacts are represented through linkages among economic sectors. For example, both the direct impacts to hydropower production and the indirect effects on all other sectors such as agriculture, manufacturing, mining, and finance are represented. Thus, changes to one sector of the economy and the resulting impacts within all other sectors are fully captured in the economic results as indirect impacts.

Issue 52: Questions were raised concerning the reallocation of water and the sectors that were projected to utilize the reallocated water.

Service Response: In all cases, the reallocated water represented a benefit and thus was placed in a relatively low value use. For instance, in California, which incurs positive impacts, the choice for the sector to receive the reallocated water was the agricultural sector. If municipal and industrial had been chosen, then the positive impacts would have been much larger.

Issue 53: Concern was expressed regarding the lack of economic impacts resulting from flood plain designation.

Service Response: Information received during the public comment periods and previously available data did not indicate any major economic impacts related to flood plain designation. The Service recognizes that individual projects located in the flood plain may experience economic impacts.

Issue 54: Concern was raised by the Navajo Nation and its representatives regarding the expansion of the Navajo Indian Irrigation Project (NIIP).

Service Response: Based upon information provided during the public comment period, the New Mexico analysis was revised to include an additional 52,000 acre-feet of future water depletions foregone. Additionally, cropping patterns and yields for NIIP were adjusted based on information supplied by the Navajo Nation and the Bureau of Indian Affairs during the comment period. Likewise, when data provided during the comment periods seemed reasonable, those economic data were incorporated into the models.

Issue 55: Concerns were raised by several commenters about the lack of economic impacts identified in the Lower Basin. In some cases, hypothetical changes to existing Lower Colorado, Salt, Verde, and/or Gila River operations were provided to estimate economic impacts to agriculture and mining activities.

Service Response: At present, the Service does not foresee changes in current hydrological operations of these rivers occurring as a result of recovery efforts for these fishes. The impacts predicted by the commenters and the scenarios used to generate those impacts are not envisioned by Service biologists in the Lower Basin as necessary for recovery and survival of these fish.

Issue 56: One commenter indicated that the transfer of Colorado Eastern Slope agricultural water rights to municipal use would be impracticable or impossible due to endangered species constraints on the Platte River system.

Service Response: Construction of conveyance facilities to transfer Eastern Slope agricultural water to municipalities may require section 7 consultation with regard to Platte River endangered species. However, several such transfers have already occurred without any Federal action, demonstrating the feasibility of such transfers.

Issue 57: Concern was expressed regarding the comparability of the Input-Output (I–O) and Computable General Equilibrium (CGE) results.

Service Response: The underlying model assumptions differ. CGE models allow for greater factor mobility and substitution. I–O models do not permit impacts to communicate and adjust with geographic areas outside the State or region; thus negative impacts are overestimated. Therefore, due to these differences, results from these models are not directly comparable.

Issue 58: Concerns were raised regarding changes in governmental revenue flows from hydropower impacts.

Service Response: Such revenues represent transfers of economic resources, not real resource costs. The models capture changes in government revenues.

Issue 59: Concern was raised regarding a variety of projects planned for the region that were not specifically addressed in the analysis.

Service Response: Projects not specifically identified in the economic analysis were presumed to be undertaken and appear in the baseline projections. Further, some future projects have already undergone section 7 consultation and as such do not represent an impact. Future projects for which little or no information is currently available will be subject to section 7 consultation and as such it is premature to judge whether they will be affected.

Issue 60: Concerns were raised regarding the omission of the cost of capital facilities to use water such as planned municipal diversions.

Service Response: These costs would be incurred regardless of whether critical habitat is designated and as such are not an appropriate cost for inclusion in the analysis.

Issue 61: Respondents recommended that the economic benefits of listing and

critical habitat designation must be addressed.

Service Response: The economic analysis addresses both monetary cost and the benefits of designating critical habitat. Monetary values associated with the benefits of the existence of the species are not within the framework of the economic evaluation of critical habitat designation nor is such an evaluation required by the Act. These types of economic data would require extensive research and debate prior to being used in the evaluation of critical habitat.

Issue 62: A few respondents indicated that changing flows to benefit the endangered fish would be detrimental to people along the rivers.

Service Response: Designation of critical habitat is not a management plan for the recovery of these endangered fish. Specific management actions such as changing flows to benefit these fish will result from the RIP's, other recovery programs, and actions or project-specific requirements of biological opinions. Effects of flow changes due to Federal actions that benefit the endangered fish will be addressed through the NEPA process.

Issue 63: Several respondents questioned why only 10 percent of the cost of recovering these fish was attributed to critical habitat. Others were confused on how the Service arrived at the 90/10 percent split between species listing and critical habitat designation.

Service Response: The Act requires that the economic and other relevant impacts of designation of critical habitat be determined. This provision requires that the Service separate those costs specific to designation of critical habitat from the costs associated with the listing of these species. The Service used the extensive history of section 7 consultations that used the "jeopardy" standard to estimate the level of additional protection that might be provided by "adverse modification." Although the increased protection provided by critical habitat varies by impact type (flood plain activities, depletions, etc.), overall the Service determined that increased protection provided by critical habitat would account for approximately 10 percent of the total cost identified.

Issue 64: A few respondents questioned the selection of 1967–1985 for the hydrologic period to be used in preparation of the economic analysis. Some also indicated that using average flow years did not give an accurate portrayal of impacts.

Service Response: The Service selected the 1967–1985 period because it reflected the hydrology of the system with major water developments in place and operating without any operational changes due to endangered fish needs. Thus, this period was the most accurate one available for determining the full economic impact of reoperation of the river system for recovery of the endangered fish. Average, above average, and below average flow years were modeled.

Social Comments

Issue 65: Some respondents believed that humans are the real endangered species. Fish should not be considered more important than people. There is no benefit to people from these species.

Service Response: The Act strives to protect species that are in danger of becoming extinct in the immediate or foreseeable future. Humans are not in such danger. On the contrary, the number of humans has increased in the last 100 years at a rapid rate. Humans have, at times, believed that some other species may be of little or no value, when in fact the same species later has been determined to be of great value. In the past, the Colorado River fishes were of value to man for subsistence food, and they were widely taken for recreational and commercial reasons.

The four endangered fishes are considered of value to different segments of the human population for widely different reasons. As a case in point, one species, the Colorado squawfish has been valued by humans for several different reasons, including: (1) Historic value—it has been suggested that the food provided by this fish was of importance in the early settlement of portions of the West, and it was certainly used as food by American Indians; (2) food for humans—the literature is full of accounts of humans catching and eating Colorado squawfish, and its culinary qualities have been widely attested; (3) scientific—the potomadromous migrations and unique life cycle of this largest North American minnow is of great scientific interest and importance; and (4) ecological—as the top native predator of the Colorado River, it has a valid place in the natural Colorado River ecosystem.

Issue 66: Many respondents believed that the designation would adversely affect the quality of life in communities adjacent to critical habitat because loss of water rights, elimination of flood plain developments, prevention of new flood control projects and similar issues may result in destruction of communities.

Service Response: The designation will not take existing water rights nor will it require the removal of existing flood plain developments. Any new flood control project or other water development project would likely be subject to section 7 consultation, and if destruction or adverse modification of critical habitat were found, reasonable and prudent alternatives would be developed to address the project purposes. Actions without Federal involvement are not affected by the designation of critical habitat.

Issue 67: Several letters indicated that designation would adversely affect historic use of resources and lands.

Service Response: Existing development and use of water rights and non-Federal lands will not be affected by the designation of critical habitat except in cases where a Federal project or funding is required. Actions without Federal involvement are not affected by the designation of critical habitat.

Issue 68: Some respondents wondered how the designation would affect use of these rivers and reservoirs for recreation.

Service Response: The direct effects of critical habitat designation upon reservoir and river-based recreation are expected to be minor. Few Federal actions related to recreation are likely to "destroy or adversely modify" critical habitat. Power boating, rafting, swimming, fishing, and similar uses do not significantly impact or destroy the physical habitat of these species. However, these types of activities (flow changes, sport fish management, etc.) may be affected by specific efforts to recover these species. The Economic Analysis provided data on the potential economic impacts to recreational activities due to designation of critical habitat for these species. This information can be used to evaluate the significance of the effect of critical habitat will have upon the various recreation activities in and along the Colorado River system.

Issue 69: A few respondents stated that decisions affecting the quality and way of life in a community should be made locally and for the benefit of the local community.

Service Response: Congress has determined that endangered species consideration is of national importance and should be evaluated in a wider context. Effects to the local community are recognized in the process of designating critical habitat. However, the economic analysis and the exclusion process, according to the Act, only consider national and regional impacts. An area can be removed from the critical habitat designation if the economic costs of the designation are greater than the benefits to the species

and if exclusion is not likely to result in the extinction of the species.

Issue 70: Many respondents stated the need for balance between economic and environmental issues.

Service Response: The Economic Analysis and public comments were used by the Service during the exclusion process to achieve a balance between the needs of these species and economic and other concerns. The exclusion process allows for areas to be excluded from critical habitat designation if economic and other impacts exceed benefits for the listed species of concern, provided that exclusion will not result in the extinction of the species. The exclusion process allows economic and other issues to be weighed against the requirements of critical habitat under the Act.

National Environmental Policy Act

The Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in conjunction with regulations adopted pursuant to section 4(a) of the Act. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Executive Order 12866 and Regulatory Flexibility Act

This rule was reviewed by the Office of Management and Budget under Executive Order 12866. Based on the information discussed in this rule concerning public projects and private activities within critical habitat areas, there are no significant economic impacts resulting from the critical habitat designation. There are a limited number of actions on private land that have Federal involvement through funds or permits that may be affected by critical habitat designation. Also, no direct costs, enforcement costs, information collection, or recordkeeping requirements are imposed on small entities by this designation. Further, the rule contains no recordkeeping requirements as defined by the Paperwork Reduction Act of 1990.

Taking Implications Assessment

The Service has analyzed the potential taking implications of designating critical habitat for the razorback sucker, Colorado squawfish, humpback chub, and bonytail chub in a Takings Implications Assessment prepared pursuant to requirements of Executive Order 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights." The Takings Implications Assessment concludes that the designation does not pose significant takings implications.

References Cited

A complete list of all references cited herein is available upon request from the Service's Utah Field Office (see **ADDRESSES** above).

Authors

The primary authors of this rule are Henry R. Maddux, U.S. Fish and Wildlife Service, Utah Field Office (see **ADDRESSES** section); William R. Noonan, U.S. Fish and Wildlife Service, Colorado Field Office; Lesley A. Fitzpatrick, U.S. Fish and Wildlife Service, Arizona Field Office; and Harold M. Tyus, U.S. Fish and Wildlife Service, Region 6, Denver, Colorado.

List of Subjects in 50 CFR Part 17

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

Regulations Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations is hereby 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.

§ 17.11 [Amended]

2. Section 17.11(h) is amended by revising the Critical Habitat column for the entries "Chub, bonytail," "Chub, humpback," "Squawfish, Colorado," and "Sucker, razorback," under FISHES, to read "17.95(e)".

3. Section 17.95(e) is amended by adding critical habitat of the bonytail chub (*Gila elegans*), humpback chub (*Gila cypha*), Colorado squawfish (*Ptychocheilus lucius*), and razorback sucker (*Xyrauchen texanus*), in the same alphabetical order as each species occurs in § 17.11(h).

§ 17.95 Critical habitat—fish and wildlife.

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Bonytail Chub (*Gila elegans*)

Description of areas taken from the Bureau of Land Management (BLM) 1:100,000 scale maps (available from BLM State Offices): Rangely, CO 1989; Canyon of Lodore, CO 1990; Seep Ridge, UT/CO 1982; La Sal, UT/CO 1985; Hite Crossing, UT 1982; Parker, AZ/CA 1980; Davis Dam, AZ/NV/CA 1982; Boulder City, NV/AZ 1978; Needles, CA 1986.

Colorado: Moffat County. The Yampa River from the boundary of Dinosaur National Monument in T.6N., R.99W., sec. 27 (6th Principal Meridian) to the confluence with the Green River in T.7N., R.103W., sec. 28 (6th Principal Meridian).

Utah: Uintah County; and Colorado: Moffat County. The Green River from the confluence with the Yampa River in T.7N., R.103W., sec. 28 (6th Principal Meridian) to the boundary of Dinosaur National Monument in T.6N., R.24E., sec. 30 (Salt Lake Meridian).

Utah: Uintah and Grand Counties. The Green River (Desolation and Gray Canyons) from Sumner's Amphitheater in T.12S., R.18E., sec. 5 (Salt Lake Meridian) to Swasey's Rapid in T.20S., R.16E., sec. 3 (Salt Lake Meridian).

Utah: Grand County; and Colorado: Mesa County. The Colorado River from Black Rocks in T.10S., R.104W., sec. 25 (6th Principal Meridian) to Fish Ford in T.21S., R.24E., sec. 35 (Salt Lake Meridian).

Utah: Garfield and San Juan Counties The Colorado River from Brown Betty Rapid in T.30S., R.18E., sec. 34 (Salt Lake Meridian) to Imperial Canyon in T.31S., R.17E., sec. 28 (Salt Lake Meridian).

Arizona: Mohave County; Nevada: Clark County; and California: San Bernardino County. The Colorado River from Hoover Dam in T.30N., R.23W., sec. 3 (Gila and Salt River Meridian) to Davis Dam in T.21N., R.21W., sec. 18 (Gila and Salt River Meridian) including Lake Mohave up to its full pool elevation.

Arizona: Mohave County; and California: San Bernardino County. The Colorado River from the northern boundary of Havasu National Wildlife Refuge in R.22W., T.16N., sec. 1 (Gila and Salt River Meridian) to Parker Dam in T.11N., R.18W., sec. 16 (Gila and Salt River Meridian) including Lake Havasu up to its full pool elevation.

Known constituent elements include water, physical habitat, and biological environment as required for each particular life stage for each species.

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Humpback Chub (*Gila cypha*)

Description of areas taken from BLM 1:100,000 scale maps (available from BLM State Offices): Rangely, CO 1989; Canyon of Lodore, CO 1990; Seep Ridge, UT/CO 1982; Vernal, UT/CO 1982; Grand Junction, CO 1990; Moab, UT/CO 1985; La Sal, UT/CO 1985; Tuba City, AZ 1983; Peach Springs, AZ 1980; Grand Canyon, AZ 1980; Mt. Trumbull, AZ 1979.

Colorado: Moffat County. The Yampa River from the boundary of Dinosaur National Monument in T.6N., R.99W., sec. 27 (6th Principal Meridian) to the confluence with the Green River in T.7N., R.103W., sec. 28 (6th Principal Meridian).

Utah: Uintah County; and Colorado: Moffat County. The Green River from the confluence with the Yampa River in T.7N., R.103W., sec. 28 (6th Principal Meridian) to the southern boundary of Dinosaur National Monument in T.6N., R.24E., sec. 30 (Salt Lake Meridian).

Utah: Uintah and Grand Counties. The Green River (Desolation and Gray Canyons) from Sumner's Amphitheater in T.12S., R.18E., sec. 5 (Salt Lake Meridian) to Swasey's Rapid in T.20S., R.16E., sec. 3 (Salt Lake Meridian).

Utah: Grand County; and Colorado: Mesa County. The Colorado River from Black Rocks in T.10S., R.104W., sec. 25 (6th Principal Meridian) to Fish Ford River in T.21S., R.24E., sec. 35 (Salt Lake Meridian).

Utah: Garfield and San Juan Counties. The Colorado River from Brown Betty Rapid River in T.30S., R.18E., sec. 34 (Salt Lake Meridian) to Imperial Canyon in T.31S., R.17E., sec. 28 (Salt Lake Meridian).

Arizona: Coconino County. The Little Colorado River from river mile 8 in T.32N., R.6E., sec. 12 (Salt and Gila River Meridian) to the confluence with the Colorado River in T.32N., R.5E., sec. 1 (Salt and Gila River Meridian).

Arizona: Coconino County. The Colorado River from Nautiloid Canyon in T.36N., R.5E., sec. 35 (Salt and Gila River Meridian) to Granite Park in T.30N., R.10W., sec. 25 (Salt and Gila River Meridian).

Known constituent elements include water, physical habitat, and biological environment as required for each particular life stage for each species.

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Colorado Squawfish (*Ptychocheilus lucius*)

Description of areas taken from BLM 1:100,000 maps (available from BLM State Offices): Canyon of Lodore, CO 1990; La Sal, UT/CO 1985; Rangely, CO 1989; Delta, CO 1989; Grand Junction, CO 1990; Hite Crossing, UT 1982; Vernal, UT/CO 1990; Craig, CO 1990; Bluff, UT/CO 1985; Moab, UT/CO 1985; Hanksville, UT 1982; San Rafael Desert, UT 1985; Huntington, UT 1982; Price, UT 1989; Farmington, NM 1991; Navajo Mountain, UT/AZ 1982. The 100-year flood plain for many areas is detailed in Flood Insurance Rate Maps (FIRM) published by and available through the Federal Emergency Management Agency (FEMA). In areas where a FIRM is not available, the presence of alluvium soils or known high water marks can be used to determine the extent of the flood plain. Only areas of flood plain containing constituent elements are considered critical habitat.

Colorado: Moffat County. The Yampa River and its 100-year flood plain from the State Highway 394 bridge in T.6N., R.91W., sec. 1 (6th Principal Meridian) to the confluence with the Green River in T.7N., R.103W., sec. 28 (6th Principal Meridian).

Utah: Uintah, Carbon, Grand, Emery, Wayne, and San Juan Counties; and Colorado: Moffat County. The Green River and its 100-year flood plain from the confluence with the Yampa River in T.7N., R.103W., sec. 28 (6th Principal Meridian) to the confluence with the Colorado River in T.30S., R.19E., sec. 7 (Salt Lake Meridian).

Colorado: Rio Blanco County; and Utah: Uintah County. The White River and its 100-year flood plain from Rio Blanco Lake Dam in T.1N., R.96W., sec. 6 (6th Principal Meridian) to the confluence with the Green River in T.9S., R.20E., sec. 4 (Salt Lake Meridian).

Colorado: Delta and Mesa Counties. The Gunnison River and its 100-year flood plain from the confluence with the Uncompahgre River in T.15S., R.96W., sec. 11 (6th Principal Meridian) to the confluence with the Colorado River in T.1S., R.1W., sec. 22 (Ute Meridian).

Colorado: Mesa and Garfield Counties; and Utah: Grand, San Juan, Wayne, and Garfield Counties. The Colorado River and its 100-year flood plain from the Colorado River Bridge at exit 90 north off Interstate 70 in T.6S., R.93W., sec. 16 (6th Principal Meridian) to North Wash including the Dirty Devil arm of Lake Powell up to the full pool elevation in T.33S., R.14E., sec. 29 (Salt Lake Meridian).

New Mexico: San Juan County; and Utah: San Juan County. The San Juan River and its 100-year flood plain from the State Route 371 Bridge in T.29N., R.13W., sec. 17 (New Mexico Meridian) to Neskahai Canyon in the San Juan arm of Lake Powell in T.41S., R.11E., sec. 26 (Salt Lake Meridian) up to the full pool elevation.

Known constituent elements include water, physical habitat, and biological environment as required for each particular life stage for each species.

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Razorback Sucker (*Xyrauchen texanus*)

Description of areas taken from BLM 1:100,000 scale maps (available from BLM State Offices): Rangely, CO 1989; Canyon of Lodore, CO 1990; Seep Ridge, UT/CO 1982; La Sal, UT/CO 1985; Westwater, UT/CO 1981; Hite Crossing, UT 1982; Glenwood Springs, CO 1988; Grand Junction, CO 1990; Delta, CO 1989; Navajo Mountain, UT/AZ 1982; Vernal, UT/CO 1990; Craig, CO 1990; Bluff, UT/CO 1985; Moab, UT/CO 1985; Hanksville, UT 1982; San Rafael Desert, UT 1985; Huntington, UT 1982; Price, UT 1989; Tuba City, AZ 1983; Lake Mead, NV/AZ 1981; Davis Dam, AZ/NV/CA 1982, Parker, AZ/CA 1980; Yuma, AZ/CA 1988; Safford, AZ 1991; Globe, AZ 1980; Clifton, AZ/NM 1975; Prescott, AZ 1982; Theodore Roosevelt Lake, AZ 1982, Grand Canyon, AZ 1980; Mt. Trumbull, AZ 1979; Boulder City, NV/AZ 1978; Blythe, CA/AZ 1976; Trigo Mountains, AZ/CA 1988; Sedona, AZ 1982; Payson, AZ 1988; and U.S. Forest Service map: Tonto National Forest, Phoenix, AZ. The 100-year flood plain for many areas is detailed in Flood Insurance Rate Maps (FIRM) published by and available through the FEMA. In areas where a FIRM is not available, the presence of alluvium soils or known high water marks can be used to determine the extent of the flood plain. Only areas of flood plain containing constituent elements are considered critical habitat.

Colorado: Moffat County. The Yampa River and its 100-year flood plain from the mouth of Cross Mountain Canyon in T.6N., R.98W., sec. 23 (6th Principal Meridian) to the confluence with the Green River in T.7N., R.103W., sec. 28 (6th Principal Meridian).

Utah: Uintah County; and Colorado: Moffat County. The Green River and its 100-year flood plain from the confluence with the Yampa River in T.7N., R.103W., sec. 28 (6th Principal Meridian) to Sand Wash in T.11S., R.18E., sec. 20 (6th Principal Meridian).

Utah: Uintah, Carbon, Grand, Emery, Wayne, and San Juan Counties. The Green River and its 100-year flood plain from Sand Wash at T.11S., R.18E., sec. 20 (6th Principal Meridian) to the confluence with the Colorado River in T.30S., R.19E., sec. 7 (6th Principal Meridian).

Utah: Uintah County. The White River and its 100-year flood plain from the boundary of the Uintah and Ouray Indian Reservation at river mile 18 in T.9S., R.22E., sec. 21 (Salt Lake Meridian) to the confluence with the Green River in T.9S., R.20E., sec. 4 (Salt Lake Meridian).

Utah: Uintah County. The Duchesne River and its 100-year flood plain from river mile 2.5 in T.4S., R.3E., sec. 30 (Salt Lake Meridian) to the confluence with the Green River in T.5S., R.3E., sec. 5 (Uintah Meridian).

Colorado: Delta and Mesa Counties. The Gunnison River and its 100-year flood plain from the confluence with the Uncompahgre River in T.15S., R.96W., sec. 11 (6th Principal Meridian) to Redlands Diversion Dam in T.1S., R.1W., sec. 27 (Ute Meridian).

Colorado: Mesa and Garfield Counties. The Colorado River and its 100-year flood plain from Colorado River Bridge at exit 90 north off Interstate 70 in T.6S., R.93W., sec. 16 (6th Principal Meridian) to Westwater Canyon in T.20S., R.25E., sec. 12 (Salt Lake Meridian) including the Gunnison River and its 100-year flood plain from the Redlands Diversion Dam in T.1S., R.1W., sec. 27 (Ute Meridian) to the confluence with the Colorado River in T.1S., R.1W., sec. 22 (Ute Meridian).

Utah: Grand, San Juan, Wayne, and Garfield Counties. The Colorado River and its 100-year flood plain from Westwater Canyon in T.20S., R.25E., sec. 12 (Salt Lake Meridian) to full pool elevation, upstream of North Wash and including the Dirty Devil arm of Lake Powell in T.33S., R.14E., sec. 29 (Salt Lake Meridian).

New Mexico: San Juan County; and Utah: San Juan County. The San Juan River and its 100-year flood plain from the Hogback Diversion in T.29N., R.16W., sec. 9 (New Mexico Meridian) to the full pool elevation at the mouth of Neskahai Canyon on the San Juan arm of Lake Powell in T.41S., R.11E., sec. 26 (Salt Lake Meridian).

Arizona: Coconino and Mohave Counties; and Nevada: Clark County. The Colorado River and its 100-year flood plain from the confluence with the Paria River in T.40N , R.7E., sec. 24 (Gila and Salt River Meridian) to Hoover Dam in T.30N., R.23W., sec. 3 (Gila and Salt River Meridian) including Lake Mead to the full pool elevation.

Arizona: Mohave County; and Nevada: Clark County. The Colorado River and its 100-year flood plain from Hoover Dam in T.30N., R.23W., sec. 1 (Gila and Salt River Meridian) to Davis Dam in T.21N., R.21W., sec. 18 (Gila and Salt River Meridian) including Lake Mohave to the full pool elevation.

Arizona: La Paz and Yuma Counties; and California: San Bernardino, Riverside, and Imperial Counties. The Colorado River and its 100-year flood plain from Parker Dam in T.11N., R.18W., sec. 16 (Gila and Salt River Meridian) to Imperial Dam in T.6S., R.22W., sec. 25 (Gila and Salt River Meridian) including Imperial Reservoir to the full pool elevation or 100-year flood plain, whichever is greater.

Arizona: Graham, Greenlee, Gila, and Pinal Counties. The Gila River and its 100-year flood plain from the Arizona-New Mexico border in T.8S., R.32E., sec. 34 (Gila and Salt River Meridian) to Coolidge Dam in T.3S., R.18E., sec. 17 (Gila and Salt River Meridian), including San Carlos Reservoir to the full pool elevation.

Arizona: Gila County. The Salt River and its 100-year flood plain from the old U.S. Highway 60/State Route 77 bridge (unsurveyed) to Roosevelt Diversion Dam in T.3N., R.14E., sec. 4 (Gila and Salt River Meridian).

Arizona: Yavapai County. The Verde River and its 100-year flood plain from the U.S. Forest Service boundary (Prescott National Forest) in T.18N., R.2E., sec. 31 to Horseshoe Dam in T.7N., R.6E., sec. 2 (Gila and Salt River Meridian), including Horseshoe Lake to the full pool elevation.

Known constituent elements include water, physical habitat, and biological environment as required for each particular life stage for each species.

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Dated: March 10, 1994.

George T. Frampton,

Assistant Secretary for Fish and Wildlife and Parks, Department of the Interior.

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Part IV

Environmental Protection Agency

Model Standards and Techniques for Control of Radon in New Residential Buildings; Notice

ENVIRONMENTAL PROTECTION AGENCY

[AD–FRL–4795–3]

Model Standards and Techniques For Control of Radon in New Residential Buildings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of publication of final EPA Model Standards.

SUMMARY: The Environmental Protection Agency is today publishing final "Model Standards and Techniques For Control of Radon in New Residential Buildings," hereinafter referred to as "EPA Model Standards," as required by section 304 of title III of the Toxic Substances Control Act. These model standards and techniques are designed to prevent or reduce the potential for elevated levels of indoor radon in newly constructed residential buildings and are provided for use by national code development organizations, states, and local jurisdictions as they develop and enforce building codes for radon control specifically applicable to their regional and local requirements. This publication reflects changes and additions resulting from comments received during the public review period on the proposed EPA Model Standards.

EFFECTIVE DATE: These EPA Model Standards are effective on March 21, 1994.

FOR FURTHER INFORMATION CONTACT: David M. Murane, Radon Division (6604J), 401 M St., SW., Washington, DC 20460, Telephone: 202/233–9442. Requests for copies of this notice and supporting Cost-Benefit Analysis should also be directed to this contact.

SUPPLEMENTARY INFORMATION:

I. Introduction

EPA today publishes its "Model Standards and Techniques for Control of Radon in New Residential Buildings." These final EPA Model Standards have been modified after consideration of public comments received on the proposed EPA Model Standards during the period April 12, 1993 through June 11, 1993. Title III of the Toxic Substances Control Act (TSCA) (15 U.S.C. 2661 et seq.) (also known as the Indoor Radon Abatement Act of 1988) was enacted on October 28, 1988. Section 304 of TSCA requires the Administrator of the Environmental Protection Agency to develop model construction standards and techniques for controlling radon levels within new buildings. To the maximum extent possible, these model standards and techniques were to be developed with the assistance of organizations involved in establishing national building construction standards and techniques and be made available in draft for public review and comment. Section 304 also requires the Administrator to work to ensure that organizations responsible for developing national model building codes and authorities which regulate building construction within states or political subdivisions within states, adopt the Agency's model standards and techniques.

II. Background

A. Radon Occurrence and Health Risks

Radon was first recognized as a cause of lung cancer in underground miners in the 1930's. In 1955, the International Commission on Radiological Protection established the first occupational health standard for radon exposure in mines. In 1970, homes in the United States were found to have elevated levels of radon when uranium mill tailings were used as fill dirt or when built on reclaimed phosphate mining land. Starting in 1984, it became increasingly evident that homes could have elevated indoor radon levels caused by naturally occurring radium in the underlying soil and rock. In the past 6 years, homes with elevated radon levels have been found throughout the United States. Surveys indicate that up to 6 million homes may have radon levels above the EPA action level guideline established in 1986 of 4 pico Curies per liter of air (4 pCi/L). Based on studies by the National Academy of Sciences and other scientific organizations, EPA believes that from 7,000 to 30,000 lung cancer deaths per year can be attributed to exposure to elevated levels of indoor radon. There are also data that indicate a synergistic effect between radon exposure and smoking which places smokers at a higher risk. Several studies are underway that could provide new information and insights on the magnitude of the radon health risks. Information from these studies will be considered and, if appropriate, incorporated by EPA in any future revisions of the radon health risk estimates.

B. Initial Steps by EPA To Develop New Construction Guidance

EPA's initial efforts to reduce public exposure to radon were focused on educating the public on the health risk and identifying methods for reducing radon levels in existing homes. "A Citizen's Guide to Radon," (OPA–86–004, 1986) and "Radon Reduction Methods, A Homeowner's Guide," (OPA–86–005, August 1986) were published by EPA in 1986 to meet those needs. It was also recognized that long-term risk reduction would be facilitated if new homes built each year were constructed with radon-resistant features. In 1987, EPA and the National Association of Homebuilders jointly published "Radon Reduction in New Construction, An Interim Guide," (OPA–87–009, August 1987) to provide initial guidance for builders. At the same time, a number of research projects were initiated to validate the interim guidance and to identify additional construction techniques that would be effective in reducing radon levels in new residential buildings. In 1988, EPA published its first technical guide on "Radon-Resistant Residential New Construction," (EPA/600/8–88/087, July 1988) and, in early 1991, published an updated version of this technical guidance titled, "Radon-resistant Construction Techniques for New Residential Construction. Technical Guidance," (EPA/625/2–91/032, February 1991).

C. EPA's Goals in Preparing a Model Standard

EPA believes that the ultimate success of the EPA Model Standards will be determined by reaching six basic goals:

1. The Model Standards should meet the requirements established by Congress in the 1988 Indoor Radon Abatement Act (Title III of TSCA (15 U.S.C. 2661 et seq.)).

2. The Model Standards should result in significant radon risk reduction in newly constructed homes in areas of highest radon potential and not induce other significant indoor air problems.

3. The recommended construction techniques should be technologically achievable, and readily implementable by the nation's builders.

4. The provisions of the Model Standards should be cost-effective for both homebuilders and homebuyers. A significant aspect of all cost considerations is the underlying fact that steps taken to reduce radon entry during construction are less costly than retrofitting mitigation systems into homes after they are built.

5. The provisions of the Model Standards should be readily adoptable and/or adaptable by the national Model Code Organizations and by officials who administer building codes at the state and local level.

6. The Model Standards should be targeted for adoption in areas of highest radon risk potential.

D. Summary of Public Participation

On February 1, 1989, EPA convened a Standards and Codes Work Group consisting of over 45 representatives of governmental and building industry organizations. This Work Group developed the outline and essential features for a first draft of the proposed Model Standards. EPA then established a cooperative agreement with the National Institute of Building Sciences (NIBS) to provide broadly based technical assistance in the development and review of the specific building standards and techniques. The NIBS Radon Project Committee ultimately involved over 90 representatives of Federal Agencies (Department of Energy, Department of Housing and Urban Development, Department of Defense), building code organizations, state and local governmental agencies, and private sector companies. This Committee met five times to review and modify the draft document and provided a summary report titled, "Methods and Techniques for Reducing Radon Levels within New Buildings," April 1990, which was used by EPA as one of the sources in developing the model building standards and techniques outlined in section 9.0. The NIBS Report is available by submitting a request to: The National Institute of Building Sciences, 1201 L Street, NW., suite 400, Washington, DC 20005, telephone 202/289–7800. Other support documents, including the "Analysis of Options For EPA's Model Standards For Controlling Radon in New Homes," July, 1992, (hereinafter referred to as the Cost-Benefit Analysis (CBA)) are available through EPA. On April 12, 1993, the proposed EPA Model Standards were published for public review and comment as a Notice in the **Federal Register** (58FR, 19097, April 12, 1993). A total of 173 comments were received from 23 commenters. This Notice responds to the comments and contains the final EPA Model Standards.

III. Overview of Technical Analysis

A. Radon Reduction Technology

The three methods for controlling radon levels in new residential buildings involve the use of (1) passive systems, (2) active systems, and (3) stack effect reduction systems.

1. A passive system includes use of all the construction techniques that create physical barriers to radon entry, reduce the forces that draw radon into a building, and facilitate post-construction radon removal if the barrier techniques prove to be inadequate. A "passive system," as used in the Model Standards, includes an open vent pipe stack that carries radon from the area beneath the slab or from under the plastic sheeting covering the crawl space floor to an exit point above the roof. It also includes roughed-in electrical wiring to facilitate future installation of both a fan in the vent stack and a system failure warning device, if radon tests indicate that further radon reduction is necessary. The natural convective flow of air upward in the vent pipe draws soil gas containing radon from beneath the slab and vents it to the outside. Limited research has demonstrated that passive systems are effective in reducing indoor radon concentrations below the current EPA action level in the large majority of homes where post-construction radon levels would otherwise have been slightly elevated. EPA believes that radon reductions of about 50 percent are achievable using a passive system approach alone (CBA, chapter 4). Under certain climatic conditions and in cases where the radon source strength in the underlying soil is greatly elevated, the performance of the passive stack may not be sufficient to lower indoor radon levels below EPA's current action level, but performance can easily be improved by adding a fan in the vent stack. The cost to builders of installing a passive system, as described above, is in the range of $350 to $500 per house depending on its design and size (CBA, chapter 6). In cases where builders already use passive barrier techniques for controlling moisture entry and for energy conservation, the costs to install passive radon control systems will be lower.

2. An active system involves use of all the passive control techniques described above plus installation of an electric fan in the vent pipe stack and a system failure warning device. The active system creates a strong suction on the area beneath the slab or under the plastic sheeting covering the crawlspace floor. This results in the pressure of soil gas containing radon beneath the slab to be lower than the air pressure in the home, creating a pressure barrier to radon entry. Because of the active mechanical ventilation of the sub-slab space, an active system can reduce indoor radon concentrations to their lowest achievable levels and is effective even in the presence of very high radon concentrations in the underlying soils. Based on limited Agency and independent research, active radon control systems have reduced radon levels to below 2 pCi/L in over 90 percent of new homes. Levels below 4 pCi/L are achieved in nearly all new homes (CBA, appendix B). The cost of installing the additional components of an active radon control system (the electric fan and system failure warning device) is about $250. The total cost of an active system is therefore in the range of $600 to $750. These costs will also vary depending on the design and size of the house (CBA, chapter 6). As in the passive system, costs applied to radon control may be lower in areas where builders are already using barrier techniques and stack effect reduction techniques for moisture control and energy conservation. There are additional annual costs to homeowners for operating and maintaining active radon control systems. EPA estimates these costs to be in the range of $40 to $75 (CBA, chapter 6).

3. Stack Effect Reduction involves installation of features that prevent or reduce the flow of warm conditioned air upward and out of the building superstructure. This upward movement of air actually can draw soil gas containing radon into the lower levels of a building. The recommended stack effect reduction techniques include common construction practices such as providing adequate makeup air for combustion appliances, weather stripping exterior doors and windows, sealing openings around attic access doors, and using sealable recessed ceiling lights. In some areas, these energy conserving techniques are already required by code. Although these techniques, when used alone, may not be effective in achieving significant reduction in indoor radon levels, when combined with the barrier techniques and a passive or active vent stack installation, the stack effect reduction techniques can contribute to reducing radon entry through below ground openings in the foundation. It is recognized that use of these techniques can also reduce the infiltration of dilution air through above ground openings in the superstructure of the home. This can lead to some reduction in the air change rate. EPA is not aware, however, of any evidence that use of the recommended stack effect reduction techniques reduces air change rates to a level below the current ASHRAE standard of .35 air changes per hour (ACH), or that use of these techniques exacerbates problems with other indoor air pollutants. Use of these techniques does contribute to the fire resistance of a building, and reduces heating and cooling costs. As previously noted, the recommended stack effect reduction techniques are already requirements in the Model Building and Energy Codes used throughout the U.S. The application of these features to the

control of radon does not impose additional changes in current construction practices.

B. Map of Radon Zones

With the assistance of the U.S. Geological Survey (USGS) and State geologists, the Agency has developed a "Map of Radon Zones" designed to help state and local governments target certain data collection and outreach programs. It is also designed to help building code officials determine areas where adoption of radon-resistant construction codes may be advisable. The methodology for developing the Agency's "Map of Radon Zones" involved categorization of distinct geologic provinces based on indoor radon measurements, geology, aerial radioactivity, soil parameters, and house foundation types. These geologic provinces were then overlayed on county maps, and each county was assigned to a Zone based on the geologic province that is predominant in that county. Counties located within a geologic province that had predicted average indoor radon screening levels greater than 4 pCi/L were assigned to Zone 1. Counties with predicted average screening levels between 2 and 4 pCi/L were assigned to Zone 2, and counties below an average of 2 pCi/L were assigned to Zone 3.

While EPA believes that the Map of Radon Zones and its accompanying documentation is useful for setting general boundaries of areas of concern, EPA recommends that state and local jurisdictions collect and analyze local indoor radon measurements, and assess geology, soil parameters and housing characteristics—in conjunction with referring to the EPA Map of Radon Zones—to determine specific areas within their jurisdictions that should be classified as Zone 1.

EPA published the "Map of Radon Zones," along with accompanying state-specific documentation, in December 1993. Copies of the national map and state-specific booklets are available from state radon program offices, EPA headquarters, and EPA regional offices.

C. Cost-Benefit Considerations

The Agency considered a number of approaches for applying the Model Standards in the different radon potential zones. The basic approaches examined included: Application of active systems nationwide or only in Zone 1, application of passive systems nationwide or only in Zone 1, and application of some mixture of passive and active systems in Zones 1 and 2.

Each of the approaches for applying the Model Standards was analyzed in the CBA. The CBA compared costs of installing and operating the recommended radon control systems with the benefits in risk reduction and energy conservation. This evaluation was done for each of the alternative approaches described above.

Consistent with common EPA practices for estimating annual risk reductions from cancer-causing pollutants, EPA estimated the total number of lives saved in the population that will occupy new radon-resistant homes built over the time of the analysis (74 years) and converted that total estimate into an average of lives saved per year. Such an approach to the analysis allows consistent comparison of cost-effectiveness of the EPA Model Standards with EPA's pollution control decisions in other programs.

It should be noted that many of the construction standards and techniques recommended in this document are included in current model building codes, such as The Council of American Building Officials (CABO) "One and Two Family Dwelling Code" and the CABO "Model Energy Code," or in the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) Standards, as techniques for reducing water infiltration or energy loss, or for maintaining acceptable indoor air quality. Applying these standard techniques as a means to control the levels of indoor radon simply adds a complementary function that does not conflict with the objectives of other indoor air quality programs within EPA. In addition, applying the recommended radon barrier and stack effect reduction techniques will result in significant long-term energy savings.

The provision of radon control systems involves cost considerations for both homebuilders and homebuyers. In the passive approach to radon control, there are no homeowner costs associated with operation and maintenance of a vent fan. The result is long-term radon risk reduction at a small initial cost which later results in savings due to improved energy efficiency.

IV. Summary of the EPA Model Standards and the Implementation Approach

A. Summary of the Model Standards

The EPA Model Standards include a codified presentation of construction methods and recommended procedures for their application. The EPA Model Standards also include scope and limitations sections, a listing of pertinent reference documents and terminology, a discussion of the principles for radon-resistant construction, and a summary of the construction techniques as applied to basement, slab-on-grade, and crawlspace foundations. The recommended construction method and recommended procedures for its application are contained in sections 7.0 and 8.0, and the specific construction techniques are listed in section 9.0. Model Code Organizations, states, and local jurisdictions are encouraged to adopt those portions of the EPA Model Standards that are appropriate for their building code needs.

B. Implementation Approach

EPA considered five approaches for implementing the EPA Model Standards. These include: (1) Active systems in Zones 1 and 2, (2) active systems in Zone 1 only, (3) passive systems in Zones 1 and 2, (4) passive systems in Zone 1 only, and (5) a combination of active systems in Zone 1 and passive systems in Zone 2, plus a requirement to test and fix homes above the action level in Zone 2. Based on its analysis, EPA selected option (4). EPA believes that the use of passive radon control systems in areas of high radon potential (Zone 1), and the activation of those systems if necessitated by follow-up testing, is the best approach to achieving both significant radon risk reduction and cost-effectiveness in construction of new homes. EPA believes that this approach best accomplishes the goals identified by the Agency in Section II.C. Other approaches and their associated costs and benefits are explained in detail in the CBA.

The EPA Model Standards meet the requirements established by Congress in the Indoor Radon Abatement Act. EPA worked to develop the Standards in cooperation with the National Institute of Building Sciences (NIBS), a Standards and Codes Workgroup, individual home builders, and the National Association of Home Builders (NAHB), and will work to have the Standards adopted by the Model Code Organizations, states, and local jurisdictions.

EPA believes that the implementation approach selected will result in significant risk reduction to the buyers of newly constructed homes since about 145,000 of the one million new homes built each year are in Zone 1. By applying the selected approach, it is estimated that ultimately from 10 to 41 lung cancer deaths could be averted annually. In addition, as the EPA Model Standards are adopted across the United States, the growing number of new

houses equipped with radon-resistant features will result in a cumulative increase in the number of lives saved each year. For example, after the first five-year period of fully implementing the Standards, the Agency estimates that, statistically, over 200 lives ultimately will be saved (CBA, Chapter 5).

These estimates are based only on the risk reduction achieved by use of passive radon control systems in Zone 1. If all new homes built in Zone 1 with passive radon-resistant features are tested for radon, and passive systems activated when elevated radon levels are still present, an estimated 3 to 4 additional lives would be saved annually. To achieve maximum risk reduction, all new homes should be tested, and passive systems activated when necessary.

The construction techniques are technologically feasible and can be readily implemented by builders in the field. Agency research has demonstrated the effectiveness of the techniques, and they involve the use of standard construction practices and materials readily available to builders in all geographical areas.

The provisions of the EPA Model Standards and the recommended implementation program are cost-effective to both homebuilders and homebuyers. EPA believes this approach to controlling radon in new construction provides a balance between radon risk reduction and the cost to both homebuilders and homebuyers. The cost to builders to install a passive system is $350 to $500 per house. If applied to all new homes in Zone 1 areas, the annual installation cost would range from $50 to $70 million (CBA, chapter 6). Even at the higher end of this range, a very favorable cost-benefit relationship results when these costs are compared to lung cancer deaths that may ultimately be averted. Due to the long-term energy savings achieved by using the recommended radon reduction techniques, the 10 to 41 lung cancer deaths ultimately averted yearly would be at a savings of about $440,000 per life saved, using a 3 percent discount rate. At a 7 percent discount rate, the savings would be $281,000 per life saved. In a sensitivity analysis of this option, in which no credit was taken for energy savings, the cost was calculated to be $149,000 per life saved at the 3 percent discount rate, and $309,000 at the 7 percent discount rate.

With passive systems, there are no system operation costs to the homebuyer. However, if a home is tested, and elevated levels of radon are found, the passive system can be made significantly more effective in reducing radon levels by the addition of a fan. The installation of the fan and a system failure warning device would cost approximately $250 and the yearly operation costs of the system to the homebuyer would be about $40 to $75 (CBA, chapter 6).

Building radon-resistant features into a new home during construction is extremely cost effective. It should be noted that the cost of reducing high radon levels in existing homes that do not contain these construction features can range from $800 to $2,500 (EPA's "Consumer's Guide to Radon Reduction," 402–K92–003, August 1992).

Finally, EPA believes the Model Standards can be readily adopted by the Model Code Organizations, states, and local jurisdictions that want to address the radon problem. The Agency has developed the Model Standards with a format and content that will assist in their adoption by the Model Code Organizations. The Agency anticipates increasing support for this adoption from the building industry. Indeed, the National Association of Home Builders passed a resolution (NAHB Radon Policy Update, January 22, 1992) that is supportive of the targeted approach taken in the EPA Model Standards. The expected acceptance and use of the Standards by builders will also contribute to timely adoption by the Model Code Organizations and in the building codes and regulations of state and local jurisdictions.

Each of the other implementation options addressed in the CBA offers certain advantages and disadvantages. Active radon control systems applied in both Zones 1 and 2 would result in greater risk reduction. However, these systems would provide limited benefits in the large number of new homes that would be below 4 pCi/L without any radon-resistant features installed. If targeted only to Zone 1, active systems would still be unnecessary in a large percentage of new homes. At this time, the Agency believes that the installation, operation, and maintenance costs of active systems outweigh the benefit of the greater risk reduction achieved by these systems. Similarly, the costs of installing passive radon control systems throughout Zones 1 and 2 are considered by the Agency to be too great because of the large number of homes that would receive no benefit in terms of radon risk reduction. EPA also concludes that a "mixed approach" (active systems in Zone 1; passive systems in Zone 2) would also not be as cost effective as the recommended approach. Further explanation of the data leading to these conclusions is contained in the CBA. The CBA is available through the EPA contact listed at the beginning of this Notice.

V. Response to Comments

A. Comment Review Process and General Responses

1. Comments were reviewed and similar or related comments were grouped within one of the following 7 topical categories:

(1) Syntax, Language, General Editorial.

(2) Radon Measurement and Risk Assessment.

(3) Training, Certification, Proficiency Rating.

(4) Referencing Existing Standards and Requirements.

(5) Technical Standards and Requirements.

(6) Cost-Effectiveness of Proposed Standards.

(7) Comments Pertaining to EPA's "Significant Issues."

2. The following general responses address each of these 7 categories of comments. Specific responses to individual comments are contained in section B below.

(1) In general, a review of the 22 comments recommending editorial, syntax, or modified language changes resulted in improvements in the text of the Model Standards. These changes were adopted and no further response was considered necessary.

(2) The 14 comments relating to radon measurement and risk assessment reflected a broad spectrum of divergent views, ranging from total rejection of the Model Standards (due to an alleged failure to substantiate the risk), to recommendations that the 4 pCi/L Action Level be lowered to achieve greater risk reduction. Specific responses to comments in this category are included in section B, below.

(3) There were 6 comments that focused on the need to clarify provisions in the Model Standards relating to Training, Certification, and Proficiency Rating. Appropriate editorial changes were made to clarify those provisions. More detailed responses to the 6 comments in this category were not considered necessary.

(4) There were 21 comments citing a need to include additional references to Existing Codes or ASTM Standards, or to include more detailed specifications on construction techniques. The majority of these comments were accommodated by adding appropriate building code or ASTM references to sections 9.1.3, 9.1.6, 9.1.7, 9.1.12,

9.1.14, 9.2.1, 9.2.4, and 9.2.5 of the Model Standards. Specific responses to several of the comments in this category are included in section B, below.

(5) Many of the comments (69 out of 173) were categorized as addressing Technical Standards and Requirements. As in the previous category, the majority of these comments were accommodated since they enhanced the clarity and completeness of the Model Standards. Specific responses to suggested changes that were rejected are included in section B, below.

(6) There were 14 comments categorized as addressing Cost-Effectiveness of the Proposed Standards. All of these comments were directed toward the introductory material contained in the preamble to the Model Standards and did not recommend specific changes in the body of the Standards. However, specific responses to this category of comments have been included in Section B, below.

(7) There were 17 responses to EPA's request for comments on the 7 "Significant Issues" listed in the preamble to the Proposed EPA Model Standards. Responses to these comments are included in Section C, below.

B. Responses to Specific Comments

The following responses are related to comments on the radon measurement and risk assessment aspects of the Model Standards.

(1) One commenter questioned the need for Model Standards for radon-resistant new construction by stating that "without conclusive evidence that radon increases the risk of lung cancer, is such protective action warranted?" EPA believes that there is clear evidence to support the radon risk assessment that resulted in a Congressional mandate to develop the Model Standards. The carcinogenicity of radon has been well established by the scientific community, including the World Health Organization's International Agency for Research on Cancer (IARC 1988), the Biological Effects of Ionizing Radiation (BIER IV) Committee of the National Academy of Sciences (NAS 1988), the International Commission of Radiological Protection (ICRP 1987), and the National Council on Radiation Protection and Measurement (NCRP 1984). These concerns were also affirmed in the "Comparative Dosimetry of Radon in Mines and Homes" (NAS 1991), by the National Academy of Sciences. EPA's discussion of the aforementioned findings and other data is contained in the "Technical Support Document for the 1992 Citizen's Guide to Radon" (USEPA 1992).

(2) One commenter requested that EPA's Map of Radon Zones be included as an appendix to the Model Standards. EPA believes that the Map of Radon Zones and the more detailed state-specific booklets that accompany the map should be published separately from the Model Standards. The lack of precise definition of zone boundaries on a single page map of the U.S. would limit its usefulness to home builders or to state and local building officials as they make decisions regarding the specific application of the Model Standards to their local requirements. The state-specific booklets are considered an essential element in interpreting the Map of Radon Zones, and it would not be feasible to also include the booklets in an appendix to the Model Standards. EPA recommends that parties interested in the Map of Radon Zones consult with their state radon office to obtain information specific to their locality or area of interest.

(3) One commenter stated that EPA has not substantiated its action level with any studies showing that radon poses a risk at that level. The Agency disagrees with this statement. EPA's estimates of lung cancer risks to the general population due to radon are based on human exposure-response data from epidemiologic studies of underground miners. These studies show excess cancer risk in miners whose cumulative exposure overlaps those exposures expected in residential settings at 4 pCi/L. The Agency has provided a detailed discussion of the exposure, risk, and uncertainty issues in the "Technical Support Document for the 1992 Citizen's Guide to Radon," (EPA 400–R–92–011, May, 1992).

(4) The same commenter suggested that "even if one accepts EPA's radon action level, the standards are not cost-effective. It is more cost-effective to retrofit only those homes testing above the EPA action level, than to install passive systems in all homes in Zone 1." This assumption is incorrect on several counts. EPA estimates that 144,808 new homes are constructed in the 12 Zone 1 states each year (CBA, chapter 6). If passive radon control systems, at a cost of $500 each, were installed in each of these homes, the total installation cost would be $72,400,000. However, the costs of post-construction mitigation of homes in Zone 1 that would be expected to test above 4 pCi/L would be almost double that amount. Based on federal and state radon surveys, the Agency estimates that 55,585 of the 144,808 new homes built annually in Zone 1 would have radon levels above 4 pCi/L. If those homes were mitigated, at a cost of $2,500 per home, the total costs of mitigation would be $139,000,000. Actually, the difference between these two approaches is even greater due to the energy savings that result when passive radon control systems are installed during construction. Over the typical 74 year life of the 144,808 homes, the installation of passive systems will result in energy savings to homeowners of $7,045,000. On the cost issue, another factor must also be considered. In its evaluation of rates of voluntary radon testing by owners of existing homes across the country, EPA has found that approximately 9 percent of the homes have been tested. The rate of radon testing by owners of new homes is not expected to be any higher. Therefore, the approach suggested by the commenter would result in very little risk reduction, when compared to installation of passive systems by builders during construction.

(5) The same commenter also stated that "given the uncertain basis for EPA's action level, EPA must consider the full social cost of the standards before acting." The Agency's CBA contains an extensive analysis of the lives to be saved through implementation of the Model Standards as well as the costs incurred through this and other approaches. It is calculated that the installation of passive systems in new homes in Zone 1 and the associated energy savings derived, will result in an overall savings of $442,000 per life saved, at a 3 percent discount rate, or $281,000 at a 7 percent discount rate. As discussed earlier, if no credit is taken for energy savings, the cost was calculated to be $149,000 per life saved at a 3 percent discount rate, or $309,000 at a 7 percent discount rate. These calculations did not factor in the additional significant savings to society resulting from not having to treat cancers that have been avoided.

(6) One commenter stated that "if, according to EPA's calculations, these measures save only 16 deaths per year, then they are not worth the cost of installing." As stated earlier, if the Model Standards are fully implemented, it will result in an overall savings of $442,000 per life saved at a 3 percent discount rate. The cost per life saved indicates how cost-effective an alternative is in providing health benefits to the public. It should be compared to the cost the public is willing to pay to save a "statistical life," i.e., buy risk reductions. In the past, EPA's 1983 Regulatory Impact Analysis (RIA) Guidelines indicated that the

public appears to value a risk reduction that saves a life (in statistical terms) for between $600,000 to $9,900,000. A more recent study titled, "The Value of Reducing Risks of Death: A Note on New Evidence," by Fisher, et al. 1989, suggests that the public places the value of saving a statistical life between $2,000,000 and $10,500,000 in 1991 dollars.

(7) One commenter stated that "EPA has failed to consider studies that contradict its linear no-threshold theory for radon-induced lung cancer." The Agency has considered these studies but continues to believe the evidence available supports the no-threshold approach. In order for there to be a threshold, all non-lethal genetic damage from alpha radiation which would lead to cancer would have to be repaired perfectly. Research has established that even at low doses, only a fraction of the damage caused by alpha radiation is effectively repaired. Because of the tendency toward double stranded rather than single stranded DNA breaks with alpha radiation, there is high probability of extensive damage and a high probability of "mis-repair." Any repair that is evident indicates only cell survival, and may not indicate continued DNA integrity. The findings of the National Academy of Sciences BEIR IV report (p. 426) suggest that "carcinogenic damage induced by high-LET radiation (e.g., alpha radiation) in mammalian cells is very inefficiently repaired" and "the intracellular effect of exposures to high-LET radiation can be cumulative." Mis-repaired cells can survive, multiply, and reproduce the mis-repair (i.e., mutation) that may lead to cancer. Although a threshold cannot be definitively ruled out, there is currently no scientific evidence of a threshold for cancer induction from exposure to radon or any other ionizing radiation.

(8) One commenter stated that "EPA has overlooked a significant body of scientific literature which suggests that low levels of radiation are not only harmless, but possibly beneficial." The Agency has considered "ecologic studies" which have shown lower lung cancer rates in some states with a high incidence of radon, and some experimental evidence in animals. Ecologic studies are preliminary studies which examine groups of people rather than individuals; the relationship between individual lung cancer cases and their exposure to radon or other cancer causative agents such as smoking cannot be studied. Also the mobility of the individuals cannot be assessed. A sensitivity analysis of ecological studies by Dr. Jonathan Samet showed that they had little value. Based on the considerable limitations of this type of study design, the scientific community, including participants in a recent international epidemiologist's workshop, has recommended against further use of ecologic studies for examining residential radon risk. Some studies conducted in laboratory animals kept under sub-optimal conditions have shown a stimulatory effect of low levels of radiation. However, these studies have found no change in the expected risk of lung cancer induced by radiation exposure. Given the strong *a priori* understanding of the carcinogenicity of radon (National Research Council, BEIR IV, 1988) an inverse association of radon with lung cancer is not biologically plausible.

(9) One commenter stated that "EPA's proposed action guideline of 4 pCi/L is not safe," and indicated that "the Standard should be based on 2 pCi/L instead." Another commenter inquired as to "why EPA does not go As Low As Reasonably Achievable, ALARA?" Average levels of radon outdoors are about 0.4 pCi/L. The Agency believes that there is some risk associated with human exposure to any level of radon. In assessing residential radon risk, EPA assumes that the exposure-response relationship is linear at low exposures and exposure rates. This assumption is consistent with the evidence for linearity at a wide range of cumulative exposures in the radon epidemiologic studies of underground miners. There is no evidence of a threshold for lung cancer response from radon exposure, that is, a level of radon exposure below which no increased risk of lung cancer would exist. EPA's action level of 4 pCi/L is based on the mitigation capabilities of existing technology. This technology reduces radon levels to below 4 pCi/L in almost 95 percent of the existing homes mitigated, and below 2 pCi/L in 75 to 80 percent of these homes (CBA, Appendix B). The Agency believes a construction standard for builders should target builders to the more readily achievable 4 pCi/L, while also acknowledging that as builders follow the techniques of the Model Standards they will in fact be achieving levels below 4 pCi/L in 75 to 80 percent of the cases. The 4 pCi/L level is also consistent with EPA's action level for existing homes, as stated in the Citizen's Guide To Radon.

The following responses are related to comments on specific sections of the EPA Model Standards.

Section 1.0.1 Two commenters recommended amending this section to more clearly restrict the scope of the Model Standards to specific kinds of residential dwellings and to avoid including buildings such as high rise apartment buildings and others. EPA concurs with this amendment. Restricting the Model Standards to one- and two-family dwellings and other residential buildings three stories or less in height has been the intent throughout development of the Standards. This intent was already reflected in the Limitations section 2.0.1 and in the Summary section 6.0, and is now specifically stated in section 1.0.1.

Section 1.0.2 Two commenters questioned the need to apply the Model Standards when modifying the foundations or central air handling systems of existing buildings. This provision was not considered appropriate for inclusion in standards for new construction. It was believed to be more appropriately covered in EPA's Radon Mitigation Standards. EPA concurs with deleting the provision related to modification of central air handling systems. This section has also been modified to more clearly define applicability of the Model Standards when additions to the foundations of existing one- and two-family dwellings result in extension of the building footprint.

Section 2.0 One commenter recommended including a statement in this section that "all homes should be tested in order for the Standard to accomplish its goal of reducing the risks from radon." EPA has consistently recommended that all homes, including new homes, be tested for radon. However, in developing the recommended passive approach to radon reduction in new homes as set forth in section 7.1 of the Model Standards, it was determined that the recommendation for post-construction testing should be applied only to those new homes in which passive radon control systems were installed. This approach would identify homes where activation of the passive system is needed to achieve radon levels below the locally prescribed action level. In new homes, where builders install active radon control systems during construction, research has shown that radon concentrations below the EPA Action Level of 4 pCi/L are achieved in almost all cases (CBA, appendix B). While EPA continues to recommend testing of all new homes, inclusion of that recommendation as a specific provision of the Model Standards was not considered appropriate.

Section 7.2 One commenter disagreed with the recommendation that EPA Protocols be used for any radon testing referenced in the Model Standards and expressed a preference

for "use of prescriptive Standards." It was suggested that prescriptive standards "allow less latitude in interpretation and less variance in test results obtained." EPA believes that the rigorous requirements for gaining approval of all types of radon test devices (under the Radon Measurement Proficiency (RMP) Program), combined with the demonstrated and proven effectiveness of the procedures for use of those test devices in homes (as prescribed in EPA's "Indoor Radon and Radon Decay Product Measurement Device Protocols" and "Protocols For Radon and Radon Decay Product Measurements In Homes"), results in consistent, easily interpreted, and accurate radon testing.

Section 7.3 There were 6 comments on this section recommending changes or additions to improve clarity in describing the individuals and qualifications needed to design and install radon control systems. Additions were made in this section to include registered design professionals (architects or engineers) and contractors listed in EPA's Radon Contractor Proficiency (RCP) Program as being qualified to perform or supervise radon control system installations in new homes.

Section 8.2.3 This section states that radon-resistant features may not be needed, or that limited use of selected techniques may be sufficient in areas identified as having a low potential for indoor radon (Zone 3). One commenter recommended that in Zone 3, the Model Standards "should specify instead that radon protection measures would not be needed unless analysis indicated otherwise." The difference in these two approaches appears to be largely semantic. EPA believes that by establishing a Zone of low radon potential (Zone 3), an analysis has already been made which provides state and local jurisdictions with an adequate basis for deciding what, if any, radon-resistant features may be appropriate for inclusion in their building codes. The original wording has been retained.

Section 8.3.1 This section was designed to provide an example of how states or local jurisdictions might approach the development of rules, regulations, or ordinances for implementing provisions of the Model Standards. It also suggested the related training that might be appropriate for local building inspectors and officials. One commenter stated that, "Given no criteria for training or resources specified, it is inappropriate to recommend such training." EPA believes that it is appropriate and desireable to provide an Agency assessment of the general type of training that may be necessary in jurisdictions where the Model Standards are adopted in building codes. EPA has agreed to work with the National Association of Home Builders and with the Model Code Organizations to develop appropriate training programs and materials. Funding for this type of activity is expected to be available through grants to states, as authorized by current legislation.

Section 9.1.1 Two commenters recommended changes in this section to more clearly define the alternatives and specifications for creating a gas permeable layer under slab floors. EPA concurs with this recommendation and modified the language to include more detailed specifications for alternative sub-slab materials.

Section 9.1.2 Three commenters recommended changes in this section to more clearly define specifications and placement requirements for sub-slab soil-gas-retarder membranes. EPA believes that the current specifications for membrane type (polyethylene) and thickness (6-mil or 3-mil cross laminated), provides sufficient definition to ensure that effective soil-gas-retarders are installed by builders nationwide. At the local level, jurisdictions may decide to add more detailed, locally approved membrane specifications when they adopt provisions of the Model Standards in their building codes. This would facilitate enforcement of the requirement by local building inspectors. On the question of membrane placement, EPA concurs with the need for more specific guidance and revised this section accordingly.

Section 9.1.3 This section provides guidance for construction of concrete floor slabs and makes reference to several guides and manuals published by the American Concrete Institute (ACI). One commenter recommended that the Model Standards refer instead to existing Model Building Code standards for construction of concrete floors. EPA concurs with this recommendation but has also retained the ACI publications as "references that provide additional information on construction of concrete floor slabs."

Section 9.1.5 Three commenters recommended changes in this section to establish a performance standard for sealing large openings through floors that are in contact with the soil. EPA concurs. The section has been revised to require the use of sealant materials that "provide a permanent air-tight seal." Examples of materials that may be used to achieve that performance standard are also included in this section.

Sections 9.1.6, 9.1.7, 9.1.8, 9.1.13, 9.1.15, 9.1.17, and 9.1.18. Four commenters recommended changes in one or more of these sections to more clearly define the characteristics and specifications of sealants used to retard soil gas entry. EPA concurs with the need to provide more specific guidance on use of sealants and has made appropriate changes in each of these sections. The changes have either established a performance standard (such as air-tight sealing), or have referenced an ASTM Standard, or have included both a performance standard and samples of ASTM approved sealant materials.

Section 9.1.9 This section includes specific procedures for routing the discharge from floor drains and air conditioning condensate drains so as to prevent radon entry through those openings. One commenter indicated a preference for applying the procedures for floor drain discharge that are contained in current model building codes. EPA concurs with using existing building or plumbing codes as references when they provide guidance that is also applicable to radon control techniques. This section was changed to reference local plumbing codes.

Sections 9.1.8, 9.1.11, 9.1.12, and 9.1.14. Each of these sections contained references to one or more publications of the National Concrete Masonry Association, the National Forest Products Association, or the American Concrete Institute. One commenter suggested that if these publications are included in the Model Standards, they would not be enforceable since they are not consensus documents and are not referenced in Model Building Codes. As in the previous comment, EPA concurs with use of existing, applicable building codes whenever possible and has either deleted references to the Trade publications or listed them as additional sources of valuable information to builders.

Section 9.1.15 This section covers the placement of air handling ducts beneath slabs or in other areas exposed to earth. Two commenters recommended elimination or prohibition of sub-slab ducting, particularly in homes where passive or active sub-slab depressurization systems are installed. Because of the common use of sub-slab and crawlspace ducting in some areas of the United States, it is not considered feasible to recommend prohibition or elimination of this type of construction. EPA believes that the current wording of this section contains

sufficient safeguards to ensure that installation of such ductwork does not result in increased radon entry into homes.

Section 9.1.16 This section includes a recommendation that air handling units not be placed in crawlspaces. One commenter suggested that "it is possible to place air handling units in crawlspaces if the joints and seams are sealed." As in the previous comment, EPA recognizes that placing air handling units in crawlspaces is a common construction practice in many areas of the United States. To accommodate this reality and, at the same time, ensure that such installations do not contribute to radon entry, this section has been revised to include a standard for designing and sealing air handling units in a manner that prevents air surrounding the unit from being drawn into the unit.

Section 9.1.20 This section introduces the requirements for installing components of a passive sub-membrane depressurization (SMD) system in homes with crawlspace foundations. Two commenters identified cases where such components should not be required due to the installation of other effective radon control systems. EPA concurs and has added an "Exception" to this section which eliminates the requirement for SMD components when other effective crawlspace ventilation systems are installed.

Section 9.1.20.1 This section addresses the installation requirements for crawlspace membranes. Several commenters recommended deletion of the requirement to seal the membrane to interior piers and foundation walls. Based on experience in mitigation of radon in existing crawlspace homes (and considering that the Model Standards recommend use of passive radon control systems in areas of high radon potential), EPA believes that sealing the membrane to piers and walls should be a standard construction technique in order to maximize the effectiveness of passive SMD systems. An additional sentence has been added to this section to further ensure that the integrity of the membrane is maintained after construction activity is completed.

Sections 9.1.20.2, 9.21.1, 9.21.2, and 9.3.4. Each of these sections addresses, among other things, the routing and exhaust point of radon vent pipes. Three commenters recommended revisions in these sections to clarify limitations on the exhaust point location. These sections have been revised to more clearly define the limitations.

Section 9.21.1.1 Two commenters questioned the permitted use and effectiveness of small diameter (2 and 3-inch) radon vent pipes when installed as part of a passive radon control system. Small vent pipes down to 2 inches in diameter have been shown to be effective when installed in active radon control systems, but EPA agrees that there is insufficient evidence at this time to support a recommendation that 2-inch pipes be permitted in passive radon vent stacks. That provision has been deleted from this section.

Section 9.2.1 One commenter recommended revision of this section to more clearly define the types of air passages that should be closed or sealed to reduce the stack effect in buildings. EPA concurs and revised this section accordingly.

Section 9.2.3 Three commenters recommended a more specific definition of the type of recessed ceiling lights that should be installed to reduce the loss of conditioned air through these fixtures. EPA concurs and has revised this section to include the recommended Type IC light fixture rating.

Section 9.2.4 Four commenters recommended deletion of the requirement to install outside air ducts to provide combustion and makeup air for fireplaces and other combustion and vented appliances. Conflicts were cited between that proposed requirement and existing building, mechanical, and gas codes. EPA concurs and has revised this section to require installation of combustion and vented appliances in accordance with local codes.

Section 9.3 Two commenters suggested the need for more detailed guidance on the type, location, and specifications of system failure warning devices to be used when radon control systems are activated. There are a variety of devices currently available to builders and homeowners that provide an acceptable level of audible or visual warning if the active radon control system fails. EPA believes that establishment of more detailed warning device specifications in the Model Standards could increase costs and inhibit installation of such devices. EPA concurs, however, with the need to require, as a minimum, that warning devices be prominently positioned to ensure that building occupants are alerted if the radon control system fails. This section has been revised to include that requirement.

Section 9.3.3 One commenter suggested that establishment of a specific slope requirement (⅛ inch per foot) for horizontal runs of radon vent pipes is overly restrictive and that any slope would be effective for handling rain water and condensation flow. The ⅛ inch per foot slope specification was based on the more demanding need for sufficient slope to handle sewage flow in plumbing waste lines. EPA agrees that such a specification is not applicable to radon vent pipes and has revised this section to require only that such pipes slope downward.

Section 9.3.5 One commenter recommended adding a requirement that radon vent pipes be routed through attics in a location that would facilitate future installation and maintenance of a fan. EPA concurs with the recommendation and has inserted this section as an addition to the Model Standards.

Section 9.3.6 (Formerly 9.3.5) This section addresses the size and air movement capacity of radon vent pipe fans. One commenter recommended inclusion of a more definitive prescriptive size for the fan. EPA believes that a general specification, related to sub-slab or sub-membrane pressure field extension, permits needed flexibility in selection of fans for the wide variety of new home sizes and configurations that exist in the U.S.

C. Response to Comments on Significant Issues

During development of the Model Standards, a number of significant issues were raised that warranted special consideration. Comments were specifically solicited on all of these issues.

1. The first issue relates to the effectiveness of passive systems in achieving average annual indoor radon levels below 4 pCi/L when applied in areas of high radon potential. For example, passive systems may be affected by climatic conditions. Although data available to the Agency indicates that passive systems will result in reductions of indoor radon levels, respondents were encouraged to provide any information that would serve to further quantify effectiveness of passive systems in different house designs and in different geographical and climatic areas.

Two commenters responded on this issue. One "did not share EPA's confidence in effectiveness of passive systems," but offered no data to support that concern. The second commenter indicated that "passive systems rarely work" and expressed "doubt about the 50% radon reduction figure given by EPA," citing experience in Spokane County (Washington) where "new houses with EPA-style passive systems are testing above 4 pCi/L at a rate of 46 percent." EPA is currently conducting three studies designed to further quantify the effectiveness of passive radon control systems in new homes

throughout the U.S. One of these studies has just begun in the Spokane area and will not be completed until the end of 1994. EPA believes that it is premature to draw any conclusions from any preliminary data coming out of this study. EPA agrees that in some local areas, where radon source strength is particularly high, or where climatic conditions reduce the upward convective flow of soil-gas in the passive radon vent stack, installing passive radon control systems may not always result in radon levels under 4 pCi/L in the new homes built in those areas. This could be the case even though 50 percent reductions in radon levels were achieved in all of these homes. These limitations are the basis for recommending in the Model Standards that all new homes in which passive radon control systems are installed should be tested to determine whether activation of the system is needed.

2. The second issue relates to questions concerning "stack effect" reduction techniques, the degree to which they contribute to radon reduction, and their contribution to building safety and energy conservation. Although widely used by many builders to enhance energy conservation, it is acknowledged that there are different views on the effectiveness of these techniques in reducing indoor radon levels. Some research has been done to quantify the specific impact of individual stack effect reduction techniques on radon entry. The Agency chose to include these techniques as a prescriptive requirement in the recommended construction method because the preliminary research indicates they do contribute to reducing radon entry, and produce significant energy savings and increased fire resistance. EPA invited comment and information on this topic.

Two commenters responded to this issue. Both expressed concern that further research is needed to validate the effectiveness of stack effect reduction methods in reducing radon entry, but provided no data to support their concern. One commenter suggested that the "stack effect reduction techniques should be discussed in a non-mandatory appendix to the Model Standards due to continuing doubt as to their effectiveness." EPA concurs in the need for additional research to reduce uncertainties on this issue. However, pending receipt of additional data proving otherwise, EPA continues to believe that stack effect reduction methods contribute to reducing radon entry (and to energy conservation) and should be retained as an integral part of the Model Standards.

3. The third issue relates to the degree that radon measurements made in a new home prior to occupancy will represent actual exposure of future occupants to radon. The Agency believes that all new homes should be tested, but a concern has been raised as to whether a measurement in a newly constructed unoccupied house can be used to reliably indicate the potential for elevated post-occupancy radon levels. For example, can the house be closed and the heating and cooling systems operated under normal conditions for a minimum of 12 hours prior to and during the radon test period? The Agency specifically solicited any information or quantitative analyses related to conditions existing in a newly constructed home versus an existing home that would influence radon levels.

One commenter responded on this issue by recounting the reasons why radon measurements should not be made prior to occupancy of a new home, but offered no quantitative data. In general, EPA agrees that, for a variety of reasons, radon measurements taken prior to occupancy may not reflect actual long term exposure to occupants. To begin the process of quantifying the accuracy of pre-occupancy radon testing, EPA is currently conducting a study to assess the effect on radon levels caused by the normal settling and drying of a house during the first year after occupancy. EPA supports the need for additional studies to address other aspects of this issue.

4. The fourth issue concerned the need to ensure that new homes are tested for radon, especially homes with passive radon control systems in Zone 1, where, if high radon levels are found, greater risk reduction can be achieved by activation of the system. The Agency solicited information on methods that have been successful in increasing testing of new homes for radon.

There were no comments specifically responding to this issue apart from the related comments on pre-occupancy testing addressed in the third issue. One commenter did recommend that "the Standard should clearly identify the homeowner as the party responsible for radon testing." EPA has consistently encouraged homeowners to test for radon but has not found a workable method that would guarantee that a new home built with a passive radon control system will voluntarily be tested. EPA continues to solicit information on successful approaches to new home testing.

5. The fifth issue relates to areas of very low radon potential where jurisdictions may not believe it advisable to adopt any radon-resistant construction techniques or radon test requirements in their building codes. As a result, a small number of homes in these areas may have undetected elevated radon levels. EPA solicited suggestions on how to address this issue.

Related to this issue, one commenter asked why the Model Standards "address radon only in high radon zones," but did not offer any suggestions for how to deal with isolated cases of high radon levels in low radon potential zones. EPA believes that use of passive radon control systems in areas of high radon potential (Zone 1), and activation of those systems if necessitated by follow-up testing, is the best approach at this time to achieving both significant radon risk reduction and cost-effectiveness in construction of new homes. Other options considered in the CBA were not judged to be cost-effective. EPA will continue to explore ways in which new houses with elevated radon levels in Zones 2 and 3 can be identified and mitigated. As indicated in sections 8.2.2 and 8.2.3 of the Model Standards, if jurisdictions in Zones 2 and 3 have reason to believe that radon "hot spots" exist in their area, the Agency recommends that appropriate radon-resistant features be built-in to new homes in those areas.

6. A final issue concerned the approaches that may be taken to achieve early adoption of the Model Standards by Model Code Organizations and by local jurisdictions. It was noted that in some jurisdictions, adoption has been facilitated by including language in the codes or regulations that absolves builders and building officials from liability if the required new construction standards and techniques are applied as dictated by such codes or regulations. EPA indicated a special interest in comments on that approach and in examples of other successful attempts to have model standards relating to environmental issues adopted by Model Code Organizations or local jurisdictions. One commenter reinforced the example cited above, suggesting that adoption of the Model Standards would be "best facilitated by state laws and model codes containing provisions that absolve builders from liability if new construction standards are applied as dictated by local laws and codes." There were no other examples of approaches that might facilitate early adoption of the Model Standards. EPA will continue to work with state and local building officials and with Model Code Organizations to gain acceptance

and early adoption of the Model Standards.

7. While EPA requested comments on the entire document, the Agency was particularly interested in comments relating to the foregoing issues. Respondents were also encouraged to provide comments on the overall energy impact of applying the Model Standards. There were no comments specifically addressing the energy impact of the Model Standards. EPA continues to believe that an important by-product of building radon-resistance into new homes is the significant energy savings that also results.

Dated: March 9, 1994.

Carol M. Browner,

Administrator.

Model Standards and Techniques for Control of Radon in New Residential Buildings

1.0 Scope

1.0.1 This document contains model building standards and techniques applicable to controlling radon levels in new construction of one- and two-family dwellings and other residential buildings three stories or less in height as defined in model codes promulgated by the respective Model Code Organizations.

1.0.2 The model building standards and techniques are also applicable when additions are made to the foundations of existing one- and two-family dwellings that result in extension of the building footprint.

1.0.3 This document is not intended to be a building code nor is it required that it be adopted verbatim as a referenced standard.

1.0.4 It is intended that the building standards and techniques contained in section 9.0 of this document, the construction method in section 7.0, and the recommended procedures for applying the standards and construction method in section 8.0, serve as a model for use by the Model Code Organizations and authorities within states or other jurisdictions that are responsible for regulating building construction as they develop and adopt building codes, appendixes to codes, or standards and implementing regulations specifically applicable to their unique local or regional radon control requirements.

1.0.5 The preferential grant assistance authorized in section 306(d) of the Indoor Radon Abatement Act of 1988 (title III of the Toxic Substances Control Act, TSCA, 15 U.S.C. 2666) will be applied for states where appropriate authorities who regulate building construction are taking action to adopt radon-resistant standards in their building codes.

1.0.6 Model building standards and techniques contained in this document are not intended to supersede any radon-resistant construction standards, codes or regulations previously adopted by local jurisdictions and authorities. However, jurisdictions and authorities are encouraged to review their current building standards, codes, or regulations and their unique local or regional radon control requirements, and consider modifications, if necessary.

1.0.7 This document will be updated and revised as ongoing and future research programs suggest revisions of standards, identify ways to improve the model construction techniques, or when newly tested products or techniques prove to be equivalent to or more effective in radon control. Updates and revisions to the model building standards and techniques contained in section 9.0 will undergo appropriate peer review.

1.0.8 EPA is committed to continuing evaluation of the effectiveness of the standards and techniques contained in section 9.0 and to research programs that may identify other more effective and efficient methods.

2.0 Limitations

2.0.1 The Indoor Radon Abatement Act of 1988 (title III of TSCA) establishes a long-term national goal of achieving radon levels inside buildings that are no higher than those found in ambient air outside of buildings. While technological, physical, and financial limitations currently preclude attaining this goal, the underlying objective of this document is to move toward achieving the lowest technologically achievable and most cost effective levels of indoor radon in new residential buildings.

2.0.2 Preliminary research indicates that the building standards and techniques contained in section 9.0 can be applied successfully in mitigating radon problems in some existing nonresidential buildings. However, their effectiveness when applied during construction of new nonresidential buildings has not yet been fully demonstrated. Therefore, it is recommended that, pending further research, these building standards and techniques not be used at this time as a basis for changing the specific sections of building codes that cover nonresidential construction.

2.0.3 Although radon levels below 4 pCi/L have been achieved in all types of residential buildings by using these model building standards and techniques, specific indoor radon levels for any given building cannot be predicted due to different site and environmental conditions, building design, construction practices, and variations in the operation of buildings.

2.0.4 These model building standards and techniques are not to be construed as the only acceptable methods for controlling radon levels, and are not intended to preempt, preclude, or restrict the application of alternative materials, systems, and construction practices approved by building officials under procedures prescribed in existing building codes.

2.0.5 Elevated indoor radon levels caused by emanation of radon from water is of potential concern, particularly in areas where there is a history of groundwater with high radon content. This document does not include model construction standards or techniques for reducing elevated levels of indoor radon that may be caused by the presence of high levels of radon in water supplies. EPA has developed a suggested approach (see paragraph 8.3.2) that state or local jurisdictions should consider as they develop regulations concerning private wells. EPA is continuing to evaluate the issue of radon occurrence in private wells and the economic impacts of testing and remediation of wells with elevated radon levels.

2.0.6 While it is not currently possible to make a precise prediction of indoor radon potential for a specific building site, a general assessment, on a statewide, county, or grouping of counties basis, can be made by referring to EPA's Map of Radon Zones and other locally available data. It should be noted that some radon potential exists in all areas. However, EPA recognizes that based on available data, there is a lower potential for elevated indoor radon levels in some states and portions of some states, and that adoption of building codes for the prevention of radon in new construction may not be justified in these areas at this time. There is language in paragraph 8.2.3 of this document recommending that jurisdictions in these areas review all available data on local indoor radon measurements, geology, soil parameters, and housing characteristics as they consider whether adoption of new codes is appropriate.

3.0 Reference Documents

References are made to the following publications throughout this document. Some of the references do not specifically address radon. They are listed here only as relevant sources of additional information on building

design, construction techniques, and good building practices that should be considered as part of a general radon reduction strategy.

"Building Foundation Design Handbook," ORNL/SUB/86–72143/1, May 1988.

"Building Radon Resistant Foundations—A Design Handbook," NCMA, 1989.

"Council of American Building Officials (CABO) Model Energy Code, 1992.

"Design and Construction of Post-Tensioned Slabs on Ground," Post Tensioning Institute Manual.

"Energy Efficient Design of New Buildings Except Low-Rise Residential Buildings," ASHRAE Standard 90.1–1989.

"Energy Efficient Design of New Low-Rise Residential Buildings," Draft ASHRAE Standard 90.2 (Under public review).

"Homebuyer's and Seller's Guide to Radon," EPA 402–R–93–003, March 1993.

"Guide to Residential Cast-in-Place Concrete Construction," ACI 332R.

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"Permanent Wood Foundation System—Basic Requirements, NFPA Technical Report No. 7."

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"Radon Reduction in New Construction, An Interim Guide." OPA–87–009, August 1987.

"Radon Reduction in Wood Floor and Wood Foundation Systems." NFPA, 1988.

"Radon Resistant Construction Techniques for New Residential Construction. Technical Guidance." EPA/625/2–91/032, February 1991.

"Radon-Resistant Residential New Construction." EPA/600/8–88/087, July 1988.

"Guide for Concrete Floor and Slab Construction," ACI 302.1R–89.

"Ventilation for Acceptable Indoor Air Quality," ASHRAE 62–1989.

4.0 Description of Terms

For this document, certain terms are defined in this section. Terms not defined herein should have their ordinary meaning within the context of their use. Ordinary meaning is as defined in "Webster's Ninth New Collegiate Dictionary."

Action Level: A term used to identify the level of indoor radon at which remedial action is recommended. (EPA's current action level is 4 pCi/L.)

Air Passages: Openings through or within walls, through floors and ceilings, and around chimney flues and plumbing chases, that permit air to move out of the conditioned spaces of the building.

Combination Foundations: Buildings constructed with more than one foundation type; e.g., basement/crawlspace or basement/slab-on-grade.

Drain Tile Loop: A continuous length of drain tile or perforated pipe extending around all or part of the internal or external perimeter of a basement or crawlspace footing.

Governmental: State or local organizations/agencies responsible for building code enforcement.

Map of Radon Zones: A USEPA publication depicting areas of differing radon potential in both map form and in state specific booklets.

Mechanically Ventilated Crawlspace System: A system designed to increase ventilation within a crawlspace, achieve higher air pressure in the crawlspace relative to air pressure in the soil beneath the crawlspace, or achieve lower air pressure in the crawlspace relative to air pressure in the living spaces, by use of a fan.

Model Building Codes: The building codes published by the 4 Model Code Organizations and commonly adopted by state or other jurisdictions to control local construction activity.

Model Code Organizations: Includes the following agencies and the model building codes they promulgate: Building Officials and Code Administrators International, Inc. (BOCA National Building Code/1993 and BOCA National Mechanical Code/1993); International Conference of Building Officials (Uniform Building Code/1991 and Uniform Mechanical Code/1991); Southern Building Code Congress, International, Inc. (Standard Building Code/1991 and Standard Mechanical Code/1991); Council of American Building Officials (CABO One- and Two-Family Dwelling Code/1992 and CABO Model Energy Code/1993).

pCi/L: The abbreviation for "picocuries per liter" which is used as a radiation unit of measure for radon. The prefix "pico" means a multiplication factor of 1 trillionth. A Curie is a commonly used measurement of radioactivity.

Soil Gas: The gas present in soil which may contain radon.

Soil-Gas-Retarder: A continuous membrane or other comparable material used to retard the flow of soil gases into a building.

Stack Effect: The overall upward movement of air inside a building that results from heated air rising and escaping through openings in the building super-structure, thus causing an indoor pressure level lower than that in the soil gas beneath or surrounding the building foundation.

Sub-Slab Depressurization System (Active): A system designed to achieve lower sub-slab air pressure relative to indoor air pressure by use of a fan-powered vent drawing air from beneath the slab.

Sub-Slab Depressurization System (Passive): A system designed to achieve lower sub-slab air pressure relative to indoor air pressure by use of a vent pipe routed through the conditioned space of a building and connecting the sub-slab area with outdoor air, thereby relying solely on the convective flow of air upward in the vent to draw air from beneath the slab.

Sub-Membrane Depressurization System: A system designed to achieve lower sub-membrane air pressure relative to crawlspace air pressure by use of a fan-powered vent drawing air from under the soil-gas-retarder membrane.

5.0 Principles for Construction of Radon-Resistant Residential Buildings

5.1 The following principles for construction of radon-resistant residential buildings underlie the specific model standards and techniques set forth in section 9.0.

5.1.1 Residential buildings should be designed and constructed to minimize the entrance of soil gas into the living space.

5.1.2 Residential buildings should be designed and constructed with features that will facilitate post-construction radon removal or further reduction of radon entry if installed prevention techniques fail to reduce radon levels below the locally prescribed action level.

5.2 As noted in the limitations section (paragraph 2.0.2), construction standards and techniques specifically applicable to new nonresidential buildings (including high-rise residential buildings), have not yet been fully demonstrated. Accordingly, the specific standards and techniques set forth in section 9.0 should not, at this time, be considered applicable to such

buildings. There are, however, several general conclusions that may be drawn from the limited mitigation experience available on large nonresidential construction. These conclusions are summarized below to provide some initial factors for consideration by builders of nonresidential buildings.

5.2.1 HVAC systems should be carefully designed, installed and operated to avoid depressurization of basements and other areas in contact with the soil.

5.2.2 As a minimum, use of a coarse gravel or other permeable base material beneath slabs, and effective sealing of expansion joints and penetrations in foundations below the ground surface will facilitate post-construction installation of a sub-slab depressurization system, if necessary.

5.2.3 Limited mitigation experience has shown that some of the same radon reduction systems and techniques used in residential buildings can be scaled up in size, number, or performance to effectively reduce radon in larger buildings.

6.0 Summary of the Model Building Standards and Techniques

The model building standards and techniques listed in section 9.0 are designed primarily for control of radon in new one- and two-family dwellings and other residential buildings three stories or less in height.

6.1 Basement and Slab-on-Grade Foundations

The model building standards and techniques for radon control in new residential buildings constructed on basement and slab-on-grade foundations include a layer of permeable sub-slab material, the sealing of joints, cracks, and other penetrations of slabs, floor assemblies, and foundation walls below or in contact with the ground surface, providing a soil-gas-retarder under floors and installing either an active or passive sub-slab depressurization system (SSD). Additional radon reduction techniques are prescribed to reduce radon entry caused by the heat induced "stack effect." These include the closing of air passages (also called thermal by-passes), providing adequate makeup air for combustion and exhaust devices, and installing energy conservation features that reduce nonrequired airflow out of the building superstructure.

6.2 Crawlspace Foundations

The model building standards and techniques for radon control in new residential buildings constructed on crawlspace foundations include those systems that actively or passively vent the crawlspace to outside air, that divert radon before entry into the crawlspace, and that reduce radon entry into normally occupied spaces of the building through floor openings and ductwork.

6.3 Combination Foundations

Radon control in new residential buildings constructed on a combination of basement, slab-on-grade or crawlspace foundations is achieved by applying the appropriate construction techniques to the different foundation segments of the building. While each foundation type should be constructed using the relevant portions of these model building standards and techniques, special consideration must be given to the points at which different foundation types join, since additional soil-gas entry routes exist in such locations.

7.0 Construction Methods

The model construction standards and techniques described in section 9.0 have proved to be effective in reducing indoor radon levels when used to mitigate radon problems in existing homes and when applied in construction of new homes. In most cases, combinations of two or more of these standards and techniques have been applied to achieve desired reductions in radon levels. Because of success achieved in reducing radon levels by applying these multiple, interdependent techniques, limited data have been collected on the singular contribution to radon reduction made by any one of the construction standards or techniques. Accordingly, there has been no attempt to classify or prioritize the individual standards and techniques as to their specific contribution to radon reduction. It is believed that use of *all* the standards and techniques (both passive and active) will produce the lowest achievable levels of indoor radon in new homes (levels below 2 pCi/L have been achieved in over 90 percent of new homes). It is also believed that use of only selected (passive) standards and techniques will produce indoor radon levels below the current EPA action level of 4 pCi/L in most new homes, even in areas of high radon potential.

7.1 It is recommended that all the passive standards and techniques listed in section 9.0 (including a roughed-in passive radon control system) be used in areas of high radon potential, as defined by local jurisdictions or in EPA's Map of Radon Zones. Based on more detailed analysis of locally available data, jurisdictions may choose to apply more or less restrictive construction requirements within designated portions of their areas of responsibility. To ensure that new homes are below the locally prescribed action level, in those cases where only passive radon control systems have been installed, occupants should have their homes tested to determine if passive radon control systems need to be activated. In addition, it is recommended that periodic retests be conducted to confirm continued effectiveness of the radon control system.

7.2 Any radon testing referenced in this document should be conducted in accordance with EPA Radon Testing Protocols or current EPA guidance for radon testing in real estate transactions as referenced in paragraph 3.0. It is recommended that all testing be conducted by companies listed in EPA's Radon Measurement Proficiency Program (RMP) or comparable State certification programs.

7.3 The design and installation of radon control systems should be performed or supervised by individuals (i.e., builders, their representatives, or registered design professionals such as architects or engineers) who have attended an EPA-approved radon training course, or by an individual listed in the EPA Radon Contractor Proficiency Program.

8.0 Recommended Implementation Procedures

The following procedures are recommended as guidelines for applying the model building standards and techniques and construction methods contained in this document. These procedures are based on the rationale that a passive radon control system and features to facilitate any necessary post-construction radon reduction should be routinely built-in to new residential buildings in areas having a high radon potential.

8.1 State, county, or local jurisdictions that use these model building standards and techniques as a basis for developing building codes for radon resistant construction should classify their area by reference to the Zones in EPA's Map of Radon Zones or by considering other locally available data. While EPA believes that the Map of Radon Zones and accompanying state-specific booklets are useful in setting general boundaries of areas of concern, EPA recommends that state and local jurisdictions collect and analyze local indoor radon measurements, and assess geology, soil parameters and housing characteristics—in conjunction with referring to the EPA radon maps—to

determine the specific areas within their jurisdictions that should be classified as Zone 1.

8.2 State, county, or local jurisdictions that use these model building standards and techniques as a basis for developing building codes for radon-resistant construction should specify the construction methods applicable to their jurisdictional area.

8.2.1 In areas classified as Zone 1 in the Map of Radon Zones, or by local jurisdiction, application of the construction method in paragraph 7.1 is recommended.

8.2.2 In areas classified as Zone 2, home builders may apply any of the radon-resistant construction standards and techniques that contribute to reducing the incidence of elevated radon levels in new homes and that are appropriate to the unique radon potential that may exist in their local building area.

8.2.3 In those areas where state and local jurisdictions have analyzed local indoor radon measurements, geology, soil parameters, and housing characteristics and determined that there is a low potential for indoor radon, application of radon-resistant construction techniques may not be appropriate. In these areas, radon-resistant construction techniques may not be needed, or limited use of selected techniques may be sufficient.

8.3 It is recognized that specific rules, regulations, or ordinances covering implementation of construction standards or codes are developed and enforced by state or local jurisdictions. While developing the model construction standards and techniques contained in this document, EPA also developed several approaches to regulation that states or local jurisdictions may find useful and appropriate as they develop rules and regulations that meet their unique requirements. For example:

8.3.1 In areas where the recommended construction method or comparable prescriptive methods are mandated by state or local jurisdictions, regulations would need to include, as part of the inspection process, a review of the radon-resistant construction features by inspectors who have received additional training, to ensure that the radon-resistant construction features are properly installed during construction. It would also be necessary to establish requirements for those building officials who review and approve construction plans and specifications to become proficient in identifying and approving planned radon-resistant construction features.

8.3.2 In any area where surveys have shown the existence of high levels of radon in groundwater, or in areas where elevated levels of indoor radon have been found in homes already equipped with active radon control systems, well water may be the source. In such areas, authorities responsible for water regulation should consider establishing well water testing requirements that include tests for radon.

9.0 Model Building Standards and Techniques

9.1 Foundation and Floor Assemblies:

The following construction techniques are intended to resist radon entry and prepare the building for post-construction radon mitigation, if necessary. These techniques, when combined with those listed in paragraph 9.2, meet the requirements of the construction method outlined in paragraph 7.1. (See also the construction methods listed in ASTM Standard Guide, E–1465–92.)

9.1.1 A layer of gas permeable material shall be placed under all concrete slabs and other floor systems that directly contact the ground and are within the walls of the living spaces of the building, to facilitate installation of a sub-slab depressurization system, if needed. Alternatives for creating the gas permeable layer include:

a. A uniform layer of clean aggregate, a minimum of 4 inches thick. The aggregate shall consist of material that will pass through a 2-inch sieve and be retained by a ¼-inch sieve.

b. A uniform layer of sand, a minimum of 4 inches thick, overlain by a layer or strips of geotextile drainage matting designed to allow the lateral flow of soil gases.

c. Other materials, systems, or floor designs with demonstrated capability to permit depressurization across the entire subfloor area.

9.1.2 A minimum 6-mil (or 3-mil cross laminated) polyethylene or equivalent flexible sheeting material shall be placed on top of the gas permeable layer prior to pouring the slab or placing the floor assembly to serve as a soil-gas-retarder by bridging any cracks that develop in the slab or floor assembly and to prevent concrete from entering the void spaces in aggregate base material. The sheeting should cover the entire floor area, and separate sections of sheeting should be overlapped at least 12 inches. The sheeting shall fit closely around any pipe, wire or other penetrations of the material. All punctures or tears in the material shall be sealed or covered with additional sheeting.

9.1.3 To minimize the formation of cracks, all concrete floor slabs shall be designed, mixed, placed, reinforced, consolidated, finished, and cured in accordance with standards set forth in the Model Building Codes. The American Concrete Institute publications, "Guide for Concrete Floor and Slab Construction," ACI 302.1R, "Guide to Residential Cast-in-Place Concrete Construction," ACI 332R, or the Post Tensioning Institute Manual, "Design and Construction of Post-Tensioned Slabs on Ground" are references that provide additional information on construction of concrete floor slabs.

9.1.4 Floor assemblies in contact with the soil and constructed of materials other than concrete shall be sealed to minimize soil gas transport into the conditioned spaces of the building. A soil-gas-retarder shall be installed beneath the entire floor assembly in accordance with paragraph 9.1.2.

9.1.5 To retard soil gas entry, large openings through concrete slabs, wood, and other floor assemblies in contact with the soil, such as spaces around bathtub, shower, or toilet drains, shall be filled or closed with materials that provide a permanent air-tight seal such as non-shrink mortar, grouts, expanding foam, or similar materials designed for such application.

9.1.6 To retard soil gas entry, smaller gaps around all pipe, wire, or other objects that penetrate concrete slabs or other floor assemblies shall be made air tight with an elastomeric joint sealant, as defined in ASTM C920–87, and applied in accordance with the manufacturer's recommendations.

9.1.7 To retard soil gas entry, all control joints, isolation joints, construction joints, and any other joints in concrete slabs or between slabs and foundation walls shall be sealed. A continuous formed gap (for example, a "tooled edge") which allows the application of a sealant that will provide a continuous, air-tight seal shall be created along all joints. When the slab has cured, the gap shall be cleared of loose material and filled with an elastomeric joint sealant, as defined in ASTM C920–97, and applied in accordance with the manufacturer's recommendations.

9.1.8 Channel type (French) drains are not recommended. However, if used, such drains shall be sealed with backer rods and an elastomeric joint sealant in a manner that retains the channel feature and does not interfere with the effectiveness of the drain as a water control system.

9.1.9 Floor drains and air conditioning condensate drains that discharge directly into the soil below the slab or into crawlspaces should be avoided. If installed, these drains shall be routed through solid pipe to daylight or through a trap approved for use in floor drains by local plumbing codes.

9.1.10 Sumps open to soil or serving as the termination point for sub-slab or exterior drain tile loops shall be covered with a gasketed or otherwise sealed lid to retard soil gas entry. (Note: If the sump is to be used as the suction point in an active sub-slab depressurization system, the lid should be designed to accommodate the vent pipe. If also intended as a floor drain, the lid shall also be equipped with a trapped inlet to handle any surface water on the slab.)

9.1.11 Concrete masonry foundation walls below the ground surface shall be constructed to minimize the transport of soil gas from the soil into the building. Hollow block masonry walls shall be sealed at the top to prevent passage of air from the interior of the wall into the living space. At least one continuous course of solid masonry, one course of masonry grouted solid, or a poured concrete beam at or above finished ground surface level shall be used for this purpose. Where a brick veneer or other masonry ledge is installed, the course immediately below that ledge shall also be sealed.

9.1.12 Pressure treated wood foundations shall be constructed and installed as described in the National Forest Products Association (NFPA) Manual, "Permanent Wood Foundation System—Basic Requirements, Technical Report No. 7." In addition, NFPA publication, "Radon Reduction in Wood Floor and Wood Foundation Systems" provides more detailed information on construction of radon-resistant wood floors and foundations.

9.1.13 Joints, cracks, or other openings around all penetrations of both exterior and interior surfaces of masonry block or wood foundation walls below the ground surface shall be sealed with an elastomeric sealant that provides an air-tight seal. Penetrations of poured concrete walls should also be sealed on the exterior surface. This includes sealing of wall tie penetrations.

9.1.14 To resist soil gas entry, the exterior surfaces of portions of poured concrete and masonry block walls below the ground surface shall be constructed in accordance with water proofing procedures outlined in the Model Building Codes.

9.1.15 Placing air handling ducts in or beneath a concrete slab floor or in other areas below grade and exposed to earth is not recommended unless the air handling system is designed to maintain continuous positive pressure within such ducting. If ductwork does pass through a crawlspace or beneath a slab, it should be of seamless material. Where joints in such ductwork are unavoidable, they shall be sealed with materials that prevent air leakage.

9.1.16 Placing air handling units in crawlspaces, or in other areas below grade and exposed to soil-gas, is not recommended. However, if such units are installed in crawlspaces or in other areas below grade and exposed to soil gas, they shall be designed or otherwise sealed in a durable manner that prevents air surrounding the unit from being drawn into the unit.

9.1.17 To retard soil gas entry, openings around all penetrations through floors above crawlspaces shall be sealed with materials that prevent air leakage.

9.1.18 To retard soil gas entry, access doors and other openings or penetrations between basements and adjoining crawlspaces shall be closed, gasketed or otherwise sealed with materials that prevent air leakage.

9.1.19 Crawlspaces should be ventilated in conformance with locally adopted codes. In addition, vents in passively ventilated crawlspaces shall be open to the exterior and be of noncloseable design.

9.1.20 In buildings with crawlspace foundations, the following components of a passive sub-membrane depressurization system shall be installed during construction: (Exception: Where local codes permit mechanical crawlspace ventilation or other effective ventilation systems, and such systems are operated or proven to be effective year round, the sub-membrane depressurization system components are not required.)

9.1.20.1 The soil in both vented and nonvented crawlspaces shall be covered with a continuous layer of minimum 6-mil thick polyethylene sheeting or equivalent membrane material. The sheeting shall be sealed at seams and penetrations, around the perimeter of interior piers, and to the foundation walls. Following installation of underlayment, flooring, plumbing, wiring, or other construction activity in or over the crawlspace, the membrane material shall be inspected for holes, tears, or other damage, and for continued adhesion to walls and piers. Repairs shall be made as necessary.

9.1.20.2 A length of 3- or 4-inch diameter perforated pipe or a strip of geotextile drainage matting should be inserted horizontally beneath the sheeting and connected to a 3- or 4-inch diameter "T" fitting with a vertical standpipe installed through the sheeting. The standpipe shall be extended vertically through the building floors, terminate at least 12 inches above the surface of the roof, in a location at least 10 feet away from any window or other opening into the conditioned spaces of the building that is less than 2 feet below the exhaust point, and 10 feet from any adjoining or adjacent buildings.

9.1.20.3 All exposed and visible interior radon vent pipes shall be identified with at least one label on each floor level. The label shall read: "Radon Reduction System."

9.1.20.4 To facilitate installation of an active sub-membrane depressurization system, electrical junction boxes shall be installed during construction in proximity to the anticipated locations of vent pipe fans and system failure alarms.

9.1.21 In basement or slab-on-grade buildings the following components of a passive sub-slab depressurization system shall be installed during construction:

9.1.21.1 A mimimum 3-inch diameter PVC or other gas-tight pipe shall be embedded vertically into the sub-slab aggregate or other permeable material before the slab is poured. A "T" fitting or other support on the bottom of the pipe shall be used to ensure that the pipe opening remains within the sub-slab permeable material. This gas tight pipe shall be extended vertically through the building floors, terminate at least 12 inches above the surface of the roof, in a location at least 10 feet away from any window or other opening into the conditioned spaces of the building that is less than 2 feet below the exhaust point, and 10 feet from any adjoining or adjacent buildings.

Note: Because of the uniform permeability of the sub-slab layer prescribed in paragraph 9.1.1, the precise positioning of the vent pipe through the slab is not critical to system performance in most cases. However, a central location shall be used where feasible.

In buildings designed with interior footings (that is, footings located inside the overall perimeter footprint of the building) or other barriers to lateral flow of sub-slab soil gas, radon vent pipes shall be installed in each isolated, nonconnected floor area. If multiple suction points are used in nonconnected floor areas, vent pipes are permitted to be manifolded in the basement or attic into a single vent that could be activated using a single fan.

9.1.21.2 Internal sub-slab or external footing drain tile loops that terminate in a covered and sealed sump, or internal

drain tile loops that are stubbed up through the slab are also permitted to provide a roughed-in passive sub-slab depressurization capability. The sump or stubbed up pipe shall be connected to a vent pipe that extends vertically through the building floors, terminates at least 12 inches above the surface of the roof, in a location at least 10 feet away from any window or other opening into the conditioned spaces of the building that is less than 2 feet below the exhaust point, and 10 feet from any adjoining or adjacent buildings.

9.1.21.3 All exposed and visible interior radon vent pipes shall be identified with at least one label on each floor level. The label shall read: "Radon Reduction System."

9 1.21.4 To facilitate installation of an active sub-slab depressurization system, electrical junction boxes shall be installed during construction in proximity to the anticipated locations of vent pipe fans and system failure alarms.

9.1.21.5 In combination basement/crawlspace or slab-on-grade/crawlspace buildings, the sub-membrane vent described in paragraph 9.1.20.2 may be tied into the sub-slab depressurization vent to permit use of a single fan for suction if activation of the system is necessary.

9.2 Stack Effect Reduction Techniques.

The following construction techniques are intended to reduce the stack effect in buildings and thus the driving force that contributes to radon entry and migration through buildings. As a basic principle, the driving force decreases as the number and size of air leaks in the upper surface of the building decrease. It should also be noted that in most cases, exhaust fans contribute to stack effect.

9.2.1 Openings around chimney flues, plumbing chases, pipes, and fixtures, ductwork, electrical wires and fixtures, elevator shafts, or other air passages that penetrate the conditioned envelope of the building shall be closed or sealed using sealant or fire resistant materials approved in local codes for such application.

9.2.2 If located in conditioned spaces, attic access stairs and other openings to the attic from the building shall be closed, gasketed, or otherwise sealed with materials that prevent air leakage.

9.2.3 Recessed ceiling lights that are designed to be sealed and that are Type IC rated shall be used when installed on top-floor ceilings or in other ceilings that connect to air passages.

9.2.4 Fireplaces, wood stoves, and other combustion or vented appliances, such as furnaces, clothes dryers, and water heaters shall be installed in compliance with locally adopted codes, or other provisions made to ensure an adequate supply of combustion and makeup air.

9.2.5 Windows and exterior doors in the building superstructure shall be weather stripped or otherwise designed in conformance with the air leakage criteria of the CABO Model Energy Code.

9.2.6 HVAC systems shall be designed and installed to avoid depressurization of the building relative to underlying and surrounding soil. Specifically, joints in air ducts and plenums passing through unconditioned spaces such as attics, crawlspaces, or garages shall be sealed.

9.3 Active Sub-Slab/Sub-Membrane Depressurization System. When necessary, activation of the roughed-in passive sub-membrane or sub-slab depressurization systems described in paragraphs 9.1.20 and 9.1.21 shall be completed by adding an exhaust fan in the vent pipe and a prominently positioned visible or audible warning system to alert the building occupant if there is loss of pressure or air flow in the vent pipe.

9.3.1 The fan in the vent pipe and all positively pressurized portions of the vent pipe shall be located outside the habitable space of the building.

9.3.2 The fan in the vent pipe shall be installed in a vertical run of the vent pipe.

9.3.3 Radon vent pipes shall be installed in a configuration and supported in a manner that ensures that any rain water or condensation accumulating within the pipes drains downward into the ground beneath the slab or soil-gas-retarder

9.3.4 To avoid reentry of soil gas into the building, the vent pipe shall exhaust at least 12 inches above the surface of the roof, in a location at least 10 feet away from any window or other opening into the conditioned spaces of the building that is less than 2 feet below the exhaust point, and 10 feet from any adjoining or adjacent buildings.

9.3.5 To facilitate future installation of a vent fan, if needed, the radon vent pipe shall be routed through attics in a location that will allow sufficient room to install and maintain the fan.

9.3.6 The size and air movement capacity of the vent pipe fan shall be sufficient to create and maintain a pressure field beneath the slab or crawlspace membrane that is lower than the ambient pressure above the slab or membrane.

9.3.7 Under conditions where soil is highly permeable, reversing the air flow in an active sub-slab depressurization system and forcing air beneath the slab may be effective in reducing indoor radon levels.

(**Note:** The long-term effect of active sub-slab depressurization or pressurization on the soil beneath building foundations has not been determined. Until ongoing research produces definitive data, in areas where expansive soils or other unusual soil conditions exist, the local soils engineer shall be consulted during the design and installation of sub-slab depressurization or pressurization systems.)

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Monday
March 21, 1994

Part V

Department of Health and Human Services

Centers for Disease Control and Prevention

Ryan White Comprehensive AIDS Resources Emergency Act; Emergency Response Employees; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Implementation of Provisions of the Ryan White Comprehensive AIDS Resources Emergency Act Regarding Emergency Response Employees

AGENCY: Centers for Disease Control and Prevention (CDC), Public Health Service, Department of Health and Human Services.

ACTION: Final notice.

SUMMARY: The Ryan White Comprehensive AIDS Resources Emergency (CARE) Act (Pub. L. 101–381) includes provisions for emergency response employees (EREs) who may be exposed to potentially life-threatening diseases during the course of an emergency. This notice sets forth the final list of diseases to which these provisions apply; final guidelines describing circumstances under which exposure to listed diseases may occur; and final guidelines for determining whether an exposure to the listed diseases has occurred. The final list of diseases and guidelines incorporate comments received by CDC on a draft list and guidelines (57 FR 54794, November 20, 1992).

DATES: The list of diseases and guidelines in this notice are effective on March 21, 1994. All other applicable provisions of the Act pertaining to this notice are effective on April 20, 1994.

FOR FURTHER INFORMATION CONTACT: Dr. Robert Mullan, Centers for Disease Control and Prevention, 1600 Clifton Road, NE., M/S F40, Atlanta, GA 30333, telephone (404) 639–0983.

SUPPLEMENTARY INFORMATION:

Introduction

The Ryan White CARE Act amended the Public Health Service Act to include provisions regarding emergency response employees (EREs). (See sections 2681–2690 of the PHS Act, 42 U.S.C. 300ff–81 to 300ff–90. References are to Title 42 of the U.S. Code.)

Section 300ff–81 requires the development and publication of the following: (1) A list of potentially life-threatening infectious diseases to which EREs may be exposed in responding to emergencies; (2) guidelines describing circumstances in which EREs may be exposed to such diseases; and, (3) guidelines for medical facilities to determine whether such exposure occurred.

Sections 300ff–82 through 300ff–83 specify that EREs must be notified of exposure to any of the airborne infectious diseases on the list and may request notification of exposure to other listed diseases. Sections 300ff–84 and 300ff–85 specify the procedures for notifying EREs when there has been an exposure to a listed disease. Under section 300ff–86, every State public health officer must designate an official of every employer of EREs in the State who will be responsible for notifying EREs of exposure. This official is referred to as the Designated Officer. A medical facility that receives an infectious patient to which an ERE may have been exposed is responsible for notifying the Designated Officer that the ERE was exposed to a listed disease.

Section 300ff–87 limits the time period for which medical facilities must maintain medical information on patients and respond to the request under section 300ff–83.

Under section 300ff–88 these provisions may not be construed to authorize civil actions or penalties against a medical facility or Designated Officer; to require a medical facility to test patients for any infectious disease; to authorize or require the disclosure of identifying information; or, to authorize any ERE to fail to respond, or to deny services, to victims of emergencies.

Section 300ff–89 requires the Secretary of Health and Human Services (the Secretary) to establish an administrative process through which the Department can be notified of alleged violations of the provisions and, as appropriate, investigate such alleged violations. The Secretary may seek injunctive relief for violations of these provisions.

Under section 300ff–90, the provisions of the Act and the notification system do not apply in a State that has certified to the Secretary that its notification laws are in substantial compliance with the Act.

The list of diseases and guidelines specified in section 300ff-81 are effective on the date of publication. All other requirements of the notification process take effect 30 days after the publication of the list and guidelines.

This notice includes definitions (Part I), the final list of potentially life-threatening diseases under section 300ff-81 (Part II), the final guidelines required under section 300ff-81 (Part III), and steps to implement sections 300ff–82–300ff–90 (Part IV). Three addenda are provided for background and informational purposes: A. The text of the Act; B. Excerpts concerning hepatitis B vaccination, and C. References.

Responses to Comments

On November 20, 1992, CDC published in the **Federal Register** (57 FR 54794) a request for comments, including a draft of the required list of infectious diseases and guidelines. CDC received comments from 101 individuals and/or organizations. CDC solicited comments to the following questions:

- What procedural steps can be taken to protect the confidentiality of patient information subject to the provisions of the Act?
- Can the ERE notification process be carried out within existing State confidentiality laws?
- What will be the resource implications in carrying out this legislation?
- What are the likely benefits to be gained in implementing these requirements?
- Which States have notification laws that, under section 300ff-90, could be viewed as being in substantial compliance with the Act?

CDC received a total of 275 comments in response to these questions. In addition, there were 432 comments to other issues in the notification process. The comments to the five specific questions and the additional comments are addressed below.

1. What procedural steps can be taken to protect the confidentiality of patient information subject to the provisions of the Act?

According to section 300ff–88(c), this statute may not be construed to authorize or require any medical facility, any designated officer of emergency response employees, or any such employee, to disclose identifying information with respect to a victim of an emergency or with respect to an emergency response employee."

CDC received 74 comments to the question regarding this provision. Many of the comments expressed concern that the victim's confidentiality could be breached. However, commenters also acknowledged that EREs and medical facilities are already responsible for protecting patient confidentiality and that additional protection could be provided through training.

Other commenters were concerned with the possible liability for medical facilities that provide patient information to Designated Officers. The statute addresses liability only from the perspective of failure to comply with duties established under the statute, not for breaches of confidentiality. As in other situations involving patient information, liability for breach of confidentiality is an issue of State law.

Several commenters stated that informed consent must be obtained before information on a victim could be provided to a Designated Officer. The statute does not address informed consent and informed consent to sharing patient information. Therefore, medical facilities must look to State laws regarding informed consent and the sharing of patient information.

The confidentiality provision (section 300ff–88[c]) must also be read in relation to section 300ff–84, procedures for notification of exposure. Under this later section, when a medical facility determines that a victim had an airborne infectious disease or that an ERE was exposed to an infectious disease on the list, the medical facility is required to provide (1) the name of the infectious disease involved; and (2) the date on which the victim of the emergency involved was transported by emergency response employees to the medical facility involved." These sections can be read together to mean that a medical facility that provides the required information under section 300ff-84 is not disclosing identifying information under section 300ff–88(c).

States should review their confidentiality statutes and resolve any conflict with this Federal legislation. Medical facilities must determine whether, under their State and local laws, providing the required information under section 300ff-84 violates State or local confidentiality laws.

2. Can the ERE notification process be carried out within existing State confidentiality laws?

CDC received responses to this question from 21 State health departments. Of these States, 11 thought the notification process could be implemented within the existing State confidentiality laws, 6 States did not think it could, and 4 States indicated that it could be carried out for some diseases, but not for other diseases, e.g., exposure to human immunodeficiency virus (i.e., acquired immunodeficiency syndrome, AIDS).

3. What will be the resource implications in carrying out this legislation?

CDC received 86 responses to this question. The vast majority (75) stated that the notification process would require an allocation of resources. Several commenters expressed a belief that the cost would be significant to medical facilities that are served by a large number of EREs requesting notification.

4. What are the likely benefits to be gained in implementing these requirements?

CDC received 41 comments to this question. Of these comments, 28 expressed doubt that the notification process would be beneficial to EREs. According to the comments, the process was not projected to confer many benefits because EREs are already covered by the Occupational Health and Safety Administration's Bloodborne Pathogens Standard, and because EREs should be using universal precautions. The 13 commenters who stated the process would be beneficial believed that it would increase uniformity in notification of EREs, reduce noncompliance among medical facilities in informing EREs of exposures, and provide additional protection to EREs.

5. Which States have notification laws that, under section 300ff–90, could be viewed as being in substantial compliance with the Act?

Under section 300ff–90, the requirements under the Act do "not apply in a State if the chief executive officer of the State certifies to the Secretary that the law of the State is in substantial compliance with" the Act.

A total of 30 commenters responded to this question. Of these, 14 said that their State would be in substantial compliance with the law and 16 said that their State would not be in compliance with the law.

Two commenters said that States should be allowed latitude in the determination whether they are in substantial compliance with the Act. Another commenter requested criteria that would be used to determine whether a State is in substantial compliance. However, the Act does not list any criteria for determining whether a State is in substantial compliance with the provisions of the Act. Therefore, CDC will accept the certification from the chief executive officer or designee of a State who certifies that the State is in substantial compliance with the Act. The certification must include the State statute(s) or regulation(s) upon which the certification is based. However, under section 300ff–89, the Secretary retains the authority to "commence a civil action to obtain temporary or permanent injunctive relief with respect to any violation of" the Act.

6. List of diseases.

Under section 300ff–81, the Secretary must develop "a list of infectious disease to which emergency response employees may be exposed in responding to emergencies. The list * * * shall include a specification of those infectious diseases on the list that are routinely transmitted through airborne or aerosolized means."

CDC received 31 comments to the draft list.

According to one commenter, "uncommon or rare diseases" should be deleted. However, the legislation calls for the list to include potentially life-threatening diseases regardless of their incidence. Therefore, the rarity of a disease should not determine whether it is included on the list.

Other commenters suggested adding chicken pox, syphilis, childhood diseases, and meningitis to the list. These diseases are not appropriate for the list because chicken pox is not generally life-threatening, syphilis does not pose a significant risk of transmission if an ERE is exposed to an infectious patient, and childhood diseases (i.e., measles and rubella) are not life-threatening to the ERE. Meningococcal disease is already on the list. Another commenter noted that meningococcal disease is not rare, and that it is transmitted through direct contact, and that the ERE is not likely to be aware of exposure. As noted in Part III, "Under special circumstances, *C. diphtheriae, N. meningitidis,* and *Y. pestis* could be transmitted to EREs by direct contact with droplets from the respiratory tract of infected persons. However, such transmission is rare." Although one commenter recommended that diphtheria and meningococcal disease be classified as airborne diseases, they are transmitted by direct contact only. Likewise, another reviewer recommended that hemorrhagic fevers be classified as bloodborne diseases, rather than as uncommon or rare diseases. Although the hemorrhagic fevers have been reported to have been transmitted via inoculation with contaminated needles,[1] it was decided to place the entire group under the uncommon or rare disease category to emphasize the decreased probability of exposure to these diseases.

It was also suggested that hepatitis C be deleted because of difficulty in interpretation of laboratory test, lack of routine test availability, and the lack of definitive treatment. Hepatitis C has been removed from the list at this time for the following reasons: Available laboratory tests do not distinguish between current or past infections, evidence of transmission in the health care setting is limited, and the withdrawal by the Immunization Practices Advisory Committee of its recommendations for prophylaxis with immune serum globulin following percutaneous exposure to hepatitis C. Moreover, there are no specific recommendations for following workers

[1] Benenson AS (ed). Control of communicable diseases in man. Washington, D.C.: The American Public Health Association, 15th edition, 1990.

after an exposure incident involving hepatitis C. CDC will continue to monitor the scientific literature on hepatitis C, however, and if new information becomes available that suggests that hepatitis C should be returned to the list of diseases contained here, CDC will amend the list.

A number of comments were received regarding tuberculosis. One commenter stated that tuberculosis is not life threatening, which should be noted in the regulation. However, tuberculosis, especially multiple drug-resistant tuberculosis (MDR-TB), can pose a threat to life; therefore it will remain in the list. Another commenter recommended that the list should specify tuberculosis disease as infectious "pulmonary" TB. This recommendation has been incorporated into the list.

It was also recommended that tuberculosis should be deleted from the list since no emergency treatment is indicated and EREs are required to have annual skin tests. However, in the event of a recognized exposure to tuberculosis, employees should be skin tested six weeks thereafter for conversion. In the event of a conversion, a decision concerning chemoprophylaxis should be made as soon as feasible.

One commenter suggested CDC reorganize the list of diseases into "mandatory reporting" and "exposure-triggered reporting." However, it was thought that the current organization made the most sense, since "exposure-triggered reporting" is still "mandatory," if an infectious disease exposure occurs that meets the criteria set forth in the Act. Some commenters thought the division of diseases into airborne and other modes of transmission was unnecessary. The diseases are distinguished by their mode of transmission because, under section 300ff-81(b), the statute requires a "specification of those infectious diseases on the list that are routinely transmitted through airborne or aerosolized means."

Many States commented that they already have a more comprehensive list of diseases requiring reporting. A more comprehensive list of diseases is not prohibited by the legislation; therefore, States may add diseases to the list, but no diseases on the list published herein may be removed by a State.

7. Definitions.

Under section 300ff–76, definitions for some of the terms applied in the statute can be found. Where it was necessary, additional definitions were added to the draft for clarification. A total of 32 comments regarding the definitions used in the notification process were received.

One commenter requested the definition of "Secretary" be added to the definitions to clarify that it is the Secretary of the Department of Health and Human Services who is responsible for injunctions under section 300ff–89. Therefore, the definition of "Secretary" has been added to the definitions.

Many commenters requested a definition of medical facility. This term was not defined in the Act, therefore, a definition of medical facility has been added to the list of definitions. A medical facility, for purposes of this statute, is any facility that treats victims of emergencies.

One commenter requested clarification whether the definition of an ERE included "non-governmental EREs." The definition of EREs includes employees of non-governmental organizations. One commenter recommended that law enforcement personnel be included under the definition of EREs. Under the Act, the definition of EREs includes law enforcement officers." One commenter stated that it is unclear whether EREs who treat a victim but do not transport the victim are covered under the Act. Under section 300ff–82, when a medical facility makes a determination that a victim has an airborne infectious disease, the medical facility must notify only the Designated Officer of the EREs who transported the victim, not those who also treated the victim. However, under section 300ff–83, any ERE who "attended, treated, assisted, or transported" a victim may submit a request for a determination whether there was an exposure to an infectious disease. Therefore, under section 300ff–82, the medical facility is required to notify those EREs who transported a victim who has an airborne infectious disease, even when the ERE has not made a request for notification. For these EREs, section 300ff–82 does not require the medical facility to determine whether the ERE was exposed to the infectious disease. Under section 300ff–83, EREs who attended, treated, assisted, or transported a victim can request a determination from the medical facility of whether the ERE was exposed to an infectious disease from a victim. This determination would include a determination of whether an ERE was exposed to a victim of an airborne infectious disease.

One commenter requested a definition of "public health officer" where, under section 300ff–83(g), a designated officer requests the assistance of the public health officer. Under that section, "the public health officer for the community in which the medical facility is located shall evaluate" a request from a designated officer to a medical facility where the medical facility finds that there is insufficient information to determine whether the ERE was exposed to a disease. Designated Officers must determine who the public health officer for the community is where the medical facility is located based on the jurisdiction where the medical facility is located, i.e., whether the community is a city or county.

The majority of comments received on the definitions related to the definition of "exposed" as it is defined in the statute and applied in the notification process.

The term "exposed" is found in two sections of the statute. Under section 300ff–81, the Secretary must develop the following: "a list of potentially life-threatening infectious diseases to which emergency response employees may be exposed in responding to emergencies; guidelines describing the circumstances in which such employees may be exposed to such diseases * * *; [and] guidelines describing the manner in which medical facilities should make determinations for purposes of section 300ff–83(d)." Under section 300ff–83(d), the medical facility must evaluate the facts submitted by a Designated Officer and make a determination whether, on the basis of the medical information possessed by the facility regarding the victim involved, the emergency response employee was exposed to an infectious disease included on the list, according to the guidelines issued by the Secretary.

Under section 300ff–76(6), "the term 'exposed,' with respect to HIV disease, or any other infectious disease, means to be in circumstances in which there is a significant risk of becoming infected with the etiologic agent for the disease involved." Neither the statute nor the legislative history of the statute provide any additional information regarding the definition of significant risk. Therefore, without statutory or legislative elucidation as to the meaning of significant risk", the term can be understood with reference to its use in other circumstances.

Under the Supreme Court case *School Board of Nassau County* v. *Arline*, the Court listed the criteria by which it could be determined whether an individual poses a "significant risk" to others (480 U.S.C. 273, 288). These criteria were recommended by the American Medical Association and included:

A finding of facts, based on reasonable medical judgments given the state of medical knowledge, about

(a) The nature of the risk (how the disease is transmitted),

(b) The duration of the risk (how long is the carrier infectious),

(c) The severity of the risk (what is the potential harm to others), and

(d) The probabilities the disease will be transmitted and will cause varying degrees of harm.

Subsequently, these criteria were incorporated into the definition of "direct threat" under the Americans With Disabilities Act. (See Senate Report No. 101–116, 101st Congress, 1st Session, 1989, page 40.) These criteria have been incorporated into the definition of "exposed" and into the guidelines under section 300ff–81(a)(2).

One commenter suggested that a system should be established that specifies the information required from a Designated Officer regarding exposure, thereby reducing the chance for confusion or insufficient information. Such a system is not required under the statute and has not been developed. The parties involved in this system must be given the latitude to develop procedures appropriate for their situation.

Several commenters stated that the determination of exposure is complex and should be left to public health or occupational health officials and that the determination of exposure cannot be the responsibility of the medical facility. The responsibility for determining exposure is specified in the statute and rests with medical facilities. This process cannot be altered by CDC.

Commenters also noted the need for more "user-friendly" exposure determination guidelines for Designated Officers with no medical background. The guidelines for Designated Officers describe the circumstances in which employees may be exposed to the diseases on the list. These guidelines are as succinct as possible within the specifications of the statute.

It was noted that exposure to persons undergoing tuberculosis drug therapy and skin test converters, who are not infectious, should not be reported. CDC agrees with this comment and it is addressed under Comments on the Disease List. Another comment on tuberculosis stated that the section on airborne diseases is a problem because merely sharing air space is not sufficient to transmit tuberculosis and would not require treatment or followup. However, sharing air space is the main route of transmission for tuberculosis. EREs who transport patients with infectious TB are at risk of infection and should be medically evaluated.

One individual asked whether States are ultimately responsible for determining which circumstances constitute exposure and whether State health officers or other professionals have input in this determination. Under the statute, in the case of airborne transmission, no determination of exposure must be made: if the medical facility determines that the victim has an airborne disease, the facility must notify the Designated Officer of the ERE who transported the victim. In the case of bloodborne exposures, it is the responsibility of Designated Officers and medical facilities to make these determinations based on the guidelines.

One commenter stated that the duties of the medical facility should apply, as long as there is documentation that an ERE may have been exposed to one of the listed diseases. However, the period for which medical facilities must retain information on a victim is limited by section 300ff–87.

As suggested by commenters, in section III.A.2 a recommendation has been added that when an exposure incident occurs or there is a breach of universal precautions, OSHA's Bloodborne Pathogens Standard protocols should be followed. Also, in defining occupational exposure to bloodborne pathogens, skin contact is limited to contact with non-intact skin.

One commenter suggested that ERE employers should provide, at no cost, counseling and medical evaluation, medical treatment, or prophylaxis whenever EREs are notified of occupational exposure. This suggestion is consistent with the OSHA Bloodborne Pathogens Standard. However, the Act does not require compliance with these provisions.

One commenter stated that rural States with low prevalence of HIV and hepatitis B virus infection do not need a sophisticated notification system as specified under this legislation. However, the statute does not allow for distinguishing between States with high and low prevalences of the notifiable diseases.

One commenter stated that the use of *Control of Communicable Diseases in Man* is not adequate to make exposure determinations. *Control of Communicable Diseases in Man* is intended to serve in conjunction with prior infection control training and experience of the Designated Officer in making exposure determinations.

8. First responders.

Several commenters stated that first responders should be covered under the notification system established by the Act, while one stated they should not be covered. First responders are individuals who have other responsibilities within an organization but who also, as part of their official responsibilities or as a volunteer, respond to emergencies that occur. Whether first responders are covered under the Act depends upon whether they fit within the definition of an ERE. The definition of ERE includes "firefighters, law enforcement officer, paramedics, emergency medical technicians, and other individuals (including employees of legally organized and recognized volunteer organizations, without regard to whether such employees receive nominal compensation) who, in the course of professional duties, respond to emergencies in the geographic area involved." Therefore, for first responders to be covered by the Act, they must respond to emergencies as part of their professional duties.

9. Patient testing.

Twelve comments regarding the patient testing provision of the Act were received. Patient testing is addressed under 300ff–88(b). This section states that the Act "may not, with respect to victims of emergencies, be construed to authorize or require a medical facility to test any such victim for any infectious disease."

One commenter recommended that patient testing be mandatory and others suggested that this provision establishes an incentive to test patients. One other comment recommended routinely testing victims for tuberculosis. The Act does not authorize mandatory patient testing.

Several commenters requested that the testing provision be incorporated into the guidelines for clarification. This has been done in a footnote to section III.C.3.

Several comments addressed patient consent for testing. One commenter suggested that consent should be requested when knowledge of the patient's infected status is necessary in order to determine whether there has been an exposure. The Act does not prohibit seeking patient consent where consent is required in order to test the patient.

Other commenters stated that, in their medical facility, patient consent is necessary before a patient can be tested. Whether consent is required in order to test a patient is a matter of State laws. Medical facilities should consult their State health department or other regulatory agency for State laws and regulation on patient consent.

The patient testing provision must also be read in conjunction with the provisions of OSHA's Occupational Exposure to Bloodborne Pathogens Standard (29 CFR part 1910). Under OSHA's standard, following a report of an exposure incident, "(A) [t]he source

individual's blood shall be tested as soon as feasible and after consent is obtained in order to determine HBV and HIV infectivity. If consent is not obtained, the employer shall establish that legally required consent cannot be obtained. When the source individual's consent is not required by law, the source individual's blood, if available, shall be tested and the results documented" (29 CFR § 1910.1030(f)(3)(A)). Therefore, while the ERE notification system established under the Act does not authorize or require a medical facility to test a victim for any infectious disease, other laws or regulations may require or permit testing of victims. Also, other laws, particularly State laws, may address patient consent to testing. When there has been an exposure, employers should follow the OSHA Bloodborne Pathogens Standard and applicable State and local laws regarding patient testing and consent.

10. 30-day implementation period.

Under the Act, the provisions of the notification system take effect 30 days after publication of the list of diseases and guidelines under section 300ff–81. (42 U.S.C. 300ff–80 note.) Of the twenty comments received regarding this provision, nineteen stated that the 30-day period was insufficient to implement the provisions of the Act. However, the 30-day implementation provision is statutorily defined, and CDC cannot alter it.

11. 48-hour notification period.

Under section 300ff–82(b), a medical facility must inform the Designated Officer as soon as is practicable, but not later than 48 hours, when it determines that a victim has an airborne infectious disease, including when the victim dies before reaching the medical facility. The same time limitation applies, under section 300ff–83(e), when it determines that an ERE requesting notification was or was not exposed to an infectious disease.

Of the comments received, fifteen stated that the statutory time frame for reporting was too short. In general these comments reflected the position that it would be difficult for medical facilities to comply with the time frame due to staff shortages, low weekend coverage, and occasions when appropriate medical personnel are unavailable. An additional nine comments stated that the time frame was too long. Several commenters stated that 48 hours was too long to wait for notification when the ERE has been exposed to meningococcal disease due to its incubation period. Another commenter stated that 48 hours is unacceptable for exposure to cases of plague, rabies, and hepatitis B.

Since the time limits are established in the Act, they cannot be altered. However, it should be noted that, in the case of an airborne disease, notification is not required until a determination has been made that the victim has such a disease. The time limit begins after such a determination is made. For other diseases, if, after 48 hours, exposure cannot be determined without additional information, the medical facility must inform the designated officer that there are insufficient facts to make a determination or that the facility does not have the necessary information on a victim to determine whether the victim has a disease on the list of diseases.

Both medical facilities and designated officers should be aware of the provisions of section 300ff–87 regarding time limits and information available on a victim. This section states that the duties of medical facilities under the Act

(1) Shall apply only to medical information possessed by the facility during the period in which the facility is treating the victim for conditions arising from the emergency, or during the 60-day period beginning on the date on which the victim is transported by emergency response employees to the facility, whichever period expires first; and

(2) Shall not apply to any extent after the expiration of the 30-day period beginning on the expiration of the applicable period referred to in paragraph (1), except that such duties shall apply with respect to any request under section 300ff–83(c) received by a medical facility before the expiration of such 30-day period.

One commenter requested clarification as to the meaning of this language. Subsection (1) establishes the time limit for which a medical facility must retain information on a victim of an emergency. The meaning of subsection (2) is somewhat ambiguous. Accordingly, the two subsections are interpreted and will be applied to mean that the duties of medical facilities terminate at the end of the period during which the facility provides medical care to the victim for conditions arising from the emergency, or at the end of the 60-day period beginning on the date on which the victim is transported by EREs to the facility, whichever period is shorter. However, the duties of the medical facility shall continue if, under section 300ff–83(c) a request is received within 30 days of the date of the applicable period under subsection (1) of section 300ff–87. In practice, if a victim is transported to a medical facility and released after two days, the facility must respond to a request submitted under section 300ff–83(c) if the request is received within 30 days of the date the victim was discharged from the facility. Also, if a victim of an emergency is transported to a medical facility and remains in the facility for more than 60 days, the facility must respond to a request under section 300ff–83(c) when the request is received within 30 days from the expiration of the 60-day period.

12. Designated Officers

Under 42 U.S.C. 300ff–87:

(a) For the purposes of receiving notifications and responses and making requests * * * on behalf of emergency response employees, the public health officer of each State shall designate 1 official or officer of each employer of emergency response employees in the State.

(b) In making the designations required in section (a), a public health officer shall give preference to individuals who are trained in the provision of health care or in the control of infectious diseases.

A total of 56 comments regarding these provisions were received. The majority of comments stated that it is impractical for State public health officers to make such designations due to the large number of employers of EREs in the State, the high turnover rate among some employees, and the lack of individuals trained in the control of infectious diseases among some employers of EREs. Other commenters stated that it would be more efficient for employers to designate the official or officer for their EREs. In order to address the concern that designating an official or officer for each employer of EREs is impractical or too burdensome on State public health officers, it would be permissible for States to allow employers to submit the name of an individual whom the employer would like for the State public health officer to designate as the designated officer for the employer.

Many commenters recommended that the Designated Officer should be a physician or, in one comment, an epidemiologist or infection control practitioner. Many other commenters stated that it will be very difficult for employers to have a designated officer who is qualified to make the determinations required under the statute. Regarding the qualifications of the Designated Officer, the statute only requires that the State public health officer "give preference to individuals who are trained in the provision of health care or in the control of

infectious disease." While, under the statute, a State public health officer cannot require an employer to have a physician as the Designated Officer, employers can recommend to the State public health officer that a physician who is an employee be designated as the Designated Officer. In those cases where an employer does not consider any employee qualified to act as the Designated Officer, a qualified individual, such as a physician, could be retained by the employer to serve solely as the Designated Officer.

A number of commenters suggested permitting the State public health officer to designate a regional Designated Officer, who could function in that capacity for several employers. This would be permitted under the statute only where the regional designated officer is also an employee of all the employers in the specified region.

Two commenters stated that the duties of the Designated Officers may create liability for them. While the duties of the Designated Officer may create liability issues under State law for acts or omissions, the statutes provides that it * * * may not be construed to authorized any cause of action for damages or any civil penalty against any * * * designated officer, for failure to comply with the duties established. * * *"

13. Comments on prevention.

CDC received 44 comments regarding preventing disease in EREs. It was suggested that if EREs are using universal precautions, then there would not be a need for this regulation. However, universal precautions do not address airborne disease transmission. Moreover, universal precautions cannot protect entirely from inadvertent needlestick injury.

It was also suggested that EREs may become lax regarding compliance with universal precautions if they know they can get patient information. Since exposure precedes notification, notification is not expected to deter EREs in the practice of universal precautions.

One commenter thought that the concept of body substance isolation should be used instead of universal precautions. As noted under III.A.2, "Under emergency circumstances in which differentiation between fluid types is difficult, if not impossible, all body fluids are considered potentially hazardous." This is essentially body substance isolation.

One commenter suggested that, to avoid confusion and duplication, CDC should adopt language crafted by OSHA in their Bloodborne Pathogens Standard and tuberculosis compliance memorandum. This was agreed to; as noted above, several changes have been made to bring the two documents into closer alignment.

One commenter suggested that purified protein derivative (PPD) testing should be given to EREs every 6 months. CDC recommends that tuberculin skin testing be performed every 6 months in areas where there is a high risk for tuberculosis transmission. For other, lower-risk areas, annual tuberculin skin testing is recommended.

One commenter stated that EREs need to be trained to recognize symptoms of active tuberculosis. CDC agrees with this.

Another commenter noted that patients suspected of having active tuberculosis should be tested and isolated in a timely manner. CDC acknowledges that this is a key concept in tuberculosis control efforts.[2,3]

One commenter thought that CDC should explain if or how the proposed notification requirements will reduce transmission of airborne disease and how they will fit into the infection control strategy outlined in the 1990 CDC *Guidelines for Preventing the Transmission of Tuberculosis in Health Care Settings*. There is no conflict between these requirements and either the 1990 document[4] or the 1993 draft *Guidelines*.[5]

One commenter noted that tetanus/diphtheria boosters should be given every 10 years. This is current CDC policy.[6]

One commenter thought that diphtheria vaccination virtually eliminates the possibility of occupational transmission. This is true; notification of exposure then provides an impetus for ensuring that diphtheria vaccination has been obtained recently enough to ensure that immunity has been maintained.

It was also suggested that infection control education programs are needed for EREs. However, the legislation is not directed to this need. The OSHA Bloodborne Pathogens Standard has provisions for employee training programs for bloodborne pathogens.

For plague and rabies, it was noted that education offers the best prevention against infection. Nonetheless, notification and follow-up are indicated upon potential exposure to either of these diseases.

One commenter proposed that an ERE who sustains significant exposure should be assured counseling and testing, and that this is more important than inordinate efforts to determine patient HIV status. CDC believes that counseling and testing are key elements in follow-up of an employee exposure to a potentially life-threatening infectious disease. Additional language from the OSHA Bloodborne Pathogens Standard has therefore been appended in Addendum B for follow-up of a potential HIV exposure: "Following a report of an exposure incident, the employer shall make immediately available to the exposed employee a confidential medical evaluation and follow-up including at least the following elements: * * * counseling."

One commenter stated that medical facilities should not be responsible for follow-up testing of EREs. There is no provision in the legislation that charges medical facilities with follow-up testing of EREs.

One commenter suggested that regulation provides little incentive for ERE employers to adopt infection control plans. The threat of HIV infection should provide a powerful incentive for implementation of infection control plans. Moreover, there are Federal agencies and other organizations that require and recommend infection control procedures (e.g., OSHA and the National Fire Protection Administration).

14. Airborne versus bloodborne.

Ten comments were received regarding notification for airborne diseases versus notification for other diseases. It was suggested that EREs should be notified of all the listed diseases, not just airborne diseases, without making a request, and that the ERE request should be a "back-up." This is not consistent with the legislation.

One commenter suggested that in making a distinction between airborne and bloodborne exposures, the Act frustrates its intent, placing the burden on the ERE to request determinations of bloodborne exposures. The commenter thought that this would lead to more requests than if all diseases were treated alike. Again, this concept is not consistent with the legislation.

15. Coordination with OSHA.

Ten comments were received regarding this notification system and

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[2] CDC. Guidelines for preventing the transmission of tuberculosis in health-care facilities, with special focus on HIV-related issues. MMWR 1990;39(no. RR–17).

[3] CDC. Draft Guidelines for Preventing the Transmission of Tuberculosis in Health-Care Facilities, Second Edition. **Federal Register** 1993:58 (no. 195):52810–52854, October 12.

[4] See footnote 2.

[5] See footnote 3.

[6] CDC. General recommendations on immunization. Recommendations of the Advisory Committee on Immunization Practices (ACIP) MMWR 1994; 43(No. RR–1).

requirements of the OSHA Bloodborne Pathogens Standard.

In one response, CDC was urged to cooperate with OSHA to develop a joint advisory notice on tuberculosis. However, OSHA has announced its intention to promulgate an occupational health standard addressing tuberculosis and other airborne pathogens. CDC will be assisting OSHA in this regulatory effort.

Another commenter felt that CDC should require States without State plan OSHA programs to develop worker protection programs at least as effective as those in the already Federally approved States. States without State OSHA plans are already covered by Federal OSHA programs.

One commenter thought it was unclear how the notification process interfaces with OSHA regulations and that there appeared to be duplication. Since a significant portion of EREs are not covered by OSHA regulations, some degree of overlap is inescapable.

One reviewer stated that the draft notification process recommended that workers be immunized with hepatitis B virus vaccine," but noted that this is a requirement under the OSHA Bloodborne Pathogens Standard. The recommendation for immunization was added for those EREs not covered by the OSHA Bloodborne Pathogens Standard. The OSHA requirement is presented in Addendum B.

Several commenters noted that the definition of bloodborne transmission is inconsistent with the OSHA Bloodborne Pathogens Standard's use of the term "other potentially infectious material." Part III.2 has been expanded to comply with the OSHA definition.

One commenter asked whether the Designated Officer represents the employer or the employee. According to the commenter, it would be inconsistent under the OSHA Bloodborne Pathogens Standard for the Designated Officer to represent the employee. In the ERE notification system, the Designated Officer is acting in the interest of the employee. This is not seen as inconsistent with OSHA regulations, however, since employers are still required to meet the notification provisions of the OSHA Bloodborne Pathogens Standard. In addition, many EREs are not covered by OSHA regulations.

One commenter stated that his State has an approved occupational safety and health plan, and suggested that the notification process therefore is redundant. As noted in section 300ff-90, "this [ERE portion of the Act] shall not apply in a State if the chief executive officer of the State certifies to the Secretary that the law of the State is in substantial compliance with this subpart."

One commenter suggested that all medical facilities are covered by OSHA regulations regarding exposure; therefore, Designated Officers should be aware of them and educate EREs. In fact, not all medical facilities are covered by OSHA (e.g., public hospitals in states without State OSHA plans). Moreover, EREs are not typically employees of the medical facility, thus necessitating another route of notification to that provided by the OSHA Bloodborne Pathogens Standard.

16. Injunctive relief.

Authority for injunctive relief is provided in section 300ff-89. This section states:

(a) The Secretary may, in any court of competent jurisdiction, commence a civil action for the purpose of obtaining temporary or permanent injunctive relief with respect to any violation of [these provisions].

(b) The Secretary shall establish an administrative process for encouraging emergency response employees to provide information to the Secretary regarding violations of [these provisions]. As appropriate, the Secretary shall investigate alleged such violations and seek appropriate injunctive relief.

Regarding subsection (b) of these provisions, anyone alleging a violation of any of these provisions should contact CDC. Alleged violations of these provisions will be investigated. In any case that injunctive relief may be sought, the Department of Health and Human Services will coordinate its efforts with the Department of Justice.

Final Notice: Provisions of Section 411 of the Ryan White Comprehensive AIDS Resources Emergency Act Regarding Emergency Response Employees

Section 411 of the Ryan White Comprehensive AIDS Resources Emergency (CARE) Act (Pub. L. 101–381), amends the Public Health Service Act to include provisions regarding emergency response employees (sections 2681–2690 of the PHS Act, 42 U.S.C. 300ff-81 to 300ff-90). This notice sets forth the final list of diseases; final guidelines describing circumstances under which exposure to infectious diseases may occur; and final guidelines for determining whether an exposure to such a disease has occurred, as required under section 411 of the Act. The final list of diseases and guidelines incorporate comments received by CDC to the draft list and guidelines (57 FR 54794, November 20, 1992). The list of diseases and guidelines are effective on March 21, 1994. All other provisions of section 411 of the Act are effective on April 20, 1994.

CDC will continue to monitor the scientific literature on infectious diseases. If new information becomes available that suggests that additional infectious diseases should be added to the list of diseases contained here, CDC will amend the list.

Dated: March 15, 1994.

Walter R. Dowdle,

Deputy Director, Centers for Disease Control and Prevention (CDC).

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Statutory citations within this notice are to the Title 42 of the U.S. Code.

Part I. Definitions

Aerosol. Small particles of matter that float on air currents.

Airborne transmission. Person-to-person transmission of an infectious agent by an aerosol.

Bloodborne transmission. Person-to-person transmission of an infectious agent through contact with an infected person's blood.

Designated Officer of Emergency Response Employees. An individual designated under 42 U.S.C. 300ff–86 by the public health officer of the State involved (42 U.S.C. 300ff–76).

Emergency. An emergency involving injury or illness (42 U.S.C. 300ff–76).

Emergency response employees (EREs). Firefighters, law enforcement officers, paramedics, emergency medical technicians, and other persons (including employees of legally organized and recognized volunteer organizations, without regard to whether such employees receive nominal compensation) who, in the course of professional duties, respond to emergencies in the geographic area involved (42 U.S.C. 300ff–76).

Employer of Emergency Response Employee. An organization that, in the course of professional duties, responds to emergencies in that geographic area involved (42 U.S.C. 300ff–76).

Exposed. With respect to HIV disease or any other infectious disease, to be in circumstances in which there is a significant risk of becoming infected with the etiologic agent for the disease involved (42 U.S.C. 300ff–76).

Medical Facility. Any facility that receives victims of emergencies who are transported to the facility by emergency response employees.

Patient. A victim of an emergency who has been aided by an Emergency Response Employee and has been transported to a medical facility.

Potentially life-threatening infectious disease. An infectious disease that can cause death in a healthy, susceptible host.

Routinely transmitted by aerosol. A disease that is usually transmitted via the aerosol route.

Secretary. The Secretary of the Department of Health and Human Services as this term is used in Title XXVI of the Public Health Service Act (42 U.S.C. 300ff–80 through 42 U.S.C. 300ff–90).

Significant Risk. A finding of facts relating to a human exposure to an etiologic agent for a particular disease, based on reasonable medical judgments given the state of medical knowledge, about

(a) The nature of the risk (how the disease is transmitted),

(b) The duration of the risk (how long an infected person may be infectious),

(c) The severity of the risk (what is the potential harm to others) and

(d) The probabilities the disease will be transmitted and will cause varying degrees of harm.

Part II. List of Potentially Life-Threatening Infectious Diseases to Which Emergency Response Employees Can be Exposed

In developing the list of infectious diseases to which EREs can be exposed, CDC used the following criteria:

1. The disease is potentially life-threatening, i.e., it carries a significant risk of death if acquired by a healthy, susceptible host, and

2. The disease can be transmitted from person to person.

A. Airborne Diseases

Infectious pulmonary tuberculosis (*Mycobacterium tuberculosis*)

B. Bloodborne Diseases

1. Hepatitis B
2. Human immunodeficiency virus infection (including acquired immunodeficiency syndrome [AIDS])

C. Uncommon or Rare Diseases

1 Diphtheria (*Corynebacterium diphtheriae*)
2. Meningococcal disease (*Neisseria meningitidis*)
3. Plague (*Yersinia pestis*) [7]
4. Hemorrhagic fevers (Lassa, Marburg, Ebola, Crimean-Congo, and other viruses yet to be identified)
5. Rabies

Part III. Guidelines for Determining Exposure

A. Circumstances Under Which Exposure can Occur

1. Airborne Diseases

Infectious pulmonary tuberculosis (*Mycobacterium tuberculosis*)

Occupational exposure to airborne pathogens may occur when an ERE shares air space with a patient who has an infectious disease caused by an airborne pathogen.

2. Bloodborne Diseases

Human immunodeficiency virus infection (including acquired immunodeficiency syndrome [AIDS])
Hepatitis B

Occupational exposure to bloodborne pathogens may occur as the result of contact during the performance of normal job duties with blood or other body fluids to which universal precautions apply. When EREs have contact with body fluids under emergency circumstances in which differentiation between fluid types is difficult, if not impossible, all body fluids are considered potentially hazardous. Universal precautions, as outlined in *Guidelines for Prevention of Transmission of Human Immunodeficiency Virus and Hepatitis B Virus to Health-Care and Public-Safety Workers*, are recommended for all EREs to reduce the risk of exposure to bloodborne pathogens. In the Occupational Safety and Health Administrations Bloodborne Pathogens Standard, an exposure incident is defined as a "specific eye, mouth, other mucous membrane, non-intact skin, or parenteral contact with blood or other potentially infectious materials that results from the performance of an employee's duties." Bloodborne pathogens are defined therein as "pathogenic microorganisms that are present in human blood and can cause disease in humans. These pathogens include, but are not limited to, hepatitis B virus (HBV) and human immunodeficiency virus (HIV)."[8]

These precautions, and other provisions of the Occupational Safety and Health Administration (OSHA) rule governing occupational exposure to bloodborne pathogens (29 CFR 1910.1030), may be mandatory for some EREs, depending upon whether they are employed in the public or private sector and whether the State in which they are employed has an approved occupational safety and health plan. Employers covered under the OSHA Bloodborne Pathogens Standard should comply with provisions contained in the standard when there is an exposure incident or a breach of universal precautions.

Also, it is recommended that workers with occupational exposure to blood be vaccinated with hepatitis B vaccine (see Addendum B).

3. Uncommon or Rare Diseases

Diphtheria (*Corynebacterium diphtheriae*)
Meningococcal disease (*Neisseria meningitidis*)
Plague (*Yersinia pestis*)
Hemorrhagic fevers (Lassa, Marburg, Ebola, Crimean-Congo, and other viruses yet to be identified)
Rabies

While person-to-person transmission of pathogens in this category is rare or theoretical, infection with any of these pathogens could be life-threatening. Under special circumstances, *Corynebacterium diphtheriae*, *Neisseria meningitidis*, and *Yersinia pestis* could be transmitted to EREs by direct contact with droplets from the respiratory tract of infected persons. However, such transmission is rare. Person-to-person transmission of plague, for example, has not been documented since 1924. Hemorrhagic fever viruses are primarily bloodborne pathogens, but none occur naturally in the U.S. Any suspected importation of these infectious agents are thoroughly investigated by the Public Health Service.

B. Guidelines for Determining Exposure to an Airborne Infectious Disease Listed in Part II

Under section 300ff-82, if it is determined that a patient has an airborne infectious disease, the medical facility must notify the Designated Officer of the EREs who transported the patient as soon as practicable but not later than 48 hours after the determination has been made.

C. Guidelines for Determining Exposure to a Bloodborne or Other Infectious Disease Listed in Part II

1. Under section 300ff-83(a), an ERE may submit a request for a determination whether he or she was exposed to an infectious disease.

2. Upon receipt of such a request from an ERE, under section 300ff-83 (b) and (c) the Designated Officer must:

a. Collect facts relating to the circumstances under which the ERE may have been exposed to an infectious disease, and

b. Evaluate the facts and determine if the ERE would have been exposed to an infectious disease (see Part III.A.).

c. If the Designated Officer determines that the ERE may have been exposed to an infectious disease, he or she must send to the medical facility to which the patient was transported a signed written request, along with the facts collected, for a determination of whether the ERE was exposed to a listed disease.

3. When a medical facility receives such a request, under section 300ff-83(d), it must:

a. Determine if there is sufficient information in the request to identify the patient suspected of having an infectious disease (see Part III).[7]

b. If the medical facility can identify the patient in question, medical records should be reviewed for:

(i) Results of tests diagnostic for any of the diseases listed in Part II.

(ii) Signs or symptoms compatible with any of the diseases listed in Part II.

c. If it is determined that the patient is infected with any of the diseases listed in Part II, the medical facility must review the information sent with the request to determine if the ERE was exposed.

(i) In determining whether the ERE was exposed, the medical facility should consider whether, based on the facts, the ERE was in circumstances in which there is a significant risk of becoming infected with the etiologic

[7] During the 1980s, a mean of 18 cases of plague was reported annually in persons exposed in enzootic areas of the southwestern United States. Thus, normally only EREs in this area face potential occupational exposure to plague.

[8] Occupational Safety and Health Administration. Occupational exposure to bloodborne pathogens: final rule. 29 CFR Part 1910.1030. **Federal Register**, December 6, 1991.

[7] Note however, that per section 300ff-88, "this subpart may not, with respect to victims of emergencies, be construed to authorize or require a medical facility to test any such victim for any infectious disease."

agent for the disease with which the patient is infected;

(ii) In determining whether there was a significant risk of the ERE becoming infected with the etiologic agent for the disease with which the patient is infected, the medical facility should consider:

(a) The nature of the risk (how the disease is transmitted),

(b) The duration of the risk (how long is the carrier infectious),

(c) The severity of the risk (what is the potential harm to others), and

(d) The probabilities the disease will be transmitted and will cause varying degrees of harm.

(iii) Under section 300ff-83(e), if a determination of exposure is made, the medical facility must notify the Designated Officer in writing as soon as practicable, but not later than 48 hours after receiving the request, that the ERE was exposed to a listed disease.

(iv) If the information provided by the Designated Officer is insufficient to make a determination, the medical facility must so notify the Designated Officer in writing as soon as practicable but not later than 48 hours after receiving the request.

(v) Under section 300ff-83(g), if the Designated Officer receives notice of insufficient information, he or she may request the public health officer for the community in which the medical facility is located to evaluate the request and the medical facility's response. The public health officer must then evaluate the request and the medical facility's response and report his or her findings to the Designated Officer as soon as practicable but not later than 48 hours after receiving the request.

(a) If the public health officer finds the information provided is sufficient to make a determination of exposure, he or she must submit the request to the medical facility.

(b) If the public health officer finds the information provided was insufficient to make a determination of exposure, he or she must advise the Designated Officer about collecting more information. If sufficient facts are subsequently collected by the Designated Officer, the public health officer must resubmit the request to the medical facility.

D. References

In making determinations or evaluations described in this Part, the Designated Officer, the medical facility, or the public health officer may use standard medical references or the latest edition of The Control of Communicable Diseases in Man. Additional references are listed in Addendum C.

Part IV. Implementation of the Law

A. By April 20, 1994, State public health officers must have selected persons to serve as Designated Officers of EREs for each employer of EREs in their States. In the selection of Designated Officers, the State public health officer shall give preference to individuals who are trained in the provision of health care or the control of infectious diseases (section 300ff-86).

B. By April 20, 1994, medical facilities must have in place procedures for:

1. Notifying Designated Officers within 48 hours of any instances in which it is known that a patient who has been transported to the medical facility is infected with an airborne disease listed in Part II (section 300ff-82(a) and (b)).

2. Responding within 48 hours to written requests from Designated Officers for determination of possible exposure to diseases listed in Part II (section 300ff-83(e)).

C. By April 20, 1994, ERE employers must have in place procedures by which EREs can make requests of Designated Officers and procedures by which the Designated Officers would make appropriate disposition of such requests (section 300ff-83(a)).

D. By April 20, 1994, local health agencies must have in place procedures for handling requests for evaluations from Designated Officers (section 300ff-83(g)).

E. By April 20, 1994, the Secretary of Health and Human Services will:

1. Send copies of the list of potentially life-threatening diseases and the exposure guidelines to State public health officers requesting appropriate distribution (section 300ff-81(c)(1)).

2. Make copies of the list and guidelines available to the public (section 300ff-81(c)(2)).

3. Have in place procedures for receiving and handling allegations of violations of the exposure notification process (section 300ff-89(b)).

Addendum A

Background—Text of Sections 2681–2690 of the PHS Act as amended by Pub. L. 101–381 (42 U.S.C. 300ff-81 to 300ff-90. References are to Title 42 U.S.C.). (Published for informational purposes only)

SUBPART II—Notifications of Possible Exposure to Infectious Diseases

SEC. 300ff-81. Infectious Diseases and Circumstances Relevant to Notification Requirements.

(a) In General.—Not later than 180 days after the date of the enactment of the Ryan White Comprehensive AIDS Resources Emergency Act of 1990, the Secretary shall complete the development of—

(1) A list of potentially life-threatening infectious diseases to which emergency response employees may be exposed in responding to emergencies;

(2) Guidelines describing the circumstances in which such employees may be exposed to such diseases, taking into account the conditions under which emergency response is provided; and

(3) Guidelines describing the manner in which medical facilities should make determinations for purposes of Section 300ff-83(d).

(b) Specification of Airborne Infectious Diseases.—The list developed by the Secretary under subsection (a)(1) shall include a specification of those infectious diseases on the list that are routinely transmitted through airborne or aerosolized means.

(c) Dissemination.—The Secretary shall—

(1) Transmit to the state public health officers copies of the list and guidelines developed by the Secretary under subsection (a) with the request that the officers disseminate such copies as appropriate throughout the states; and

(2) Make such copies available to the public.

Sec. 300ff-82. Routine Notifications With Respect to Airborne Infectious Diseases in Victims Assisted.

(a) Routine Notification of Designated Officer.

(1) Determination by Treating Facility.—If a victim of an emergency is transported by emergency response employees to a medical facility and the medical facility makes a determination that the victim has an airborne infectious disease, the medical facility shall notify the designated officer of the emergency response employees who transported the victim to the medical facility of the determination.

(2) Determination by Facility Ascertaining Cause of Death.—If a victim of an emergency is transported by emergency response employees to a medical facility, the medical facility ascertaining the cause of death shall notify the designated officer of the emergency response employees who transported the victim to the initial medical facility of any determination by the medical facility that the victim had an airborne infectious disease.

(b) Requirement of Prompt Notification.—With respect to a determination described in paragraph (1) or (2), the notification required in each of such paragraphs shall be made as soon as is practicable, but not later than 48 hours after the determination is made.

Sec. 300ff–83. Request for Notifications with Respect to Victims Assisted.

(a) Initiation of Process by Employee.—If an emergency response employee believes that the employee may have been exposed to an infectious disease by a victim of an emergency who was transported to a medical facility as a result of the emergency, and if the employee attended, treated, assisted, or transported the victim pursuant to the emergency, then the designated officer of the employee shall, upon the request of the employee, carry out the duties described in subsection (b) regarding a determination of whether the employee may have been exposed to an infectious disease by the victim.

(b) Initial Determination by Designated Officer.—The duties referred to in subsection (a) are that—

(1) The designated officer involved collect the facts relating to the circumstances under which, for purposes of subsection (a), the employee involved may have been exposed to an infectious disease; and

(2) the designated officer evaluate such facts and make a determination of whether, if the victim involved had any infectious disease included on the list issued under paragraph (1) of Section 300ff–81(a), the employee would have been exposed to the disease under such facts, as indicated by the guidelines issued under paragraph (2) of such Section.

(c) Submission of Request to Medical Facility.—

(1) In General.—If a designated officer makes a determination under subsection (b)(2) that an emergency response employee may have been exposed to an infectious

disease, the designated officer shall submit to the medical facility to which the victim involved was transported a request for a response under subsection (d) regarding the victim of the emergency involved.

(2) Form of Request.—A request under paragraph (1) shall be in writing and be signed by the designated officer involved, and shall contain a statement of the facts collected pursuant to subsection (b)(1).

(d) Evaluation and Response Regarding Request to Medical Facility.—

(1) In General.—If a medical facility receives a request under subsection (c), the medical facility shall evaluate the facts submitted in the request and make a determination of whether, on the basis of the medical information possessed by the facility regarding the victim involved, the emergency response employee was exposed to an infectious disease included on the list issued under paragraph (1) of Section 300ff-81(a), as indicated by the guidelines issued under paragraph (2) of such Section.

(2) Notification of Exposure.—If a medical facility makes a determination under paragraph (1) that the emergency response employee involved has been exposed to an infectious disease, the medical facility shall, in writing, notify the designated officer who submitted the request under subsection (c) of the determination.

(3) Finding of no Exposure.—If a medical facility makes a determination under paragraph (1) that the emergency response employee involved has not been exposed to an infectious disease, the medical facility shall, in writing, inform the designated officer who submitted the request under subsection (c) of the determination.

(4) Insufficient Information.—(A) If a medical facility finds in evaluating facts for purposes of paragraph (1) that the facts are insufficient to make the determination described in such paragraph, the medical facility shall, in writing, inform the designated officer who submitted the request under subsection (c) of the insufficiency of the facts.

(B)(i) If a medical facility finds in making a determination under paragraph (1) that the facility possesses no information on whether the victim involved has an infectious disease included on the list under Section 2681(a), the medical facility shall, in writing, inform the designated officer who submitted the request under subsection (c) of the insufficiency of such medical information.

(ii) If after making a response under clause (i) a medical facility determines that the victim involved has an infectious disease, the medical facility shall make the determination described in paragraph (1) and provide the applicable response specified in this subsection.

(e) Time for Making Response.—After receiving a request under subsection (c) (including any such request resubmitted under subsection (g)(2)), a medical facility shall make the applicable response specified in subsection (d) as soon as is practicable, but not later that 48 hours after receiving the request.

(f) Death of Victim of Emergency.—

(1) Facility Ascertaining Cause of Death.—If a victim described in subsection (a) dies at or before reaching the medical facility involved, and the medical facility receives a request under subsection (c), the medical facility shall provide a copy of the request to the medical facility ascertaining the cause of death of the victim, if such facility is a different medical facility than the facility that received the original request.

(2) Responsibility of Facility.—Upon the receipt of a copy of a request for purposes of paragraph (1), the duties otherwise established in this subpart regarding medical facilities shall apply to the medical facility ascertaining the cause of death of the victim in the same manner and to the same extent as such duties apply to the medical facility originally receiving the request.

(g) Assistance of Public Health Officer.—

(1) Evaluation of Response of Medical Facility Regarding Insufficient Facts.—

(A) In the case of a request under subsection (c) to which a medical facility has made the response specified in subsection (d)(4)(A) regarding the insufficiency of facts, the public health officer for the community in which the medical facility is located shall evaluate the request and the response, if the designated officer involved submits such documents to the officer with the request that the officer make such an evaluation.

(B) As soon as is practicable after a public health officer receives a request under paragraph (1), but not later than 48 hours after receipt of the request, the public health officer shall complete the evaluation required in such paragraph and inform the designated officer of the results of the evaluation.

(2) Finding of Evaluation.—

(A) If an evaluation under paragraph (1)(A) indicates that the facts provided to the medical facility pursuant to subsection (c) were sufficient for purposes of determinations under subsection (d)(1)—

(i) The public health officer shall, on behalf of the designated officer involved, resubmit the request to the medical facility; and

(ii) The medical facility shall provide to the designated officer the applicable response specified in subsection (d).

(B) If an evaluation under paragraph (1)(A) indicates that the facts provided in the request to the medical facility were insufficient for purposes of determinations specified in subsection (c)—

(i) The public health officer shall provide advice to the designated officer regarding the collection and description of appropriate facts; and

(ii) If sufficient facts are obtained by the designated officer—

(I) the public health officer shall, on behalf of the designated officer involved, resubmit the request to the medical facility; and

(II) The medical facility shall provide to the designated officer the appropriate response under subsection (c).

Sec. 300ff-84. Procedures for Notification of Exposure.

(a) Contents of Notification to Officer.—In making a notification required under section 300ff-82 or section 300ff-83(d)(2), a medical facility shall provide—

(1) The name of the infectious disease involved; and

(2) The date on which the victim of the emergency involved was transported by emergency response employees to the medical facility involved.

(b) Manner of Notification.—If a notification under Section 300ff-82 or Section 300ff-82(d)(2) [sic] is mailed or otherwise indirectly made—

(1) The medical facility sending the notification shall, upon sending the notification, inform the designated officer to whom the notification is sent of the fact that the notification has been sent; and

(2) Such designated officer shall, not later than 10 days after being informed by the medical facility that the notification has been sent, inform such medical facility whether the designated officer has received the notification.

Sec. 300ff-85. Notification of Employee.

(a) In General.—After receiving a notification for purposes of section 300ff-82 or 300ff-83(d)(2), a designated officer of emergency response employees shall, to the extent practicable, immediately notify each of such employees who—

(1) Responded to the emergency involved; and

(2) As indicated by guidelines developed by the Secretary, may have been exposed to an infectious disease.

(b) Certain Contents of Notification to Employee.—A notification under this subsection to an emergency response employee shall inform the employee of—

(1) The fact that the employee may have been exposed to an infectious disease and the name of the disease involved;

(2) Any action by the employee that, as indicated by guidelines developed by the Secretary, is medically appropriate; and

(3) If medically appropriate under such criteria, the date of such emergency.

(c) Responses Other Than Notification of Exposure.—After receiving a response under paragraph (3) or (4) of subsection (d) of section 300ff-83, or a response under subsection (g)(1) of such section, the designated officer for the employee shall, to the extent practicable, immediately inform the employee of the response.

Sec. 300ff–86. Selection of Designated Officers.

(a) In General.—For the purposes of receiving notifications and responses and making requests under this subpart on behalf of emergency response employees, the public health officer of each state shall designate 1 official or officer of each employer of emergency response employees in the state.

(b) Preference in Making Designations.—In making the designations required in subsection (a), a public health officer shall give preference to individuals who are trained in the provision of health care or in the control of infectious diseases.

SEC. 300ff–87. Limitations With Respect to Duties of Medical Facilities.

The duties established in this subpart for a medical facility—

(1) Shall apply only to medical information possessed by the facility during the period in which the facility is treating the victim for conditions arising from the emergency, or during the 60-day period beginning on the date on which the victim is transported by emergency response employees to the facility, whichever period expires first; and

(2) Shall not apply to any extent after the expiration of the 30-day period beginning on the expiration of the applicable period referred to in paragraph (1), except that such duties shall apply with respect to any request under section 300ff–83(c) received by a medical facility before the expiration of such 30-day period.

Sec. 300ff–88. Rules of Construction.

(a) Liability of Medical Facilities and Designated Officers.—This subpart may not be construed to authorize any cause of action for damages or any civil penalty against any medical facility, or any designated officer, for failure to comply with the duties established in this subpart.

(b) Testing.—This subpart may not, with respect to victims of emergencies, be construed to authorize or require a medical facility to test any such victim for any infectious disease.

(c) Confidentiality.—This subpart may not be construed to authorize or require any medical facility, any designated officer of emergency response employees, or any such employee, to disclose identifying information with respect to a victim of an emergency or with respect to any emergency response employee.

(d) Failure to Provide Emergency Services.—This subpart may not be construed to authorize any emergency response employee to fail to respond, or to deny services, to any victim of an emergency.

Sec. 300ff–89. Injunctions Regarding Violation of Prohibition.

(a) In General.—The Secretary may, in any court of competent jurisdiction, commence a civil action for the purpose of obtaining temporary or permanent injunctive relief with respect to any violation of this subpart.

(b) Facilitation of Information on Violations.—The Secretary shall establish an administrative process for encouraging emergency response employees to provide information to the Secretary regarding violations of this subpart. As appropriate, the Secretary shall investigate alleged such violations and seek appropriate injunctive relief.

Sec. 300ff–90. Applicability of Subpart.

This subpart shall not apply in a state if the chief executive officer of the state certifies to the Secretary that the law of the state is in substantial compliance with this subpart.

Effective Date.—Sections 300ff–80 and 300ff–81 of part E of title XXVI of the Public Health Service Act, as added by subsection (a) of this section, shall take effect upon the date of the enactment of this Act. Such part shall otherwise take effect upon the expiration of the 30-day period beginning on the date on which the Secretary issues guidelines under section 300ff–81(a).

(See 300ff–80 Note in Title 42 of the United States Code)

Addendum B

Excerpts Concerning Hepatitis B Vaccination

Guidelines for Prevention of Transmission of Human Immunodeficiency Virus and Hepatitis B Virus to Health-Care and Public-Safety Workers. Morbidity and Mortality Weekly Report 1989; 38 (supplement no. S–6).

Emergency medical workers have an increased risk for hepatitis B infection . . . The degree of risk correlates with the frequency and extent of blood exposure during the conduct of work activities. A few studies are available concerning risk of HBV infection for other groups of public-safety workers (law-enforcement personnel and correctional-facility workers), but reports that have been published do not document any increased risk for HBV infection . . . Nevertheless, in occupational settings in which workers may be routinely exposed to blood or other body fluids as described below, an increased risk for occupational acquisition of HBV infection must be assumed to be present.

Occupational Safety and Health Administration's Occupational Exposure to Bloodborne Pathogens Standard, 29 CFR Part 1910.1030.

(f) Hepatitis B vaccination and post-exposure evaluation and follow-up—

(1) General.

(i) The employer shall make available the hepatitis B vaccine and vaccination series to all employees who have occupational exposure . . .

(ii) The employer shall ensure that . . . the hepatitis B vaccine and vaccination series and post-exposure evaluation and follow-up, including prophylaxis, are:

(A) Made available at no cost to the employee.

(3) Post-exposure Evaluation and Followup. Following a report of an exposure incident, the employer shall make immediately available to the exposed employee a confidential medical evaluation and follow-up, including at least the following elements:

(v) Counseling.

Addendum C

References

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Benenson AS (ed). Control of communicable diseases in man. Washington, D.C.: The American Public Health Association, 15th edition, 1990.

For hepatitis B and human immunodeficiency virus:

CDC. Guidelines for prevention of transmission of human immunodeficiency virus and hepatitis B virus to health-care and public-safety workers. MMWR 1989; 38 (supplement no. S–6).

Occupational Safety and Health Administration. Occupational exposure to bloodborne pathogens: final rule. 29 CFR Part 1910.1030. **Federal Register**, December 6, 1991.

For tuberculosis:

American Thoracic Society/Centers for Disease Control. Diagnostic standards and classification of tuberculosis. Amer Rev Resp Dis 1009;142:725–35.

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CFR CHECKLIST

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An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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1, 2 (2 Reserved)	(869–019–00001–1)	$15.00	Jan. 1, 1993
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1993. The CFR volume issued April 1, 1990, should be retained.

[5] No amendments to this volume were promulgated during the period Apr. 1, 1991 to Mar. 31, 1993. The CFR volume issued April 1, 1991, should be retained.

[6] No amendments to this volume were promulgated during the period July 1, 1991 to June 30, 1993. The CFR volume issued July 1, 1991, should be retained.

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