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Presidential Documents

Title 3—

The President

Proclamation 6672 of April 15, 1994

Nancy Moore Thurmond National Organ and Tissue Donor Awareness Week, 1994

By the President of the United States of America

A Proclamation

Perhaps the most precious legacy that one human being can bestow upon another is the gift of life. The unselfish decision to donate one's organs after death is an act of generosity that can mean the beginning of new life for others. Advanced medical knowledge and techniques have allowed bone marrow transplants to bring hope and healing to children with leukemia; the gift of a new heart, lung, or liver has enabled many terminally ill Americans who would otherwise have died, to live longer, fuller lives. A new kidney has provided improved health, and the donation of a cornea has restored the miracle of sight. Unfortunately, however, many people still wait, and many people still die waiting for a suitable organ to become available.

Today there are more than 34,000 patients on the national transplant waiting list, and a new patient is added to the list every 20 minutes. The gap between the number of patients on the waiting list and the number of donors continues to widen, and many more will needlessly die. The United States has the potential to maintain an adequate supply of donor organs. To fulfill that potential we must increase public awareness of the urgent need for donation. All Americans need to know that by completing a donor card and carrying it, and by discussing with their families their wishes to donate, they may give the blessing of life to other Americans in need of organs for transplantation.

One year ago, on April 14, 1993, a tragic auto accident claimed the life of Nancy Moore Thurmond, the beautiful, gifted, and caring young daughter of Senator Strom Thurmond and his wife, Nancy. Their courageous decision to donate her organs so that others might live was in accordance with Nancy's wishes and, even in death, has enabled the promise of her young life to continue. The Thurmond family, along with others who have made the same magnanimous gesture for their loved ones, can find some measure of comfort in knowing that they have, indeed, bequeathed the gift of life.

The Congress, by Public Law 103–30, has designated the week beginning April 17, 1994, as "Nancy Moore Thurmond National Organ and Tissue Donor Awareness Week" and has authorized and requested the President to issue a proclamation calling upon the people of the United States to observe this week with appropriate programs, ceremonies, and activities.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim the week of April 17 through April 23, 1994, as Nancy Moore Thurmond National Organ and Tissue Donor Awareness Week. I urge all health care professionals, educators, the media, public and private organizations concerned with organ donation and transplantation, and all Americans to join me in promoting greater and more widespread awareness and acceptance of this humanitarian cause.

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

William J. Clinton

[FR Doc. 94–9550
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Rules and Regulations

Federal Register
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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.

DEPARTMENT OF ENERGY

Office of the Secretary

10 CFR Part 600

RIN 1991–AB03

Financial Assistance Rules; Seismic Safety Standards

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) today is amending the Financial Assistance Rules (Rules), 10 CFR part 600, to bring the Rules into compliance with Executive Order 12699 of January 5, 1990, Seismic Safety of Federal and Federally Assisted or Regulated New Building Construction.

EFFECTIVE DATE: May 19, 1994.

FOR FURTHER INFORMATION CONTACT:
Gwendolyn Cowan, Director, Business and Financial Policy Division, (HR–521.2), U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–8159.
Sophie C. Cook, Office of the Assistant General Counsel, Procurement and Finance (GC–34), U.S. Department of Energy, Washington, DC 20585, (202) 586–1900.

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V. Regulatory Review.
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VII. Review Under the Paperwork Reduction Act.
VIII. Review Under the National Environmental Policy Act.
IX. Review Under Executive Order 12778.

I. Introduction

To comply with Executive Order 12699 of January 5, 1990, the DOE initially changed its Financial Assistance Rules on February 2, 1992. At the time the Rules were amended, the Uniform Building Code was the only code/standard judged to be "substantially equivalent" to the National Earthquake Hazards Reduction Program's Recommended Provisions for the Development of Seismic Regulations for New Buildings, 1988 Edition.

On March 4, 1992, the Interagency Committee on Seismic Safety in Construction (ICSSC), acting in accordance with E.O. 12699, issued a recommendation to the Federal Emergency Management Administration (FEMA) finding that specified versions of three of the four model building codes reviewed "provide a level of seismic safety that is substantially equivalent to the Recommended Provisions for the Development of Seismic Regulations for New Buildings, 1988 Edition (FEMA 222 and 223)" (see appendix C of the Guidelines and Procedures for Implementation of the Executive Order on Seismic Safety of New Building Construction, ICSSC RP 2.1A, NISTIR 4852, June 1992). Following this "certification," the DOE again proposed changes to the Financial Assistance Rules to permit the use of all model building codes found to be acceptable.

When other codes and/or standards are found acceptable, such as the ASCE 7–93 Standard (for seismic loads), the DOE will initiate appropriate changes to the Financial Assistance Rules.

II. Changes to 10 CFR Part 600

Section 600.12(c) is revised to identify additional building codes which would meet the seismic safety requirements of the Executive Order.

III. Discussion of Comments on Proposed Rule

One comment was received. The American Society of Civil Engineers (ASCE) stated that the DOE should adopt ASCE Standard 7–93 for seismic loads in the Financial Assistance Rules.

The Department is unable to adopt the ASCE comment at this time. The ASCE proposal can be considered when ASCE Standard 7–93 has been found by the Interagency Committee on Seismic Safety in Construction (ICSSC) to provide a level of seismic safety that is substantially equivalent to the Recommended Provisions for the Development of Seismic Regulations for New Buildings. The ASCE comment has been forwarded to the Chairman of the ICSSC of the National Earthquake Hazards Reduction Program for consideration.

IV. Review Under Executive Order 12612

Executive Order 12612 requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the Federal Government and the States, or in the distribution of power and responsibilities among various levels of Government. If there are sufficient substantial direct effects, then the Executive Order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action. Today's rule will revise certain policy and procedural requirements. However, DOE has determined that the revision will not have a substantial direct effect on the institutional interests or traditional functions of States.

V. Regulatory Review

Today's regulatory action has been determined not to be a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review," (58 FR 51735, October 4, 1993). Accordingly, today's action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs.

VI. Review Under the Regulatory Flexibility Act

This final rule was reviewed under the Regulatory Flexibility Act of 1980, Public Law 96–354, 94 Stat. 1164, which requires preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities; i.e., small businesses, small organizations, and small governmental jurisdictions. DOE has concluded that the final rule would only affect small entities as they apply for and receive financial assistance, and does not create additional economic impact on small entities as a whole. DOE certifies that this final rule will not have a significant economic impact on

a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

VII. Review Under the Paperwork Reduction Act

No information collection or recordkeeping requirements are imposed upon the public by this rulemaking. Accordingly, no OMB clearance is required under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, *et seq.*, or OMB implementing regulations at 5 CFR part 1320.

VIII. Review Under the National Environmental Policy Act

DOE has concluded that promulgation of this final rule clearly would not represent a major Federal action having significant impact on the human environment under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, *et seq.* (1976)), the Council on Environmental Quality Regulations (40 CFR parts 1500–1508), and DOE guidelines (10 CFR part 1021) and, therefore, does not require an environmental impact statement pursuant to NEPA.

IX. Review Under Executive Order 12778

Section 2 of Executive Order 12778 instructs each agency to adhere to certain requirements in promulgating new regulations and reviewing existing regulations. These requirements, set forth in sections 2(a) and (b)(2), include eliminating drafting errors and needless ambiguity, drafting the regulations to minimize litigation, providing clear and certain legal standards for affected conduct, and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable effort to ensure that the regulation specifies clearly any preemptive effect, effect on existing Federal law or regulation, and retroactive effect; describes any administrative proceedings to be available prior to judicial review and any provisions for the exhaustion of such administrative proceedings; and defines key terms. DOE certifies that today's final rule meets the requirements of sections 2(a) and (b) of Executive Order 12778.

List of Subjects in 10 CFR Part 600

Cooperative agreements/energy; Educational institutions; Energy; Grants/energy; Non-profit organizations.

In consideration of the foregoing, the Department of Energy amends part 600 of chapter II of title 10 of the Code of Federal Regulations as set forth below.

Issued in Washington, DC, April 4, 1994.

Richard H. Hopf,

Deputy Assistant Secretary for Procurement and Assistant Management.

For the reasons set out in the preamble, part 600 of chapter II, title 10 of the Code of Federal Regulations is amended as follows:

PART 600—FINANCIAL ASSISTANCE RULES

1. The authority citation for Part 600 continues to read as follows:

Authority: Secs. 644 and 646, Pub. L. 95–91, 91 Stat. 599 (42 U.S.C. 7254 and 7256); Pub. L. 97–258, 96 Stat. 1003–1005 (31 U.S.C. 6301–6308), unless otherwise noted.

2. Section 600.12(c) is revised as follows:

§ 600.12 Generally applicable requirements.

* * * * *

(c) Provisions shall be made to design and construct all buildings, in which DOE funds are used, to meet appropriate seismic design and construction standards. Seismic codes and standards meeting or exceeding the provisions of each of the model codes listed in this paragraph are considered to be appropriate for purposes of this part. The model codes are as follows:

(1) 1991 Uniform Building Code, of the International Council of Building Officials,

(2) 1992 Supplement to the National Building Code, of the Building Officials and Code Administrators International,

(3) 1992 Amendments to the Standard Building Code, of the Southern Building Code Congress International.

These codes provide a level of seismic safety that is substantially equivalent to the National Earthquake Hazards Reduction Program (NEHRP) Recommended Provisions for the Development of Seismic Regulations for New Buildings, 1988 Edition (Federal Emergency Management Administration 222 and 223).

Revisions of these model codes that are substantially equivalent to or exceed the then current or immediately preceding edition of the NEHRP Recommended Provisions (which are updated triennially) shall be considered to be appropriate standards.

[FR Doc. 94–9400 Filed 4–18–94; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Chapter V and Parts 503, 504, 505, 515, 544, 552, and 561

[No. 93–250]

Technical Amendments

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Thrift Supervision (OTS) is amending its regulations to incorporate a number of technical and conforming amendments. The amendments include a global revision to reflect the change from the MACRO to the CAMEL rating system used by the other federal banking regulatory agencies and a reinstatement of the definition of "affiliated person" that was inadvertently removed. The rule also revises OTS's organizational regulations to reflect current titles and makes technical corrections to provisions concerning bylaws and charter reissuance.

EFFECTIVE DATE: April 19, 1994.

FOR FURTHER INFORMATION CONTACT: Mary Gottlieb, Senior Paralegal, (202) 906–7135, or Deborah Dakin, Assistant Chief Counsel, (202) 906–6445, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street NW., Washington DC 20552.

SUPPLEMENTARY INFORMATION: The OTS is today adopting several technical amendments to its regulations to implement the new rating system for savings associations, to reinstate a definitional provision, to update organizational titles and addresses and correct an erroneous cross-reference.

CAMEL Rating System

The OTS is amending its regulations to reflect the conversion from the MACRO to the CAMEL rating system. The purpose of the conversion is to reduce regulatory burden by using the same rating system employed by the other federal banking regulatory agencies. The MACRO system currently used by the OTS is very similar to the FDIC's CAMEL policy guidance. The conversion is intended to improve consistency with regard to risk-based assessments and joint examinations. The OTS expects there to be virtually no practical effect on savings associations as a result of this change.

Affiliated Person Definition

The OTS is also taking the opportunity to reinstate its definition of

"affiliated person," which formerly appeared as § 561.5. The definition, which was inadvertently removed through the final rule on regulatory review,[1] is being restored without change to avoid confusion or misunderstanding about the applicability of restrictions on affiliated persons.

Bylaws and Charter Reissuance

The appendix to part 544 which sets forth model bylaws for mutual savings associations is being amended to bring it into conformity with § 544.5(b)(8). The appendix to part 552 containing model bylaws for stock associations is being revised to bring it into conformity with § 552.6–1(h). A conforming change is also being made to § 552.6(d), based upon the model bylaws contained in the appendix. The provisions undergoing amendment specify the amount of notice to be given prior to certain meetings of boards of directors and state when voting lists are to be prepared and how the meetings may be conducted. Section 552.4 concerning charter reissuance is also being revised to correct an erroneous cross-reference.

Miscellaneous

Parts 503, 504 and 515 are being updated to incorporate the current titles of senior OTS personnel. New addresses are being incorporated into part 505 to reflect recent office relocations.

Administrative Procedure Act

Pursuant to 5 U.S.C. 553, the OTS has found good cause to dispense with both prior notice and comment on this final rule and a thirty-day delay of its effective date. OTS believes that it is contrary to public interest to delay the effective date of the rule, as it brings the OTS's regulations into conformity with the current rating system. The OTS believes that it is in the best interest of savings associations for the implementing regulations to be amended at the time the rating system is changed. The other amendments are purely technical corrections.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601), it is certified that this technical regulation will not have a significant economic impact on a substantial number of small savings associations, small service corporations or other small entities.

[1] 58 FR 4308 (Jan. 14, 1993).

Executive Order 12866

The Acting Director has determined that this rule is not a "significant regulatory action" for purposes of Executive Order 12866.

List of Subjects

12 CFR Part 503

Privacy.

12 CFR Part 504

Classified information.

12 CFR Part 505

Freedom of information.

12 CFR Part 515

Infants and children, Postal service.

12 CFR Part 544

Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 552

Reporting and recordkeeping requirements, Savings associations, Securities.

12 CFR Part 561

Savings associations.

Accordingly, and under the authority of 12 U.S.C. 1462 *et seq.*, the Office of Thrift Supervision hereby amends chapter V, title 12 of the Code of Federal Regulations as set forth below.

CHAPTER V—[AMENDED]

1. Chapter V is amended by removing the word "MACRO" wherever it appears and by adding in lieu thereof the word "CAMEL".

SUBCHAPTER A—ORGANIZATION AND PROCEDURES

PART 503—[AMENDED]

2. The authority citation for part 503 is revised to read as follows:

Authority: 5 U.S.C. 552a; 12 U.S.C. 1462a, 1463, 1464.

§ 503.1 [Amended]

3. Section 503.1 is amended by removing the phrase "Senior Deputy Director for Congressional Relations and Communications" in paragraph (e) and by adding in lieu thereof the phrase "Deputy Director for Washington Operations".

PART 504—[AMENDED]

4. The authority citation for part 504 is revised to read as follows:

Authority: E.O. 12356, 3 CFR, 1982 Comp., p. 166.

§ 504.3 [Amended]

5. Section 504.3 is amended by removing the phrase " 'Senior Deputy Director' " in the introductory text and by adding in lieu thereof the phrase " 'Deputy Director for Washington Operations' ".

§ 504.4 [Amended]

6. Section 504.4 is amended by removing the phrase "Senior Deputy Director" in the first sentence and by adding in lieu thereof the phrase "Deputy Director for Washington Operations".

PART 505—[AMENDED]

7. The authority citation for part 505 is revised to read as follows:

Authority: 5 U.S.C. 552; 12 U.S.C. 1462a, 1463, 1464.

§ 505.2 [Amended]

8. Section 505.2 is amended by removing the phrase "1776 G Street NW., Street Level, 18th Street side of the building." in the second sentence and by adding in lieu thereof the phrase "1700 G Street NW., from 1 p.m. to 4 p.m. on business days. Visitors are escorted to and from the Public Reference Room at established intervals."

§ 505.4 [Amended]

9. Section 505.4 is amended by removing the phrase "1776 G Street, NW, Street Level, 18th Street side of building." in the third sentence and by adding in lieu thereof the phrase "1700 G Street NW".

PART 515—[AMENDED]

10. The authority citation for part 515 is revised to read as follows:

Authority: 39 U.S.C. 3220.

§ 515.2 [Amended]

11. Section 515.2 is amended by removing the phrase "Director, Financial and Administrative Systems, Management Office," and by adding in lieu thereof the phrase "Deputy Assistant Director, Procurement and Administrative Services Division, Administration Office,".

§ 515.4 [Amended]

12. Section 515.4 is amended by removing the phrase "The Financial and Administrative Systems Division ("FAS") of the Management Office" in the introductory text of paragraph (a) and by adding in lieu thereof the phrase "Procurement and Administrative Services Division of the Administration Office"; and by removing the phrase "Senior Deputy Directors" in paragraph (b) and adding in lieu thereof the phrase "Deputy Assistant Directors".

§ 515.5 [Amended]

13. Section 515.5 is amended by removing the phrase "Management Office" and by adding in lieu thereof the phrase "Administration Office".

SUBCHAPTER C—REGULATIONS FOR FEDERAL SAVINGS ASSOCIATIONS

PART 544—[AMENDED]

14. The authority citation for part 544 is revised to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 2901 *et seq.*

15. The appendix to part 544 is amended by revising the third sentence of Item 8 and by adding a new sentence between the seventh and eighth sentences to read as follows:

Appendix to Part 544—Model Bylaws for Mutual Savings Associations

* * * * * *

8. *Meetings of the board.* * * * All special meetings shall be held upon at least 24 hours written notice to each director [trustee] unless notice is waived in writing before or after such meeting. * * * The board may also permit telephonic participation at meetings. * * *

* * * * * *

PART 552—[AMENDED]

16. The authority citation for part 552 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a.

§ 552.4 [Amended]

17. Section 552.4 is amended by removing the phrase "§ 500.32(c)(5) of this chapter" in paragraph (d) and by adding in lieu thereof the phrase "§ 516.1(c) of this chapter".

§ 552.6 [Amended]

18. Section 552.6 is amended by removing the phrase "10 days" in the first sentence of paragraph (d)(1) and by adding in lieu thereof the phrase "20 days".

Appendix to Part 552 [Amended]

19. The appendix to part 552 is amended by removing the phrase "two days" in the first sentence of Article III, Section 6, and by adding in lieu thereof the phrase "24 hours".

SUBCHAPTER D—REGULATIONS APPLICABLE TO ALL SAVINGS ASSOCIATIONS

PART 561—[AMENDED]

20. The authority citation for part 561 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a.

21. Section 561.5 is added to read as follows:

§ 561.5 Affiliated person.

The term *affiliated person* of a savings association means the following:

(a) A director, officer, or controlling person of such association;

(b) A spouse of a director, officer, or controlling person of such association;

(c) A member of the immediate family of a director, officer, or controlling person of such association, who has the same home as such person or who is a director or officer of any subsidiary of such association or of any holding company affiliate of such association;

(d) Any corporation or organization (other than the savings association or a corporation or organization through which the savings association operates) of which a director, officer or the controlling person of such association:

(1) Is chief executive officer, chief financial officer, or a person performing similar functions;

(2) Is a general partner;

(3) Is a limited partner who, directly or indirectly either alone or with his or her spouse and the members of his or her immediate family who are also affiliated persons of the association, owns an interest of 10 percent or more in the partnership (based on the value of his or her contribution) or who, directly or indirectly with other directors, officers, and controlling persons of such association and their spouses and their immediate family members who are also affiliated persons of the association, owns an interest of 25 percent or more in the partnership; or

(4) Directly or indirectly either alone or with his or her spouse and the members of his or her immediate family who are also affiliated persons of the association, owns or controls 10 percent or more of any class of equity securities or owns or controls, with other directors, officers, and controlling persons of such association and their spouses and their immediate family members who are also affiliated persons of the association, 25 percent or more of any class of equity securities; and

(5) Any trust or other estate in which a director, officer, or controlling person of such association or the spouse of such person has a substantial beneficial interest or as to which such person or his or her spouse serves as trustee or in a similar fiduciary capacity.

Dated: December 30, 1993.

By the Office of Thrift Supervision.

Jonathan L. Fiechter,

Acting Director.

[FR Doc. 94–9300 Filed 4–18–94; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 27683; Amdt. No. 1594]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria was applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

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. For the same reason, the FAA certifies that this amendment 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 97

Air traffic control, Airports, Navigation (Air).

Issued in Washington, DC, on April 8, 1994.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. App. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective June 23, 1994*

South Lake Tahoe, CA, Lake Tahoe, LDA/DME–1 RWY 18, Amdt. 7
South Lake Tahoe, CA, Lake Tahoe, LDA/DME–2 RWY 18, Amdt. 1
Lanai, HI, Lanai, VOR or TACAN RWY 3, Amdt. 6
Lanai, HI, Lanai, VOR or TACAN–A, Amdt. 8
Covington/Cincinnati, KY, OH, Cincinnati/Northern Kentucky Intl, ILS RWY 9, Amdt. 13
Covington/Cincinnati, KY, OH, Cincinnati/Northern Kentucky Intl, ILS RWY 18L, Amdt. 2
Covington/Cincinnati, KY, OH, Cincinnati/Northern Kentucky Intl, ILS RWY 18R, Amdt. 16
Covington/Cincinnati, KY, OH, Cincinnati/Northern Kentucky Intl, ILS RWY 27, Amdt. 14
Covington/Cincinnati, KY, OH, Cincinnati/Northern Kentucky Intl, ILS RWY 36L, Amdt. 35
Covington/Cincinnati, KY, OH, Cincinnati/Northern Kentucky Intl, ILS RWY 36R, Amdt. 3
Covington/Cincinnati, KY, OH, Cincinnati/Northern Kentucky Intl, NDB RWY 18R, Amdt. 15
Covington/Cincinnati, KY, OH, Cincinnati/Northern Kentucky Intl, NDB RWY 9, Amdt. 11
Somerset, KY, Somerset-Pulaski County-J.T. Wilson Field, SDF RWY 4, Amdt. 6
Somerset, KY, Somerset-Pulaski County-J.T. Wilson Field, NDB RWY 4, Amdt. 6
Southbridge, MA, Southbridge Muni, VOR/DME–B, Amdt. 6
Whiteville, NC, Columbus County Muni, NDB RWY 5, Amdt. 4
Medford, OK, Medford Muni, NDB RWY 17, Amdt. 1B, CANCELLED
Rockwood, TN Rockwood Muni, VOR/DME RWY 22, Amdt. 5
Sparta, TN, Upper Cumberland Regional, SDF RWY 4, Amdt. 3
Sparta, TN, Upper Cumberland Regional, NDB RWY 4, Amdt. 3
Dallas, TX, Redbird, VOR/DME RWY 17, Orig.
Houston, TX, William P. Hobby, ILS RWY 4, Amdt. 37
Palacious, TX, Palacios Muni, VOR RWY 13, Amdt. 10
Victoria, TX, Victoria Regional, VOR or GPS RWY 12L, Amdt. 13
Victoria, TX, Victoria Regional, VOR/DME or GPS RWY 30R, Amdt. 5
Victoria, TX, Victoria Regional, NDB RWY 12L, Amdt. 3
Victoria, TX, Victoria Regional, ILS RWY 12L, Amdt. 8
Yoakum, TX, Yoakum Muni, NDB RWY 31, Amdt. 2

** * * Effective May 26, 1994*

Corona, CA, Corona Muni, VOR–A, Amdt. 4
Fort Pierce, FL, St. Lucie County Intl, NDB RWY 27, Orig.
Fort Pierce, FL, St. Lucie County Intl, ILS RWY 9, Orig.

Concord, NH, Concord Muni, VOR RWY 12, Amdt. 1
Concord, NH, Concord Muni, VOR/DME RWY 12, Amdt. 2 Cancelled
Concord, NH, Concord Muni, NDB RWY 35, Amdt. 5
Concord, NH, Concord Muni, ILS RWY 35, Amdt. 1
Manchester, NH, Manchester, VOR/DME 3 RWY 17, Orig-A, Cancelled
Manchester, NH, Manchester, VOR/DME RWY 17, Orig.
Manchester, NH, Manchester, VOR/DME RWY 17, Amdt. 9A, Cancelled
Manchester, NH, Manchester, VOR RWY 17, Orig.
Manchester, NH, Manchester, VOR RWY 35, Amdt. 15
Manchester, NH, Manchester, NDB RWY 6, Amdt. 1
Manchester, NH, Manchester, NDB RWY 35, Amdt. 13
Manchester, NH, Manchester, ILS RWY 35, Amdt. 17
Manchester, NH, Manchester, VOR/DME RNAV RWY 6, Amdt. 3
Nashua, NH, Boire Field, VOR RWY 23, Orig.
Nashua, NH, Boire Field, VOR–A, Amdt. 11
Nashua, NH, Boire Field, VOR/DME RWY 32, Orig. Cancelled
Nashua, NH, Boire Field, NDB RWY 14, Amdt. 5
Nashua, NH, Boire Field, ILS RWY 14, Amdt. 5
Nashua, NH, Boire Field, VOR/DME RNAV RWY 32, Amdt. 6
Denton, TN, Denton Muni, GPS RWY 35, Orig.

** * * Effective April 28, 1994*

Denver, CO, Front Range, ILS RWY 17, Orig.
Freeport, IL, Albertus, LOC RWY 24, Orig.
Freeport, IL, Albertus, NDB RWY 6, Orig.
Freeport, IL, Albertus, NDB RWY 24, Amdt. 11, Cancelled
Warsaw, IN, Warsaw Muni, ILS/DME RWY 27, Orig.
Minneapolis, MN, Airlake, VOR RWY 11, Orig.
Minneapolis, MN, Airlake, ILS RWY 29, Orig.
Lakeville, MN, Airlake, VOR–A, Amdt. 3, Cancelled
Lakeville, MN, Airlake, ILS RWY 29, Amdt. 2, Cancelled
New York, NY, John F. Kennedy Intl, ILS RWY 31L, Amdt. 9
Cincinnati, OH, Cincinnati-Blue Ash, VOR RWY 6, Amdt. 4, Cancelled
Cincinnati, OH, Cincinnati-Blue Ash, NDB RWY 6, Orig.
Cincinnati, OH, Cincinnati-Blue Ash, NDB RWY 24, Orig.

[FR Doc. 94–9425 Filed 4–18–94; 8:45 am]
BILLING CODE 4910–13–M

14 CFR Part 97

[Docket No. 27684; Amdt. No. 1595]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The Provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAM for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been cancelled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports.

This amendment to part 97 contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need

for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

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. For the same reason, the FAA certifies that this amendment 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 97

Air traffic control, Airports, Navigation (Air).

Issued in Washington, DC, on April 8, 1994.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. App. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g) (revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

Effective	State	City	Airport	FDC No.	SIAP
02/23/94	TN	SMYRNA	SMYRNA	FDC 4/0896	ILS RWY 32 AMDT 5.
03/23/94	TX	MARSHALL	HARRISON COUNTY	FDC 4/1401	VOR/DME–A AMDT 4.
03/24/94	OH	FINDLAY	FINDLAY	FDC 4/1421	VOR RWY 36 AMDT 5.
03/25/94	ME	WATERVILLE	WATERVILLE ROBERT LAFLEUR	FDC 4/1435	VOR/DME RWY 5 AMDT 7.
03/25/94	OH	COLUMBUS	OHIO STATE UNIVERSITY	FDC 4/1431	NDB RWY 27L AMDT 6.
04/04/94	CA	SAN DIEGO	SAN DIEGO INTL–LINDBERGH FIELD.	FDC 4/1563	NDB RWY 9 AMDT 19A.

[FR Doc. 94–9426 Filed 4–18–94; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 4

RIN 1515–AB42

[T.D. 94–41]

Extension of Time Limit in Which To File Vessel Repair Documents

AGENCY: Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to extend the time limit allowed to vessel operators to file documentation submitted in connection with vessel repair entries, including applications for relief from the assessment of duties under the vessel repair statute. It also amends the regulations to require that any shipyard cost estimates available be submitted at the time that a vessel repair entry is made. These changes will expedite the decision process in determining duty liability.

EFFECTIVE DATE: May 19, 1994.

FOR FURTHER INFORMATION CONTACT: Bruce Friedman, Office of Trade Operations, 202–343–0024 (operational matters), or Larry L. Burton, 202–482–6940 (legal matters).

SUPPLEMENTARY INFORMATION:

Background

On January 13, 1993, a document was published in the **Federal Register** (58 FR 4114) soliciting comments regarding a Customs proposal to amend the Customs Regulations regarding the time limit available for the submission of documentation in support of required vessel repair entries.

Section 1466 of title 19 of the United States Code provides that a duty of 50 per cent ad valorem shall be assessed upon the value of repairs accomplished outside of the United States on certain American-flag vessels. The statute itself and numerous judicial and administrative interpretations provide exceptions to the assessment of duty under specific circumstances.

The statutory mandate is implemented under section 4.14 of the Customs Regulations (19 CFR 4.14), which provides the necessary working guidelines for Customs as well as vessel operators. Among the matters set forth in § 4.14 are the procedures for making entry and for seeking administrative refund or remission of assessed duty. It is required that American-flag vessels submit a vessel repair entry to Customs within 5 days of arrival from a foreign port following any shipyard work. Depending upon whether actual shipyard invoices are available at the time an entry is submitted, the regulations provide that such entry may be denominated either a complete or incomplete submission.

The regulations provide, absent the grant of an extension, that in the case of entries submitted as incomplete

accounts, a full and complete account of foreign shipyard costs incurred must be submitted to Customs within 60 days from the date of vessel arrival in the United States (19 CFR 4.14(b)(2)(ii)).

It has long been heard from vessel operators that the matter of final charges is frequently the subject of negotiation between themselves and foreign shipyards. It was claimed that this process often makes it impossible to meet the regulatory submission deadline without the necessity of seeking an extension from Customs. Customs had been reluctant to extend the filing period, recognizing that extending the period for the gathering of all evidence has the inevitable effect of delaying the eventual collection of the revenue. Customs has come to believe, however, that such a delay already existed owing to the large number of operators seeking extensions, and that a savings could be realized by not having to process numerous requests for extension. With publication of the January 13, 1993, notice, Customs proposed extending the filing period from the 60-day limit to a period of 90 days.

At the same time, Customs took the opportunity to propose an additional amendment to the vessel repair regulations. In the case of vessel repair entries submitted as incomplete accounts, Customs requires that the best estimate of foreign repair costs be provided pending receipt of actual final invoices. Such statements of cost are used to calculate the amount of the bond or duties that must be deposited with Customs prior to departure of vessels from port.

It has been noted that on some occasions, final invoice amounts vary greatly from initially estimated costs, and that the revenue has been inadequately protected by small deposits or bonds. It is also known that in many cases, written estimates from foreign shipyards have been provided to vessel operators prior to the commencement of repair operations. Customs merely proposed to require that when a written estimate has been provided to a vessel operator, documentary evidence of that estimated cost must be filed at the time of submission of an incomplete vessel repair entry.

Discussion of Comments

Five comments were received in response to the proposal. Four were from vessel operators and interested industry members, and one was from within the Customs Service. A discussion of the specific comments follows.

Comment: The additional time proposed to submit documentation is needed and its addition is welcomed. However, a major and much more general review of the regulations should be undertaken. As for the proposal to require the submission of written cost estimates which may be in the possession of a vessel operator, that element should be deleted. Such estimates are not always accurate and inclusion of this element in the regulations may be interpreted by Customs officers in the field as a requirement for all vessel entries.

Response: Customs is planning to undertake a total revision of the vessel regulations, to include those governing vessel repair matters, as soon as practicable. As to the accuracy of written estimates, Customs prefers to have some written benchmark for establishing cost rather than just a best guess. Further, there are only three Vessel Repair Liquidation Units, all of which are familiar with and well practiced at applying the Customs Regulations. All three Units are in frequent contact with Customs Headquarters and thus any interpretive problems could be quickly resolved.

Comment: The focus should be on elimination of the 50 per cent duty on foreign repairs to United States vessels. The duty is an operational and administrative burden to vessel operators.

Response: The comment is non-responsive to the published notice and solicitation of comments. The Customs Service merely enforces the statute as enacted by the Congress. Any change regarding the amount of the vessel repair duty would require Congressional action. If repeal of the statute is desired, it would be appropriate to lobby the Congress and not Customs.

Comment: While in general agreement with the proposal, it should be recognized that the final cost of foreign repairs is invariably less than the written estimates received from shipyards. It is unfair to liquidate entries 90 days after entry based upon such high estimates.

Response: In addition to the initial filing period, the regulations also provide for a 30-day field-granted filing extension as well as an additional filing extension of unspecified length to be granted by Customs Headquarters. These combined periods in addition to the initial 90 days should provide sufficient time to obtain final cost figures upon which liquidation may be based.

Comment: The extension to a 90-day filing period is needed and welcomed. In regard to the additional element concerning the submission of cost estimates, the wording of the proposal should be altered to make it clear that actual estimate documents need not be submitted, and that only the estimated cost amounts are needed.

Response: Customs does not expect cost estimates to be obtained by all vessel operators anticipating the filing of vessel entries. However, to the extent that such documentation already exists, Customs does not believe it to be overly burdensome to require the submission of copies of those documents. Given the fact that the regulations allow five working days after arrival for the submission of a vessel repair entry, it should be possible to provide existing written cost estimates to Customs by the time the entry process is completed.

Comment: The addition of 30 days to the filing time is unnecessary and will only serve to further delay the entry liquidation process. Further, the language of the proposal should have been written to require the submission of written estimates with all entries which are filed as incomplete.

Response: Customs disagrees. The proposal was limited to requiring the submission of existing estimated cost documents. Customs does not wish to require that each operator generate new documentation and submit it during the entry process.

Conclusion

After careful consideration of all comments received and further review of the matter, it has been determined that the amendments should be adopted.

Executive Order 12866

This document is not a "significant regulatory action" as defined in E.O. 12866.

Regulatory Flexibility Act

Based on the above discussion, pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the amendment will not have a significant economic impact on a substantial number of small entities. Accordingly, they are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Drafting Information

The principal author of this document was Larry L. Burton, Carrier Rulings Branch, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

List of Subjects in 19 CFR Part 4

Customs duties and inspection, Reporting and recordkeeping requirements, Vessels.

Amendments to the Regulations

Part 4, Customs Regulations (19 CFR part 4), is amended as set forth below:

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

1. The general authority citation for part 4, Customs Regulations (19 CFR part 4) and the relevant specific authority citation for § 4.14 (19 CFR 4.14) continue 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;

* * * * *

Section 4.14 also issued under 19 U.S.C. 1466, 1498;

* * * * *

§ 4.14 [Amended]

2. Section 4.14(b)(1) is amended by removing the reference to "§ 113.14(m)," and adding in its place "§ 113.13".

3. Section 4.14(b)(2)(ii) introductory text, (b)(2)(ii)(B), and (d)(1)(ii) are amended by removing the references to "60" where they appear, and adding in their places references to "90."

4. Section 4.14(b)(2)(ii) introductory text is amended by adding after the word "arrival" in the second sentence, the following new language: ", except that evidence of estimated foreign shipyard cost in the possession of or known to the vessel operator must be submitted at the time entry is made."

Samuel H. Banks,

Acting Commissioner of Customs.

Approved: March 31, 1994.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 94–9282 Filed 4–18–94; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 24

[Docket No. R–94–1721; FR–3695–01]

RIN 2501–AB73

Limited Denial of Participation; Technical Amendment

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This final rule makes two technical changes to 24 CFR 24.700. One change corrects the designations of HUD officials who have authority to order Limited Denial of Participation actions, based on HUD's Field structure reorganization. The other change corrects the spelling of a word in the regulation.

EFFECTIVE DATE: May 19, 1994.

FOR FURTHER INFORMATION CONTACT: Emmett N. Roden, Assistant General Counsel, Inspector General and Administrative Proceedings Division, Office of General Counsel, room 10251, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–2350; (TDD) (202) 708–3259. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: HUD's regulation at 24 CFR 24.700 is being amended to eliminate the designation of authority to order Limited Denials of Participation (LDP) by specifically listed positions. The positions listed will not be accurate after HUD's Field Office restructuring because the positions and functions of certain Department officials will be changed.

In November 1993, the Secretary announced the reorganization of HUD's field structure to improve HUD's performance and provide HUD's customers—members of the public and program beneficiaries—more efficient service and less bureaucracy by empowering HUD employees to serve HUD's customers more effectively. In implementing this objective, the Secretary determined to remove the Regional organizational layer and provide officials at lower organizational levels full authority to carry out program functions, with these field office officials reporting directly to program officials. The ordering of LDP actions will assist in achieving the Secretary's objective.

Currently, § 24.700 designates authority to order LDPs to Regional Administrators, Office Managers, the Director of an Office of Indian Programs, or the Deputy Assistant Secretary for Single Family Housing. This amendment will give a broad designation of authority to unspecified Department officials, similar to the authority set forth in HUD's debarment regulations at § 24.105(g).

On September 11, 1993, the President issued Executive Order 12861, which requires each Executive department and agency to undertake to eliminate within three years of the effective date of the Order not less than 50 percent of its civilian internal management regulations that are not required by law. Section 24.700 is a civilian internal management regulation of the type referenced in the Executive Order. The Secretary of HUD has determined that listing specific position titles in 24 CFR 24.700 is not required by law and can be accomplished through published delegations of authority.

A notice of Delegation from the Secretary, delegating the Secretary's Authority to order LDPs to the Department's Assistant Secretaries, with authority to redelegate, was published on April 15, 1994 in the **Federal Register**.

Finally, the word "mortgages" in § 24.700 is being corrected to read "mortgagees."

Justification for Final Rulemaking

In general, the Department publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking, 24 CFR part 10. However, § 10.1 provides that notice and public procedure may be omitted with respect to rules governing the Department's organization or its own internal practices or procedures. The amendment being made in this document is such a rule.

Other Matters

Environmental Review

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.20(k) of the HUD regulations, the policies and procedures in this document relate only to internal administrative procedures whose content does not relate to the physical condition of project areas or building sites and, therefore, are categorically excluded from the requirements of the National Environmental Policy Act of 1969.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule eliminates unnecessary regulations. There are no anticompetitive discriminatory aspects of the rule with regard to small entities, and there are not any unusual procedures that would need to be complied with by small entities.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule will not have substantial direct effects on States or their political subdivisions, on the relationship

between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the rule is not subject to review under the Order. The rule is limited to eliminating unnecessary or duplicative regulations.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being and, thus, is not subject to review under the Order. No significant change in existing HUD policies or programs will result from promulgation of this rule, as those policies and programs relate to family concerns.

Regulatory Agenda

This rule was not listed in the Department's Semiannual Agenda of Regulations published on October 25, 1993 (58 FR 56402) under Executive Order 12291 and the Regulatory Flexibility Act.

List of Subjects in 24 CFR Part 24

Administrative practice and procedure, Drug abuse, Government contracts, Government procurement, Grant programs, Loan programs, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, title 24 of the Code of Federal Regulations is amended as follows:

PART 24—GOVERNMENT DEBARMENT AND SUSPENSION AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The authority citation for part 24 is revised to read as follows:

Authority: Executive Order 12549; 41 U.S.C. 701 et seq.; 42 U.S.C. 3535(d).

2. Section 24.700 is revised to read as follows:

§ 24.700 General.

Officials who may order a limited denial of participation. HUD officials, as designated by the Secretary, are authorized to order a limited denial of participation affecting any participant or contractor and its affiliates, except HUD–FHA approved mortgagees. In each case, even if the offense or violation is of a criminal, fraudulent or other serious nature, the decision to order a limited denial of participation shall be discretionary and in the best interests of the Government.

Dated: April 5, 1994.

Henry G. Cisneros,

Secretary.

[FR Doc. 94–9391 Filed 4–18–94; 8:45 am]

BILLING CODE 4210–32–P

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Part 941

[Docket No. R–94–1711; FR–3591–F–01]

RIN 2577–AB39

PHA Acquisition of Single Family HUD/VA/RTC Properties

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Final rule.

SUMMARY: This rule revises existing regulations to expedite public housing agency (PHA) acquisition of single family properties (with or without rehabilitation) that are secured by an FHA-insured or HUD-held mortgage or owned by HUD, VA, or RTC by eliminating the requirements for approval by the Assistant Secretary and allowing Field Offices to exercise more discretion in determining the nature and scope of required technical reviews.

EFFECTIVE DATE: May 19, 1994.

FOR FURTHER INFORMATION CONTACT: Janice Rattley, Director, Office of Construction, Rehabilitation and Maintenance, Office of Public and Indian Housing, room 4138, 451 Seventh Street SW., Washington, DC 20410, Telephone (202) 708–1800. A telecommunications device for speech and/or hearing impaired persons (TDD) is available at (202) 708–0850. (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION: The current regulation for public housing development provides, in part, at 24 CFR 941.206(c), that PHA acquisition of properties (with or without rehabilitation) that are secured by an FHA-insured or HUD-held mortgage or are owned by HUD may not be approved, except with the prior written approval of the Assistant Secretary for Public and Indian Housing. This rule amends § 941.206(c) by removing the requirement for prior approval by the Assistant Secretary and by adding properties owned by the Veterans Administration (VA) or the Resolution Trust Corporation (RTC) as eligible for acquisition under this section.

This rule also streamlines the procedure for acquiring such properties by expanding the limited proposal procedure for scattered-site projects to permit the PHA purchase of HUD/VA/RTC properties, any combination of such, and/or in combination with the purchase of eligible properties on the open market. The limited proposal procedure would be the same for any single family acquisition regardless of its ownership.

This rule permits Field Offices to exercise more discretion in determining the nature and scope of required reviews. In order to enable a Field Office to have the ability to limit its reviews and expedite processing, the PHA is required to certify, either as part of its limited proposal or at the time the PHA identifies a property it wants to acquire and provides the proposed sales contract, that compliance with all necessary applicable requirements will be met: e.g.,

(1) Prevailing wages;
(2) Nondiscrimination requirements;
(3) Site and neighborhood standards;
(4) Intergovernmental review;
(5) Accessibility requirements;
(6) Relocation requirements;
(7) Minimum Property Standards (MPS) or Housing Quality Standards (HQS);
(8) If replacement housing under section 18 is involved, that the housing to be acquired is consistent with the replacement housing plan approved by HUD;
(9) Generally, properties constructed prior to 1978 should not be considered; however, if a proposed property was built prior to 1978, that lead-based paint testing and the determination of the cost feasibility of abatement will be done before the transfer of title to and payment of funds by the PHA or the contract is null and void; and
(10) Any other Federal requirements listed under 24 CFR 941.202 through 941.209. These PHA certifications do not provide a basis for waiving or dispensing with the applicability of the aforementioned requirements, environmental assessments and other Federal requirements listed under 24 CFR 941.202 through 941.209.

Based on the PHA's submission, including the certifications, each Field Office is allowed to decide, on its own discretion, whether or not to require the submission, technical review and approval of any further information. In order to expedite processing, the Field Office's Housing Specialist will distribute simultaneously to each of HUD's technical offices (in accordance with the recent reorganization at the Field Office level) the PHA's submission to determine as soon as possible if any technical reviews are necessary. The

Field Office is responsible for performing the reviews to assure compliance with applicable requirements and development within the approved development cost limits, while at the same time keeping the number of technical reviews at a minimum. Under this rule, there is a target period of 50 days from the time the PHA indicates it wants to acquire a specific property and when the Field Office approves or rejects the request; after approval notification, the PHA has an additional 10 day target period to close on the property. Properties involving extensive rehabilitation, lead-based paint testing and abatement, historic preservation requirements and/or an uncompleted environmental assessment, may require extension of the target date. The payment of Single Family Property Disposition (SFPD) customary extension fees is considered an eligible public housing development expense.

The rule provides guidance on the factors that a Field Office is to consider in deciding whether or not to require additional submissions for review and approval. The Field Office is to take into account the total development cost of the proposed project, and the management and development capabilities of the PHA, including the PHA's performance rating under the Public Housing Management Assessment Program (PHMAP) at 24 CFR part 901. The Field Office can, at its own discretion, accept all PHA certifications that required compliances will be met, except the environmental assessment; by law, only HUD can certify compliance with 24 CFR part 50. If the Field Office is satisfied with the PHA submission, including its certifications, additional submissions and technical reviews will not be necessary.

These changes to HUD's development review process are a part of the overall effort that the Department is undertaking to promote decentralization. More authority is entrusted to the Field Offices to exercise discretion with respect to the activities of PHAs that they deal with on a close and regular basis. PHAs are themselves empowered to act without the prior approval of the Assistant Secretary and with the potential for more informal consultations with the Field Office. The end result is anticipated to be a more streamlined and efficient property acquisition process.

This rule further specifies that the limited proposal procedure under § 941.404(n) for scattered site properties would also be followed for acquisition of HUD/VA/RTC properties. PHAs may identify such properties to consider for acquisition as described below in the succeeding paragraph. Section 941.404(n) is amended to include these properties within its scope, and to include the list of certifications discussed above. The unnumbered closing paragraph of § 941.404(n) is revised to reflect the Department's streamlined review procedures.

Purchase of HUD-Owned Properties

Acquisition by PHAs of HUD's single family acquired properties must routinely follow the established current procedures used by HUD's Division of Single Family Property Disposition (SFPD). This includes the process by which all other nonprofit organizations and government agencies purchase properties. After a PHA receives notice of property availability, the PHA has 5 days to indicate interest and then an additional 15 days to submit a signed sales contract. Upon execution of the contract by SFPD, the PHA will close the sale within the Field Office closing timeframe, generally 30–60 days. During this remaining period, all regulatory and statutory regulations must be met by the PHA before the transfer of title to and payment of funds by the PHA or the contract is null and void.

HUD would like to expedite sales to PHAs and encourages PHAs to contact the Director of Housing Management in the HUD field office having jurisdiction over the area in which the PHA has authority to determine the availability of HUD-owned single family properties, and the status of HUD-held mortgages which may be in the process of being foreclosed.

Purchase of Properties Owned by the Veteran's Administration (VA) and the Resolution Trust Corporation (RTC)

Pursuant to a Memorandum of Agreement between the Secretary of Housing and Urban Development and the Secretary of Veteran Affairs, a framework will be established for a continuing working relationship between HUD and VA to coordinate the sale of VA-acquired properties to PHAs. Upon request, the local VA field office will make available a list, by computer or otherwise, of single family (one to four units) properties owned by VA and located within the PHA's jurisdiction. PHAs will have a right of first option on these properties for a period of time from the date the list is furnished to the PHA, and the PHA and VA will follow an agreed upon procedure for the property purchase.

With regard to RTC properties, RTC sells foreclosed single family properties in conjunction with its responsibilities for resolving failed financial institutions. Under the RTC's Affordable Housing Disposition (AHD) Program, public agencies, nonprofit organizations and low/moderate-income buyers have an exclusive right for a period of time to purchase lower-priced single family properties that the RTC has placed on the market. RTC offers these properties at their fair market value and publicizes the availability of these properties through various state and local housing agencies and Federal Home Loan Banks, which serve as property information clearinghouses. PHAs are to contact the Affordable Housing Disposition Department Head at the local RTC field offices in order to be placed on the RTC property mailing list.

The Department has determined that the changes made by this rule should be adopted without the delay occasioned by requiring prior notice and comment. These changes primarily constitute a change in the Department's own review procedures and the elimination of a requirement to obtain prior approval of the Assistant Secretary before a PHA may acquire certain properties. As such, prior notice and comment are unnecessary, and the rule is exempt under 24 CFR part 10 from notice and comment requirements.

Findings and Certifications

A. Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk at the above address.

B. Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule do not have federalism implications and, thus, are not subject to review under the Order. This rule removes a layer of prior HUD review and approval and allows Field Offices to exercise more discretion at multiple processing stages for the acquisition of certain properties. It will not have substantial, direct effects on States, on their political subdivisions, or on their relationships with the Federal government, or on the distribution of power and responsibilities between them and other levels of government.

C. Family Impact

The General Counsel, as the Designated Official under Executive Order 12606, the Family, has determined that this rule will have only an indirect, though beneficial, impact on family formation, maintenance, and general well-being, since it should simplify the development of housing by PHAs, and thus, is not subject to review under the Order.

This rule was not listed in the Department's Semiannual Agenda of Regulations published on October 25, 1993 (58 FR 56402) under Executive Order 12291 and the Regulatory Flexibility Act.

List of Subjects in 24 CFR Part 941

Grant programs—housing and community development, Loan programs—housing and community development, Public housing.

Accordingly, the Department amends 24 CFR part 941 as set forth below:

PART 941—PUBLIC HOUSING DEVELOPMENT

1. The authority citation for 24 CFR part 941 continues to read as follows:

Authority: 42 U.S.C. 1437b, 1437c, 1437g, and 3535(d).

2. In § 941.206, paragraph (c) is revised to read as follows:

§ 941.206 Eligible properties.

* * * * *

(c) *Single family properties secured by an FHA-insured or HUD-held mortgage, or owned by HUD, the Veterans Administration (VA), or the Resolution Trust Corporation (RTC).* (1) Proposals for the acquisition of single family properties (with or without rehabilitation) that are secured by an FHA-insured or HUD-held mortgage or are owned by HUD, the Veterans Administration (VA), or the Resolution Trust Corporation (RTC), must be submitted to the Field Office for approval. The limited proposal procedure for scattered-site projects, as set forth at 24 CFR 941.404(n), may be followed to facilitate the PHA purchase for scattered-site projects of HUD/VA/RTC properties, any combination of such, and/or in combination with the purchase of eligible properties on the open market.

(2) After approval of the limited proposal and execution of the ACC, Field Offices will determine the nature and scope of required technical reviews, taking into consideration the PHA submission identifying a property it wants to acquire that includes the proposed sales contract and PHA certifications that compliance with all necessary requirements will be met. If the PHA has provided the certifications as part of its limited proposal, the Field Office can, at its own discretion, accept all PHA certifications that required compliances will be met except the environmental assessment; by law, only HUD can certify compliance with 24 CFR part 50. The PHA certifications do not waive or dispense with the applicability of other Federal requirements pursuant to 24 CFR 941.202 through 941.209, but only serve to facilitate the approval process. These certifications shall address, but are not limited to:

(i) Prevailing wages;

(ii) Nondiscrimination requirements;

(iii) Site and neighborhood standards;

(iv) Intergovernmental review;

(v) Accessibility requirements;

(vi) Relocation requirements;

(vii) Minimum Property Standards (MPS) or Housing Quality Standards (HQS);

(viii) If replacement housing under section 18 is involved, that the housing to be acquired is consistent with the Replacement Housing Plan approved by HUD;

(ix) Generally, properties constructed prior to 1978 should not be considered; however, if a proposed property was built prior to 1978, that lead-based paint testing and the determination of the cost feasibility of abatement will be done before the transfer to and payment of funds by the PHA or the contract is null and void; and

(x) Any other Federal requirements listed under 24 CFR 941.202 through 941.209.

(3) After receiving a PHA's submission in accordance with paragraph (c) (2) of this section, each Field Office will decide whether or not to require the review and approval of any further information, based on its consideration of the PHA's submission, the acquisition cost of the property, and the management and development capabilities of the PHA, including the PHA's performance rating, under the Public Housing Management Assessment Program (PHMAP) at 24 CFR part 901.

(4) The Field Office will perform all necessary reviews to assure all compliance requirements are met.

(5) Under this section, there is a target period of 50 days from the time the PHA indicates it wants to acquire a specific property and when the Field Office approves or rejects the request; after approval notification, the PHA has an additional 10 day target period in which to close on the property. Properties involving additional requirements, such as acquisition with extensive rehabilitation, lead-based paint testing and abatement, historic preservation requirements and/or an uncompleted environmental assessment, may require extension of the target date.

3. In § 941.404, paragraph (n) is amended by designating the introductory text as paragraph (n)(1); by revising the section heading and the newly designated paragraph (n)(1); by redesignating existing paragraphs (n)(1) through (n)(9) as paragraphs (n)(1)(i) through (n)(1)(ix), respectively; by adding a new paragraph (n)(1)(x); by designating the undesignated paragraph as paragraph (n)(2); and by revising the newly designated paragraph (n)(2), to read as follows:

§ 941.404 Proposal content.

* * * * *

(n) *Special procedures for HUD/VA/RTC properties and scattered site projects.* (1) PHAs may, in lieu of submission of the complete proposal described in this section, submit a limited proposal if: the proposal is for the acquisition of properties secured by an FHA-insured or HUD-held mortgage, or owned by HUD, the Veterans Administration (VA), or the Resolution Trust Corporation (RTC); or the proposal is for a project involving scattered-site acquisition or a scattered-site conventional new construction or rehabilitation development, and the proposal has been determined to be eligible for front-end funding pursuant to § 941.402(c) or § 941.403(c), and the diversity of ownership of the properties is expected to make site control difficult.

* * * * *

(x) Certification that the PHA will comply with the following HUD requirements:

(A) Prevailing wages;

(B) Nondiscrimination requirements;

(C) Site and neighborhood standards;

(D) Intergovernmental review;

(E) Accessibility requirements;

(F) Relocation requirements;

(G) Minimum Property Standards (MPS) or Housing Quality Standards (HQS);

(H) If replacement housing under section 18 is involved, that the housing to be acquired is consistent with the Replacement Housing Plan approved by HUD;

(I) Generally, properties constructed prior to 1978 should not be considered; however, if a proposed property was built prior to 1978, that lead-based paint testing and the determination of the cost feasibility of abatement will be done before the transfer to and payment of

funds by the PHA or the contract is null and void; and

(J) Any other Federal requirements listed under 24 CFR 941.202 through 941.209.

(2) HUD will review the limited proposal, in accordance with § 941.405, and upon approval of the proposal, HUD will execute the ACC and permit advances for the purposes and amounts described in § 941.406(b)(3). The PHA will select individual properties in accordance with its approved limited proposal, but will not acquire a property or make a commitment to acquire without specific HUD site approval, and a determination that the property, including the resulting total development cost, is consistent with the approved limited proposal.

Dated: April 11, 1994.

Joseph Shuldiner,

Assistant, Secretary for Public and Indian Housing.

[FR Doc. 94–9392 Filed 4–18–94; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 75

RIN 1219–AA11

Safety Standards for Underground Coal Mine Ventilation

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Extension of administrative stay and extension of effectiveness.

SUMMARY: MSHA is extending the stay of the effective date of two safety standards for ventilation of underground coal mines to allow completion of a rulemaking involving these and other ventilation standards. MSHA is also extending the effectiveness of three standards to allow the completion of this rulemaking.

EFFECTIVE DATE: April 19, 1994.

Sections 75.313 and 75.344(a)(1) in 30 CFR part 75 are stayed until completion of a rulemaking involving these and other ventilation standards. Sections 75.314, 75.315 and 75.345 in 30 CFR part 75 will continue in effect until completion of the rulemaking.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA, phone (703) 235–1910.

SUPPLEMENTARY INFORMATION: On May 15, 1992, MSHA published a final rule revising its safety standards for ventilation of underground coal mines (57 FR 20868). These standards were to take effect on August 16, 1992. On August 6, 1992, MSHA delayed the effective date of the rule until November 16, 1992, to allow mine operators time to effectively plan and implement necessary changes (57 FR 34683). On November 13, 1992, as a result of discussions with the mining community, MSHA administratively stayed the effective date of §§ 75.313 and 75.344(a)(1) until July 1, 1993 (57 FR 53856). Section 75.313 was stayed to allow MSHA to further evaluate the effect of fan stoppages in certain mines. Section 75.344(a)(1) was stayed to evaluate whether requiring portable compressors to be located in a noncombustible structure or area could create a fire hazard due to overheating. MSHA also recodified the provisions these standards were to replace as §§ 75.314, 75.315 and 75.345. On June 7, 1993, MSHA extended the stay until July 1, 1994 (58 FR 31908). Consistent with the stay extension, the recodified provisions continue in effect until July 1, 1994 (58 FR 33996).

As a result of meetings with the mining public and further review of the ventilation rule, the Agency is initiating a rulemaking to address the issues which prompted the stay. On December 30, 1993, MSHA published a notice (58 FR 69312) proposing to extend the stay until completion of a rulemaking involving these and other ventilation standards. The Agency received comments from interested parties concurring with the proposed extension. By this notice the Agency is extending the stay of §§ 75.313 and 75.344(a)(1) until completion of the ventilation rulemaking.

This notice does not affect the indefinite suspension of § 75.321(a) (57 FR 55457). That action was in response to an order of the United States Court of Appeals which stayed § 75.321(a) indefinitely, pending court review. *American Mining Congress* v. *Secretary of Labor*, No. 92–1288, and consolidated cases (D.C. Cir., filed July 8, 1992) (Order of November 16, 1992).

Authority: This document is issued under 30 U.S.C. 811.

Dated: April 14, 1994.

J. Davitt McAteer,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 94–9393 Filed 4–18–94; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–94–025]

RIN 2115–AA97

Safety Zone; New England Training Institute Conference Fireworks, Burlington Harbor, VT

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the New England Training Institute Conference Fireworks in Burlington Harbor. This event is sponsored by the Burlington Department of Parks and Recreation and will take place from 9 p.m. until 9:30 p.m. on April 24, 1994. This safety zone is needed to protect the boating public from the hazards associated with fireworks exploding in the area.

EFFECTIVE DATE: This rule is effective from 9 p.m. until 9:30 p.m. on April 24, 1994.

FOR FURTHER INFORMATION CONTACT: LT R. Trabocchi, Project Manager, Captain of the Port, New York, (212) 668–7933.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are LT R. Trabocchi, Project Manager, Captain of the Port, New York and CDR J. Astley, Project Attorney, First Coast Guard District, Legal Office.

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective less than 30 days after **Federal Register** publication. Due to the date this application was received, there was not sufficient time to publish a proposed rule in advance of the event. Publishing a NPRM and delaying the event would be contrary to public interest since the fireworks display is for public viewing.

Background and Purpose

On March 4, 1994, the Burlington Department of Parks and Recreation submitted an application to hold a fireworks program at Burlington Waterfront Park, Burlington, Vermont. This regulation establishes a temporary safety zone in all waters of Burlington Harbor within 250 feet of a point located on the southern corner of Burlington Waterfront Park at or near 44°28′45″ N

latitude 73°13'20" W longitude. This safety zone is needed to protect boaters from the hazards associated with fireworks exploding in the area. No vessel will be permitted to enter or move within this safety zone unless authorized to do so by the Coast Guard Captain of the Port, New York.

Regulatory Evaluation

This regulation is not major under Executive Order 12291 and not significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). No vessel traffic is permitted to transit within 250 feet of a point located on the southern corner of Burlington Waterfront Park in Burlington Harbor. Due to the limited duration of the event, the extensive advisories that will be made, and the limited traffic in the area at this time, and the fact that vessel traffic can safely transit around this zone, the Coast Guard expects the economic impact of this regulation 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 regulation will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under Section 3 of the Small Business Act (15 U.S.C. 632).

For the reasons given in the Regulatory Evaluation, the Coast Guard expects the impact of this regulation to be minimal. The Coast Guard certifies under 5 U.S.C. 605(b) that this regulation will not have a significant economic impact on a substantial number of small entities.

Collection of Information

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

Federalism

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

Environment

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

List of Subjects in 33 CFR Part 165

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

Regulations

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

PART 165 [AMENDED]

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

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

2. A temporary § 165.T01–025 is added to read as follows:

§ 165.T01–025 New England Training Institute Conference Fireworks, Burlington Harbor, Vermont

(a) *Location.* This temporary safety zone includes all waters of Burlington Harbor within 250 feet of a point located on the southern corner of Burlington Waterfront Park at or near 44°28'45" N latitude 73°13'20" W longitude.

(b) *Effective period.* This section is effective from 9 p.m. until 9:30 p.m. on April 24, 1994.

(c) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply to this safety zone.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel via siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: April 6, 1994.

T.H. Gilmour,

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

[FR Doc. 94–9411 Filed 4–18–94; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 165

[CGD08–93–027]

RIN 2115–AE79

Regulated Navigation Area: Oliver Lock and Dam; Black Warrior River-MM 338

AGENCY: Coast Guard, DOT.

ACTION: Interim final rule.

SUMMARY: The Coast Guard is establishing a Regulated Navigation Area at the Oliver Lock and Dam at MM 338 of the Black Warrior River. This regulation places restrictions on downbound tows passing through the lock during periods of high Tail-Water Gauge readings. Strong currents exist during high water conditions below the lock and dam that set downbound tows against the right protruding bank. The regulations applicable in this regulated navigation area in high water conditions will alleviate this problem.

DATES: This regulation becomes effective on April 19, 1994. Comments on this regulation must be received on or before June 3, 1994.

ADDRESSES: Comments should be mailed to Commander (mps), Eighth Coast Guard District, Hale Boggs Federal Bldg., 501 Magazine St., New Orleans, LA 70130–3396. Comments may also be hand-delivered to this address. The comments and other materials related to this regulation will be available for inspection and copying in room 1341 at the above address. Normal office hours are between 7:30 a.m. and 4 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Verne Gifford, Marine Safety Division, Eighth Coast Guard District, room 1341, Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA 70130–3396. Phone number: (504) 589–6188.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation, and good cause exists for making it effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been contrary to the public interest. Several near miss marine casualties have occurred previously as a result of the conditions cited above. Immediate action is needed to prevent marine casualties and to protect the environment during instances of high water.

Although this regulation is published as a final rule without prior notice, an

opportunity for public comment is nevertheless desirable to ensure that the regulation is both reasonable and workable. Accordingly, persons wishing to comment may do so by submitting written comments to the office listed under **ADDRESS** in this preamble. Commenters should include their names and addresses, identify the docket number for the regulations, and give reasons for their comments. Based upon comments received, the regulations may be changed.

Drafting Information

The Drafters of this regulation are LTJG R.S. Hoffmann, project officer for the Captain of the Port, Mobile, Alabama, LT Verne Gifford, project officer, Eighth Coast Guard District Marine Safety Division, and CDR D.G. Dickman, project attorney, Eighth Coast Guard District Legal Office.

Discussion of Regulations

These regulations have been established to decrease the risk of a marine casualty or oil pollution incident below the Oliver Lock and Dam. During normal river conditions, a tow leaving the lock has the current coming over the dam moving the tow to the right, making it difficult to move away from the lock wall and the right bank. The tows must navigate around a point of land on the right descending bank, which is fortified with rip-rap. In order to avoid this bank, they must offset the current by powering toward the Hunt Oil Dock located on the left descending bank in the same area. This situation is hazardous as a tow may be pushed into the right descending bank or ram crude oil barges docked at Hunt Oil, causing a major marine casualty or pollution incident.

The recent incomplete removal of the deflector dike on the downstream side of the Oliver Lock and Dam has accentuated the problem of currents pushing downbound tows toward the right protruding bank as they exit the lock. However, the problem will continue after removal of the remainder of the deflector dike. In higher water conditions, the currents are stronger and therefore the situation is even more hazardous. Already these conditions have resulted in many near misses, as reported by many of the towing companies using the lock.

The Coast Guard seeks to alleviate this situation by limiting tow sizes as the water level increases. This makes maneuvering easier for towboat operators because smaller tows have less area for the current to affect and because smaller tows increase the horsepower per ton ratio for the tow. Prohibiting downbound oil or hazardous material barges from transitting the lock when the river is exceptionally high will alleviate the danger of those products being released due to the hazardous downbound conditions should a tow and barge have difficulty navigating due to these hazardous downbound conditions.

Economic Assessment and Certification

This regulation is not considered to be a significant regulatory action under Executive Order 12866 and is nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. This is based on the following historic data provided by the Army Corps of Engineers for percentage of days per year on which conditions exist on the Black Warrior River that would require compliance with this regulation: a Tail-Water Gauge reading of 102.3 feet or less—78% or 285 days per year; a Tail-Water Gauge reading of 102.3 feet to 112.3 feet—16% or 58 days per year; a Tail-Water Gauge reading of 112.3 feet or greater—6% or 22 days per year. Normal high water periods are during the months of January through April. Transit statistics for the Black Warrior and Tombigbee Rivers for the most recent year for which such statistics are available, 1989, indicate that there were 8,110 towboat transits, including 1,517 tank barge transits, which may be potentially affected by these regulations. Additionally, the Coast Guard certifies that this regulation will not have a significant economic impact on a substantial number of small entities.

Federal Assessment

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

Environmental Assessment

This rule has been thoroughly reviewed by the Coast Guard. It has been determined not to have a significant effect on the human environment or environmental conditions and to be categorically excluded from further environmental documentation in accordance with section 2.B.2.c. of Commandant Instruction M16475.1B. The Coast Guard welcomes comments on potential environmental impacts of this rule.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements.

List of Subjects in 33 CFR Part 165

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

Final Regulation

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

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

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

2. A new § 165.809 is added to read as follows:

§ 165.809 Regulated navigation area: Oliver Lock and Dam; Black Warrior River—MM 338.

The following restrictions apply to downbound loaded tows passing through the Oliver Lock and Dam on the Black Warrior River at Mile Marker (MM) 338:

(a) When the Tail-Water Gauge reading at the Oliver Lock and Dam is 102.3 feet or greater, loaded tank barge tows must not exceed 55 feet in width and 600 feet in length, not including the towing vessel.

(b) When the Tail-Water Gauge reading at the Oliver Lock and Dam is 112.3 feet or greater, loaded open hopper barge tows must not exceed a maximum of four barges and a width of 70 feet. Loaded tank barge tows must not exceed a maximum of two barges and a width of 55 feet.

(c) When the Tail-Water Gauge reading at the Oliver Lock and Dam is 123 feet or greater, no tank or other barges loaded in bulk with oil or hazardous material, as that term is defined under the provisions of 46 CFR 153.20, may transit the lock.

Dated: April 6, 1994.

C.B. Newlin,

Captain, U.S. Coast Guard, Commander, 8th Coast Guard Dist., Acting.

[FR Doc. 94–9410 Filed 4–18–94; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[CGD01–93–030]

RIN 2115–AE80

Regulated Navigation Area; Providence River, Providence, RI

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is making the deep draft channel between Narragansett Bay Entrance Lighted Horn Buoy NB (LLNR 17675) and Providence River Channel Light 42 (LLNR 18580, Fuller Rock Light), a Regulated Navigation Area (RNA). This action is necessary to protect the maritime community from the hazards to navigation associated with the extreme shoaling that has taken place within the Providence River channel.

EFFECTIVE DATE: This regulation is effective on May 1, 1994.

FOR FURTHER INFORMATION CONTACT: Lieutenant Walt Petig, of Marine Safety Office Providence at (401) 435–2300.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this regulation are Lieutenant W. Petig, Project Manager for the Coast Guard Captain of the Port, Providence, Lieutenant Commander J. Stieb, Project Counsel for the First Coast Guard District Legal Office, and Lieutenant M. Swegles, Project Coordinator for the First Coast Guard District Aids to Navigation and Waterways Management Office.

Regulatory History

On February 17, 1993, the Captain of the Port, Providence, signed an emergency Safety Zone Regulation for the Providence River Channel. This regulation was published in the **Federal Register** on March 16, 1993 (58 FR 14151). The Captain of the Port, Providence requested comments concerning the safety zone regulation and received none. This emergency Safety Zone Regulation imposed restrictions on vessel traffic pertaining to maximum allowable drafts, one way traffic, and communications.

The Coast Guard published a Notice of Proposed Rulemaking (NPRM) proposing the establishment of a Regulated Navigation Area in the Providence River in the **Federal Register** on December 16, 1993 (58 FR 65684). That NPRM differed from the emergency safety zone regulations by enlarging the area which is regulated, adding a restriction concerning operations in reduced visibility, and reducing the number of SECURITE call locations for outbound vessels. No letters or comments on the proposed rule were received. Therefore, the Coast Guard is publishing the final regulation as proposed. Public hearings were not requested and none were held.

Background and Purpose

In February of 1993, the Captain of the Port, Providence, received the results of a hydrographic survey of the Providence River Federal navigation channel. This survey conducted by the Army Corps of Engineers showed that serious shoaling was taking place in the northern section of the channel. To provide for the safety of the port, the Captain of the Port, Providence, published an emergency Safety Zone regulation in the **Federal Register** on March 16, 1993 (58 FR 14151). Comments were solicited and none were received. A task force to study the need for dredging in the affected areas was organized by the state. However, due to the contamination of the dredge spoils and local environmental concerns, a decision is not expected in the near future. The finalizing of this RNA will allow the Coast Guard to regulate vessel traffic over an extended period of time. It is designed to protect the Port of Providence from any deep draft vessel casualty due to shoaling that may result in a grounding or associated casualty leading to loss of life, injury, property loss, oil or hazardous material discharge, or blockage of the channel.

The existing safety zone regulating vessel traffic in the effected area will expire on May 1, 1994. In the interest of safety and the public's interest in maintaining continuity in the regulations governing vessel traffic in this area, good cause exists for having this rule, which is nearly identical to the regulations that have been in effect since February 17, 1993, take effect on May 1, 1994.

Regulatory Evaluation

This rule is not a significant regulatory action under Executive Order 12866 and is not significant under the "Department of Transportation Regulatory Policies and Procedures" (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary. The emergency regulations have been in effect since February 17, 1993. Commercial operators utilizing the Port of Providence have reported no problems or economic burdens due to these regulations. The volume of commercial traffic utilizing this waterway is such that the costs incurred due to delays because of one-way traffic or reduced visibility are considered minimal and are far outweighed by the extra measures of safety provided by the regulations.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this rule, if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). For the reasons discussed in the Regulatory Evaluation, the Coast Guard expects the economic impact of this rule to be minimal on all entities. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

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

Federalism

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

Environment

The environmental impact of this rule has been evaluated using the Coast Guard's procedures for implementing the National Environmental Policy Act (Commandant Instruction M16475.1B). Under Section 2.B.2.(c) of these procedures, it is concluded that this action is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket.

List of Subjects in 33 CFR Part 165

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

For the reasons set out in the preamble, the Coast Guard amends part 165 of title 33 of the Code of Federal Regulations.

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Section 165.122 is added to read as follows:

§ 165.122 Providence River, Providence, R.I. regulated navigation area.

(a) *Description of the regulated navigation area (RNA).* The Regulated Navigation Area (RNA) encompasses the deep draft channel between Narragansett Bay Entrance Lighted Horn Buoy NB (LLNR 17675) 41°23.0′ N Latitude, 71°23.4′ W Longitude, and Fox Point, Providence.

(b) *Regulations.* (1) The following restrictions apply in the portion of the regulated area between Conimicut Light (LLNR 18305) and Channel Light 42 (Fuller Rock Light, (LLNR 18580)).

(i) No vessel with a draft greater than 35 feet may transit when water depth is at or below mean low water.

(ii) Vessels with drafts greater than 35 feet but less than 38 feet may transit when water depth is other than that on or below mean low water, provided there is sufficient depth under the keel to prevent grounding.

(iii) Vessels with drafts greater than or equal to 38 feet must obtain permission, 48 hours in advance of the desired transit time, from the Captain of the Port, Providence to transit.

(2) Vessels with drafts greater than 35 feet must have at least one mile of visibility to transit the regulated area between Conimicut Light (LLNR 18305) and Channel Light 42 (LLNR 18580, Fuller Rock Light).

(3) Vessels over 65 feet in length are prohibited from passing, meeting, or overtaking other vessels over 65 feet in length in the regulated area from:

(i) Gaspee Point to Channel Light 42, (Fuller Rock Light, LLNR 18580).

(ii) Conimicut Point Reach (Conimicut Light, LLNR 18305) to Channel Lighted Buoy 19, 41° 43.7′ N Latitude, 71° 21.8′ W Longitude, (LLNR 18330) and Channel Lighted Buoy 20, 41° 43.7′ N Latitude, 71° 21.8′ W Longitude, (LLNR 18335).

(4) Vessels over 65 feet in length inbound for berths up the Providence River, planning to transit through the deep draft channel, are required to make Safety Signal (SECURITE) calls on both VHF channels 13 and 16 at the following geographic locations: Pilot's Station, Abeam of Castle Hill, Approaching the Newport bridge, South of Prudence Island, Abeam of Sandy Point, Abeam of Popasquash Point, Approaching the Southern End of Rumstick Neck Reach, Abeam of Conimicut Point Light (LLNR 18305), Abeam of Gaspee Point, Abeam of Sabin Point and upon mooring.

(5) Vessels over 65 feet in length outbound for sea down the Providence River Channel transiting through this regulated navigation area are required to make SECURITE calls on VHF channels 13 and 16 at the following geographic locations: one-half hour prior to departure from the berth, at departure from the berth, Abeam of Sabin Point, Abeam of Gaspee Point, and Abeam of Conimicut Light (LLNR 18305).

(6) Vessels 65 feet and under in length and all recreational vessels when meeting deep draft commercial vessel traffic in the Providence River Channel between Conimicut Light (LLNR 18305) and Channel Light 42 (LLNR 18580, Fuller Rock Light) shall keep out of the way of the oncoming deep draft commercial vessel.

(7) The Captain of the Port, Providence, may authorize a deviation from these regulations.

(c) *Enforcement.* Violations of this regulated navigation area should be reported to the Captain of the Port, Providence, at (401) 435–2300. Persons in violation of these regulations will be subject to civil penalty under § 165.13(b) of this part.

Dated: March 28, 1994.

K.W. Thompson,

Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.

[FR Doc. 94–9412 Filed 4–18–94; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WV7–1–5573; A–1–FRL–4840–6]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Good Engineering Practice for Stack Heights

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State implementation plan (SIP) revision submitted by the State of West Virginia. This revision establishes and requires that the degree of emission limitation required for the control of any air pollutant is not affected by that portion of the stack height which exceeds good engineering practice (GEP) or by any other dispersion technique. The revision is consistent with the stack height provisions under EPA's "Requirements for Preparation, Adoption, and Submittal of Implementation Plans—Control Strategy". The intended effect of this action is to approve a SIP revision consisting of a stack height regulation adopted by the State of West Virginia. The State adopted this regulation to conform to the July 8, 1985 Federal promulgation of a revised stack height regulation. This action is being taken under section 110 of the Clean Air Act.

EFFECTIVE DATE: This action will become effective June 20, 1994, unless notice is received by May 19, 1994 that adverse or critical comments will be received. If the effective date is delayed, timely notice will be published in the **Federal Register.**

ADDRESSES: Comments may be mailed to Thomas J. Maslany, Director, Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107; Jerry Kurtzweg ANR–443, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and West Virginia Office of Air Quality, 1558 Washington Street, East, Charleston, West Virginia 25311.

FOR FURTHER INFORMATION CONTACT: David J. Campbell, Air and Radiation Programs Branch, Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107; 215 597–9781.

SUPPLEMENTARY INFORMATION: On April 2, 1990, the West Virginia Department of Commerce, Labor, and Environmental Resources submitted a revision to its State implementation plan (SIP) to incorporate a regulation for good engineering practice (GEP) as it applies to stack heights. The revision consists of West Virginia Air Pollution Control Commission (WVAPCC) Regulation 20—"Good Engineering Practice as Applies to Stack Heights" (45CSR20), adopted by the West Virginia Legislature on April 8, 1989 and effective July 14, 1989. The SIP revision is consistent with EPA's revised stack height regulation as published in the July 8, 1985 **Federal Register** (See 50 FR 27906).

Summary of SIP Revision

On July 8, 1985, EPA promulgated a revised stack height regulation to ensure that the degree of emission limitation required for the control of any pollutant under an applicable SIP is not affected by that portion of any stack height which exceeds GEP or by any other dispersion technique (See 50 FR 27892). The regulation updated the rule

promulgated on February 8, 1982 at 47 FR 5864.

On April 2, 1990, the State of West Virginia responded to the July 8, 1985 **Federal Register** by submitting a SIP revision consisting of WVAPCC Regulation 20—"Good Engineering Practice as Applies to Stack Heights". This regulation is consistent with EPA's stack height regulation.

EPA Evaluation

EPA has evaluated West Virginia's SIP revision request and concluded the following: (1) The stack height requirements will not adversely affect West Virginia's ability to enforce the current applicable emission limitations which adequately protect the national ambient air quality standards (NAAQS); (2) the stack height requirements are clearly enforceable; and (3) the applicable requirements of 40 CFR part 51 have been met. A more detailed evaluation is provided in a Technical Support Document available upon request from the Regional EPA office listed in the **ADDRESSES** section of this document.

EPA is approving this SIP revision without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. These revisions to West Virginia's regulations have been effective in the State since July 14, 1989. This action will be effective June 20, 1994 unless, by May 19, 1994, notice is received that adverse or critical comments will be submitted. If such notice is received, this action will be withdrawn before the effective date by simultaneously publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective on June 20, 1994.

Final Action

EPA is approving the WVAPCC Regulation 20—"Good Engineering Practice as Applies to Stack Heights" (45CSR20) submitted by the State of West Virginia as a revision to the West Virginia SIP. EPA's review of West Virginia's stack height regulation indicates that it conforms to the requirements of 40 CFR parts 51 and 52, and to the July 8, 1985 Federal promulgation of a revised stack height regulation.

The Agency has reviewed this request for revision of the Federally-approved State implementation plan for conformance with the provisions of the 1990 Amendments enacted on November 15, 1990. The Agency has determined that this action conforms with those requirements irrespective of the fact that the submittal preceded the date of enactment.

Nothing in this action shall 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.

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 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.

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, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Clean Air Act forbids EPA to base its actions concerning SIP's on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

This SIP revision establishing good engineering practice as applies to stack heights in West Virginia has been classified as a Table 3 action for signature by the Acting 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. 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. EPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. OMB has agreed to continue the waiver until such time as it rules on EPA's request. This request is still applicable under Executive Order 12866, which superseded Executive Order 12291 on September 30, 1993.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 20, 1994. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: February 9, 1994.

Stanley L. Laskowski,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart XX—West Virginia

2. Section 52.2520 is amended by adding paragraph (c)(27) to read as follows:

§ 52.2520 Identification of plan.

* * * * *

(c) * * *

(27) Revision to the State implementation plan consisting of a good engineering practice (GEP) for stack heights regulation as submitted by the Secretary, West Virginia Department of Commerce, Labor, and Environmental Resources on April 2, 1990:

(i) Incorporation by reference.

(A) Letter from the Secretary, Department of Commerce, Labor, and Environmental Resources dated April 2, 1990 submitting a revision to the West Virginia State implementation plan.

(B) Regulation 20 (45CSR20)—"Good Engineering Practice as Applies to Stack Heights" adopted by the State of West Virginia on April 8, 1989. The regulation became effective on July 14, 1989.

(ii) Additional materials.

(A) Remainder of the State implementation plan revision submitted by the West Virginia Department of Commerce, Labor, and Environmental Resources on April 2, 1990.

[FR Doc. 94–9326 Filed 4–18–94; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

43 CFR Part 230

RIN 1006–AA26

Rules and Regulations for Reclamation of Arid Lands by the United States

AGENCY: Bureau of Reclamation, Interior.

ACTION: Final rule; rescission.

SUMMARY: 43 CFR Part 230 pertains to the management of water rights for individuals receiving benefits from Bureau of Reclamation (Reclamation) irrigation projects. This regulation is outdated because current procedures for managing water rights conform to State requirements rather than procedures stated in this regulation. This regulation is no longer applicable to Reclamation programs, and so it is being removed from the Code of Federal Regulations.

EFFECTIVE DATE: April 19, 1994.

FOR FURTHER INFORMATION CONTACT: Marilyn Rehfeld, Department of Interior, Bureau of Reclamation, Division of Supply and Services (D–7924), PO Box 25007, Building 67, Denver Federal Center, Denver, Colorado 80225–0007, Tel: 303–236–6730.

SUPPLEMENTARY INFORMATION: The Department of the Interior (Department) has determined this document is not a significant rule under Executive Order 12866, and therefore does not require review by the Office of Management and Budget.

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Bureau of Reclamation certifies that this rule will not have a significant economic effect on a substantial number of small entities.

This final rule to rescind 43 CFR part 230 is determined not to have Federalism effects under Executive Order 12612 as it has no direct causal effect on the relative roles of Federal and State Government.

This rule does not contain collections of information that require approval by the Office of Management and Budget (OMB) under 44 U.S.C. 3501 *et seq.*

The Department has determined that this document does not constitute a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969.

The policy of the Department is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. A proposed rule was published in the **Federal Register**, 58 FR 65692, Dec. 16, 1993. Interested persons were asked to submit written comments, suggestions or objections regarding its content. No comments were received during the 60-day comment period.

The Department has certified to the OMB that this final rule meets the applicable standards provided in sections 2(a) and 2(b) of Executive Order 12778.

List of Subjects in 43 CFR Part 230

Administrative practice and procedure, Irrigation, Reclamation, Reporting and recordkeeping requirements.

PART 230—[REMOVED]

Under the authority of section 702 Pub. L. 94–579, the Federal Land Policy and Management Act of 1976, and for reasons stated above, 43 CFR is amended by removing part 230.

Dated: April 11, 1994.

Elizabeth Ann Rieke,

Assistant Secretary—Water and Science.

[FR Doc. 94–9328 Filed 4–18–94; 8:45 am]

BILLING CODE 4310–94–P

43 CFR Part 406

RIN 1006–AA27

Rules and Regulations for the Exchange or Amendment of Farm Units on Federal Reclamation Projects

AGENCY: Bureau of Reclamation, Interior.

ACTION: Final rule; rescission.

SUMMARY: 43 CFR Part 406 was written in the 1950's to help carry out the Farm Unit Exchange Act (Act of August 13, 1953, 67 Stat. 556) that provides for the exchange of certain unpatented farm units or private land on a Federal irrigation project, for certain classes of qualified applicants whose lands have been determined, pursuant to a land classification, to be insufficient to support a family, and the amendment of farm units by the addition of contiguous or noncontiguous land on the same project. All farm units that were eligible for exchange have been exchanged, and since the program is no longer active, this regulation is no longer applicable to Reclamation programs, and so it is being removed from the Code of Federal Regulations.

EFFECTIVE DATE: April 19, 1994.

FOR FURTHER INFORMATION CONTACT: Marilyn Rehfeld, Department of Interior, Bureau of Reclamation, Division of Supply and Services (D–7924), PO Box 25007, Building 67, Denver Federal Center, Denver, Colorado 80225–0007, Tel: 303–236–6730.

SUPPLEMENTARY INFORMATION: The Department of the Interior (Department) has determined this document is not a significant rule under Executive Order 12866, and therefore does not require review by the Office of Management and Budget.

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Bureau of Reclamation certifies that this rule will not have a significant economic effect on a substantial number of small entities.

This final rule to rescind 43 CFR part 406 is determined not to have Federalism effects under Executive Order 12612 as it has no direct casual effect on the relative roles of Federal and State Government.

This rule does not contain collections of information that require approval by the Office of Management and Budget (OMB) under 44 U.S.C. 3501 *et seq.*

The Department has determined that this document does not constitute a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969.

The policy of the Department is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. A proposed rule was published in the **Federal Register**, 58 FR 65693, Dec. 16, 1993. Accordingly, interested persons were asked to submit written comments, suggestions or objections regarding its content. No comments were received during the 60-day comment period.

The Department has certified to the OMB that this final rule meets the applicable standards provided in sections 2(a) and 2(b) of Executive Order 12778.

List of Subjects in 43 CFR Part 406

Administrative practice and procedure, Irrigation, Reclamation, Reporting and recordkeeping requirements.

PART 406—[REMOVED]

Under the authority of the Reclamation Act of June 17, 1902, section 10, 43 U.S.C. 373 (1976) and the Farm Unit Exchange Act (Act of August

13, 1953, 67 Stat. 556) and for the reasons stated above, 43 CFR is amended by removing part 406.

Dated: April 11, 1994.

Elizabeth Ann Rieke,

Assistant Secretary—Water and Science.

[FR Doc. 94–9329 Filed 4–18–94; 8:45 am]

BILLING CODE 4310–94–P

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43 CFR Part 419

RIN 1006–AA28

Rules and Regulations for Administrative Claims Under Public Works Appropriation Act for Teton Dam

AGENCY: Bureau of Reclamation, Interior.

ACTION: Final rule; rescission.

SUMMARY: 43 CFR part 419 pertains to the payment of claims for actual damages to or loss of property, income, personal injury, or for death directly resulting from the failure on June 5, 1976, of the Teton Dam of the Lower Teton Division of the Teton Basin Federal Reclamation Project. There is no need for continuation of this rule because all claims against the United States resulting from the failure of Teton Dam have been settled, and so it is being removed from the Code of Federal Regulations.

EFFECTIVE DATE: April 19, 1994.

FOR FURTHER INFORMATION CONTACT: Marilyn Rehfeld, Department of Interior, Bureau of Reclamation, Division of Supply and Services (D–7924), PO Box 25007, Building 67, Denver Federal Center, Denver, Colorado 80225–0007, Tel: 303–236–6730.

SUPPLEMENTARY INFORMATION: The Department of the Interior (Department) has determined this document is not a significant rule under Executive Order 12866, and therefore does not require review by the Office of Management and Budget.

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Bureau of Reclamation certifies that this rule will not have a significant economic effect on a substantial number of small entities.

This final rule to rescind 43 CFR part 419 is determined not to have Federalism effects under Executive Order 12612 as it has no direct causal effect on the relative roles of Federal and State Government.

This rule does not contain collections of information that require approval by the Office of Management and Budget (OMB) under 44 U.S.C. 3501 *et seq.*

The Department has determined that this document does not constitute a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969.

The policy of the Department is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. A proposed rule was published in the **Federal Register**, 58 FR 65693, Dec. 16, 1993. Accordingly, interested persons were asked to submit written comments, suggestions or objections regarding its content. No comments were received during the 60-day comment period.

The Department has certified to the OMB that this final rule meets the applicable standards provided in sections 2(a) and 2(b) of Executive Order 12778.

List of Subjects in 43 CFR Part 419

Administrative practice and procedure, Irrigation, Reclamation, Reporting and recordkeeping requirements.

PART 419—[REMOVED]

Under the authority of the Annual Public Works Appropriation Act of 1976, Pub. L. 94–180, 89 Stat. 1035, the Act of July 12, 1976, 90 Stat. 889, and the Teton Dam Disaster Assistance Act of 1976, Pub. L. 94–400, 90 Stat. 1211, and for reasons stated above, 43 CFR is amended by removing part 419.

Dated: April 11, 1994.

Elizabeth Ann Rieke,

Assistant Secretary—Water and Science.

[FR Doc. 94–9330 Filed 4–18–94; 8:45 am]

BILLING CODE 4310–94–P

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43 CFR Part 423

RIN 1006–AA29

Rules and Regulations for Emergency Drought Act Policies, Procedures, and Authorizations

AGENCY: Bureau of Reclamation, Interior.

ACTION: Final rule, rescission.

SUMMARY: 43 CFR part 423 prescribes the policies, procedures, and authority of the Bureau of Reclamation (Reclamation) to mitigate losses and damages resulting from the drought conditions in 17 Western States during 1987, 1988, and 1989. This regulation was implemented upon passage of the Disaster Assistant Act of 1988, Public Law 100–387, 102 Stat. 924, August 11, 1988. There is no need for continuation of this rule because it terminated December 31, 1989, and so it is being removed from the Code of Federal Regulations.

EFFECTIVE DATE: April 19, 1994.

FOR FURTHER INFORMATION CONTACT: Marilyn Rehfeld, Department of Interior, Bureau of Reclamation, Division of Supply and Services (D–7924), PO Box 25007, Building 67, Denver Federal Center, Denver, Colorado 80225–0007, Tel: 303–236–6730.

SUPPLEMENTARY INFORMATION: The Department of the Interior (Department) has determined this document is not a significant rule under Executive Order 12866, and therefore does not require review by the Office of Management and Budget.

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Bureau of Reclamation certifies that this rule will not have a significant economic effect on a substantial number of small entities.

This final rule to rescind 43 CFR part 423 is determined not to have Federalism effects under Executive Order 12612 as it has no direct casual effect on the relative roles of Federal and State Government.

This rule contains collections of information as defined in the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This requirement has been approved by the Office of Management and Budget (OMB). The OMB approval number is 1006–0010; OMB expiration date December 31, 1989.

The Department has determined that this document does not constitute a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969.

The policy of the Department is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. A proposed rule was published in the **Federal Register**, 58 FR 65694, Dec. 16, 1993. Accordingly, interested persons were asked to submit written comments, suggestions or objections regarding its content. No comments were received during the 60-day comment period.

The Department has certified to the OMB that this final rule meets the applicable standards provided in sections 2(a) and 2(b) of Executive Order 12778.

List of Subjects in 43 CFR Part 423

Administrative practice and procedure, Irrigation, Reclamation, Reporting and recordkeeping requirements.

PART 423—[REMOVED]

Under the authority of the Disaster Assistance Act of 1988, Public Law 100–387, 102 Stat. 924, August 11, 1988, and for reasons stated above, 43 CFR is amended by removing part 423.

Elizabeth Ann Rieke,

Assistant Secretary—Water and Science.

[FR Doc. 94–9331 Filed 4–18–94; 8:45 am]

BILLING CODE 4310–94–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 20, 22, 24, 80, 90, 99

[GN Docket No. 93–252; FCC 94–31]

Implementation of Sections 3(n) and 332 of the Communications Act Regarding Regulatory Treatment of Mobile Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This rule making proceeding adopts rules to implement sections 3(n) and 332 of the Communications Act of 1934 (the Act), as amended by section 6000(b) of the Omnibus Budget Reconciliation Act of 1993 (Budget Act). The new rules adopted: interpret the elements that define the terms "commercial mobile radio service (CMRS)" and "private mobile radio service (PMRS);" based on these definitions, determine the regulatory status of existing mobile services and of personal communications services (PCS); address the degree to which those services that will be classified as CMRS will be subject to regulation under Title II of the Act; and address the other issues, including interconnection rights and preemption of state regulatory authority over mobile service providers. The Commission's action furthers the congressional objectives of ensuring that similar services are subject to consistent regulatory classification and that appropriate levels of regulation be established for CMRS providers. The Commission's action establishes a symmetrical regulatory structure that will promote competition in the mobile services marketplace and will serve the interests of consumers while also benefiting the national economy.

EFFECTIVE DATE: July 18, 1994.

FOR FURTHER INFORMATION CONTACT: Nancy Boocker (202) 632–6450 or Judy Argentieri (202) 632–6917 in the Common Carrier Bureau or David Furth (202) 634–2443 in the Private Radio Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Second Report and Order in GN Docket No. 93–252, adopted February 3, 1994 and released March 7, 1994. The full text of Commission decisions are available for inspection and copying during normal business hours in the FCC Docket Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Washington, DC 20037.

Paperwork Reduction

Public reporting burden for the collections of information is estimated as follows:

Section/forms	Estimated average hours per response	Estimated annual responses
20.9(a)(13)	2	15
20.9(b)	2	20
20.9(b)(2)	2	10
20.13(a)	40	10
20.13(a)(5)	2	20
20.13(b)	40	10
20.13(c)	2	10
20.15(c)	1	1,200

Total Annual Burden: 2,150.
Frequency of Response: On occasion.

These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Federal Communications Commission, Records Management Division, Paperwork Reduction Project, Washington, DC 20554 and to the Office of Management and Budget Paperwork Reduction Project, Washington, DC 20503.

Final Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. section 604, a final regulatory flexibility analysis has been prepared and is presented below. It is available for public viewing as part of the full text of this decision, which may be obtained from the Commission or its copy contractor.

Pursuant to section 603 of title 5, United States Code, 5 U.S.C. 603, an initial Regulatory Flexibility Analysis was incorporated in the Notice of Proposed Rulemaking in GN Docket No. 93–252. Written comments on the proposals in the Notice, including the Regulatory Flexibility Analysis, were requested.

A. Need for and Purpose of Rules

This rule making proceeding was initiated to implement sections 3(n) and 332 of the Communications Act. The rules adopted herein will carry out the intent of Congress to establish a uniform regulatory framework for all mobile services.

B. Issues Raised by the Public in Response to the Initial Analysis

While all the parties recognize that this rulemaking will impose new legal obligations on licensees whose regulatory status has changed from private to commercial as a result of the new legislation and the actions we have taken in this Order, a number of parties propose that licensees should be able to offer both commercial and private radio service on the same system and under a single license. As a result of these comments, we have adopted these proposals. As a result of other comments, we have made modifications to other proposals as appropriate.

C. Significant Alternatives Considered

We have reduced the burdens wherever possible. In an effort to reduce the burdens on small entities, for example, we will not impose any tariff filing obligations. In addition, we emphasize that the three-year transition rules adopted in this Order will allow existing licensees that are subject to reclassification as CMRS providers to continue to be regulated as private until August 10, 1996. This three-year period will ensure an orderly transition for all reclassified private licensees that are small entities.

Synopsis of the Second Report and Order

On September 23, 1993, the Commission adopted a Notice of Proposed Rule Making (Notice), 58 FR 53169 (October 14, 1993), in this proceeding in which we sought comment on: (1) The definitional issues raised in the Budget Act; (2) which existing mobile services and future mobile services should be classified as "commercial mobile radio service" under the statute and which should be classified as "private mobile radio services"; and (3) which provisions of Title II of the Communications Act should not be applied to CMRS. We received 76 comments and 52 reply comments in response to the Notice in this proceeding.

In summarizing the actions the Commission has taken in this Order, the following points highlight the decisions

made to implement the objectives of Congress in amending section 332 of the Act. First, the Order gives a comprehensive scope to the term "mobile service," including within the definition all public mobile services, private land mobile service, mobile satellite services, and most marine and aviation wireless services.

Second, the Order defined the term "commercial mobile radio service" in a manner that covers a significant portion of services provided by mobile carriers because of the conclusion that such a definition best serves the congressional purpose of making mobile services widely available at reasonable rates and on reasonable terms in a competitive marketplace. There are three prongs to the CMRS definition: The service must be provided for profit, it must be interconnected to the public switched network, and it must be available to the public or to such classes of eligible users as to be effectively available to a substantial portion of the public. Under the first element of the definition, the Order provides that "for profit" includes any mobile service that is provided with the intent of receiving compensation or monetary gain. In the case of services that are not-for-profit, except for a portion of excess capacity that the licensee offers with the intent of receiving compensation, the service will be treated as for-profit to the extent of such excess capacity activities.

Under the second element of the CMRS definition, the Order concludes that a mobile service offers interconnected service if it allows subscribers to send or receive messages to or from anywhere on the public switched network (PSN). Both direct and indirect interconnection with the PSN satisfy this criterion, as well as the use of store-and-forward technology. The Order also gives an expansive meaning to the term public switch network, concluding that the network includes the facilities of common carriers that participate in the North American Numbering Plan and having switching capability.

Under the third prong of the definition, the Order decides that service made available "to the public" means any service that is offered without restriction on who may receive it. The Order also concludes that whether a service is offered to "such classes of eligible users as to be effectively available to a substantial portion of the public" depends on several relevant factors, such as the type, nature, and scope of users for whom the service is intended. The Commission decided not to consider limited system capacity or coverage of small geographic areas as factors in restricting system availability. If a service is provided only for internal use or only to a specified class of eligible users under the Commission's rules, then the Order concludes that the service will not meet the "public availability" prong of the CMRS definition.

Third, the Order interpreted the term "private mobile radio service" by closely adhering to the statutory definition, and with the aim of advancing the congressional objective of applying a symmetrical regulatory framework to mobile services. The Order determines that the statutory language and the legislative history support the conclusion that a mobile service may be classified as PMRS only if it does not fall within the statutory definition of CMRS and is not the functional equivalent of a service that meets the three-part definition of CMRS. Those services that are classified as PMRS will, however, be presumed PMRS unless it is demonstrated that the service is the functional equivalent of CMRS. In applying the functional equivalence test, the Order considers a variety of factors, including whether the mobile service involved is a close substitute for any CMRS offering as evidenced by the cross-price elasticity of demand.

Fourth, applying the definitions discussed above, the Order classifies existing private land mobile services and common carrier services. For example, all existing Government and Public Safety Services (including the Special Emergency Radio Service) and all Industrial and Land Transportation Services other than certain Business Radio Service are classified as PMRS. The Order also classifies Automatic Vehicle Monitoring as a private mobile radio service.

In the Business Radio Service, which has a broader range of eligible users than other Industrial and Land Transportation services, the Order classifies Business Radio licensees who provide for-profit interconnected service to third-party users as CMRS. Business Radio licensees who operate not-for-profit internal systems, or who do not offer interconnected service, are classified as private.

The Order classifies Specialized Mobile Radio (SMR) licensees as CMRS if they offer interconnected service to customers. In addition, private carrier paging (PCP) services are classified as CMRS because they fit the statutory definition of CMRS. The Order concludes, however, those PCP systems that service the licensee's internal communications needs and do not offer for-profit service to third-party customers will be classified as PMRS. The Order classifies 220–222 MHz private land mobile systems using the same approach taken by the Order for classifying SMR and PCP licensees.

Finally, with respect to existing common carrier services, the Order classifies as CMRS: Cellular service, 800 MHz air-ground service, common carrier paging service, mobile telephone service, improved mobile telephone service, trunked mobile telephone service, 454 MHz air-ground service, and Offshore Radio Service.

With respect to mobile satellite service, the Order concludes that the Commission will exercise its discretion under the statute to determine whether the provision of space segment capacity by satellite licensees may be treated as common carriage. Lastly, the Order concludes that the Commission will seek further comment in a subsequent proceeding on whether it should remove existing restrictions that bar CMRS providers from offering dispatch service.

Fifth, the Order determines that personal communications services (PCS) should be classified presumptively as CMRS. Under this approach, a PCS applicant or licensee would be regulated as a CMRS carrier, but would be able to offer private PCS and be regulated as PMRS, upon making the requisite showing. The Order concludes that treating PCS as presumptively CMRS most suits the manner in which the Commission has defined PCS, and the four goals that the Commission established for the service—speed of deployment, universality, competitive delivery, and diversity of services.

Sixth, the Order states that the Commission has decided to exercise its forbearance authority regarding several Title II provisions in order to maximize market competition. The Order finds that the Commission's forbearance actions will promote competition, and that application of the three-pronged test set forth in section 332(c) of the Act warrants forbearance from many Title II provisions. In general, the Commission has forborne from enforcing any tariffing requirements, and from exercising Commission authority to investigate into existing and newly filed rates and practices, to collect intercarrier contracts, to require certification concerning interlocking directorates, and to require Commission approval relating to market entry and exit (respectively, sections 203, 204, 205, 211, 212, and 214 of the Act). The Commission, however, did not forbear from provisions that are unrelated to Commission authority and regulatory obligations (section 210), are primarily

reservations of Commission authority (sections 213, 215, 218, 219, and 221), or are consumer protection-related (sections 223, 225, 226, 227, and 228). In addition, in the case of cellular service, the Order states that the Commission will shortly issue a Notice of Proposed Rule Making to establish monitoring provisions applicable to the cellular marketplace. The Order further provides that the Commission will issue a Notice of Proposed Rule Making addressing whether the Commission should adopt further forbearance actions under Title II of the Act in the case of specified classes of CMRS providers.

Seventh, the Order requires local exchange carriers (LECs) to provide reasonable and fair interconnection for all CMRS because the Commission sees no distinction between cellular carriers to whom LECs are currently required to provide such interconnection and all other CMRS providers, including PCS providers. The Order also provides that if a LEC provides interconnection to CMRS providers while denying the same interconnection to PMRS providers, the carrier would bear the burden of demonstrating why such practice does not constitute a violation of Title II of the Act.

Eighth, the Order concludes that Congress, in revising section 332, intended to preempt state and local rate and entry regulation of all CMRS. The Order establishes a range of procedural and other requirements states must meet if they seek to retain any existing CMRS rate regulation or initiate such rate regulation for the first time.

Finally, the Order implements provisions of the Budget Act that establish effective dates for the "regulatory treatment" amendment to the Communications Act and set forth deadlines for an orderly transition to the changed regulatory structure. The Budget Act established a three-year transition period during which "any private land mobile service provided by any person before such date of enactment, and any paging service utilizing frequencies allocated as of January 1, 1993, for private land mobile service shall * * * be treated as private mobile service." With respect to private land mobile services, the Order interprets this language to mean that the three-year transition applies to all private land mobile licensees who were licensed, and therefore authorized to provide service, as of August 10, 1993. On the other hand, the Order provides that private mobile licensees who are subject to reclassification as CMRS and were not licensed as of the enactment date of the Budget Act, are not subject to the three-year "grandfathering" period, and will therefore be treated as CMRS as soon as the Commission's rules go into effect.

The Commission concluded that Congress did not intend the transition period to apply in a rigid fashion to pre-enactment licensees and that it did intend some flexibility in the implementation of these transition provisions. The Commission determined, therefore, that it will allow grandfathered licensees to modify and expand existing systems and to acquire additional licenses in the same service for which they were licensed prior to August 10, 1993. In addition, with respect to non-grandfathered licensees, the Commission concluded that reclassification should be effective upon the effective date of the Commission's transitional rules for reclassified services; these rules will be considered in a separate rule making.

With respect to paging services, the Order finds that the transition period applies more broadly. The Commission concluded that Congress specifically provided that all paging licensees "utilizing" private paging frequencies allocated as of January 1, 1993, are to be treated as private mobile radio service providers for three years. The Commission noted that the Conference Report accompanying the Budget Act explains that paging was treated separately to prevent states from attempting to restrict entry of paging licensees on private frequencies prior to the effective date of the Commission's preemption regulations, which do not go into effect until August 10, 1994. The Commission concluded that all private paging licensees are to be treated as private mobile service providers, regardless of whether they were licensed before or after the date of enactment.

Ordering Clauses

Accordingly, it is ordered that the rule changes made, as specified below, will become effective 90 days after publication in the **Federal Register**, pursuant to sections 4(i), 4(j), 7(a), 302, 303(c), 303(f), 303(g), 303(r), 332(c), and 332(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 157(a), 302, 303(c), 303(f), 303(g), 303(r), 332(c), 332(d).

It is further ordered, pursuant to sections 4(i), 4(j), and 332(c)(1)(A) of the Communications Act, 47 U.S.C. 154(i), 154(j), 332(c)(1)(A), that all commercial mobile radio service providers with tariffs on file with the Commission shall cancel such tariffs. Cancellation shall be by supplement effective upon five days' notice and the supplement shall reference this Order as authority for cancellation. For this purpose, §§ 61.58 and 61.59 of the Commission's rules, 47 CFR 61.58, 61.59, are waived. These cancellations shall be filed no later than July 18, 1994.

It is further ordered that the Petition for Special Relief Concerning Enhanced Mobile Radio Applications and Authorizations filed by Bell Atlantic Mobile Systems, Inc., is denied.

List of Subjects

47 CFR Part 20

Commercial mobile radio services; Radio.

47 CFR Part 22

Public mobile services; Radio.

47 CFR Part 80

Maritime services; Radio.

47 CFR Part 90

Private land mobile services; Radio.

47 CFR Part 99

Personal communications services; Radio.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Adoption of Amendments

47 CFR parts 20, 22, 80, 90, and 99 are amended as follows:

PART 20—COMMERCIAL MOBILE RADIO SERVICES

1. Part 20 is added to read as follows:

Sec.

20.1 Purpose.
20.3 Definitions.
20.5 Citizenship.
20.7 Mobile services.
20.9 Commercial mobile radio service.
20.11 Interconnection to facilities of local exchange carriers.
20.13 State petitions for authority to regulate rates.
20.15 Requirements under Title II of the Communications Act.

Authority: Secs. 4, 303, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, and 332, unless otherwise noted.

§ 20.1 Purpose.

The purpose of these rules is to set forth the requirements and conditions applicable to commercial mobile radio service providers.

§ 20.3 Definitions.

Commercial mobile radio service. A mobile service that is: (a)(1) provided for profit, *i.e.*, with the intent of receiving compensation or monetary gain;

(2) An interconnected service; and

(3) Available to the public, or to such classes of eligible users as to be

effectively available to a substantial portion of the public; or

(b) The functional equivalent of such a mobile service described in paragraph (a) of this section.

Interconnection or Interconnected. Direct or indirect connection through automatic or manual means (by wire, microwave, or other technologies such as store and forward) to permit the transmission or reception of messages or signals to or from points in the public switched network.

Interconnected Service. A service: (a) That is interconnected with the public switched network, or interconnected with the public switched network through an interconnected service provider, that gives subscribers the capability to communicate to or receive communication from all other users on the public switched network; or

(b) For which a request for such interconnection is pending pursuant to section 332(c)(1)(B) of the Communications Act, 47 U.S.C. 332(c)(1)(B). A mobile service offers interconnected service even if the service allows subscribers to access the public switched network only during specified hours of the day, or if the service provides general access to points on the public switched network but also restricts access in certain limited ways. Interconnected service does not include any interface between a licensee's facilities and the public switched network exclusively for a licensee's internal control purposes.

Mobile Service. A radio communication service carried on between mobile stations or receivers and land stations, and by mobile stations communicating among themselves, and includes:

(a) Both one-way and two-way radio communications services;

(b) A mobile service which provides a regularly interacting group of base, mobile, portable, and associated control and relay stations (whether licensed on an individual, cooperative, or multiple basis) for private one-way or two-way land mobile radio communications by eligible users over designated areas of operation; and

(c) Any service for which a license is required in a personal communications service under part 24 of this chapter.

Private Mobile Radio Service. A mobile service that is neither a commercial mobile radio service nor the functional equivalent of a service that meets the definition of commercial mobile radio service. Private mobile radio service includes the following:

(a) Not-for-profit land mobile radio and paging services that serve the licensee's internal communications needs as defined in part 90 of this chapter. Shared-use, cost-sharing, or cooperative arrangements, multiple licensed systems that use third party managers or users combining resources to meet compatible needs for specialized internal communications facilities in compliance with the safeguards of § 90.179 of this chapter are presumptively private mobile radio services;

(b) Mobile radio service offered to restricted classes of eligible users. This includes the following services: Public Safety Radio Services; Special Emergency Radio Service; Industrial Radio Services (excluding Business Radio Services that offer customers for-profit interconnected services); Land Transportation Radio Services; and Radiolocation Services;

(c) 220–222 MHz land mobile service and Automatic Vehicle Monitoring systems (part 90 of this chapter) that do not offer interconnected service or that are not-for-profit; and

(d) Personal Radio Services under part 95 of this chapter (General Mobile Services, Radio Control Radio Services, and Citizens Band Radio Services); Maritime Service Stations (excluding Public Coast stations) (part 80 of this chapter); and Aviation Service Stations (part 87 of this chapter).

Public Switched Network. Any common carrier switched network, whether by wire or radio, including local exchange carriers, interexchange carriers, and mobile service providers, that use the North American Numbering Plan in connection with the provision of switched services.

§ 20.5 Citizenship.

(a) This rule implements section 310 of the Communications Act, 47 U.S.C. 310, regarding the citizenship of licensees in the commercial mobile radio services. Commercial mobile radio service authorizations may not be granted to or held by:

(1) Any foreign government or any representative thereof;

(2) Any alien or the representative of any alien;

(3) Any corporation organized under the laws of any foreign government;

(4) Any corporation of which any officer or director is an alien or of which more than one-fifth of the capital stock is owned of record or voted by aliens or their representatives or by a foreign government or representative thereof or by any corporation organized under the laws of a foreign country; or

(5) Any corporation directly or indirectly controlled by any other corporation of which any officer or more than one-fourth of the directors are aliens, or of which more than one-fourth of the capital stock is owned of record or voted by aliens, their representatives, or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country, if the Commission finds that the public interest will be served by the refusal or revocation of such license.

(b) The limits listed in paragraph (a) of this section may be exceeded by eligible individuals who held ownership interests on May 24, 1993, pursuant to the waiver provisions established in section 332(c)(6) of the Communications Act. Transfers of ownership to any other person in violation of paragraph (a) of this section are prohibited.

§ 20.7 Mobile services.

The following are mobile services within the meaning of sections 3(n) and 332 of the Communications Act, 47 U.S.C. 153(n), 332.

(a) Public mobile services (part 22 of this chapter), including fixed operations that support the mobile systems, but excluding Rural Radio Service and Basic Exchange Telecommunications Radio Service (part 22, subpart H of this chapter);

(b) Private land mobile services (part 90 of this chapter), including secondary fixed operations, but excluding fixed services such as call box operations and meter reading;

(c) Mobile satellite services (part 25 of this chapter) including dual-use equipment, terminals capable of transmitting while a platform is moving, but excluding satellite facilities provided through a transportable platform that cannot move when the communications service is offered;

(d) Marine and aviation services (parts 80 and 87 of this chapter), including fixed operations that support these marine and aviation mobile systems;

(e) Personal radio services (part 95 of this chapter), but excluding Interactive Video and Data Service;

(f) Personal communications services (part 24 of this chapter);

(g) Auxiliary services provided by mobile service licensees, and ancillary fixed communications offered by personal communications service providers;

(h) Unlicensed services meeting the definition of commercial mobile radio service in § 20.3, such as the resale of commercial mobile radio services, but excluding unlicensed radio frequency devices under part 15 of this chapter (including unlicensed personal communications service devices).

§ 20.9 Commercial mobile radio service.

(a) The following mobile services shall be treated as common carriage services and regulated as commercial mobile radio services (including any such service offered as a hybrid service or offered on an excess capacity basis to the extent it meets the definition of commercial mobile radio service, or offered as an auxiliary or ancillary service), pursuant to Section 332 of the Communications Act, 47 U.S.C. 332:

(1) Private Paging (part 90 of this chapter), excluding not-for-profit paging systems that serve only the licensee's own internal communications needs;

(2) Business Radio Services (§ 90.75 of this chapter) that offer customers for-profit interconnected service;

(3) Land Mobile Systems on 220–222 MHz (part 90 of this chapter), except services that are not-for-profit or do not offer interconnected service;

(4) Specialized Mobile Radio services that provide interconnected service (part 90 of this chapter);

(5) Public Coast Stations (part 80, subpart J of this chapter);

(6) Public Land Mobile Service (paging, mobile telephone, improved mobile telephone, trunked mobile, and 454 MHz air-ground services) (part 22, subpart G of this chapter);

(7) Domestic Public Cellular Radio Telecommunications Service (part 22, subpart K of this chapter);

(8) 800 MHz Air-Ground Radiotelephone Service (part 22, subpart M of this chapter);

(9) Offshore Radio Service (part 22, subpart L of this chapter);

(10) Any mobile satellite service involving the provision of commercial mobile radio service (by licensees or resellers) directly to end users, except that mobile satellite licensees and other entities that sell or lease space segment capacity, to the extent that it does not provide commercial mobile radio service directly to end users, may provide space segment capacity to commercial mobile radio service providers on a non-common carrier basis, if so authorized by the Commission;

(11) Personal Communications Services (part 24 of this chapter), except as provided in paragraph (b) of this section;

(12) For-profit subsidiary communications services transmitted on subcarriers within the FM baseband signal, that provide interconnected service (47 CFR 73.295 of this chapter); and

(13) A mobile service that is the functional equivalent of a commercial mobile radio service.

(i) A mobile service that does not meet the definition of commercial mobile radio service is presumed to be a private mobile radio service.

(ii) Any interested party may seek to overcome the presumption that a particular mobile radio service is a private mobile radio service by filing a petition for declaratory ruling challenging a mobile service provider's regulatory treatment as a private mobile radio service.

(A) The petition must show that: (*1*) The mobile service in question meets the definition of commercial mobile radio service; or

(*2*) The mobile service in question is the functional equivalent of a service that meets the definition of a commercial mobile radio service.

(B) A variety of factors will be evaluated to make a determination whether the mobile service in question is the functional equivalent of a commercial mobile radio service, including: consumer demand for the service to determine whether the service is closely substitutable for a commercial mobile radio service; whether changes in price for the service under examination, or for the comparable commercial mobile radio service would prompt customers to change from one service to the other; and market research information identifying the targeted market for the service under review.

(C) The petition must contain specific allegations of fact supported by affidavit(s) of person(s) with personal knowledge. The petition must be served on the mobile service provider against whom it is filed and contain a certificate of service to this effect. The mobile service provider may file an opposition to the petition and the petitioner may file a reply. The general rules of practice and procedure contained in §§ 1.1 through 1.52 of this chapter shall apply.

(b) Licensees of a Personal Communications Service or applicants for a Personal Communications Service license proposing to use any Personal Communications Service spectrum to offer service on a private mobile radio service basis must overcome the presumption that Personal Communications Service is a commercial mobile radio service.

(1) The applicant or licensee (who must file an application to modify its authorization) seeking authority to dedicate a portion of the spectrum for private mobile radio service, must include a certification that it will offer Personal Communications Service on a private mobile radio service basis. The certification must include a description of the proposed service sufficient to demonstrate that it is not within the definition of commercial mobile radio service in § 20.3. Any application requesting to use any Personal Communications Service spectrum to offer service on a private mobile radio service basis will be placed on public notice by the Commission.

(2) Any interested party may file a petition to deny the application within 30 days after the date of public notice announcing the acceptance for filing of the application. The petition shall contain specific allegations of fact supported by affidavit(s) of person(s) with personal knowledge to show that the applicant's request does not rebut the commercial mobile radio service presumption. The petition must be served on the applicant and contain a certificate of service to this effect. The applicant may file an opposition with allegations of fact supported by affidavit. The petitioner may file a reply. No additional pleadings will be allowed. The general rules of practice and procedure contained in § 1.1 through § 1.52 of this chapter and § 22.30 of this chapter shall apply.

(c) Any provider of private land mobile service before August 10, 1993 (including any system expansions, modifications, or acquisitions of additional licenses in the same service, even if authorized after this date), and any private paging service utilizing frequencies allocated as of January 1, 1993, that meet the definition of commercial mobile radio service, shall, except for purposes of § 20.5 (applicable August 10, 1993 for the providers listed in this paragraph), be treated as private mobile radio service until August 10, 1996. After this date, these entities will be treated as commercial mobile radio service providers regulated under this part.

§ 20.11 Interconnection to facilities of local exchange carriers.

(a) A local exchange carrier must provide the type of interconnection reasonably requested by a mobile service licensee or carrier, within a reasonable time after the request, unless such interconnection is not technically feasible or economically reasonable. Complaints against carriers under section 208 of the Communications Act, 47 U.S.C. 208, alleging a violation of this section shall follow the requirements of §§ 1.711–1.734 of this chapter, 47 CFR 1.711–1.734.

(b) Local exchange carriers and commercial mobile radio service providers shall comply with principles of mutual compensation.

(1) A local exchange carrier shall pay reasonable compensation to a commercial mobile radio service

provider in connection with terminating traffic that originates on facilities of the local exchange carrier.

(2) A commercial mobile radio service provider shall pay reasonable compensation to a local exchange carrier in connection with terminating traffic that originates on the facilities of the commercial mobile radio service provider.

§ 20.13 State petitions for authority to regulate rates.

(a) States may petition for authority to regulate the intrastate rates of any commercial mobile radio service. The petition must include the following:

(1) Demonstrative evidence that market conditions in the state for commercial mobile radio services do not adequately protect subscribers to such services from unjust and unreasonable rates or rates that are unjustly or unreasonably discriminatory. Alternatively, a state's petition may include demonstrative evidence showing that market conditions for commercial mobile radio services do not protect subscribers adequately from unjust and unreasonable rates, or rates that are unjustly or unreasonably discriminatory, and that a substantial portion of the commercial mobile radio service subscribers in the state or a specified geographic area have no alternative means of obtaining basic telephone service. This showing may include evidence of the range of basic telephone service alternatives available to consumers in the state.

(2) The following is a non-exhaustive list of examples of the types of evidence, information, and analysis that may be considered pertinent to determine market conditions and consumer protection by the Commission in reviewing any petition filed by a state under this section:

(i) The number of commercial mobile radio service providers in the state, the types of services offered by commercial mobile radio service providers in the state, and the period of time that these providers have offered service in the state;

(ii) The number of customers of each commercial mobile radio service provider in the state; trends in each provider's customer base during the most recent annual period or other data covering another reasonable period if annual data is unavailable; and annual revenues and rates of return for each commercial mobile radio service provider;

(iii) Rate information for each commercial mobile radio service provider, including trends in each provider's rates during the most recent annual period or other data covering another reasonable period if annual data is unavailable;

(iv) An assessment of the extent to which services offered by the commercial mobile radio service providers the state proposes to regulate are substitutable for services offered by other carriers in the state;

(v) Opportunities for new providers to enter into the provision of competing services, and an analysis of any barriers to such entry;

(vi) Specific allegations of fact (supported by affidavit of person with personal knowledge) regarding anti-competitive or discriminatory practices or behavior by commercial mobile radio service providers in the state;

(vii) Evidence, information, and analysis demonstrating with particularity instances of systematic unjust and unreasonable rates, or rates that are unjust or unreasonably discriminatory, imposed upon commercial mobile radio service subscribers. Such evidence should include an examination of the relationship between rates and costs. Additionally, evidence of a pattern of such rates, that demonstrates the inability of the commercial mobile radio service marketplace in the state to produce reasonable rates through competitive forces will be considered especially probative; and

(viii) Information regarding customer satisfaction or dissatisfaction with services offered by commercial mobile radio service providers, including statistics and other information about complaints filed with the state regulatory commission.

(3) Petitions must include a certification that the state agency filing the petition is the duly authorized state agency responsible for the regulation of telecommunication services provided in the state.

(4) Petitions must identify and describe in detail the rules the state proposes to establish if the petition is granted.

(5) States have the burden of proof. Interested parties may file comments in support or in opposition to the petition within 30 days after public notice of the filing of a petition by a state under this section. Any interested party may file a reply within 15 days after the expiration of the filing period for comments. No additional pleadings may be filed. Except for § 1.45 of this chapter, practice and procedure rules contained in §§ 1.42–1.52 of this chapter shall apply. The provisions of §§ 1.771–1.773 of this chapter do not apply.

(6) The Commission shall act upon any petition filed by a state under this paragraph not later than the end of the nine-month period after the filing of the petition.

(7) If the Commission grants the petition, it shall authorize the state to regulate rates for commercial mobile radio services in the state during a reasonable period of time, as specified by the Commission. The period of time specified by the Commission will be that necessary to ensure that rates are just and reasonable, or not unjustly or unreasonably discriminatory.

(b) States that regulated rates for commercial mobile services as of June 1, 1993, may petition the Commission under this section before August 10, 1994, to extend this authority.

(1) The petition will be acted upon by the Commission in accordance with the provisions of paragraphs (a)(1) through (a)(5) of this section.

(2) The Commission shall act upon the petition (including any reconsideration) not later than the end of the 12-month period following the date of the filing of the petition by the state involved. Commercial mobile radio service providers offering such service in the state shall comply with the existing regulations of the state until the petition and any reconsideration of the petition are acted upon by the Commission.

(3) The provisions of paragraph (a)(7) of this section apply to any petition granted by the Commission under this paragraph.

(c) No sooner than 18 months from grant of authority by the Commission under this section for state rate regulations, any interested party may petition the Commission for an order to discontinue state authority for rate regulation.

(1) Petitions to discontinue state authority for rate regulation must be based on recent empirical data or other significant evidence demonstrating that the exercise of rate authority by a state is no longer necessary to ensure that the rates for commercial mobile are just and reasonable or not unjustly or unreasonably discriminatory.

(2) Any interested party may file comments in support of or in opposition to the petition within 30 days after public notice of the filing of the petition. Any interested party may file a reply within 15 days after the time for filing comments has expired. No additional pleadings may be filed. Except for 1.45 of this chapter, practice and procedure rules contained in § 1.42–1.52 of this chapter apply. The provisions of § 1.771–1.773 of this chapter do not apply.

(3) The Commission shall act upon any petition filed by any interested

party under this paragraph within nine months after the filing of the petition.

§ 20.15 Requirements under Title II of the Communications Act.

(a) Commercial mobile radio services providers, to the extent applicable, must comply with sections 201, 202, 206, 207, 208, 209, 216, 217, 223, 225, 226, 227, and 228 of the Communications Act, 47 U.S.C. 201, 202, 206, 207, 208, 209, 216, 217, 223, 225, 226, 227, 228; part 68 of this chapter, 47 CFR part 68; and §§ 1.701–1.748, and 1.815 of this chapter, 47 CFR 1.701–1.748, 1.815.

(b) Commercial mobile radio service providers are not required to:

(1) File with the Commission copies of contracts entered into with other carriers or comply with other reporting requirements, or with §§ 1.781–1.814 and 43.21 of this chapter;

(2) Seek authority for interlocking directors (section 212 of the Communications Act);

(3) Submit applications for new facilities or discontinuance of existing facilities (section 214 of the Communications Act).

(c) Commercial mobile radio service providers shall not file tariffs for interstate service to their customers, or for interstate access service. Sections 1.771–1.773 and part 61 of this chapter are not applicable to interstate services provided by commercial mobile radio service providers. Commercial radio service providers shall cancel tariffs for interstate service to their customers and interstate access service.

(d) Nothing in this section shall be construed to modify the Commission's rules and policies on the provision of international service under part 63 of this chapter.

PART 22—PUBLIC MOBILE SERVICE

2. The authority citation for part 22 continues to read as follows:

Authority: 47 U.S.C. 154, 303, unless otherwise noted.

3. Section 22.1 is amended by adding paragraph (g) to read as follows:

§ 22.1 Other applicable rule parts.

* * * * *

(g) Part 20 of this chapter which governs commercial mobile radio services which include the following services in this part:

(1) Public Land Mobile;

(2) Offshore Radio Service;

(3) Domestic Public Cellular Radio Telecommunications Service;

(4) 800 MHz Air-Ground Radiotelephone Service.

§ 22.13 [Amended]

4. Section 22.13 is amended by removing paragraph (f).

§ 22.43 [Amended]

5. Section 22.43 is amended by removing paragraph (b)(2).

§ 22.304 [Removed]

6. Section 22.304 is removed.

PART 80—STATIONS IN THE MARITIME SERVICE

7. The authority citation for part 80 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

8. Section 80.3 is amended by removing paragraphs (g) through (k), by redesignating paragraphs (f), and (l) through (o) as (g), and (h) through (k), respectively, and by adding new paragraph (f) to read as follows:

§ 80.3 Other applicable rule parts of this chapter.

* * * * *

(f) Part 20 of this chapter which governs commercial mobile radio services which include subpart J of this part (public coast stations).

* * * * *

PART 90—PRIVATE LAND MOBILE RADIO SERVICE

9. The authority citation for part 90 continues to read as follows:

Authority: Sec. 4, 303, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, and 332, unless otherwise noted.

10. Section 90.5 is amended by redesignating paragraphs (h) through (j) as paragraphs (i) through (k), respectively, and by adding a new paragraph (h) to read as follows:

§ 90.5 Other applicable rule parts.

* * * * *

(h) Part 20 of this chapter which governs commercial mobile radio service applicable to certain providers in the following services in this part:

(1) Business radio service;

(2) Private paging;

(3) Land mobile service on 220–222 MHz;

(4) Specialized Mobile Radio Service.

* * * * *

PART 99—[REDESIGNATED AS PART 24]

11. Part 99 is redesignated as part 24 to read as follows:

PART 24—PERSONAL COMMUNICATIONS SERVICES

12. The authority citation for redesignated part 24 continues to read as follows:

Authority: Secs. 4, 301, 302, 303, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 301, 302, 303, and 322, unless otherwise noted.

13. In redesignated part 24, § 24.2 is amended by redesignating paragraphs (g) through (i) as paragraphs (h) through (j), respectively, and by adding a new paragraph (g) to read as follows:

§ 24.2 Other applicable rule parts.

* * * * *

(g) Part 20 of this chapter governs commercial mobile radio services.

* * * * *

[FR Doc. 94–9071 Filed 4–18–94; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 685

[Docket No. 931198–4100; I.D. 031494C]

RIN 0648–AF97

Pelagic Fisheries of the Western Pacific Region

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

ACTION: Final rule.

SUMMARY: NMFS adopts as final, with one change, the interim final rule authorizing the Southwest Regional Director (RD), NMFS, to require the owner or agent of a vessel with a permit for the longline fishery to make accommodations for a NMFS observer. This final rule requires permit holders or their designated agents (which may include the vessel operator) to provide NMFS with at least 72 hours notice (not including weekends and Federal holidays) prior to each departure from port so the RD can determine if an observer placement will be made. This action is necessary to ensure adequate collection-of-data on the frequency and nature of interactions between longline fishing gear and sea turtles around Hawaii to ensure the fishery operates in compliance with the Endangered Species Act (ESA).

EFFECTIVE DATE: April 23, 1994, 0001 hours Hawaii time.

ADDRESSES: Copies of the Observer Plan may be obtained from Anneka W. Bane,

Acting Regional Director, Southwest Region, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802.

FOR FURTHER INFORMATION CONTACT: Svein Fougner at 310–980–4034; Norm Mendes at 310–980–4022, or Alvin Katekaru at 808–955–8831.

SUPPLEMENTARY INFORMATION: The Pelagic fisheries of the western Pacific region, including the longline fishery based in Hawaii, are managed under a Fishery Management Plan (FMP) that was approved in 1987 and subsequently was amended six times. Rules implementing the FMP are found at 50 CFR part 685.

A Biological Opinion and Incidental Take Statement were issued June 10, 1993, concerning the take of sea turtles in the Hawaii longline fishery. In addition to setting a limit on the incidental take of sea turtles, the Incidental Take Statement also requires NMFS to establish an observer program (initially through voluntary placements and subsequently through a mandatory program) to ensure collection of sufficient data to produce statistically significant results and to evaluate the accuracy of logbooks submitted for the fishery.

This rule provides the administrative mechanism for NMFS to carry out the observer program with general longline permit holders.

An interim final rule establishing the mandatory observer program was published on December 22, 1993 (58 FR 67699). In that rule, the observer placement authority was provided under the limited entry permit requirement for longline vessels under an existing longline limited entry program in Hawaii. It was anticipated that a new limited entry program would be implemented by an FMP amendment existing at the time the program expires at midnight, April 22, 1994. However, the proposed FMP amendment (Amendment 7) was not submitted to the Secretary for review and implementation under the Magnuson Fishery Conservation and Management Act (Magnuson Act) until late January 1994. Under the normal schedule of the Magnuson Act for action on FMP amendments, the new program (if approved) will not be implemented before mid-June 1994. This means there could be a lapse of 2 months in observer placements due to the lack of a limited entry program and moratorium permits to which the existing observer requirements apply. If this occurred, there would be a substantial risk that the incidental take of turtles could erroneously be estimated. This could result in adverse impacts on sea turtles, if the take of turtles were significantly underestimated and corrective action to protect turtles were not taken; or adverse impacts on the industry if the take of turtles were overestimated and unnecessary constraints were imposed on the fishery.

The interim final rule is being adopted as final with one change. The change from the interim final rule is to impose the observer placement requirements on the owner of a vessel covered by a general longline permit issued under § 685.9, provided any part of the vessel's next fishing trip will occur in the exclusive economic zone (EEZ) around Hawaii. This is a change from the interim rule, which required notification of NMFS by holders of permits issued pursuant to the current moratorium under § 685.15. However, the moratorium, and the permits issued thereunder, are due to expire April 22, 1994. As explained above, a replacement limited entry program will probably not be implemented prior to April 22, 1994. Therefore, in order to continue to collect observer data, NMFS needs to modify the observer requirement to apply to vessels with general longline permits issued under § 685.9. These general permits are currently required and will remain so even with the expiration of the moratorium and implementation of a new limited entry program.

Comments on the interim final rule were received from two persons. One commenter emphasized the importance of obtaining detailed, at-sea data on the longline fishery and fully endorsed the observer program. The other commenter raised a number of operational concerns tied to the timing of notices prior to fishing trips and of observer placement meetings. This commenter suggested that more flexibility is needed to accommodate the nature of the fishery and the difficulty for fishermen to make firm timing commitments regarding vessel departures.

No changes have been made in the regulations as a result of these comments. Experience in observer programs in other fisheries indicates that arrangements usually can be made for modifications when necessary to accommodate changes in schedules (§ 685.11(c) (1) and (3)) and delays in departure times or special accommodations for observers (§ 685.11(d)). It is recognized that vessel operators may want to make rapid turnaround on trips and may not have 72 hours on shore to contact NMFS concerning the next trip. These operators can contact NMFS through a telephone call from their vessels at sea, if necessary, to determine if an observer will be required and to arrange the placement, if necessary. If a vessel's departure is delayed, the operator can telephone NMFS on a toll free line to arrange for a change in schedule with little disruption. NMFS expects that experience in the longline fishery observer program will provide feedback from vessel owners and operators that should result in an effective program with minimal disruption of vessel operations and scheduling. If necessary, changes can be made to operational procedures without requiring changes in the regulations. Finally, one of the two commenters pointed out correctly that the preamble to the proposed rule could be clarified to indicate that: (a) The Council had recommended, and the Secretary had taken, emergency action to close the protected species zone to longline fishing before the Biological Opinion was issued; and (b) the limited success of the voluntary observer program had been due in large part to the limited number of observers available for duty.

Classification

The Assistant Administrator for Fisheries NOAA, (AA), has determined that the measures in this rule are consistent with the Magnuson Act and other applicable law.

For purposes of E.O. 12866, this rule has been determined to be "not significant".

This rule contains a collection-of-information requirement subject to the Paperwork Reduction Act. Permit holders or their designated agents will have to notify NMFS at least 72 hours prior to departure on a fishing trip so the RD can determine whether an observer must be taken. If the RD concludes an observer must be taken, the permit holder or designated agent will be so advised and further arrangements will be made, as necessary, concerning details of time and place of embarkation, observer duties, permit holder, vessel operator and crew responsibilities, and related matters. Vessel owners may submit reimbursement claims for certain observer-related costs. The public reporting burden for this collection is estimated to average 5 minutes per call, with all trips covered. About 10 percent of all calls would result in an observer placement, requiring possibly 1 hour to meet with NMFS officials and make observer placement arrangements. This collection is part of a previously approved collection (Southwest Region Logbook Family of Forms, OMB No. 0648–0214), modification of which was approved by the Office of Management and Budget for the interim final rule.

Send comments regarding this burden estimate or on any other aspect of this collection-of-information to the RD (see ADDRESSES) and to the Office of Management and Budget, Paperwork Reduction Project (0648–0214), Washington, D.C. 20503 [Attn: NOAA Desk Officer].

This action is intended to carry out the requirements of the Biological Opinion and Incidental Take Statement issued by NMFS under section 7 of the ESA on June 10, 1993. These data are necessary to determine the impacts of take on the species and possible measures to reduce or prevent the take in the future. Therefore, this rule is consistent with the ESA.

List of Subjects in 50 CFR Part 685

American Samoa, Fisheries, Fishing, Guam, Hawaiian Natives, Northern Mariana Islands.

Dated: April 13, 1994.

Nancy Foster,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

Accordingly, the interim final rule amendment 50 CFR part 685 which was published at 58 FR 67699 on December 22, 1993, is adopted as a final rule with the following change:

PART 685—PELAGIC FISHERIES OF THE WESTERN PACIFIC REGION

1. The authority citation for part 685 continues to read as follows:

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

2. In § 685.11, the first sentence of paragraph (a) is revised to read as follows:

§ 685.11 Protected species conservation.

(a) *Notice prior to fishing trip.* The permit holder for a fishing vessel subject to the permit requirements of § 685.9, or an agent designated by the permit holder, shall provide a notice to the Regional Director at least 72 hours (not including weekends and Federal holidays) before the vessel leaves port on a fishing trip, any part of which occurs in the EEZ around Hawaii. * * *

* * * * *

[FR Doc. 94–9325 Filed 4–18–94; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 59, No. 75
Tuesday, April 19, 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.

MERIT SYSTEMS PROTECTION BOARD

5 CFR Part 1209

Practices and Procedures for Appeals and Stay Requests of Personnel Actions Allegedly Based on Whistleblowing

AGENCY: Merit Systems Protection Board.

ACTION: Notice of proposed rule.

SUMMARY: The Board proposes to amend its Practices and Procedures for Appeals and Stay Requests of Personnel Actions Allegedly Based on Whistleblowing. This amendment extends the time limit for filing an appeal of an agency action where the appellant first files a request for a stay of that action. This proposed change will bring the filing time in initial whistleblower cases into line with filing times in the Board's appellate jurisdiction cases and will also have the effect of making the Board's appellate processes more accessible to Federal employees.

DATES: Comments must be received on or before May 19, 1994.

ADDRESSES: Submit comments to Robert E. Taylor, Clerk of the Board, Merit Systems Protection Board, 1120 Vermont Avenue, NW., Washington, DC 20419–0002.

FOR FURTHER INFORMATION CONTACT: Llewellyn M. Fischer, General Counsel, (202) 653–7171.

SUPPLEMENTARY INFORMATION: The proposed change came about as a result of Executive Order 12866, September 30, 1993, requiring agencies to insure that regulations are effective, consistent, sensible, and understandable. The Board's review found that changing the time limit for filing initial appeals to its regional offices would be consistent with the legal and regulatory time limits for filing with the Federal courts and the Equal Employment Opportunity Commission both of which can potentially review final decisions of the Board. The consistency created by this proposed change will help to eliminate possible confusion by Federal employees who file appeals with the Board.

The Board has determined that this proposed regulatory action is not "significant" as defined by Executive Order 12866, and therefore, is not subject to review by the Office of Management and Budget.

The Board has also determined that this proposed regulatory action does not have a significant impact on a substantial number of small entities under the Regulatory Flexibility Act (Pub. L. 96354, 94 Stat. 1164, 5 U.S.C. 601–612).

List of Subjects in 5 CFR Part 1209

Administrative practice and procedure, Civil rights, Government employees.

Accordingly, the Board proposes to amend 5 CFR part 1209 as follows:

PART 1209—[AMENDED]

1. The authority citation for part 1209 continues to read as follows:

Authority: 5 U.S.C. 1204, 1221, 2302(b)(8) and 7701.

§ 1209.5 [Amended]

2. Section 1209.5 is amended by removing the number "20" in paragraph (c); and by adding in its place the number "30".

Dated: April 13, 1994.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 94–9323 Filed 4–18–94; 8:45 am]

BILLING CODE 7400–01–M

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

[Docket No. EE–RM–90–201]

Energy Conservation Program for Consumer Products (Energy Conservation Standards for Eight Types of Consumers Products)

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of proposed rulemaking; extending comment period and scheduling of second public hearing.

SUMMARY: Due to requests by the Gas Appliance Manufacturers Association, the Association of Home Appliance Manufacturers, the Edison Electric Institute, the Electronic Industries Association, and the Carolina Power & Light Company, and the large volume of information contained in the Notice of Proposed Rulemaking (NOPR) and in the Technical Support Document, the Department of Energy (the Department or DOE) has decided to extend the comment period by 60 days and schedule a second public hearing. This notice announces that the comment period which was to be closed on May 18, 1994, will be extended to July 18, 1994, and a second public hearing is scheduled for June 7 and 8, 1994.

DATES: Written comments in response to this document must be received by July 18, 1994.

Oral views, data, and arguments may be presented at a second public hearing to be held in Washington, DC, on June 7 and 8, 1994. Requests to speak at the hearing must be received by the Department no later than 4 p.m., Friday, May 27, 1994, for the second public hearing. Ten (10) copies of statements to be given at the public hearing must be received by the Department no later than 4 p.m., Tuesday, June 1, 1994, for the second public hearing.

ADDRESSES: Written comments and requests to speak at the public hearing are to be submitted to: U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Hearings and Dockets, "Energy Conservation Program for Consumer Products (Energy Conservation Standards for Eight Types of Consumer Products)" (Docket No. EE–RM–90–201), Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–0561.

Both hearings will begin at 9:30 a.m., and will be held at the U.S. Department of Energy, Forrestal Building, room 1E–245, 1000 Independence Avenue SW., Washington, DC.

Requests may be hand delivered to such address between the hours of 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Requests should be labeled "Energy Conservation Program for Consumers Products (Energy Conservation Standards for Eight Types of Consumers Products)," (Docket No. EE–RM–90–201), both on the document and on the envelope.

Copies of the transcript of the public hearing and public comments received may be read and/or photocopied at the DOE Freedom of Information Reading Room, U.S. Department of Energy, Forrestal Building, room 1E–190, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–6020, between the hours of 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Carl E. Adams, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE–431, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9127.

Eugene Margolis, U.S. Department of Energy, Office of General Counsel, Mail Station GC–72, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9507.

SUPPLEMENTARY INFORMATION: The Department published a Notice of Proposed Rulemaking on March 4, 1994, entitled "Energy Conservation Program for Consumer Products (Energy Conservation Standards for Eight Types of Consumer Products)" (59 FR 10464).

In its letter of March 14, 1994, to DOE, the Association of Home Appliance Manufacturers requested postponement of the public hearing, or scheduling of a second hearing and extension of the deadline for written comments, based on "the short time allowed to prepare for the hearing, and the lack of publication by DOE of information on test procedures."

In its letter of March 16, 1994, to DOE, the Gas Appliance Manufacturers Association requested postponement of the public hearing, or scheduling of a second public hearing and extension of the deadline for written comments, stating that given "the unexpected severity of DOE's proposed rule, a short interval between publication of the proposed rule and a public hearing on the proposed rule does not give GAMA or manufacturers enough time to prepare adequately for the public hearing."

In its letter of March 25, 1994, to DOE, the Edison Electric Institute requested postponement, and a second public hearing and extension of the deadline for written comments, based on "the significance and far-reaching implications of the proposed rule."

In its letter of March 25, 1994, to DOE, the Electronic Industries Association requested postponement of the public hearing and extension of the deadline for written documents. The EIA gave as reasons: "the voluminous amount of the Technical Support Document, and the need for its member companies to obtain input from their regionally-based engineers."

In its letter of March 25, 1994, to DOE, the Carolina Power & Light Company stated as its reason for requesting postponement, a second hearing and extension of the deadline for written documents that "the proposed rule could have significant implications for its company and the entire electric industry."

Based on these representations, the Department is extending the comment period to July 18, 1994, and scheduling a second public hearing for June 7 and 8, 1994.

Frank M. Stewart, Jr.,

Acting Chief of Staff, Energy Efficiency and Renewable Energy.

[FR Doc. 94–9284 Filed 4–18–94; 8:45 am]

BILLING CODE 6450–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 704

Corporate Credit Unions

AGENCY: National Credit Union Administration (NCUA).

ACTION: Advance notice of proposed rulemaking.

SUMMARY: Many corporate credit unions are closely tied to credit union leagues or trade associations through interlocking boards of directors or common management. The NCUA Board requests comment on whether to amend its regulations to require that a corporate credit union's board of directors be independently elected by its members, that the board represent primarily the interests of those members that are credit unions, and that management report only to the corporate credit union's board of directors.

DATES: Comments must be postmarked by June 20, 1994.

ADDRESSES: Send comments to Becky Baker, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428.

FOR FURTHER INFORMATION CONTACT:

D. Michael Riley, Director, Office of Examination and Insurance, (703) 518–6360, or Robert M. Fenner, General Counsel, (703) 518–6540, at the above address.

SUPPLEMENTARY INFORMATION:

A. Introduction

The corporate credit union system today consists of 44 corporate credit unions serving the nation's 13,000 natural person credit unions, with U.S. Central Credit Union in turn serving the corporate credit unions. The corporate credit union system provides liquidity, investment, and payment services to credit unions. As of December 31, 1993, the 44 corporate credit unions held about $41 billion in assets, half of which was reinvested in shares in U.S. Central. Approximately half of the corporate credit unions are closely tied to state credit union leagues, either through interlocking boards, management relationships, or both. In the case of U.S. Central, six of nine board seats are allotted to trade association representatives: three to the Credit Union National Association (CUNA), two to the Association of Credit Union League Executives, and one to the Kansas Credit Union Association. In addition, U.S. Central's CEO reports to the CEO of CUNA.

For the reasons discussed below, the NCUA Board is requesting comment on whether a corporate credit union's board of directors should be independently elected by its members, primarily represent the interests of the corporate's member credit unions, and have sole authority over the management of the corporate credit union. These and other corporate credit union issues, including investment powers and capital levels, are currently under review by NCUA as part of a 180-day study of the corporate system, and the Board may propose specific regulatory changes at the completion of the study.

B. Background

The history of the ties between corporate credit unions and trade associations is a long and, for the most part, successful one. It stems from the credit union movement's long struggle for a national solution to its liquidity problems. A review of these efforts is essential in understanding how the present system, with its unusual combination of private and government entities, was established.

The original draft of the 1934 Federal Credit Union Act contained a section for a central bank for credit unions. It was dropped in exchange for a grant of authority for federal credit unions to make deposits in, and to borrow from, federal reserve banks. Opposition from the Federal Reserve System led to the striking of this authority. Federal credit unions were led to believe that, as a

compromise, they would be included in the upcoming legislation to create the Federal Deposit Insurance Corporation (FDIC). When the legislation was adopted, however, credit unions were not included.

During the 1940's, credit unions experienced a number of liquidity problems, especially during the war years of 1941–1945. In response, the first corporate credit union was organized by credit union leaders in Kansas in 1951. Also in 1951, the credit union movement secured the introduction of a bill for a national central bank and seven regional banks, but Congress failed to address the issue. In the late 1950's, several bills were considered by Congress for the chartering of central credit unions which could accept the deposits of federal credit unions. None of these was adopted.

Forced to address liquidity problems on their own, credit union leagues began to establish additional state-chartered corporate credit unions. League officials lent their expertise in helping to start these corporate credit unions and serving on their boards.

Following severe liquidity problems in 1966 and 1969, the credit union movement again petitioned Congress for a central bank. Congressman Wright Patman (D–TX) introduced a bill to create a national credit union bank in 1971, but did not secure enactment. He tried again in 1973, once more unsuccessfully.

Realizing that credit union system liquidity and investment needs would continue to be addressed in the private sector, CUNA worked to establish a central institution to serve corporate credit unions, securing a charter for U.S. Central Credit Union from the State of Kansas in 1974. In 1980, legislation was passed enabling U.S. Central and the other corporate credit unions to be designated as "bankers banks," with access to the Federal Reserve System. By the early 1980's, most states had established corporate credit unions.

The financial reform bills of the early to mid-1970's advanced the concept of a central liquidity facility for credit unions, rather than a central bank. The credit union movement eventually supported the establishment of such a facility to serve as a backup for the private system. The Central Liquidity Facility (CLF) was officially established November 1978 and continues in its role of providing a government-operated source of liquidity for the credit union system.

The credit union movement must be acknowledged for successfully establishing a private system which has met the liquidity needs of credit unions and provided services in the areas of investments, securities safekeeping, payment systems, and correspondent services. This corporate credit union system, while encountering some problems, has nevertheless done an admirable job of meeting the needs of credit unions over an extended period of time.

C. Regulatory History

The history of NCUA's regulatory efforts in this area reflects its concern regarding the control and direction of corporate credit unions. Until 1979, only natural person members of a corporate credit union were permitted to serve on the board of directors. In 1979 the NCUA Board issued a final rule permitting *member credit unions* to appoint representatives to the corporate credit union. See 44 FR 58496, Oct. 10, 1979. A representative was empowered to attend meetings, vote, and stand for election on behalf of the member credit union.

In 1980 the Board issued Interpretive Ruling and Policy Statement (IRPS) 80–3, which clarified that although *other non-natural person members* of corporate credit unions were entitled to vote through agents, such agents could not stand for election in place of the non-natural person member and were not eligible to serve in any elective or appointive capacity in the corporate credit union. 45 FR 14202, Mar. 5, 1980.

In 1983 the Board adopted the standard corporate federal credit union (FCU) bylaws. Article XV, Section 2, addresses conflicts of interest of officials and employees and is identical to Article XIX, Section 4, of the standard FCU bylaws for natural person FCUs. It provides, in relevant part:

> No director, committee member, officer, agent, or employee of this credit union shall in any manner, directly or indirectly, participate in the deliberation upon or the determination of any question affecting his/her pecuniary interest or the pecuniary interest of any corporation, partnership, or association (other than this credit union) in which he/she is directly or indirectly interested.

In response to concerns about the implications for a corporate credit union official who is the designated representative of a member credit union acting upon matters which may affect that credit union, the Board noted that the provision was not intended to preclude an official from participating in the establishment of policy and general direction of the corporate credit union. The Board stated that it was intended to preclude an official from taking part in actions which would represent a true conflict of interest in a meaningful sense pertaining to his or her credit union.

In 1984 the Board issued a final rule permitting all non-natural person members of corporate credit unions to designate representatives to stand for election and hold elective and appointive office. 49 FR 50368, Dec. 28, 1984. In the preamble to the proposed rule, the Board stated that the restrictions of the regulation and IRPS 80–3 were at variance with the underlying philosophy of one-member-one-vote. 49 FR 17953, Apr. 26, 1984. In the preamble to the final rule, the Board stated that because corporate credit unions must primarily serve other credit unions, the credit union members would continue to influence the direction, policy, and priorities of the corporates through the democratic process. The Board also acted to officially repeal IRPS 80–3, stating that it addressed matters that were either superseded by or incorporated in the rule.

Over time, a limited number of corporate credit unions developed financial problems resulting in part from poor quality, preferential loans made to affiliated leagues, less than arms-length transactions involving the purchase or lease of league's fixed assets, and the payment of other league expenses. These incidents occurred in corporates that were closely tied to leagues at either the board or management level. In response, the NCUA Board issued a proposed rule in 1991 requiring that at least three members of the corporate credit union board be individuals who were independent of any organization with which the corporate credit union was associated, excluding member credit unions. See 56 FR 11952, Mar. 21, 1991. The Board noted that many corporate credit unions shared physical space, personnel, and officials with other organizations, often leagues and service organizations, creating an environment in which conflicts of interest, or the appearance of conflicts of interest, could develop. The proposed rule also contained a recusal provision identical to Article XV, Section 2, of the standard corporate FCU bylaws.

The final rule, issued on May 7, 1992, see 57 FR 22626, May 28, 1992, gave corporate credit unions an option with regard to board representation. Section 704.12(a) states that the board of directors of a corporate credit union is determined as stipulated in the corporate credit union's bylaws, provided that: (1) At least three directors are not officers, directors, or employees of an affiliated organization;

or (2) elections are open and independent, with procedures for nominations by petition and mail balloting.

The proposed recusal provision was also changed. Section 704.12(c)(1) *requires recusal* for matters involving *personal pecuniary interest.* For matters involving the *pecuniary interest of an entity* in which an official or employee is interested, Section 704.12(c)(2) requires recusal only when the amount in question exceeds 5 percent of the corporate credit union's capital, when measured annually as an aggregate of business arrangements with the entity. The conflict faced by corporate FCUs, between the new recusal provision and the bylaws, was not addressed.

D. Re-examining the System

Although the new regulations have resulted in greater independence of corporate credit unions, the leagues and trade associations still wield considerable influence in some institutions. A number of factors have led the Board to consider whether additional steps should be taken to ensure that boards of directors and management of corporate credit unions operate independently of credit union trade associations and represent the interests of the corporate's member credit unions.

One important factor is the dramatic increase in the scrutiny of financial institutions by the public, the press, and Congress as a result of the savings and loan disaster. A primary example of this scrutiny is the exhaustive General Accounting Office study of credit unions. This 371-page report was the longest and most detailed of any financial institution sector and was done at a time when the credit union movement was recording record growth, record health, and was experiencing no identifiable problems.

This atmosphere of intense scrutiny, while fully understandable, means that measures must be taken to ensure that safety and soundness, and the perception of safety and soundness, are maintained at the highest possible level. Public confidence in the financial system is based, after all, more on public perception than on an intimate knowledge of the workings of the system. The crash of the savings and loan industry and temporary problems at the FDIC have increased public scrutiny and mistrust of the financial services industry. In this atmosphere, it is essential that credit union members and the public be assured that corporate credit union decision makers act only with the interests of the corporate credit union's members in mind.

The second factor is a function of credit union growth. The asset level of corporate credit unions is almost as high as that of the entire credit union movement when the CLF was created. The magnitude of the asset growth within the corporate system attracts outside attention and warrants continuous re-examination for possible weaknesses and/or areas of improvement.

Third, as previously mentioned, the interrelationships between corporate credit unions and state trade associations have in some cases led to the misuse of corporate credit unions' resources to address budgetary or financial constraints in the trade associations. The NCUA Board is concerned that such conflicts, or even the appearance of conflicts in these areas, may threaten the survival of a strong and independent credit union system.

Finally, the recent publicity concerning U.S. Central's foreign investments has focused considerable attention to the corporate credit union system. The Board is concerned that if the system is perceived as having areas of potential conflict, Congress will introduce legislative proposals to address them. As mentioned earlier, the Board has undertaken a study of the corporate credit union system which should allay these concerns if they are unfounded. If changes are needed, however, the Board believes it is preferable to address them by regulation, rather than await Congressional action over which NCUA and credit unions may have little or no control.

E. Request for Comment

Election of Directors

In consideration of the above factors, the Board requests comment on changes to NCUA's regulation of corporate credit unions, 12 CFR Part 704, to require that the board of directors of a corporate credit union be independently elected by its members, with the condition that at least a majority of the board seats be held by representatives of member credit unions.

Recognizing that in many instances interlocks exists as a result of the same representative(s) being separately elected to both the corporate credit union board of directors and the board of a league or other association, the NCUA Board also requests comment on whether it should establish a requirement that all or a majority of the corporate board be comprised of representatives who do not serve in dual capacities other than as officials of both the corporate and a member credit union.

The Board requests comments on other issues related to how best to accomplish majority representation by credit unions. For example, elections could be open, with unrestricted nominations. However, once the maximum number of seats permitted to representatives of non-credit union members was filled, the remaining seats would go to credit union representatives, even if a non-credit union representative received more votes. As an alternative, the Board could revise the regulations to revert to the limitations of IRPS 80–3, *i.e.*, that non-credit union members have full voting rights but are not eligible to hold seats or place representatives on the board of directors. The Board seeks comments on these and other methods to assure a corporate credit union's board is representative primarily of the interests of the corporate's member credit unions.

The Board is aware that this is a departure from the democratic ideal of equal rights for all members, but believes for the reasons described above, that it may be in the best interests of credit unions. As the history of part 704 shows, the rights of various types of corporate credit union members frequently have differed, as the role of corporate credit unions has evolved over the years.

In the case of U.S. Central Credit Union, the Board has some concern that majority representation by its member credit unions may not be the best solution. While U.S. Central serves other corporate credit unions, it ultimately has great responsibilities, because of its central and national role, to natural person credit unions and credit union members. The Board requests comment on whether classes of directors should be established at U.S. Central in order to ensure representation by natural person credit unions and others broadly representative of the public interest.

Non-natural Person Representation

The Board also seeks comment on whether election or appointment of a non-natural person member representative to a position in a corporate credit union should be considered to be an election or appointment of the individual or the non-natural person member. In IRPS 80–3 the Board took the position that election or appointment was of the individual, not the non-natural person member. The Board stated that while the board of directors of a member credit union (at that time the only non-natural person member permitted to

designate a representative to stand for election) was free to change its designated representative at any time, where that representative had been elected to the corporate credit union's board of directors or elected or appointed to a committee, revocation of the designation meant that any position held by that individual must be declared vacant. Such vacancies were to be filled in accordance with the Article VII, Section 3, of the FCU bylaws (the corporate FCU bylaws had not yet been issued), which provides that vacancies on the board, credit committee, or supervisory committee shall be filled by vote of a majority of the directors then holding office. The member credit union's new representative did not automatically assume the old representative's elected or appointed position.

As discussed above, IRPS 80–3 was repealed in the 1984 revision to the regulation. However, there was no discussion of NCUA's position on filling a position when a non-natural person member's designated can no longer serve or the non-natural person member wishes to change its designate. Subsequently, NCUA informally took the position that it was a matter to be determined by each corporate.

The Board notes that there are sound arguments for each position. In IRPS 80–3, it was observed that where the designated representative of a non-natural member has been elected or appointed to a position in the corporate credit union, the voters or appointing official were, at least in part, swayed by the qualifications of the individual. It was reasoned that to permit the board of directors of the non-natural person member to substitute another individual in the place of a representative who has been elected or appointed to an office defeats the purpose of an election in the one case and usurps the power of the appointing official in the other. On the other hand, it is the non-natural person entity that is the actual member of the corporate credit union, not the representative, so it can be argued that it is the non-natural person member that holds the elected or appointed position. As such the member should have the right to determine who serves as its representative. The Board seeks comment on whether all corporates should be required to take the same approach to non-natural person members and which approach is preferable.

Recusal Provision

Requiring that a majority of the board of directors of a corporate credit union, but not all, be representatives of member credit unions means that some board members may be either representatives of other non-natural person members, such as leagues and service organizations, or natural person members with ties to such entities. Also, depending on the Board's ultimate decision on the issue, individual representatives of member credit unions may, in some cases, continue to serve on the corporate board and, at the same time, serve on the board of a league or other association. Finally, conflicts will continue to arise when matters come before the board of a corporate credit union that directly involve a member credit union whose representative serves on the board. Accordingly, the NCUA Board believes that to avoid even the appearance of a conflict of interest, it is important to have a strong recusal provision.

To address these concerns, the Board is considering returning to the language of Article XV, Section 2, of the standard corporate FCU bylaws, which prohibits directors, committee members, officers, agents, or employees of corporate credit unions from participation in any question affecting the pecuniary interest of any organization in which those individuals are interested. Adopting this language would resolve the conflict, for corporate FCUs, between the bylaw and the regulation, and would make the standard uniform for all corporate credit unions. The Board seeks comment on this idea and on the appropriate definition of "interested."

Management Accountability

Finally, as previously mentioned, the NCUA Board is concerned about situations in which management of a corporate credit union reports to the officials of an affiliated league or trade association. For corporate FCUs, this may violate several provisions of the standard corporate FCU bylaws. Article VI, Section 5, provides that the board shall have the general direction and control of the affairs of the credit union. The bylaw states that the board may delegate the performance of administrative duties but is not relieved of its responsibility for their performance. Article VII, Section 6, provides that the board may employ a management official who shall not be a member of the board and who shall be under the direction and control of the board. Although the Board cannot speak to the bylaws of state-chartered corporate credit unions, the practice of the management of one entity reporting to officials of another entity violates fundamental principles of general corporate law. Accordingly, the Board is considering amending its regulations to require that management of a corporate credit union report solely to the board of directors of that credit union.

The Board welcomes comment on these and any other considerations with respect to the management and control of corporate credit unions.

F. Effect on State-Chartered Corporate Credit Unions

Part 704 applies to all federally insured corporate credit unions. Further, non-federally insured corporate credit union must agree to comply with NCUA's corporate credit union regulation as a condition of receiving funds from natural person FCUs. Thus, the regulatory changes will affect all corporate credit unions. The Board believes this result is essential, given that the vast majority of funds held in the corporate system represent investments by federally insured credit unions.

By the National Credit Union Administration Board on April 12, 1994.

Becky Baker,

Secretary of the Board.

[FR Doc. 94–9324 Filed 4–18–94; 8:45 am]

BILLING CODE 7535–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 93–AGL–23]

Proposed Alteration of VOR Federal Airways

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would alter VOR Federal Airways V–172 and V–177 located in Wisconsin and Illinois. Altering V–172 and V–177 would expedite the flow of traffic arriving at the satellite airports in the Chicago, IL, metropolitan area.

DATES: Comments must be received on or before June 3, 1994.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, AGL–500, Docket No. 93–AGL–23, Federal Aviation Administration, O'Hare Lake Office Center, 2300 East Devon Avenue, Des Plaines, IL 60018.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Patricia P. Crawford, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9255.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 93–AGL–23." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing data for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket 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, Office of Public Affairs, Attention: Public Inquiry Center, APA–220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3485. 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 alter VOR Federal Airways V–172 and V–177 located in Wisconsin and Illinois. To expedite the flow of traffic, direct routings are desirable for aircraft arriving at satellite airports in the Chicago metropolitan area. V–172 would be realigned from the newly relocated ELGIN, IL, intersection direct to the Du Page, IL, (DPA) Very High Frequency Omnidirectional Range/Distance Measuring Equipment facility. V–177, heading southeast from the Janesville, WI, (JVL) Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC) facility toward the Joliet, IL, (JOT) VORTAC currently doglegs over the Rockford, IL, (RFD) VORTAC. Realigning V–177 would provide a direct route between the Janesville and Joliet VORTACs and eliminate the dogleg over the Rockford VORTAC. Domestic VOR Federal airways are published in paragraph 6010(a) 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 airways 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 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 6010(a)—Domestic VOR Federal Airways

* * * * *

V–172 [Revised]

From North Platte, NE, via INT North Platte 073° and Wolbach, NE, 266° radials; Wolbach; Columbus, NE; Omaha, NE, INT Omaha 066° and Newton, IA, 262° radials; Newton; Cedar Rapids, IA; Polo, IL; INT Polo 088°T(085°M) and Du Page, IL, 293°T(291°M) radials; Du Page.

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V–177 [Revised]

From Joliet, IL, via Janesville, WI; Madison, WI; Stevens Point, WI; Wausau, WI; Hayward, WI; Duluth, MN; to Ely, MN.

* * * * *

Issued in Washington, DC, on April 7, 1994.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 94–9427 Filed 4–18–94; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 343

[Docket No. 77N–094U]

RIN 0905–AA06

Internal Analgesic, Antipyretic, and Antirheumatic Drug Products for Over-the-Counter Human Use; Proposed Amendment to Tentative Final Monograph; Reopening of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of proposed rulemaking; reopening of comment period.

SUMMARY: The Food and Drug Administration (FDA) is reopening to May 4, 1994, the comment period on the notice of proposed rulemaking pertaining to combinations of over-the-counter (OTC) internal analgesic and antacid ingredients, specifically sodium bicarbonate used as an antacid active ingredient (February 2, 1994, 59 FR 5068). FDA is taking this action in response to a request to extend the comment period for an additional 30 days to allow more time to comment on this proposal. The comment period for these issues closed on April 4, 1994. This proposal is part of the ongoing review of OTC drug products conducted by FDA.

DATES: Written comments by May 4, 1994.

ADDRESSES: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD–810), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5000.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 2, 1994 (59 FR 5068), FDA issued a notice of proposed rulemaking to amend the tentative final monograph for OTC internal analgesic, antipyretic, and antirheumatic drug products (hereinafter referred to as the February 1994, proposal). This proposal affected combinations of internal analgesic and antacid ingredients, specifically sodium bicarbonate used as an antacid active ingredient. As proposed, combination drug products intended to be dissolved in liquid prior to administration, such as powders and effervescent granules or tablets, would not be allowed to make a claim for "relief of overindulgence in food and drink" or a claim for "relief of hangover." FDA issued the February 1994, proposal after receiving reports of gastric (stomach) rupture following ingestion of sodium bicarbonate to relieve gastrointestinal distress. Interested persons were given until April 4, 1994, to submit comments on the proposal.

On March 28, 1994, the Nonprescription Drug Manufacturers Association (NDMA), a trade association representing the manufacturers and distributors of OTC medicines, requested that the comment period be extended for at least 30 days. NDMA stated that the extension is necessary to provide sufficient time to develop comprehensive comments to submit to the agency. NDMA explained that most companies that distribute OTC drug products containing sodium bicarbonate as an active ingredient were not anticipating changes in the internal analgesic, antipyretic, and antirheumatic tentative final monograph and the February 1994, proposal provided the first opportunity for many affected parties to become aware of the agency's concerns and intentions for amending the tentative final monograph. NDMA stated that interested parties have had insufficient time to acquire the reference materials cited by FDA, to retrieve relevant product experience reports, and to research thoroughly the issues raised in FDA's February 1994, proposal. NDMA also mentioned that the time period for the comments includes several days on which many company employees will not be working because of religious holidays.

FDA has carefully considered the request and believes that this additional time for comment is in the public interest. Accordingly, the comment period is reopened to May 4, 1994.

Interested persons may, on or before May 4, 1994, submit to the Dockets Management Branch (address above) written comments regarding OTC internal analgesic, antipyretic, and antirheumatic drug products containing sodium bicarbonate as an antacid active ingredient. Three copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 13, 1994.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 94–9354 Filed 4–18–94; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1903

[Docket No. C–03]

Abatement Verification

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of proposed rulemaking.

SUMMARY: OSHA is developing a regulation requiring employers to certify abatement and submit abatement plans and progress reports as a result of OSHA citations. In addition, OSHA is proposing the placement of a tag on cited equipment to alert affected employees that a hazardous condition exists while abatement is being accomplished. Violation of the regulation would result in civil penalties as prescribed by section 17 of the Occupational Safety and Health Act of 1970. This notice invites interested parties to submit comments and recommendations on the issues detailed in this document, as well as other pertinent issues. All the information received in response to this notice will be carefully reviewed. The comments received will assist OSHA in developing the final regulation.

DATES: Written comments on the notice of proposed rulemaking must be postmarked no later than July 18, 1994.

ADDRESSES: Comments and information should be submitted in quadruplicate to the Docket Officer, Docket No. C–03, Occupational Safety and Health Administration, room N–2625, U.S. Department of Labor, 200 Constitution Ave. NW., Washington, DC 20210; telephone: (202) 219–7894.

FOR FURTHER INFORMATION CONTACT: Mr. James Foster, Occupational Safety and Health Administration, Office of Public Affairs, room N–3647, U.S. Department of Labor, 200 Constitution Ave. NW., Washington, DC 20210; telephone: (202) 219–8151.

SUPPLEMENTARY INFORMATION: The purpose of this proposed rule is to require employers to inform OSHA and their employees about measures they will take or have taken in response to OSHA citations, as well as to inform employees about OSHA citations and the alleged safety or health hazards described therein.

I. Background

Under the Occupational Safety and Health Act of 1970 (i.e., "the Act" or "the OSH Act"), 29 U.S.C. 651 *et. seq.*, OSHA inspects workplaces to determine whether employers are complying with OSHA standards and other statutory or regulatory requirements. If OSHA believes that an employer has committed a violation, a citation is issued. The citation will reference the requirement allegedly violated, the alleged violation, and note the proposed penalty and a date by which the violation is to be corrected, i.e., the abatement date. Section 9(a), 29 U.S.C. 658(a).

Currently, the cover letter to the employer which accompanies an OSHA citation states that the employer must notify the Area Director promptly by letter of abatement of violations. (OSHA Instruction ADM 1–1.12A CH–7, August 3, 1987. "IMIS FORMS Manual", Appendix C, page C–22). No specific regulation, however, authorizes this notification action. When, therefore, an employer does not provide written verification of abatement, OSHA may, depending on the circumstances, seek to verify abatement by making further efforts to communicate with the employer (e.g., by telephone), or by conducting an on-site follow-up inspection.

On May 1991, the General Accounting Office (GAO) issued a report to Congress in which it assessed the adequacy of OSHA's policies and procedures for determining whether hazards have been abated. The report (GAO/HRD–91–35) (Ex. 1)[1] found that these policies and procedures have limitations that impede the Agency's ability to detect employers who have failed to abate the safety and health hazards for which they have been cited. GAO found that OSHA's policies: (1) Do not require, but merely request, employers to provide evidence of abatement, and (2) inadequately address confirmation of hazard abatements found at construction worksites.

The GAO report concluded that OSHA would obtain improved evidence of abatement if its regulations required employers to provide specific documentation that they have abated hazards. The report further concluded that such a requirement would enhance OSHA's ability to detect noncomplying employers and determine where to conduct follow-up inspections. Employers also would be more likely to abate hazards because they would have to provide specific evidence of abatement. Accordingly, GAO recommended that OSHA promulgate a regulation requiring employers to submit detailed evidence of what corrective actions have been taken to abate hazards.

GAO was also concerned about hazard abatement problems in the construction industry due to the mobility of hazardous equipment. The report's conclusion stated:

> OSHA needs to confirm abatement of construction hazards in such a way that they will not be repeated at subsequent worksites. OSHA's practice of accepting worksite closing as a form of abatement allows the continuation of procedures and practices that perpetuate hazardous conditions. Consequently, contractors can continue to use a defective piece of equipment, untrained employees, or inadequate procedures and processes at subsequent worksites. *OSHA should require contractors to take abatement actions that will correct what caused the hazard rather than just eliminate the hazard at the inspection site.* (emphasis added) (GAO/HRD–91–35)

The second GAO recommendation was for OSHA to revise its polices so that (1) citations to employers at construction worksites require correcting the condition, equipment, or procedure that create the hazard, and (2) employers will not be able to "abate" hazards solely by moving to another location.

Although not referenced in the GAO report, unsuspecting employees may be exposed to similar hazards under conditions in which the place of employment and equipment are permanent, but there is a frequent turnover of employees in temporary jobs or employees are rotated frequently through different job assignments. Also, workers in mobile crews who visit different job sites should have available hazard warning information regarding defective equipment which they must operate.

Current OSHA policy is that written, detailed plans of abatement shall be submitted to the Area Director when citations are issued alleging (i.e. noise or air contaminant) violations and OSHA orders that engineering or administrative controls be implemented. In these cases, employers are also asked to submit progress reports, generally every ninety days, detailing steps taken to achieve complete abatement (e.g., procurement of engineering controls). Field Operations Manual, chapter V (appendix), E.4.a. and c., E.5.a. and c. (Ex. 2) OSHA's policy, therefore is to have employers verify that the violation cited has been corrected. Despite this policy, there is no existing regulation, enforceable by citations and civil penalties, which mandates employers to submit abatement plans, progress reports, or abatement verification letters. Thus, OSHA proposes that employers should be required by regulation to submit such documents.

Currently, 29 CFR 1903.16 requires the posting of a citation at or near the place of the alleged violation. This regulation is inadequate in many instances to notify employees that OSHA has required the abatement of hazardous conditions because citations are often posted on company bulletin boards that employees may not see or read. Employees are more likely, therefore, to be informed about hazardous equipment they are operating via a required tag affixed to that equipment than by a posted citation. OSHA already requires that employers in general industry and construction affix accident-prevention tags informing employees about hazardous conditions. 29 CFR 1910.145(f) and 1926.200(h). However, these standards do not require employers to state that a condition has been cited. Further, the General Industry standard does not apply to construction, maritime, or agricultural employers. 29 CFR 1910.145 (f)(1)(ii). Therefore, OSHA also proposes that all employers covered by the OSH Act be required to affix tags to cited equipment informing employees about an OSHA citation regarding that equipment.

Legal Considerations

Introduction

For purposes of the proposed rule, there are two key terms, i.e., "abatement date" and "final order." The following discussion is provided in order to relate these terms to the statutory framework created by the OSH Act. The discussion, however, is general in nature and is not intended to address every situation that may arise in the course of litigation.

Contesting a Citation

As noted above, an employer has the right, under the OSH Act, to contest a citation or a prescribed abatement date. (employers may also contest only the amount of the penalty proposed for a violation, but this action does not delay the abatement period prescribed for that violation). An abatement date can also be contested by an affected employee or a representative of affected employees. If neither the employer nor employees contest the citation, the date set forth in the citation for the correction of the violation is the abatement date.[2]

The Act also provides that, in the event of a contest, the employer's obligation to abate a cited violation is suspended, provided that the employer's contest has been made "* * * in good faith and not solely for purposes of delay or avoidance of penalties." Section 10(b), 29 U.S.C. 659(b). Once a citation is contested, an employer's abatement obligation

[1] "Ex.," followed by a number, designate the exhibit in the docket containing the referenced document.

[2] The Act provides that an employer may file a notice of contest within fifteen working days of receiving the notification of proposed penalty. Section 10, 29 U.S.C. 659. (Under current OSHA practice, the notification of proposed penalty is attached to the citation.) Appellate courts have held that OSHA may set an abatement date which falls within the fifteen-day period, in which case the period allowed for contest is shortened accordingly. See *Dunlop* v. *Haybuster Mfg. Co.*, 524 F.2d 222 (8th Cir. 1975); *Brennan* v. *OSHRC and Kesler & Sons Construction Company*, 513 F.2d 553, 557–58 (10th Cir. 1975).

generally does not start to run until a "final order" has been issued ending the administrative phase of the litigation.

When a citation or a prescribed abatement period has been contested, the matter is adjudicated by the Occupational Safety and Health Review Commission (i.e., "the Commission"), an independent agency headed by three Presidential appointees (i.e., "Members"). Initially, a contested case is usually heard by an administrative law judge (ALJ) of the Commission. The ALJ issues a decision and order, which are then docketed with the Commission. This decision and order may subsequently be reviewed by the full Commission. Section 12(j), 29 U.S.C. 659(j). Under this review procedure, any Member of the Commission may direct review of the ALJ's decision and order within thirty days of the docketing date. If there is no direction for review, the ALJ's decision and order becomes the final order of the Commission. *Id.* Any abatement requirement affirmed or modified by an ALJ's decision and order will start to run on the date that the ALJ's decision and order become a final order. The new abatement date is determined by adding to the final order date either: (1) The number of days allowed originally for abatement in the citation (in cases where the ALJ affirms the abatement requirement) or (2) the newly specified period for abatement (in cases where the ALJ modifies the abatement requirement). If, However, the Commission reviews an ALJ's decision and order, the employer's abatement obligation remains suspended during the review process. Following its review, the Commission will generally issue its own decision, which becomes a final order thirty days after its decision is issued. Section 10(c), 29 U.S.C. 659(c).[3] Again, any abatement period affirmed or modified as a result of the Commission's decision will start to run from the date its decision becomes a final order.[4]

An ALJ's decision and order that have not been directed for Commission review, or a decision of the Commission following such review, also may be challenged in the appropriate federal appellate court. Sections 11(a) and (b), 29 U.S.C. 660(a) and (b). Filing a petition for appellate court review does not automatically stay the employer's abatement requirements. *Id.* In extraordinary cases, however, either the Commission or the court of appeals may stay the final order at the employer's request. If stayed, the abatement requirement does not begin to run until the appellate court upholds the earlier decision of the Commission or the ALJ (i.e., to affirms or revise the abatement requirement) by issuing a mandate or an equivalent order giving legal effect to the appellate court's decision. Where a citation was vacated by the Commission or the ALJ, and the appellate court subsequently reverses that decision, the appellate court will generally remand the case to the Commission for entry of an order to affirm the citation. The abatement requirement then will begin to run thirty days after the date of the appellate court's order. Should the appellate court, in such cases, not remand the case for entry of a Commission order, the abatement obligation begins to run from the court's own entry of mandate or equivalent order.

Settlement or withdrawal of a contest. At any stage of an ongoing contest proceeding, there may be a settlement of the case, in whole or in part, or the employer may unilaterally withdraw the notice of contest, in whole or in part. Under these conditions, the ALJ or the Commission will enter an order based on the settlement or withdrawal of the notice of contest. It is OSHA's legal position that, in some circumstances, withdrawal or settlement actions by employers become final orders by operation of law upon execution, without approval by the Commission. (See *Cuyahoga Valley Ry. Co.* v. *United Transportation Union*, 474 U.S. 3 (1985)). However, for purposes of determining the timing of an employer's abatement obligations under the proposed regulation, OSHA has elected to treat orders based on settlement or withdrawal in the same manner as other ALJ and Commission orders, i.e., the abatement obligation begins to run thirty days after the docketing of the ALJ order by the Commission or after the issuance of the Commission order, as the case may be. Should the parties phrase the settlement agreement such that abatement is called for by a date certain, or that the abatement period will run from a certain event (e.g., the date of execution of the agreement), the abatement date will be determined in accordance with the terms of the agreement provided no employee or employee representative contests the abatement period specified in the agreement.

The existence of a Commission final order has a number of consequences for enforcement. If OSHA determines that an employer has failed to correct a violation on or before the expiration of the abatement date, OSHA may issue a notification of failure to abate. Section 10(b), 29 U.S.C. 659(b). A penalty of up to $7000 may be assessed for each day the failure to abate continues. Section 17(d), 29 U.S.C. 666(d). If, after a final order, the employer commits a substantially similar violation in a different location, or with a different piece of equipment, or with the same piece of equipment after a period of temporary abatement, the violation is classified as repeated and a penalty of up to $70,000 may be assessed. Section 17 (a), 29 U.S.C. 666(a). Further, the Secretary may file a petition for enforcement of a Commission order which has became final after a notice of contest, or after a failure to contest within fifteen working days. This petition is filed in the court of appeals and the court issues a decree enforcing the Commission final order. If the employer violates this decree, the employer may be subject to penalties for contempt of court. Section 11(b), 29 U.S.C. 660(b).

The discussion above details the regular procedures for obtaining and enforcing final Commission orders with their concomitant abatement dates. In addition, there are procedures for modifying the abatement requirements of a citation due to employer hardship. Upon a showing by an employer of inability to complete abatement within the prescribed period because of factors beyond the employer's reasonable control, the employer may obtain a modification of the abatement date. Section 10(c), 29 U.S.C. 659(c). A petition for modification of abatement date (PMA) must be filed no later than the close of the next working day following the date on which abatement is required. If neither OSHA nor affected employees object to the employer's request, OSHA may approve the PMA and it then becomes a final order pursuant to section 10(a) and (c) of the Act. If either OSHA or employees object to the PMA, the case is forwarded to the Commission for adjudication. See 29 CFR 2200.37. The Commission may either accept, reject, or modify the employer's request for additional time and issue an appropriate order.

II. Summary and Explanation of the Regulation

Under the proposed regulation, an employer who has received an OSHA

[3] Prior to issuing its decision, the Commission may sever one or more citation items from the case if it determines that it will not review the ALJ's affirmance of those items. See Hamilton Die Cast Inc., 12 BNA OSRC 1797 (No. 83–308, 1986). The order severing citation items will become a final order as to those items.

[4] It is possible that the Commission (or an ALJ) could, in modifying an abatement requirement, state an actual date by which abatement must be accomplished. In that situation, the abatement date would be the date as specified.

citation must submit to the OSHA Area Director an abatement certificate, which states whether or not the violation has been abated, as documentation of abatement. The proposed regulation would also require an employer who has received an OSHA citation to submit an abatement plan, where the Area Director requests one by such means as a note on the citation, which sets forth a schedule for the implementation of abatement measures. Under the proposal the employer would also submit progress reports, which explain what measures have been taken, if any, in the process of achieving abatement, when the Area Director requires them. The proposed rule would also require employers to affix tags on equipment noting that a citation has been issued.

Paragraph (a), Scope and Application

This regulation applies to all industries covered by the OSH Act, including general industry, construction, maritime, and agricultural employers. The specific identification of the major industrial groups, in this section, is intended to make this fact clear.

Paragraph (b), Definitions

Only those terms of the definitions paragraph which were felt to need further clarification are included in this section.

Abatement date. The date by which the employer must abate a violation depends on the stage to which a case has progressed. This definition sets forth the various ways an abatement date is determined. Circumstance (1) refers to the date actually set forth in the citation, where the citation item has not been contested. As explained in Section I, this date applies even if it is with the fifteen-working-day period normally available for the filing of a notice of contest.

Circumstance (2) is self-explanatory, as it refers simply to adding to the final order date either the amount of time in days initially specified for abatement on the citation or, if that period was modified by the Commission or its judge, the amount of time so modified.

Circumstance (3) refers to a date for abatement "expressly set forth" by the Commission, or a Commission administrative law judge. The phrase "expressly set forth" refers to a date certain or to a set number of days from the final order date specified date.

Circumstance (4) refers to a date set in a PMA final order. The term (PMA) refers to a petition for modification of the abatement date described in Section 10(c) of the OSH Act, 29 U.S.C. 659(c). A PMA final order results either from OSHA's approval of an uncontested PMA or the Commission's approval, modification or rejection of the employer's request for additional time in order to complete abatement.

Circumstance (5) refers to settlement agreements signed by OSHA and the employer, and, in some cases, employees or their authorized representatives. As in circumstance(3) the phrase "expressly set forth" refers to a date certain or to a set number of days from the final order date or other specified date.

Abatement plan. As the definition implies with its reference to "outlining a schedule for the implementation of measures to achieve abatement", an abatement plan required by a citation will specify the requirement for and the frequency of "progress reports." Generally, abatement plans and progress reports will be associated with multi-step or long-term abatement.

Citation item. A citation item is a single instance of a violation. For example, a citation may contain "Item 1", alleging that the employer has one machine in violation of 29 CFR 1910.212(a)(1) because it was not guarded. A citation may also list several violations of the same standard under the same citation item, for example "Item 1, instance a", and "Item 1, instance b". "Item 1, Instance a", and "Item 1, Instance b", etc. are all separate "citation items" within the meaning of the proposed regulation. Final order date: The date a citation becomes a final order is the date on which a citation becomes effective. The major ways a citation can become a final order are detailed in the definition.

The first category is that of an uncontested citation. If there is no contest by either the employer or the employees, the citation becomes a final order automatically, fifteen (15) working days after the date the employer receives the citation and proposed penalty, pursuant to Section 10 of the OSH Act, 29 U.S.C. 659.

The second category refers to situations in which there has been a contest either by the employer or by employees, resulting in the issuance of a decision or order by an ALJ. Under Section 12(j) of the OSH Act, 29 U.S.C. § 661(j), a decision of an ALJ becomes a final order of the Commission thirty days "after such report" if no member of the Commission directs review of the case. Section 12(j) has been construed by the Commission to mean that the thirty-day period runs from the date on which the decision of the ALJ is docketed by the Commission. (See 29 CFR 2200.90(b)(2); *Robert W. Setterlin & Sons Co., 4 BNA OSHC 1214 (No. 7377, 1976)).*

The third category refers to decisions issued by the Members of the Commission, including orders severing items from a case. Pursuant to Section 10(c) of the OSH Act, 29 U.S.C. § 659(c), such decisions become final orders thirty days after their issuance, and the filing of petitions for review of these decisions in a court of appeals does not stay the employer's abatement obligation unless a stay has been expressly ordered.

The fourth category addresses the two situations in which the start of an employer's abatement obligation depends on action by a court. In those cases in which a court of appeals stays an abatement requirement, the abatement requirement starts when the court issues its mandate or an equivalent order following a decision of the court upholding the Commission's affirmance of the citation. In those cases where the Commission did not affirm a citation but the court reverses that decision, the abatement obligation starts upon the court's issuance of its mandate or equivalent order unless the court remands the case to the Commission for the issuance of an appropriate Commission order. In that situation, the abatement period starts when the Commission's order becomes final thirty days after its issuance.

PMA final order. This is the order approving, modifying or rejecting the employer's request for additional time to complete the abatement requirements of the citation.

Paragraph (c), Abatement Certificate

Paragraph (c)(1) specifies the minimum content of the abatement certificate; (c)(2) provides special procedures for reissuing an abatement certificate for those situations where abatement was not initially completed; and (c)(3) allows an employer to combine the individual certifications of hazard abatement into one certificate.

Paragraph (c)(4) of the proposed regulation requires the abatement certificate to be accompanied by "documentary evidence." OSH envisions "documentary evidence" to be any type of document which provides evidence that a violative condition which was cited has, in fact, been abated. The examples of documentary evidence which follow are provided in order to clarify OSHA's intent and are not to be considered as the only methods which would be acceptable to the Agency, nor are they automatically accepted in all cases: (1) An invoice or receipt for purchase or disposal of goods and services; (2)

analyses or reports from industrial hygienists, engineers, or other experts indicating the methods by which the extent to which the hazardous condition has been abated; (3) a manufacturer's recertification for repaired equipment; (4) contracts and specifications for services; (5) training records, programs, and attendance sheets; (6) in-house certification; (7) photographic prints depicting the abated condition which have been labeled appropriately with the citation and item references as they appeared on the citation; and (8) videotape with concise audio and/or visual identification for the citation reference.

Paragraph (d), Abatement Plan

Paragraph (d) of the proposed regulation refers to written abatement plans. OSHA currently requests employers to submit abatement plans when the Area Director finds them appropriate in connection with safety or health violations. The proposed regulation would give the Area Director discretion to require abatement plans with respect to either safety or health violations.

Paragraph (e), Progress Reports

Paragraph (e) of the proposal refers to written progress reports. OSHA policy currently provides for progress reports whenever the Area Director requests them in connection with safety or health violations requiring multi-step or long term abatement. The proposed regulation would make such progress reports mandatory when required by the Area Director and indicated on the citation.

Paragraph (f), Tagging of Cited Equipment

Paragraph (f) of the proposed regulation requires the placement of a tag on cited equipment in order to alert employees who might be exposed to the hazards of that equipment. The tag will state that this equipment has been cited. This procedure will address the situation, common to the construction industry, in which cited equipment is removed from one worksite to another where employees are not aware of the hazardous condition. The tag requirements found in this proposed regulation are intended to provide such employees with knowledge of the violative condition of the equipment. The proposal provides that these warning tags shall comply with the current OSHA requirements for accident prevention tags (i.e. use, signal word, and general tag criteria) found in § 1910.145(f).

The proposed regulation would require the tag to remain in place on the equipment until the defect has been remedied. If the equipment is removed from the workplace, sold, or otherwise transferred, it is OSHA's intent that the tag remain on the equipment. Mere lack of employee exposure to the equipment will not allow the employer to remove the tag.

The reference to "tagging equipment" does not require the tagging of supplies, furnishings, policies, procedures or building service distribution systems such as for water. However, individual component parts within a distribution system may be subject to tagging. For example, an unguarded drive shaft on a circulating pump in a water distribution system found in violation of the machine guarding standard would be considered equipment within the meaning of the regulation and thus require tagging.

Paragraph (g), Transmittal of Documents

OSHA has included the following note in paragraph (g).

Note: Receipt of an employer's documents by the Agency under this regulation does not constitute an agreement that the employer is in compliance.

There are three reasons for this provision. First, although the Agency will try to evaluate submitted material in a timely fashion, other agency priorities may delay such action. Second, in some cases, the submitted materials may not accurately or completely describe the abatement. Third, changing working conditions may make the abatement action described in the materials submitted inaccurate or inadequate.

Paragraph (i), Posting Requirements

Paragraph (i)(5) of the proposed regulation states that the final abatement certificate must remain posted until abatement has been completed or for six calendar days, whichever is later. Thus, if abatement has been completed, the certificate shall remain posted for at least six days after completion. If abatement has not been completed, the abatement certificate initially submitted shall remain posted until the violation has been abated. When abatement has been accomplished, the new final abatement certificate shall remain posted for six days. If a final abatement certificate deals with a number of citation items, it shall remain posted for as long as it takes to comply with the posting requirements for all of the items. OSHA believes that the posting of the abatement certificate will inform employees whether or not the hazard has been abated and also help to assure the accuracy of the certificate.

III. Pertinent Legal Authority

This proposed regulation is authorized by Sections 8(c)(1), 8(g)(2), and 9(b) of the Occupational Safety and Health Act of 1970 (the Act), 29 U.S.C. 657 and 658. Under Section 8(c)(1) "[e]ach employer shall make, keep and preserve, and make available to the Secretary or the Secretary of Health [and Human Services] * * *, such records regarding his activities relating to this Act as the Secretary, in cooperation with the Secretary of Health [and Human Services] * * *, may prescribe by regulation as necessary or appropriate for the enforcement of this Act or for developing information regarding the causes and prevention of occupational accidents and illnesses." Section 8(g)(2) empowers the Secretary of labor to "prescribe such rules and regulations as he may deem necessary to carry out [his] responsibilities under this Act." Moreover, pursuant to Section 8(c)(1), the Secretary has authority to issue regulations requiring employers to keep their employees informed of the employers' responsibilities under the Act. Section 9(b) authorizes the Secretary to promulgate regulations associated with the posting of citations.

In addition, the Secretary's responsibilities under the Act are defined largely by its enumerated purposes, which include: Providing for appropriate reporting procedures that will help achieve the objectives of this Act and accurately describe the nature of the occupational safety and health problem [29 U.S.C. 651(b)(12)]; developing innovative methods, techniques, and approaches for dealing with occupational safety and health problems [29 U.S.C. 651(b)(5)]; and providing an effective enforcement program [29 U.S.C. 651(b)(10)].

For the reasons set forth in the preamble, the Secretary asserts that the proposed regulation is necessary and appropriate to conduct enforcement responsibilities under the Act, to develop information about the prevention of occupational accidents and illnesses, and to inform employees of their protections and obligations under the Act.

IV. Comments and Information Requested

Comment is requested on all issues involving the proposed regulation. In particular, OSHA requests comment on the following questions:

1. What type of documentary evidence should OSHA require

employers to submit as proof of final abatement? Should the type of documentation required to be submitted as proof of final abatement vary according to what is required for abatement, the type of hazard, or the classification of violation (i.e., willful, repeat, serious, other-than-serious, regulatory)? What criteria should OSHA apply in judging either the sufficiency or quality of the documentation?

2. What are the costs (time and money) of complying with this new regulation and the basis for estimating these costs?

3. What will be the effects of the requirement that employers post their abatement documents?

4. How do the proposed abatement verification procedures differ from current or previous practices of informing OSHA that abatement has been accomplished?

5. How much time does each employer currently spend on abatement verification?

6. What is the appropriate level of management to sign the abatement verification?

7. What are employer experiences with verifying abatement of cited conditions for other Federal and State agencies, especially State occupational safety and health agencies?

8. Given the need for evidence of abatement, should an employer be required to submit abatement certification if the employer has actually abated the condition during the OSHA inspection?

9. Should OSHA develop an abatement certification form? If so, what information should the form contain?

10. OSHA is proposing in paragraph (f) the use of a tag to be placed on cited equipment to alert affected employees that a hazardous condition exists with the equipment. Specific comment is requested on this particular issue. What information should the tag contain?

V. References

OSHA Policy Changes Needed to Confirm That Employers Abate Serious Hazards (GAO/HRD–91–35, Report to Congressional Requesters, May 1991).

OSHA Instruction CPL 2.45B—Field Operations Manual (FOM).

VI. Preliminary Regulatory Impact Analysis for Abatement Verification

A. Introductory

Executive Order 12866 (58 FR 51735) requires regulatory agencies to assess the costs and benefits of intended regulations, to consider the possible alternatives, and to select the most cost-effective form of regulation. The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) requires the Occupational Safety and Health Administration (OSHA) to consider the impact of the regulation on small entities.

This regulatory impact analysis presents the costs, benefits (cost savings), and economic impact of the proposed regulation requiring certification of abatement. The impact on small businesses is also presented.

The Agency has preliminarily concluded that this regulation is not a "significant regulatory action" as defined in Executive Order 12866, Section 3, Paragraph (f).

The proposed regulation for abatement verification would require employers to notify OSHA Area Directors whether or not cited violations have been abated. It would require employer to notify OSHA Area Directors whether or not cited violations have been abated. It would also require employers to offer documentation of abatement plans and progress reports for multi-step abatement efforts. Based on a survey of OSHA regional offices, OSHA estimates that as many as 70 percent of cited employers eventually certify and document their abatement actions to some degree at the present time. This regulatory action will potentially affect all employers covered by the OSH Act.

This regulatory action can impose penalties for non-reporting of conditions even if they have been abated and can also lead to an increase in the penalties that employers face from unabated, violative conditions. Failure to verify abatement on a timely basis is an additional violation. When abatement is verified by the employer but not actually performed, criminal penalties for false statement may apply. Increased penalties give employers an incentive both to abate and to verify abatement, and to do so in a timely manner. Abatement reduces the risk of injury, illness, and death for employees. The Agency has not estimated the extent of injuries, illnesses, and deaths averted by this regulatory action, because abatement itself is already required by the OSH Act.

B. Costs of Compliances

Certifying Abatement

Federal OSHA and State-plan agencies performed about 127,000 workplace inspections in 1991, issuing about 413,000 separate (upgrouped) violations (Table 1). Less than 1 percent of the violations were for failure to abate. About 10 percent of all citations were contested.

There were about 9,000 follow-up inspections by OSHA and State-plan agencies in 1991 that resulted in about 4,300 violations, of which 71 were for failure to abate (Table 2). About 18 percent of all follow-up violations were contested.

The Agency estimates that it will take firms, on average, 15 minutes to prepare and mail documentation to certify abatement, independent of firm size. The Agency estimates that the managers or proprietors who prepare the certification of abatement earn a total wage of $25 per hour, based on data in the Bureau of Labor Statistics news, June 18, 1993.

A ceiling, or maximum estimate, of the cost to employers for verifying abatement, including preparation of abatement certificates and submission of documentation, can be calculated by multiplying the number of violations with the estimated average time to verify abatement (not the time and cost to comply with the OSHA standard cited) and with the supervisory wage rate (annual, including benefits), or

412,707 violations × .25 hours per citation × $25/hour=
=$2.6 million annually.

Since a large fraction of employers cited for violations now inform OSHA that abatement was performed and sometimes offer documentation, the new additional cost to employers from this regulation is probably much less than the ceiling estimate of $2.6 million annually. Other costs, such as for photocopying, photography, or other documenting activity, are believed to be minimal. The cost of tags for cited equipment is also minor as both the general industry and construction standards already contain accident prevention tagging requirements (See 1910.145 and 1926.200).

Abatement Plans and Progress Reports

The proposed regulation allows the Agency's Area Director "at his or her discretion" to require an abatement plan and progress reports when multi-step abatement is "deemed appropriate." At the current time, when the Area Director issues a citation to an employer (usually involving air contaminants, noise, or ergonomics) which will require a long, or multi-step, abatement effort, the citation letter lists both the steps to be taken and a schedule for completion. The Agency in its citation letter informs the employer that it must send progress reports to the Area Director.

Since the employer will have in hand OSHA's proposed plan for multi-step abatement to use as a guide, the Agency estimates that it will take an employer two hours to write the plan as required by the proposed regulation. The Agency estimates that, on average, there are

three steps in a multi-step abatement and that it will take the employer 30 minutes to prepare each progress report. The Agency estimates that the total wage rate of a supervisor, manager, or proprietor who would perform this work is $25 per hour (Bureau of Labor Statistics News, June 18, 1993).

Currently, citations requiring multi-stage abatement efforts are a small percentage of all citations. Virtually all of the multi-stage abatements for Federal violations are for three causes: Ergonomics, noise, and permissible air limits. In 1991 there were 749 Federal OSHA inspections that resulted in citations for ergonomics, air contaminants, noise, or single-substance OSHA standards, resulting in 1,934 violations (all of which would have required multiple step abatement). Based on this number of multi-stage abatements required in Fiscal year 1991, and assuming that State-plan agencies had an equal number, the Agency estimates that the cost of proposing multi-step abatement plans and providing progress reports is:

Cost = (1934 × 2) × $25/hr × [2 hours + (3 × ½ hours)] = $338,450.

C. Benefits (Cost Savings)

Verification Efforts

This regulatory action will reduce time-consuming efforts required of OSHA's enforcement officers to verify and document abatement in order to close files, thereby increasing the time available for inspection activities. OSHA's Directorate of Compliance Programs estimates that these efforts consume approximately 5 percent of compliance staff time, or the equivalent of 50 full-time compliance officers for Federal enforcement. The Agency estimates that an equal number of full-time equivalents perform this task for State-plan agencies, or a total of 100 full-time-equivalents. With an average estimated salary of $50,000 including benefits, the dollar value of this time is approximately $5 million annually. The Agency estimates that the increased work of collecting and analyzing abatement certificates and accompanying documentation for enforcement agencies will be minor—OSHA is currently receiving abatement information for approximately 70 percent of its citations. The Agency estimates that affected employers should also save approximately the same amount of time and money ($5 million annually) spent in responding to OSHA's letters and calls seeking verification of abatement.

Follow-Up Inspections

In FY 1991, Federal OSHA performed about 2,000 follow-up inspections, and State-plan agencies about 7,000 (Table 2), for a total of about 9,000 annually. Combined, these efforts represented 100,700 staff hours,[5] or approximately 50 full-time compliance officers. One of the Agency's goals in promulgating this regulation is to reduce the resources employed in follow-up inspections as well as other unproductive efforts associated with abatement verification. The Agency's Directorate of Compliance estimates that under this regulation, the Agency will decrease its follow-up inspections by half, and OSHA estimates that State-plan agencies will do the same. With an estimated average salary and benefits of $50,000, cutting follow-up inspections by half will save enforcement agencies $1.25 million in resources annually.

Although a significant portion of a Compliance Officer's time is spent in preparation and travel to a worksite for these inspections, at the worksite he or she is accompanied by one or more employer representatives as well as an employees representative. The Agency estimates that: The total hourly wage of the employer's representative is $25; the total wage of the employee's representative is $15 (BLS News, June 18, 1993); and that a follow-up inspection takes, on average, three hours. The Agency estimates that reducing the number of follow-up inspections by half will annually save employers $540,000 [4,500 inspections × 3 hrs × ($25 + $15)].

D. Economic Impact

The Agency estimates that the economic impact on individual employers, industry profits, and product prices to be insignificant for every affected industry, and therefore concludes that the regulation is economically feasible. Only 15 minutes of a manager's time, on average, should be needed to verify abatement and provide some documentation. Since employers will avoid time spent responding to verification requests from the Agency as well as follow-up inspections, the Agency estimates that overall there is a net savings for employers. There is a savings of resources for Federal OSHA and State-plan states. As a whole this regulation should result in a saving of resources (Table 3).

TABLE 1.—OSHA INSPECTION DATA 1991

	Federal OSHA	State plan States	Total
Inspections:			
Safety	33,346	70,358	103,704
Health	8,963	14,053	23,016
Total	42,309	84,411	126,720
Violations:			
Willful	2,437	950	3,387
Repeat	3,525	6,948	10,473
Serious	93,600	58,391	151,991
Unclassified	30	0	30
Other-Than-Serious	50,845	167,983	218,828
Failure to Abate	1,333	2,278	3,611
Total grouped violations	151,770	-	-
Total ungrouped violations	176,157	236,550	412,707

[5] Estimated follow-up inspection staff hours:
1,477 (Fed) safety × 14 Avg. Hrs./follow-up = 20,678 Hrs.
562 (Fed) health × 46 Avg. Hrs./follow-up = 25,852 Hrs.
5,610 (State) safety × 6 Avg. Hrs./follow-up = 33,660 Hrs.
1,465 (State) health × 14 Avg. Hrs./follow-up = 20,510 Hrs.
Total = 100,700 Hrs.

TABLE 1.—OSHA INSPECTION DATA 1991—Continued

	Federal OSHA	State plan States	Total
Contested Citations	3,339	5,088	8,427

Source: OSHA's Office of Regulatory Analysis.

TABLE 2.—OSHA FOLLOW-UP INSPECTION DATA 1991

	Federal OSHA	State plan States	Total
Inspections:			
Safety	1,477	5,610	7,087
Health	562	1,465	2,027
Total	2,039	7,075	9,114
Average Case hrs./Inspection			
Safety	14	6	.....
Health	46	14	.....
Violations:			
Willful	35	38	73
Repeat	688	423	1,111
Serious	991	303	1,294
Unclassified	1	0	1
Other-Than-Serious	773	1,005	1,778
Failure to Abate	43	28	71
Contested citations	119	116	235

Source: OSHA's Office of Regulatory Analysis.

TABLE 3.—ESTIMATES OF COSTS AND COST SAVINGS OF CERTIFICATION OF ABATEMENT

[In millions of dollars]

	Firms		Federal and State OSHA	
	Costs	Savings	Costs	Savings
Compliance Cost:				
Abatement verification	2.6	.....	0	.....
Abatement plans & progress reports	0.3	.....	0	.....
Total costs	2.9	.....	0	.....
COST SAVINGS:				
Verification cost savings	.....	5.0	.....	5.0
Reduction in follow-up activities	.....	.5	.....	1.25
Total Savings	.....	5.5	.....	6.25
Net Savings	.....	2.6	.....	6.25

Source: OSHA's Office of Regulatory Analysis.

VII. Regulatory Flexibility Certification

Pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*), the Agency preliminarily certifies that the proposed regulation would not have a significant impact on small businesses in any industry. As shown in the earlier section on costs of compliance, the cost to individual small establishments is estimated to be the same as for larger establishments. The costs to establishments in every industry are very low. In addition, OSHA inspects proportionately more large establishments than small establishments, and the Agency as a matter of policy does not perform some types of inspections on establishments having ten or fewer employees. The Agency therefore concludes that this regulation does not place any undue burden on small businesses.

VIII. Environmental Impact Assessment

Finding of No Significant Impact

This regulation has been reviewed in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, *et seq.*), the regulations of the Council on Environmental Quality (CEQ) (40 CFR part 1500), and the Department of Labor's NEPA procedures (29 CFR part 11). The Agency estimates that the regulation and employers' compliance efforts will not have any impact on the environment or result in the release of materials that contaminate natural resources or the environment.

IX. Federalism

This proposed regulation has been reviewed in accordance with Executive Order 12612 (52 FR 41685, October 30, 1987), regarding Federalism. This Order requires that agencies, to the extent possible, refrain from limiting State policy options, consult with States prior to taking any actions which would restrict State policy options, and take such actions only when there is clear

constitutional authority and the presence of a problem of national scope. The Order provides for preemption of State law only if there is a clear congressional intent for the Agency to do so. Any such preemption is to be limited to the extent possible.

With respect to States that do not have State plans, the proposed regulation conforms to the preemption provisions of section 18 of the OSH Act (29 U.S.C. 667) which preempts State promulgation and enforcement of requirements dealing with occupational safety and health issues covered by Federal OSHA standards unless the State has an OSHA-approved State plan. See *Gade* v. *National Solid Wastes Management Association*, 112 S.Ct. 2374 (1992). Since States without State plans are already prohibited from issuing citations for violations of requirements covered by Federal OSHA standards, the proposed regulation does not expand this limitation.

The Agency certifies that this proposed regulation has been assessed in accordance with the principles, criteria, and requirements set forth in sections 2 through 5 of Executive Order 12612. Section 18(c)(2) of the OSH Act [29 U.S.C. 667(c)(2)] provides that an OSHA-approved State plan must provide for the development and enforcement of safety and health standards which are, or will be, at least as effective as the Federal program. In implementing this requirement, 29 CFR 1902.3(d)(1) requires a State plan to provide a program for the enforcement of the State standards which is, or will be, at least as effective as that provided under the OSH Act, and provide assurances that the State-plan enforcement program will continue to be at least as effective as the Federal program. Furthermore, 29 CFR 1902.4(a) requires State plans to establish the same procedures and rules as those established by Federal OSHA, or alternative procedures and rules as effective as the Federal procedures and rules. In particular, a State plan must provide that employees be informed of their protections and obligations under the Act. 29 CFR 1902.4(c)(2)(iv). It must also provide for prompt notice to employers and employees when an alleged violation of standards has occurred, including the proposed abatement requirements, by such means as the issuance and posting of citations. 29 CFR 1902.4(c)(2)(x). Since the proposed regulation will improve Federal OSHA's effectiveness in enforcing the OSH Act and, in particular, will foster the abatement of violations and communication to employees about their protections under the Act, State plans will be required to adopt an identical regulation, or an equivalent regulation that is at least as effective as the Federal regulation, within six months of Federal promulgation. Thus, the proposed regulation complies with the Executive Order 12612 with respect to State plan states because (1) it deals with a problem of national scope, and (2) the OSH Act requires that State-plan states adopt OSHA regulations or equally effective regulations.

State comments are invited on this proposal and will be fully considered before a final regulation is promulgated.

X. State Plans

There are currently 25 states and other jurisdictions with OSHA-approved occupational safety and health plans. These 25 jurisdictions are: Alaska, Arizona, California, Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Virgin Islands, Washington, and Wyoming; and Connecticut and New York (for State and Local government employees only).

The 25 jurisdictions with their own OSHA-approved occupational safety and health plans will be required to adopt a regulation on abatement verification that is at least as effective as this Federal regulation within six months of the publication date of this Federal regulation (i.e. six months after the final rule is published).

Current State abatement verification-procedures are described in State field operation manuals and/or directives. Although these State procedures may differ from the Federal procedures, the State-plan states, like OSHA, generally lack regulations or statutory provisions specifically addressing this issue, with the exception of Wyoming which does have a regulation requiring abatement verification. Current State abatement verification procedures are identical to the Federal except as described below:

(1) Nine States have abatement verification forms: Alaska, California, Kentucky, Michigan, North Carolina, Oregon, South Carolina, Washington, and Wyoming. On these forms, the employers describe the specific measures taken to correct each alleged violation. Alaska, Oregon, Washington, Michigan, and Kentucky also ask for documentary evidence. Alaska requests employers to certify under penalty of perjury that the violations were abated by the dates specified.

(2) California and Minnesota ask employers to submit progress reports. California requests monthly progress reports for all long-term abatements, while Minnesota requests a progress report for all serious and most other violations of the State's general industry and construction standards.

(3) For long-term abatements, California requests employers to submit an abatement plan which outlines their procedures for abatement, such as plans for controls to be installed, and schedules for engineering, purchasing, and installation. Washington schedules follow-up inspections every six months to check progress made on long-term or multi-step abatement plans.

(4) Some States (e.g., South Carolina and California) send a reminder letter to the employer just before the abatement verification form is due. Washington reminds employers by letter or telephone. Kentucky and California also send follow-up letters if the form is overdue.

(5) Maryland tracks informal conference settlements to determine if abatement documentation is adequate.

(6) Wyoming has an enforcement regulation requiring the submission of written documents saying when abatement has been accomplished. Failure to do so can result in a civil penalty. Wyoming can also take legal action to enforce submission of a letter of abatement.

(7) New York, which covers only state and local government employees, conducts follow-up inspections to verify abatement for every violation; employers are not asked to send in any abatement verification information.

XI. Public Participation

Interested persons are invited to submit written comments, data, views, and arguments on any issue raised by this proposed regulation. These comments must be postmarked by July 18, 1994, and submitted in quadruplicate to the OSHA Docket Officer, Docket No. C–03, U.S. Department of Labor, Occupational Safety and Health Administration, room N2625, 200 Constitution Avenue NW., Washington, DC 20210. Written submissions must clearly identify the issues or specific provisions of the proposal which are being addressed, and the position taken with respect to these issues or provisions. Comments will be available for public inspection and copying at the above address between the hours of 8:15 a.m. and 4:45 p.m., Monday through Friday (except Federal holidays). All timely submissions will additionally, be made part of the public record for this regulation, and will be available for inspection. The preliminary regulatory impact assessment and the exhibits

cited in this document will be available for public inspection and copying at the above address. All comments will be carefully evaluated and considered by OSHA in developing the final regulation.

XII. OMB Approval Under the Paperwork Reduction Act

5 CFR part 1320 sets forth procedures for agencies to follow in obtaining OMB clearance for information collection requirements under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* This proposed abatement verification regulation requires employers to submit to OSHA (1) an abatement certificate and accompanying documentary evidence, (2) abatement plans and progress reports when specifically required on the citation, and (3) verification that the hazardous conditions cited have been corrected. In accordance with the provisions of the Paperwork Reduction Act and regulations issued pursuant thereto, OSHA certifies that it has submitted the information collection requirements for this proposal to OMB for review under section 3504(h) of the Act.

The public reporting burden for this collection of information is estimated to average fifteen minutes per citation item. Send any comments regarding this burden estimate, or any other aspect of these information-collection procedures, including suggestions for reducing this burden, to the Office of Information Management, Department of Labor, room N–1301, 200 Constitution Avenue, NW., Washington, DC 20210, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

XIII. Authority

This document was prepared under the direction of Joseph A. Dear, Assistant Secretary of Labor for Occupational Safety and health, U.S. Department of Labor, 200 Constitution Ave. NW., Washington, DC 20210. It is issued pursuant to Sections 8(c)(1), 8(g) and 9(b) of the Occupational Safety and Health Act of 1970, (29 U.S.C. 657, 658).

List of Subjects in 29 CFR Part 1903

Abatement, Law enforcement, Occupational safety and health, Reporting and recordkeeping requirements.

Signed in Washington, DC, this 11 day of April 1994.

Joseph A. Dear,

Assistant Secretary of Labor.

Part 1903 of title 29 of the Code of Federal Regulations is proposed to be amended as follows:

PART 1903—INSPECTIONS, CITATION, AND PROPOSED PENALTIES

1. The authority citation for Part 1903 would be revised to read as follows:

Authority: Secs. 8, 9, Occupational Safety and Health Act of 1970 (29 U.S.C. 657, 658); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), or 1–90 (55 FR 9033), as applicable.

Sections 1903.7 and 1903.19 also issued under 5 U.S.C. 553.

§§ 1903.19, 1903.20, 1903.21 [Redesignated as §§ 1903.20, 1903.21, 1903.22]

2. Part 1903 would be amended by redesignating §§ 1903.19, 1903.20, and 1903.21 as §§ 1903.20, 1903.21, and 1903.22, and by adding new § 1903.19, to read as follows:

§ 1903.19 Abatement verification.

(a) *Scope and application.* This regulation requires all employers to verify the abatement of violative conditions set forth in citations, as detailed below.

(b) *Definitions.*

Abatement date means (1) the date set forth in a citation for the abatement of a violation when the citation item has not been contested; (2) when a citation item has been contested and the Commission has issued a final order, the date computed by adding to the final order date either the amount of time allowed for abatement in the original citation or, if the order modifies the abatement period, the newly specified period; (3) the date for abatement expressly set forth in a final order; (4) the date for abatement set forth in a PMA final order; or (5) the date for abatement expressly set forth in a settlement agreement.

Abatement plan is a written, detailed plan outlining a schedule for the implementation of measures to achieve abatement.

Abatement verification includes a final abatement certificate, an abatement plan and progress reports.

Area Director means the employee or officer regularly or temporarily in charge of an Area Office of the Occupational Safety and Health Administration, U.S. Department of Labor, or any other person or persons who are authorized to act for such employee or officer.

Assistant Secretary means the Assistant Secretary of Labor for Occupational Safety and Health, or designated representative.

Citation item is a separately designated portion of a citation containing one or more instances of violation.

Commission is the Occupational Safety and Health Review Commission.

Equipment is a machine or device, powered or unpowered, used to do work.

Final order date is (1) where the citation item has not been contested, the fifteenth working day after the employer's receipt of the notification of proposed penalty with respect to a citation item; (2) the thirtieth day after the date on which a decision of a Commission administrative law judge, including an order approving a settlement or a withdrawal of a notice of contest, has been docketed with the Commission, unless a member of the Commission has directed review; (3) where review has been directed, the thirtieth day after the date on which the Commission issues its decision, including but not limited to, an order approving a settlement or a withdrawal of a notice of contest, or an order severing citation items from a case; or (4) the date on which a court of appeals issues a decision where the Commission order has been previously stayed.

PMA is a petition for modification of the abatement date.

PMA final order is (1) OSHA's approval of an uncontested PMA; (2) an order of a Commission administrative law judge granting a PMA, in whole or in part, unless the judge's decision is directed for review within thirty days of its docketing with the Commission; (3) an order of Members of the Commission granting a PMA, in whole or in part, where review has been directed; or (4) an order of a court of appeals granting a PMA, in whole or in part.

Progress report is a written report explaining what measures have been taken, if any, in the process of achieving abatement of a violative condition in a citation item, other than measures ultimately achieving abatement; and the dates on which those measures have been taken.

(c) *Abatement certificate.* Each employer shall submit to the Area Director issuing the citation an abatement certificate with respect to each citation item, and do so within thirty calendar days after the abatement date for the citation item.

(1) The abatement certificate shall contain the following information:

(i) Each citation item;

(ii) A statement noting whether or not abatement has been accomplished with respect to each citation item and instance listed in the citation;

(iii) A description of the measures taken to accomplish abatement;

(iv) The date abatement was accomplished;

(v) If abatement has not been accomplished, the reason(s) for not abating;

(vi) The signature of the employer or the employer's duly authorized representative;

(vii) The date of the signature.

(2) If the employer has initially stated in an abatement certificate that a particular citation item has not been abated, and later the employer abates the condition, the employer shall submit to the Area Director issuing the citation a new abatement certificate within five calendar days after abatement.

(3) Abatement certificates for more than one citation item may be combined in a single document.

(4) Each abatement certificate with respect to a citation item shall be accompanied by documentary evidence that is sufficient to demonstrate clearly that the hazard has been corrected.

(d) *Abatement plan.* (1) An Area Director may require in a citation that the employer submit a formal plan for the abatement of safety and health violations in instances where multiple steps or long-term abatement actions are necessary.

(2) When called for in a citation, the employer shall prepare a written, signed, and dated abatement plan with respect to each citation item for which the plan is required.

(3) Abatement plans for more than one citation item may be combined within a single document.

(4) The abatement plan shall be submitted to the Area Director issuing the citation within twenty-five calendar days after the date of the final order or the date of the PMA final order.

(e) *Progress reports.* An Area Director, at his or her discretion, may require progress reports in a citation where multi-step abatement is deemed appropriate.

(1) The Area Director shall specify the citation item with respect to which the progress reports are required, the measures which the Area Director expects to be taken on or before the submission of each progress report, and the date for the submission of each progress report, expressed as the number of calendar days from the date of the final order or the date of the PMA final order.

(2) The employer shall submit to the Area Director the requested progress reports with respect to each citation item for which they are required under the abatement plan.

(3) Progress reports for more than one citation item may be combined within a single document.

(4) Progress reports shall be submitted at intervals specified by the Area Director in the citation, but the first progress report shall not be submitted earlier than thirty calendar days after the date of the final order or the date of the PMA final order.

(f) *Tagging cited equipment.* (1) The employer shall affix a "Warning" tag on all cited equipment upon receipt of the citation.

(2) The design, application, and use of the tag required by this section shall be in accordance with 29 CFR 1910.145(f)(4).

(3) In addition to the information set forth in 1910.145(f), the tag shall identify the equipment, state that a citation has been issued, and identify where the citation is posted.

(4) The employer shall ensure that the tag remains affixed to the cited equipment in a conspicuous location at or near the controls of such equipment and/or the hazardous portion of the equipment, until the cited equipment is brought into compliance with OSHA requirements or the equipment is permanently removed from service. The temporary removal from service of cited equipment is not compliance with OSHA requirements for the purpose of this section. The protection and posting requirements of paragraph (i)(4) of this section are also applicable to this paragraph.

(g) *Document Transmittal.* When this section requires submission of a document to the Area Director, it may be submitted by first-class mail, postage prepaid, facsimile transmission, or hand delivery. When the document is mailed, the date of submission is the date of the postmark. When the document is submitted by facsimile transmission or hand delivery, the date of submission is the date when the document is received by the Area Director.

Note: Receipt of an employer's documents by the Agency under this regulation does not constitute an agreement that the employer is in compliance.

(h) *Accuracy of documentation.* The employer shall assure that each statement in a document or accompanying documentation required by this section is accurate.

(i) *Posting requirements.* A copy of each document required to be submitted to the Area Director shall be posted, at the time of submission, at or near each place the violation(s) described in the citation occurred.

(1) Where, because of an employer's operations, it is not practicable to post a document at or near the location of the violation(s), such document shall be posted, unedited, in a prominent place where it will be readily observable by all affected employees.

(2) Where it is physically impracticable, because of a document's size or magnitude, to post abatement plans and progress reports, a notice to affected employees shall be posted indicating the location where the document(s) can be reviewed.

(3) The abatement certificates, abatement plan(s) and progress reports shall be provided, upon request for examination and copying, to employees, to employee representatives, and to the Assistant Secretary.

Note: If employers are engaged in activities which are geographically dispersed (see § 1903.2(b)), the document may be posted at the location where employees report each day. If employees do not primarily work at, or report to, a single location (see § 1903.2(b)), the document may be posted at the location where employees work.

(4) The employer shall assure that any document required to be posted by this section is not altered, defaced, or covered by other material.

(5) Any document required to be posted by this section shall remain posted until the violation has been abated, or for six calendar days, whichever is later.

(j) *Penalties.* Any employer failing to comply with the provisions of this section shall be subject to citation and penalty in accordance with the provisions of Section 9 and 17 of the Act.

(k) *False statements.* False statements knowingly made in any document required by this section are subject to criminal penalties set forth in section 17(g) of the Act. False statements knowingly and willfully made in any document required by this section are subject to the criminal penalties set forth in 18 U.S.C. 1001.

[FR Doc. 94–9109 Filed 4–18–94; 8:45 am]
BILLING CODE 4510–26–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1837 and 1852

Revision to NASA FAR Supplement Coverage on Pension Portability

AGENCY: Office of Procurement, Procurement Policy Division, National Aeronautics and Space Administration (NASA).

ACTION: Notice of proposed rulemaking.

SUMMARY: This rule proposes to amend the regulation on pension portability under NASA contracts. Questions from NASA personnel and industry

identified a need for consistency regarding the vesting period requirements, flowdown to subcontractors, and how to determine when pension portability would be appropriate. The rule proposes more consistent treatment of those issues.

DATES: Comments must be received on or before June 20, 1994.

ADDRESSES: Submit comments to Mr. Joseph Le Cren, Contract Pricing and Finance Division (Code HC), Office of Procurement, NASA Headquarters, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Le Cren, (202) 358–0444.

SUPPLEMENTARY INFORMATION:

Background

Questions were raised by both industry and within NASA regarding certain aspects of the coverage on pension portability. The majority of the questions concerned the lack of consistency of NASA's installations regarding the vesting period requirements and whether the pension portability requirements should apply to subcontracts. The purpose of this change is to address those issues. The rule also requires the use of the clause at 48 CFR 1852.237–71 rather than allowing a clause substantially the same as that one. It also adds a condition for determining when pension portability would be appropriate. Furthermore, the rule replaces the requirement that a copy of each written determination by the procurement officer to use pension portability be sent to the Associate Administrator for Procurement with one that the procurement officer only need keep a record of all such determinations.

Impact

NASA certifies that this regulation 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.*). This rule does not impose any reporting or record keeping requirements subject to the Paperwork Reduction Act.

List of Subjects in 48 CFR Parts 1837 and 1852

Government procurement.

Deidre A. Lee,

Associate Administrator for Procurement.

Accordingly, 48 CFR parts 1837 and 1852 are proposed to be amended as follows.

PART 1837—[AMENDED]

1. The authority citation for 48 CFR parts 1837 and 1852 continues to read as follows:

Authority: 42 U.S.C. 2473 (c)(1).

2. In part 1837, subpart 1837.1 is revised to read as follows:

Subpart 1837.1—Service Contracts—General

1837.101 Definitions.

Pension portability means the recognition and continuation in a successor service contract of the predecessor service contract employees' pension rights and benefits.

1837.110 Solicitation provisions and contract clauses.

The contracting officer shall use the clause at 1852.237–71, Pension Portability, in a solicitation, contract or negotiated contract modification for additional work when the procurement officer determines, in accordance with the requirements of 1837.170, that pension portability is in the Government's best interest.

1837.170 Pension portability.

(a) It is NASA's policy not to require pension portability in service contracts. However, pension portability requirements may be included in a solicitation, contract, or contract modification for additional work under the following conditions:

(1)(i) There is a continuing need for the same or similar services for a minimum of five years (inclusive of options) and, if and when the contractor changes, a high percentage of the predecessor contractor's employees are expected to remain with the program; or

(ii) Where the employees under a predecessor contract were covered by a portable pension plan, a follow-on contract or a contract consolidating existing services shall include pension portability as long as the total contract period covered by the plan, past and future, covers five years.

(2) Only defined contribution plans, or multiparty defined benefit plans operated under a collective bargaining agreement where the plan follows the employee instead of the employer, shall be permitted in the portability provisions;

(3) Vesting shall be 100 percent at the earlier of one year of continuous employee service or contract termination;

(4) There is a clear description of the plan, including coverage regarding service, pay, liabilities, vesting, termination, and benefits from prior contracts, as appropriate; and

(5) The procurement officer has made a written determination that such a provision is in the Government's best interest, including the facts supporting that determination.

(b) The procurement officer shall maintain a record of all written determinations that the use of pension portability is in the Government's best interest.

PART 1852—[AMENDED]

3. In part 1852, section 1852.237–71 is revised to read as follows:

1852.237–71 Pension portability.

As prescribed at 1837.110(a), insert the following clause:

Pension Portability

(XXX 1994)

(a) In order for pension costs attributable to employees assigned to this contract to be allowable costs under this contract, the plans covering such employees must:

(i) Comply with all applicable Government laws and regulations;

(ii) Be a defined contribution plan or a multiparty defined benefit plan operated under a collective bargaining agreement. In either case, the plan must be portable, i.e., the plan follows the employee, not the employer;

(iii) Provide for 100 percent employee vesting at the earlier of one year of continuous employee service or contract termination; and

(iv) Not be modified, terminated, or a new plan adopted without the prior written approval of the cognizant NASA Contracting Officer.

(b) The Contractor shall include paragraph (a) of this clause in all subcontracts for continuing services under a service contract where: (1) The prime contract requires pension portability, (2) the subcontracted labor dollars (excluding any burdens or profit/fee) exceed $2,500,000 and ten percent of the total prime contract labor dollars (excluding any burdens or profit/fee), and (3) the conditions at 1837.170 are satisfied.

(End of Clause)

[FR Doc. 94–9399 Filed 4–18–94; 8:45 am]

BILLING CODE 7510–01–M

Notices

Federal Register
Vol. 59, No. 75
Tuesday, April 19, 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

Food and Nutrition Service

National Academy of Sciences, Institute of Medicine, Food and Nutrition Board, Committee on Scientific Evaluation of WIC Nutrition Risk Criteria; Opportunity To Provide Written Comments, Public Meeting

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: Notice is hereby given that the National Academy of Sciences' (NAS) Institute of Medicine (IOM), through its Food and Nutrition Board (FNB), will conduct the first of two public meetings to obtain additional perspectives about the scientific base for the nutrition risk crtieria used in the Special Supplemental Food Program for Women, Infants, and Children (WIC). Eligibility for WIC is based in part on nutrition risk. Through a grant from the U.S. Department of Agriculture's (USDA) Food and Nutrition Service (FNS), the NAS is reviewing the scientific base for nutrition risk criteria used in WIC. At the end of the 30-month study, NAS will publish a report and provide copies to FNS containing its conclusions.

DATES: The public meeting will be held on Thursday, May 19, 1994, beginning at 8:30 a.m. Anyone wishing to reserve a place on the agenda at the public meeting to make a 5-minute oral presentation must submit a written request to speak and a copy of their remarks no later than Friday, May 13, 1994. Additional oral presentations may be made on the day of the meeting only as time permits. Such requests should be made at the beginning of the public meeting, no later than 9 a.m. Written comments without oral presentations must also be submitted by May 13. Presentations made at this meeting will be part of the public record, and the press may be present.

ADDRESSES: The public meeting will be held at the National Academy of Sciences, 2101 Constitution Avenue, NW., Washington, DC. Requests to make a 5-minute oral presentation about the scientific basis of WIC nutrition risk criteria at the public meeting or to submit written comments without an oral presentation should be sent to Robert Earl, Study Director, Food and Nutrition Board, Institute of Medicine (FO 3041), National Academy of Sciences, 2101 Constitution Avenue., NW., Washington, DC 20418.

FOR FURTHER INFORMATION CONTACT: Robert Earl at (2020 334–1917 (phone); (202) 334–2316 (fascimile).

SUPPLEMENTARY INFORMATION: The NAS, through IOM's FNB, formed the Committee on Scientific Evaluation of WIC Nutrition Risk Criteria (committee) in October 1993 to examine the scientific base for determining nutrition risk criteria used in the WIC program. The WIC program operates through a preventive approach to health care by providing supplemental foods and nutrition assessment and education to improve nutritional status and thus to improve pregnancy outcome and growth and development of infants and children (through 5 years of age). The program links food assistance and health programs by its goal of improving nutritional status through food delivery and by serving as a gateway to the public health system principally through Medicaid-delivered health services for pregnant and lactating women, for infants, and for children. Eligibility for the WIC program is based on income (185 percent of poverty level); status as a pregnant or lactating woman, an infant, or a child; and nutritional risk.

Nutrition risk criteria include biochemical and anthropometric measurements, nutritionally related medical conditions, dietary deficiencies that impair or endanger health, and conditions that predispose persons to inadequate nutrition patterns or nutritionally related medical conditions. The appropriateness of nutrition risk criteria is an issue of major interest to the WIC community and of great significance to the future direction of the program. The committee deliberations will address these issues, thereby providing a basis for establishing approriate guidance for nutrition risk criteria used to establish program eligibility.

The committee will review all WIC nutrition risk factors currently covered by the program. The committee's deliberations will begin with those risk criteria for which there is substantial scientific literature and move to those for which there is little or no scientific literature, that are most difficult to quantify, or that are not likely to be affected by the supplemental food package delivered through the program. NAS plans to identify gaps in scientific knowledge, to examine specific segments of the WIC population identified to be at risk for each criterion, and if applicable, to report its findings regarding how to determine who is at risk for each criterion, including numerical values.

Public meetings will solicit information from WIC program administrators, staff, and participants as well as from researchers in the fields related to the nutrition risk criteria under study. Two public meetings will be conducted during the course of the committee's work, both in 1994. This first public meeting will be held in Washington, DC. A second public meeting will be schedule at an upcoming meeting of the committee in 1994 at the NAS west-coast meeting facility, the Arnold and Mabel Beckman Center, Irvine, California. A report of the committee's findings and recommendations will be published by the end of the study in April 1996.

Dated: April 15, 1994.

William E. Ludwig,

Administrator, Food and Nutrition Service, USDA.

[FR Doc. 94–9569 Filed 4–18–94; 8:45 am]
BILLING CODE 3410–30–M

Forest Service

Newspapers Used for Publication of Legal Notice of Appealable Decisions for the Northern Region; Idaho, Montana, North Dakota, and Portions of South Dakota and Eastern Washington

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: This notice lists the newspapers that will be used by all Ranger Districts, Forests, and the

Regional Office of the Northern Region to publish legal notice of all decisions subject to appeal under 36 CFR Parts 215 and 217 and to publish notices for public comment and notice of decision subject to the provisions of 36 CFR Part 215. The intended effect of this action is to inform interested members of the public which newspapers will be used to publish legal notices for public comment or decisions, thereby allowing them to receive constructive notice of a decision, to provide clear evidence of timely notice, and to achieve consistency in administering the appeals process.

DATES: Publication of legal notices in the listed newspapers will begin with decisions subject to appeal that are made on or after April 30, 1994. The list of newspapers will remain in effect until another notice is published in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Stephen Solem; Regional Appeals Coordinator; Northern Region; P.O. Box 7669; Missoula, Montana 59807. Phone: (406) 329–3647

The newspapers to be used are as follows:

Northern Regional Office

Regional Forester Decisions in Montana

The Missoulian, Great Falls Tribune, and The Billings Gazette Regional Forester decisions in Northern Idaho and Eastern Washington.

The Spokesman Review

Regional Forester Decisions in North Dakota—Bismarck Tribune

Beaverhead—Montana Standard
Bitterroot—Ravalli Republic
Clearwater—Lewiston Morning Tribune
Custer—Billings Gazette (Montana); Bismarck Tribune (North Dakota); Rapid City Journal (South Dakota)
Deerlodge—Montana Standard
Flathead—Daily Interlake
Gallatin—Bozeman Chronicle
Helena—Independent Record
Idaho Panhandle—Spokesman Review
Kootenai—Daily Interlake
Lewis & Clark—Great Falls Tribune
Lolo—Missoulian
Nez Perce—Lewiston Morning Tribune

Supplemental notices may be placed in any newspaper, but time frames/deadlines will be calculated based upon notices in newspapers of record listed above.

Dated: April 14, 1994.

John M. Hughes,

Deputy Regional Forester.

[FR Doc. 94–9415 Filed 4–18–94; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Notice of Government Owned Inventions Available for Licensing

AGENCY: National Institute of Standards and Technology Commerce.

SUMMARY: The inventions listed below are owned by the U.S. Government, as represented by the Department of Commerce, and are available for licensing in accordance with 35 U.S.C. 207 and 37 CFR part 404 to achieve expeditious commercialization of results of federally funded research and development.

FOR FURTHER INFORMATION CONTACT: Technical and licensing information on these inventions may be obtained by writing to: Nancy Hale, National Institute of Standards and Technology, Office of Technology Commercialization, Physics Building, room B–256, Gaithersburg, MD 20899; Fax 301–869–2751. Any request for information should include the NIST Docket No. and Title for the relevant invention as indicated below.

SUPPLEMENTARY INFORMATION: The inventions available for licensing are:

NIST Docket No. 89–031

Title: Highly Accurate In-Situ Determination of Refractivity of an Ambient Atmosphere
Description: A method of determining the index of refraction of an ambient atmosphere, such as air. This measurement can then be used to enhance the accuracy of a quantity measurement (such as measurement of distance or length), for example, during the "step and repeat" process of patterning integrated circuit wafers using photolithography.

NIST Docket No. 91–002

Title: Thermal Properties Measurement Using a Superconductor Sensor
Description: Superconducting materials are used to sense the thermal environment in low power cryogenic flow meters, bolometers, level detectors, etc. This invention uses derivative functions of the voltage/current relationship, or any other parameter indicative of the non-linearity of this relationship, to control the current in these devices via a feedback loop.

NIST Docket No. 91–010

Title: Corrosion Resistant Thin-Film Thermocouples and Method
Description: These thin-film thermocouples provide fast temperature measurements and can operate in highly corrosive environments. The response speed of these devices approach 1,000 times faster than commercially available sheathed sensors. They can be miniaturized for use in harsh environments.

NIST Docket No. 91–013

Title: Method and Apparatus for Analyzing Character Strings
Description: Newly developed NIST technology analyzes and corrects errors in electronically stored character strings derived from handwritten documents. A processor has been designed to incorporate the technology, which significantly improves optical character recognition of handwritten data.

NIST Docket No. 92–044

Title: Monitor for Gas-Metal-Arc Welding (GMAW) Process
Description: New NIST technology provides improved control of gas-metal-arc welding (GMAW) and reduces material flaws caused by process perturbations. The technique relates arc light intensity to arc length, which corresponds with arc voltage, indicating metal-transfer frequency.

NIST Docket No. 93–016

Title: High Intermetallic Titanium-Aluminum-Vanadium-Chromium Alloys Combining High Temperature Strength with Excellent Room Temperature Ductility
Description: New NIST alloys are about 50 percent lighter than other alloys used in aerospace and industrial applications. They are very ductile at room temperatures and provide excellent strength at high temperatures.

NIST Docket No. 93–017

Title: Correlated Run Length Method for Detecting Form Structure within Digitized Documents
Description: A method of analyzing digitized form documents to identify lines, boxes and other shapes on the documents; this information allows a scanning system to identify the form being scanned and the data entry fields on that form.

NIST Docket No. 31–036

Title: Amperometric Flow Injection Analysis Biosensor for Glucose Based on Graphite Paste Modified with Tetracyanoquinodimethane
Description: NIST has developed a new biosensor for glucose based on using a graphite paste of glucose oxidase and tetracyanoquinodimethan (TCNQ) in a flow injection analysis system.

Dated April 13, 1994.

Samuel Kramer,

Associate Director.

[FR Doc. 94–9414 Filed 4–18–94; 8:45 am]

BILLING CODE 3510–13–M

National Oceanic and Atmospheric Administration

Availability of Draft Management Plan for the Apalachicola National Estuarine Research Reserve

AGENCY: Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Notice of availability of draft management plan.

SUMMARY: Notice is hereby given that the Florida Department of Environmental Protection has prepared a draft management plan for the Apalachicola National Estuarine Research Reserve. Comments will be accepted on the draft plan for forty-five days after the date of publication of this notice.

The Apalachicola National Estuarine Research Reserve was designated in 1979. Pursuant to the Coastal Zone Management Act and implementing regulations, the Florida Department of Environmental Protection has produced a five-year management plan that provides a course of action for managing the site from 1993 through 1998.

Copies of the document can be obtained from the Apalachicola National Estuarine Research Reserve, Florida Department of Environmental Protection, 261 Seventh Street, Apalachicola, FL 32320. (904) 653–8063.

Comments should be addressed to: Paul Salop, Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, Station 12634, 1305 East-West Highway, Silver Spring, MD 20910.

Federal Domestic Assistance Catalog Number 11.420 (Coastal Zone Management) Estuarine Sanctuaries.

Dated: April 11, 1994.

W. Stanley Wilson,

Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 94–9369 Filed 4–18–94; 8:45 am]

BILLING CODE 3510–08–M

[I.D. 040894D]

Marine Mammals

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

ACTION: Receipt of application for a scientific research permit (P562).

SUMMARY: Notice is hereby given that Mr. Robin Baird, of the Marine Mammal Research Group, Victoria, B.C., Canada, V8P 5L5, has applied in due form for a permit to take killer whales (*Orcinus orca*) for purposes of scientific research.

DATES: Written comments must be received on or before May 19, 1994.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289); and

Director, Northwest Region, NMFS, NOAA, 7600 Sand Point Way, NE., BIN C15700, Seattle, WA 98115 (206/526–6150).

Written data or views, or requests for a public hearing on this request, should be submitted to the Director, Office of Protected Resources, NMFS, NOAA, U.S. Department of Commerce, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

The applicant proposes to apply satellite tags to up to 25 killer whales (*Orcinus orca*) annually in the waters off Washington over a 5-year period. The tags will be attached via suction cups and will be used to study aspects of diving behavior. The applicant estimates that up to 300 killer whales may be inadvertently harassed annually, incidental to the tagging activities.]

Dated: April 12, 1994

Herbert W. Kaufman,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 94-9333 Filed 4-18-94; 8:45a.m.]

BILLING CODE 3510–22–F

[I.D. 032394B]

Marine Mammals

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

ACTION: Issuance of Modification No. 1 to Scientific Research Permit 867 (P540).

SUMMARY: Notice is hereby given that a request for modification of Scientific Research Permit No. 867 submitted by Dr. Frank Cipriano, Kewalo Marine Laboratory, 13 Ahui Street, Honolulu, HI 96813, has been granted.

ADDRESSES: The modification and related documents are available for review by written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, 1315 East-West Hwy., Room 13130, Silver Spring, MD 20910 (301/713–2289);

Director, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213 (310/980–4015);

Director, Northwest Region, NMFS, 7600 Sand Point Way, NE, BIN C15700, Seattle, WA 98115 (206/526–6150);

Director, Alaska Region, NMFS, Federal Annex, P.O. Box 21668, Juneau, AK 99802 (907/586–7221); and

Director, Southeast Region, NMFS, 9450 Koger Blvd., St. Petersburg, FL 33702 (813/893–3141).

SUPPLEMENTARY INFORMATION: On February 14, 1994, notice was published in the **Federal Register** (59 FR 6949) that a modification of Permit No. 867, issued July 27, 1993 (58 FR 40114), had been requested by the above-named individual. The requested modification has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the provisions of §§1A216.33(d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the provisions of §1A222.25 of the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR part 222).

Permit No. 867 authorized the Holder to obtain tissue samples from up to 100 dusky and Pacific whitesided dolphins *Lagenorhynchus obscurus* and *L. obliquidens*, respectively, and obtain 40 samples each from white-beaked *L. albirostris*, Atlantic white-sided *L. acutus*, hourglass *L. aruciger*, and Peale's *L. australis* dolphins. The modification authorized additional samples to be obtained from 54 odontocete species from available collections and museums for purposes of scientific research.

Issuance of this modification, as required by the ESA, was based on a finding that such permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of this permit; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: April 12, 1994

Herbert W. Kaufman,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service

[FR Doc. 94–9334 Filed 4–18–94; 8:45am]

BILLING CODE 3510–22–F

[I.D. 033094B]

Marine Mammals

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

ACTION: Receipt of Application to Modify Permit No. 846 (P532A).

SUMMARY: Notice is hereby given that Drs. Randall W. Davis, Michael Castellini, and Terrie M. Williams have requested a modification to Permit No. 846.

ADDRESSES: The modification request 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, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802 (907/586–7221); and

Alaska Fisheries Science Center, National Marine Mammal Laboratory, NMFS, 7600 Sand Point Way, NE, BIN C15700, Seattle, WA 98115–0070 (206/526–4000).

Written data or views, or requests for a public hearing on this request should be submitted to the Director, Office of Protected Resources, NMFS, NOAA, U.S. Department of Commerce, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular modification request would be appropriate.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

SUPPLEMENTARY INFORMATION: The subject modification to Permit No. 846, issued on June 7, 1993 (58 FR 32913) is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), 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 regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR part 222).

Permit No. 846 authorizes the Permit Holder to conduct scientific research on Steller sea lions (*Eumetopias jubatus*). The researchers may capture, handle, biopsy, tag and release up to 40 pups; capture up to 10 (five each location) adult females to determine suitability for physiological studies; capture, tag, handle, mark and biopsy up to 20 adult females, (10 each location); recapture and release females and pups up to 3 times; unintentionally kill two pups/two adults during research operations; and incidentally disturb up to 1000 Stellers while conducting the research. These activities were authorized to be conducted annually on Chirikof and Forrester Islands in Alaska.

The Permit Holder requests authorization to change location of take to Lowrie and Marmot Islands, increase the number of pups handled to 60 annually (30 each location) and attach small subcutaneous transmitters to five of the 10 adult females authorized to be tagged with external transmitters.

Dated: April 12, 1994

Herbert W. Kaufman

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 94–9335 Filed 4–18–94; 8:45am]

BILLING CODE 3510–22–F

[I.D. 032894E]

Marine Mammals

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

ACTION: Issuance of scientific research permit no. 898 (P7721B65).

SUMMARY: Notice is hereby given that the Southwest Fisheries Science Center, NMFS, P.O. Box 271, La Jolla, CA 92038–0271, has been issued a permit to take Hawaiian monk seals (*Monachus schauinslandi*) for purposes of scientific research and to enhance the survival of the species.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment, in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Director, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802 (310/980–4016); and

Marine Mammal Coordinator, Pacific Area Office, NMFS, 2570 Dole Street, Room 106, Honolulu, HI 96822 (808/955–8831).

SUPPLEMENTARY INFORMATION: On February 23, 1994, notice was published in the **Federal Register** (59 FR 8602) that a request for a permit to take Hawaiian monk seals had been submitted by the above-named organization. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), 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 regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR part 222).

Issuance of this permit, as required by the Endangered Species Act of 1973, was based on a finding that such permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of this permit; and (3) is consistent with the purposes and

policies set forth in section 2 of the Endangered Species Act.

Dated: April 12, 1994

Herbert W. Kaufman,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service

[FR DOC. 94–9362 Filed 4–18–94; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 040694E]

Endangered Species; Permits

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

ACTION: Issuance of a Scientific Research Permit (P7701B66)

On February 28, 1994, notice was published (59 FR 9474) thatan application had been filed by NMFS Northwest Fisheries Science Center to take listed species of Snake River salmon as authorized by the Endangered Species Act of 1973 (ESA) (16 U.S.C. §§1A1531–1543) and NMFS regulations governing listedfish and wildlife permits (50 CFR parts 217–222).

Notice is hereby given that on April 11, 1994, as authorized by the provisions of the ESA, NMFS issued Permit Number 900 for the above taking subject to certain conditions set forth therein. Issuance of this permit, as required by the ESA, was based on afinding that such permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the listed species which is/are the subject of this permit; (3) is consistent with the purposes and policies set forth in Section 2 of the ESA. This permit was also issued in accordance with and is subject to Parts 217–222 of Title 50 CFR, NMFS regulations governing listed species permits.

The application, permit, and supporting documentation are available for review by interested persons in the following offices by appointment:

Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, MD 20910–3226 (301–713–2322); and

Environmental and Technical Services Division, National Marine Fisheries Service, 911 North East 11th Ave., Room 620, Portland, OR 97232 (503–230–5400).

Dated: April 11, 1994

Herbert W. Kaufman,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR DOC. 94–9370 Filed 4–18–94; 8:45a.m.]

BILLING CODE 3510–22–F

[I.D. 040794B]

Endangered Species; Permits

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

ACTION: Notice of receipt of application for Modification to Scientific Research Permit (P503A)

Notice is hereby given that the Idaho Department of Fish and Game (IDFG) has applied in due form for a modification to Scientific Research Permit 795 (P503A) to take listed species of Snake River salmon as authorized by the Endangered Species Act of 1973 (ESA) (16 U.S.C. §§1A1531-1543) and NMFS regulations governing listed fish and wildlife permits (50 CFR Part 217-227).

Permit 795 was issued on July 29, 1992, and subsequently modified twice, as authorized by the ESA. It authorizes scientific research and enhancement activities involving listed Snake River sockeye salmon (*Oncorhynchus nerka*), through December 31, 1997. The application for a modification proposes the release of mature 1991–1993 Redfish Lake sockeye outmigrants, progeny of the brood year 1993 Redfish Lake anadromous sockeye, and mature progeny of the brood year 1991 Redfish Lake anadromous sockeye. In addition, the application requests a change in the release dates and methods.

Written data or views, or requests for a public hearing on this application for a modification should be submitted to the Director, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., Silver Spring, MD 20910–3226 within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application summary are those of the Applicant and do not necessarily reflect the views of NMFS.

The application, permit, modifications, current modification request and supporting documentation are available for review by interested persons in the following offices by appointment:

Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., Silver Spring, MD 20910–3226 (301–713–2322); and

Environmental and Technical Services Division, National Marine Fisheries Service, 911 North East 11th Ave., Room 620, Portland, OR 97232 (503–230–5400).

Dated: April 11, 1994

Herbert W. Kaufman,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service

[FR DOC. 94–9371 Filed 4–18–94; 8:45 a.m.]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Restraint Limits for Certain Man-Made Fiber, Silk Blend and Other Vegetable Textiles and Textile Products Produced or Manufactured in the People's Republic of China

April 13, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: April 13, 1994.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, 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) 927-6703. 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).

The current limit for Category 840 is being increased for swing and carryforward. The limit for Category 607 is being reduced to account for the swing being applied.

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). Also

see 59 FR 3847, published on January 27, 1994.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

April 13, 1994.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on January 24, 1994, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in the People's Republic of China and exported during the twelve-month period which began on January 1, 1994 and extends through December 31, 1994.

Effective on April 13, 1994, you are directed to adjust the limits for the following categories, as provided under the terms of the Memorandum of Understanding dated January 17, 1994 between the Governments of the United States and the People's Republic of China:

Category	Adjusted twelve-month limit [1]
Sublevels in Group I	
607	2,834,072 kilograms.
840	487,929 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1993.

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. 94–9430 Filed 4–18–94; 8:45 am]

BILLING CODE 3510–DR–F

Request for Public Comments on Bilateral Textile Consultations with the Government of the People's Republic of China on Certain Cotton and Man-Made Fiber Textile Products

April 13, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: April 21, 1994

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6703. For information on embargoes and quota re-openings, call (202) 482–3715. For information on categories on which consultations have been requested, call (202) 482–3740.

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).

On March 30, 1994, under the terms of the Memorandum of Understanding (MOU) dated January 17, 1994, between the Governments of the United States and the People's Republic of China, the United States Government requested consultations with the Government of the People's Republic of China with respect to woven pile fabric in Category 224–V.

The U.S. Government has decided to implement a limit for the prorated period beginning on March 30, 1994 and extending through December 31, 1994.

A summary market statement concerning Category 224–V follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Category 224–V, under the agreement with the the Government of the People's Republic of China, or to comment on domestic production or availability of products included in Category 224–V, is invited to submit 10 copies of such comments or information to Rita D. Hayes, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230; ATTN: Helen L. LeGrande. The comments received will be considered in the context of the consultations with the Government of the People's Republic of China.

Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Further comments may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

The United States remains committed to finding a solution concerning Category 224–V. Should such a solution be reached in consultations with the Government of the People's Republic of China, further notice will be published in the **Federal Register**.

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 64645, published on November 29, 1993). Also see 59 FR 3847, published on January 27, 1994.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Market Statement—China

Category 224–Part—Cotton and Manmade Fiber Woven Pile Fabrics

March 1994

Import Situation and Conclusion

U.S. imports of cotton and manmade fiber woven pile fabrics, Category 224–Part, from China surged to 3,004,237 square meters in 1993, double the 1,433,201 square meters imported in 1992. China is the second largest supplier of cotton and manmade fiber woven pile fabrics, Category 224–part, to the U.S. market, accounting for 21 percent of total imports in 1993. In 1992, China ranked third among the major suppliers, accounting for 12 percent of total imports.

The sharp and substantial increase of Category 224–Part imports from China is causing a real risk of disruption in the U.S. market for cotton and manmade fiber woven pile fabrics.

U.S. Production, Import Penetration, and Market Share

U.S. production of cotton and manmade fiber woven pile fabrics, Category 224–Part, declined from 52,134,000 square meters in 1989 to 44,243,000 square meters in 1992, a decline of 15 percent. Production continued to decline in 1993, falling to 32,867,000 square meters during January-September 1993, 4 percent below the January-September 1992 level. In contrast, U.S. imports of cotton and manmade fiber woven pile fabrics, Category 224–Part, nearly doubled, increasing from 6,063,000 square meters in 1989 to 11,638,000 square meters in 1992. Imports of cotton and manmade fiber woven pile fabrics continued to increase in 1993, reaching 14,456,512

square meters, 25 percent above the 1992 level.

The U.S. producers' share of the market for cotton and manmade fiber woven pile fabrics fell from 90 percent in 1989 to 73 percent during January-September 1993, a decline of 17 percentage points. The ratio of imports to domestic production more than tripled during the same time period, increasing from 12 percent in 1989 to 37 percent during January-September 1993.

Duty-Paid Value and U.S. Producers' Price

Approximately 82 percent of Category 224–Part imports from China during 1993 entered the U.S. under HTSUSA numbers 5801.23.00000—cut weft pile fabrics of cotton, 5801.25.0010—cut warp pile fabrics of cotton weighing over 271 grams per square meter, and 5801.25.0020—cut warp pile fabrics of cotton weighing less than 271 grams per square meter. These fabrics entered the U.S. at landed duty-paid values below U.S. producers' prices for comparable cotton and manmade fiber woven pile fabrics.

Committee for the Implementation of Textile Agreements

April 13, 1994.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on January 24, 1994, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in the People's Republic of China and exported during the period which began on January 1, 1994 and extends through December 31, 1994.

Effective on April 21, 1994 , you are directed to amend the January 24, 1994 directive to separate Category 224 in Group III into part Categories 224–V [1] and 224–O [2].

Also effective on April 21, 1994, you are directed to establish a limit for cotton and man-made fiber woven pile fabric in Category 224–V, produced or manufactured in China and exported during the period beginning on March 30, 1994 and extending through December 31, 1994 at a level of 2,450,923 square meters [3].

Textile products in Category 224–V which have been exported to the United States prior to March 30, 1994 shall not be subject to the limit established in this directive.

[1] Category 224–V: only HTS numbers 5801.21.0000, 5801.23.0000, 5801.24.0000, 5801.25.0010, 5801.25.0020, 5801.26.0010, 5801.26.0020, 5801.31.0000, 5801.33.0000, 5801.34.0000, 5801.35.0010, 5801.35.0020, 5801.36.0010 and 5801.36.0020.

[2] Category 224–O: all HTS numbers except those in 224–V.

[3] The limit has not been adjusted to account for any imports exported after March 29, 1994.

Category 224–V and Category 224–O shall remain subject to the 1994 Group III limit.

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 this action falls 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. 94–9431 Filed 4–18–94; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Department of the Army

Corps of Engineers

Patents Available for Licensing

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice.

SUMMARY: The Department of the Army, U.S. Army Corps of Engineers, announces the general availability of exclusive, partially exclusive or nonexclusive licenses under the following patents. Any licenses granted shall comply with 35 U.S.C. 209 and 37 CFR part 404.

Patent No.	Title	Issued date
5,283,569	Float Actuated Flood Warning System with Remote Telephone Reporting.	02/01/94
5,291,779	High-Wind Snow Collector.	03/08/94
5,292,375	Removal of Lead Based Coating by Vitrification.	03/08/94
5,295,759	Snow Plow Compatible Speed Bumps.	03/22/94
5,296,028	Antifreeze Admixture for Concrete.	03/22/94

DATES: Objections or comments concerning the licensing of these patents must be filed on or before May 19, 1994.

ADDRESSES: Director, Humphreys Engineer Center Support Activity, Office of Counsel, Kingman Building, Fort Belvoir, Virginia 22060–5580.

FOR FURTHER INFORMATION CONTACT: Patricia L. Howland or Alease J. Berry, (703) 355–2160.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 94–9367 Filed 4–18–94; 8:45 am]

BILLING CODE 3710–08–M

Department of the Navy

Government-owned Inventions; Availability for Licensing

AGENCY: Department of the Navy, DoD.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below are assigned to the United States Government as represented by the Secretary of the Navy and are made available for licensing by the Department of the Navy.

Copies of the patents cited are available from the Commissioner of Patents and Trademarks, Washington, D.C. 20231, for $3.00 each. Requests for copies of patents must include the patent number.

Copies of patent applications cited are available from the National Technical Information Service (NTIS), Springfield, Virginia 22161 for $6.95 each ($10.95 outside North American Continent). Requests for copies of patent applications must include the patent application serial number. Claims are deleted from the copies of patent applications sold to avoid premature disclosure.

FOR FURTHER INFORMATION CONTACT: Mr. R.J. Erickson, Staff Patent Attorney, Office of Naval Research (Code OOCC3), Arlington, Virginia 22217–5660, telephone (703) 696–4001.

Patent 5,150,192: Field Emitter Array; filed 20 June 1991; patented 22 September 1992.

Patent 5,194,659: High Melting Amino Aromatic Nitrate Esters; filed 15 June 1992; patented 16 March 1993.

Patent 5,200,321: Microassay on a Card; filed 12 September 1990; patented 6 April 1993.

Patent 5,200,966: Resonantly Pumped, Erbium-Doped, GSGG, 2.8 Micron, Solid State Laser With Energy Recycling and High Slope Efficiency; filed 14 May 1992; patented 6 April 1993.

Patent 5,202,414: Pyrolized Amine Cured Polymer of Dithioether-Linked Phthalonitrile Monomer; filed 13 October 1990; patented 2 April 1991.

Patent 5,202,602: Metal-Glass Composite Field-Emitting Arrays; filed 10 December 1991; patented 13 April 1993.

Patent 5,202,786: Optical Switching Devices; filed 12 September 1991; patented 13 April 1993.

Patent 5,205,871: Monocrystalline Germanium Film on Sapphire; filed 1 June 1990; patented 27 April 1993.

Patent 5,205,983: Energetic Plasticizer and Improved Gas Producing Charges; filed 13 May 1974; patented 27 April 1993.

Patent 5,205,996: Silver Lined Ceramic Vessel; filed 19 February 1992; patented 27 April 1993.

Patent 5,206,592: Detection of Explosives by Nuclear Quadruple Resonance; filed 23 May 1991; patented 27 April 1993.

Patent 5,206,867: Suppression of Relaxation Oscillations in Flashpumped Two-Micron, Tunable Solid State Lasers; filed 31 January 1992; patented 27 April 1993.

Patent 5,208,318: Phosphazene-Containing Amine as Curing Agent for Phthalonitrile-Based Polymer; filed 15 March 1991; patented 4 May 1993.

Patent 5,208,477: Resistive Gate Magnetic Field Sensor; filed 31 December 1990; patented 4 May 1993.

Patent 5,208,601: All Weather Precision Landing System for Aircraft in Remote Areas; filed 24 July 1990; patented 4 May 1993.

Patent 5,208,650: Thermal Dilation Fiber Optical Flow Sensor; filed 30 September 1991; patented 4 May 1993.

Patent 5,210,153: Thermoplastic Elastomers Having Alternate Crystalline Structure for use as High Energy Binders; filed 6 January 1992; patented 11 May 1993.

Patent 5,210,488: Projectile Velocity Measurement System and Method; filed 21 December 1991; patented 11 May 1993.

Patent 5,211,731: Plasma Chemical Vapor Deposition of Halide Glasses; filed 27 June 1991; patented 18 May 1993.

Patent 5,213,844: Volatile CVD Precursors Based on Copper Alkoxides and Mixed Group IIA-Copper Alkoxides; filed 31 January 1992; patented 25 May 1993.

Patent 5,214,166: Method of Synthesizing Nitrato Alkyl Oxetanes; filed 10 July 1989; patented 25 May 1993.

Patent 5,214,234: Composite Reinforced Gun Barrels; filed 17 July 1992; patented 25 May 1993.

Patent 5,214,347: Layered Thin-Edged Field-Emitter Device; filed 8 June 1990; patented 25 May 1993.

Patent 5,215,961: Machinable Oxide Ceramic; filed 25 June 1990; patented 1 June 1993.

Patent 5,216,965: Relocatable Explosives Storage Magazine; filed 15 June 1992; patented 8 June 1993.

Patent 5,218,164: Dual Gate Target Detecting Device (TDD); filed 18 March 1976; patented 8 June 1993.

Patent 5,218,197: Method and Apparatus for the Non-Invasive Measurement of Pressure Inside Pipes Using a Fiber Optic Interferometer Sensor; filed 20 May 1991; patented 8 June 1993.

Patent 5,218,574: Electrical Firing Circuit; filed 12 October 1970; patented 8 June 1993.

Patent 5,223,057: Monopropellant Aqueous Hydroxyl Ammonium Nitrate Fuel; 28 March 1969, patented 29 June 1993.

Patent 5,223,841: Calibration Method and Apparatus for Collecting the Output of an Array of Detector Cells; filed 29 June 1992; patented 29 June 1993.

Patent 5,225,374: Method of Fabricating a Receptor-Based Sensor; filed 14 January 1992; patented 6 July 1993.

Patent 5,227,725: Nuclear Magnetic Resonance Imaging With Short Gradient Pulses; filed 29 November 1990; patented 13 July 1993.

Patent 5,227,857: System for Canceling Phase Noise in an Interferometric Fiber Optic Sensor Arrangement; filed 24 April 1991; patented 13 July 1993.

Patent 5,229,541: Torpedo Safety System; filed 8 December 1975; patented 20 July 1993.

Patent 5,229,961: Crosstie Random Access Memory Element Having Associated Read/Write Circuitry; filed 19 November 1990; patented 20 July 1993.

Patent 5,230,230: Lock Operator for Inactive Magazine Door Locking Bolt System; filed 4 May 1992; patented 27 July 1993.

Patent 5,231,606: Field Emitter Array Memory Device; filed 2 July 1990; patented 27 July 1993.

Patent 5,232,639: Process for Forming Articles With Anisotrophic Properties; filed 8 November 1990; patented 3 August 1993.

Patent 5,233,247: Precision Drive and Speed Reduction Device; filed 6 November 1991; patented 3 August 1993.

Patent 5,233,354: Radar Target Discrimination by Spectrum Analysis; filed 13 November 1992; patented 3 August 1993.

Patent 5,233,403: Heterodyne Array for Measurement of Target Velocity; filed 30 June 1992; patented 3 August 1993.

Patent 5,233,440: Optical Encoding of Imaging Data; filed 16 July 1990; patented July 1990; patented 3 August 1993.

Patent 5,233,537: Very Low Frequency (VLF) and Low Frequency (LF) Transmitting Antenna Parameter Monitoring System (AMOS); filed 11 June 1991; patented 3 August 1993.

Patent 5,233,843: Atmospheric Moisture Collection Device; filed 12 May 1992; patented 10 August 1993.

Patent 5,234,594: Nanochannel Filter; filed 12 June 1992; patented 10 August 1993.

Patent 5,235,339: Radar Target Discrimination Systems Using Artificial Neural Network Topology; filed 13 November 1992; patented 10 August 1993.

Patent 5,235,455: Wide Bandwidth Differential Amplifier; filed 25 February 1991; patented 10 August 1993.

Patent 5,235,928: Towed, Submergible, Collapsible, Steerable Tank; filed 30 September 1992; patented 17 August 1993.

Patent 5,235,931: Inflatable Undersea Vehicle System of Special Utility as a Daughter Vessel to a Mother Vessel; filed 22 July 1192; patented 17 August 1993.

Patent 5,235,932: Submersible Dock and Dump Mechanism; filed 11 December 1991; patented 17 August 1993.

Patent 5,236,773: Fire-Resistant Barriers for Composite Materials; filed 7 October 1991; patented 17 August 1993.

Patent 5,237,045: Curing Phthalonitrile Resins with Acid and Amine; filed 9 January 1992; patented 17 August 1993.

Patent 5,237,129: Shield Ground Adapter for Kick Pipes and Stuffing Tubes; filed 13 June 1991; patented 17 August 1993.

Patent 5,237,334: Focal Plane Antenna Array for Millimeter Waves; filed 28 April 1992; patented 17 August 1993.

Patent 5,237,441: Microprocessor Chip Incorporating Optical Signal Coupling Transceiver; filed 23 February 1990; patented 17 August 1993.

Patent 5,237,526: High Speed Electronic Analog Computer Using Low-Gain Amplifiers; filed 29 August 1991; patented 17 August 1993.

Patent 5,237,947: Variable Draft Hull; filed 3 August 1992; patented 24 August 1993.

Patent 5,238,610: Method of Detecting Oxidizing Agents in Aqueous Media Through the Use of Chemiluminescent Microemulsions; filed 11 March 1992; patented 24 August 1993.

Patent 5,238,877: Conformal Method of Fabricating an Optical Waveguide on a Semiconductor Substrate; filed 30 April 1992; patented 24 August 1993.

Patent 5,239,181: Bridge Type Optoelectronic Sample and Hold

Circuit; filed 31 December 1990; filed 24 August 1993.
Patent 5,239,560: Converting Digital Data in Noisy, Unstable, Multipath Environments; filed 24 June 1991; patented 24 August 1993.
Patent 5,239,821: Underwater Turbojet Engine; filed 11 July 1991; patented 31 August 1993.
Patent 5,239,978: Oscillatory Abrasive Cable Power Saw; filed 30 September 1992; patented 31 August 1993.
Patent 5,240,207: Generic Drone Control System; filed 18 August 1992; patented 31 August 1993.
Patent 5,240,351: Hydrodynamic Cable Deployment System; filed 7 January 1992; patented 31 August 1993.
Patent 5,241,317: Method and Apparatus for Determining Target Elevation, Angle, Altitude and Range and the Like in a Monopulse Radar System With Reduced Multipath Errors; filed 29 May 1992; patented 31 August 1993.
Patent 5,241,318: Method and Apparatus for Generating Sum or Difference Signals Corresponding to an Apparent Beam in a Monopulse Radar System; filed 29 May 1992; patented 31 August 1993.
Patent 5,241,516: Diver Navigation System; filed 27 August 1992; patented 31 August 1993.
Patent 5,241,519: Hydrophone Assembly With Vibration Isolated Transducer Elements; filed 23 July 1992; patented 31 August 1993.
Patent 5,241,616: Optical Pattern Recognition System Utilizing Resonator Array; filed 31 August 1992; patented 31 August 1993.
Patent 5,241,991: Electro-Rheological Control Valve; filed 4 September 1992; patented 7 September 1993.
Patent 5,242,563: Molten Salt Reactor for Potentiostatic Electroplating; filed 12 March 1992; patented 7 September 1993.
Patent 5,242,706: Laser-Deposited Biocompatible Films and Methods and Apparatus for Producing Same; filed 31 July 1991; patented 7 September 1993.
Patent 5,242,755: High Temperature Adhesive; filed 26 February 1992; patented 7 September 1993.
Patent 5,242,792: Method for the Preservation of Red Blood Cells by Lyophilization Using Glycerol or Inositol With Disaccharides; filed 25 February 1991; patented 7 September 1993.
Patent 5,243,075: Process for Producing N-Chloromethyl Nitramines; filed 13 July 1992; patented 7 September 1993.
Patent 5,243,403: Three Axis Fiber Optic Vector Magnetometer; filed 30 September 1991; patented 7 September 1993.
Patent 5,243,530: Stand Alone Multiple Unit Tracking System; filed 26 July 1991; patented 7 September 1993.
Patent 5,245,588: Regenerative Radio-Frequency Wire Detector; filed 7 January 1972; patented 14 September 1993.
Patent 5,245,660: System for Producing Synchronized Signals; filed 19 February 1991; patented 14 September 1993.
Patent 5,245,928: Ship Signature Modifier; filed 27 November 1968; patented 21 September 1993.
Patent 5,247,055: Accordion-Like Polymers for Non-Linear Applications; filed 20 March 1992; patented 21 September 1993.
Patent 5,247,060: Curing Phthalonitriles With Acid; filed 9 January 1992; patented 21 September 1993.
Patent 5,247,310: Layered Parallel Interface for an Active Antenna Array; filed 24 June 1992; patented 21 September 1993.
Patent 5,247,684: Light Update Notification Mechanism for Shared Data Structures; filed 3 October 1991; patented 21 September 1993.
Patent 5,247,715: Multiple Use Spanner Tool M.U.S.T. Wrench; filed 27 January 1992; patented 28 September 1993.
Patent 5,248,117: Regulated Drag Area Parachute; filed 8 April 1992; patented 28 September 1993.
Patent 5,248,626: Method for Fabricating Self-Aligned Gate Diffused Junction Field Effect Transistor; filed 28 August 1992; patented 28 September 1993.
Patent 5,248,931: Laser Energized High Voltage Direct Current Power Supply; filed 31 July 1991; patented 28 September 1993.
Patent 5,249,085: Recording System Using Multiplexed Inputs to a Multichannel Recorder; filed 7 October 1991; patented 28 September 1993.
Patent 5,249,162: Radio Frequency Phase Sensitive Wire Detector; filed 20 April 1973; patented 28 September 1993.
Patent 5,249,189: Tunable Lasers Pumped by Visible Laser Diodes; filed 28 May 1992; patented 28 September 1993.
Patent 5,249,196: Internally Folded Scalable Laser; filed 21 May 1992; patented 28 September 1993.
Patent 5,249,526: Safe and Arm Device; filed 12 November 1992; patented 5 October 1993.
Patent 5,249,933: Submarine External Hydraulic Fluid-Isolated System: filed 1 October 1992; patented 5 October 1993.
Patent 5,249,922: Marine Propulsion Unit With Controlled Cyclic and Collective Blade Pitch; filed 30 December 1992; patented 5 October 1993.
Patent 5,250,730: Process for Producing Hydroxy Terminated Nitramines; filed 13 July 1992; patented 5 October 1993.
Patent 5,250,753: Wire Assembly for Electrically Conductive Circuits; filed 10 April 1992; patented 5 October 1993.
Patent 5,250,952: Method of Correcting Rotational Motion Error in Sar and Isar Imagery; 1 July 1991; patented 5 October 1993.
Patent 5,251,002: Mode Transition Matrix Measuring System; filed 25 February 1992; patented 5 October 1993.
Patent 5,251,052: System for Solving Boolean Equations Using Optical Lookup Tables; filed 31 September 1992; patented 5 October 1993.
Patent 5,251,186: Preprocessor and Adaptive Beamformer for Linear Frequency Modulation Active Signals; filed 6 October 1992; patented 5 October 1993.
Patent 5,252,911: AC to DC Power Converter with Regulated Bi-Polar Outputs; 22 July 1991; patented 12 October 1993.
Patent 5,253,196: MOS Analog Memory With Injection Capacitors; filed 9 January 1991; patented 12 October 1993.
Patent 5,253,221: Null Steering Device; filed 17 June 1977; patented 12 October 1993.
Patent 5,253,797: Method of Bonding Molybdenum to Steel; filed 21 July 1992; patented 19 October 1993.
Patent 5,253,938: Thermistor Controlled Current Source Versatile Temperature Sensor; filed 7 October 1992; patented 19 October 1993.
Patent 5,254,529: Superconducting Fibers Made With Yttrium and Yttrium Oxide Interlayers and Barium Cuprate Cover Layers; filed 31 October 1991; patented 19 October 1993.
Patent 5,254,797: Method of Bonding Molybdenum to Steel; filed 21 July 1992; patented 19 October 1993.
Patent 5,256,220: Liquid Monopropellants; filed 3 December 1979; patented 26 October 1993.
Patent 5,256,355: Method for Bonding a Polyurethane Molding Composition to a Cable Jacket of an Olefin/Ester Interpolymer; 23 September 1992; patented 26 October 1993.
Patent 5,257,243: Flexible Acoustic Array With Polymer Hydrophones; filed 28 September 1992; patented 26 October 1993.
Patent 5,259,570: Laser Resistant Optical Detector Arrangement; filed

12 August 1974; patented 9 November 1993.

Patent 5,263,431: Combination Winch and Stowage Reel Assembly for Arrays Towed by Submarines; filed 26 May 1992; patented 23 November 1993.

Patent 5,264,906: Bioluminescence Bathyphotometer; filed 8 July 1992; patented 23 November 1993.

Patent 5,265,344: Relative Motion Pinwheel; filed 5 October 1992; patented 30 November 1993.

Patent 5,266,623; Method and Apparatus for Inhibiting the Disbonding of a Paint From Metal Surfaces; filed 10 June 1992; patented 30 November 1993.

Patent 5,272,486: Antenna Erector for a Towed Buoyant Cable; filed 24 July 1992; patented 21 December 1993.

Patent 2,275,120: Strum-Suppressant Cable for Towed Arrays; filed 23 September 1992; patented 4 January 1994.

Patent 5,277,144; Valve Assembly for Submarine Balanced Ejection System; filed 11 June 1993; patented 11 January 1994.

Patent Application 012,140: Fiber Optic Magnetostrictive Transducer System; filed 29 January 1993.

Patent Application 033,224: Magnetic Heading Sensor Alignment and Roll Reducing Device; filed 18 March 1993.

Patent Application 033,225: Metrics for Specifying and/or Testing Neural Networks; filed 18 March 1993.

Patent Application 033,226: Nonlinear Neural Network Oscillator; filed 18 March 1993.

Patent Application 038,364: Apparatus for Producing Images Acoustically; filed 29 March 1993.

Patent Application 038,369: High Cure-Temperature Coating Application Method for Threat Sensitive Materials; filed 29 March 1993.

Patent Application 038,598: Electrode Array Electromagnetic Velocimeter; filed 29 March 1993.

Patent Application 040,963: Article for Delivering Pharmacological Agents Using Bipolar Tetraether Lipids; filed 31 March 1993.

Patent Application 042,219: Dispenser for Deploying Elongated Flexible Articles; filed 5 April 1993.

Patent Application 046,293: Broadband Low Drive Voltage, Electrooptic, Integrated Optical Modulator; filed 14 April 1993.

Patent Application 050,787: Improved Process for Making Superconducing PBSCCORD PBSCCA Parts; filed 21 April 1993.

Patent Application 053,280: TM:YALO.1.94-Micron Solid State Laser; filed 28 April 1993.

Patent Application 053,287: An Ultraviolet Faraday Rotator Glass; filed 29 April 1993.

Patent Application 054,485: Low-Frequency Flex-Beam Underwater Acoustic Transducer; filed 30 April 1993.

Patent Application 056,019: Suppression of Backscatter and Stray Reflection Induced Noise in Michelson Interferometers; filed 30 April 1993.

Patent Application 056,084: Improved Optical Pseudospach Switch; 3 May 1993.

Patent Application 068,816: Wireless Shipboard Data Coupler; filed 28 May 1993.

Patent Application 076,135: Transducers and Method for Making Same; filed 9 June 1993.

Patent Application 077,215: Apparatus and Method of Radio Communication From a Submerged Underwater Vehicle; filed 15 June 1993.

Patent Application 077,903: Process to Fabricate Thick Coplanar Microwave Electrode Structures; filed 18 June 1993.

Patent Application 078,887: Hydrophone Transduction Mechanism; filed 21 June 1993.

Patent Application 082,640: Corrosion Inhibition in High Temperature Environment; filed 28 June 1993.

Patent Application 082,645: Phthalonitrile Prepolymer as High Temperature Sizing Material for Composite Fibers; filed 28 June 1993.

Patent Application 082,648: Method and System for Sensing With an Active Acoustic Array; filed 28 June 1993.

Patent Application 083,231: Polarized Optical Emission due to Decay or Recombination of Spin-Polarized Injected Carriers; filed 29 June 1993.

Patent Application 083,579: Method and Apparatus for a New Transduction Mechanism for Large Area Conformal Hydrophones; filed 30 June 1993.

Patent Application 083,580: High Spatial Resolution, Range Gated, Underwater Imaging Method and Apparatus; filed 30 June 1993.

Patent Application 083,953: Method for the Control of Bragg Wavelength of Intra-Core Fiber Grating Elements Using Electro-Optical and Direct Optical Modulation; filed 30 June 1993.

Patent Application 698,218: Diamond-Reinforced Matrix Composites; filed 10 May 1991.

Patent Application 841,944: Fluorinated Resins With Low Dielectric Constant; filed 26 February 1992.

Dated: April 7, 1994.

Michael P. Rummel,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 94–9368 Filed 4–18–94; 8:45 am]

BILLING CODE 3810–AE–M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Acting Director, Information Resources Management Service, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before May 19, 1994.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Wallace McPherson, Department of Education, 400 Maryland Avenue, SW., room 4682, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Wallace McPherson (202) 401–3200.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Director of the Information Resources Management Service, publishes this notice containing proposed information

collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement;

(2) Title;

(3) Frequency of collection;

(4) The affected public;

(5) Reporting burden; and/or

(6) Recordkeeping burden; and

(7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Wallace McPherson at the address specified above.

Dated: April 14, 1994.

Wallace McPherson,

Acting Director, Information Resources Management Service.

Office of Postsecondary Education

Type of Review: New.
Title: Application Package for American Overseas Research Centers Program.
Frequency: Annually.
Affected Public: State or local governments; Non-profit institutions.
Reporting Burden:
Responses: 20.
Burden Hours: 1,200.
Recordkeepers: 0.
Burden Hours: 0.
Abstract: This form will be used by State educational agencies to apply for funding under the American Overseas Research Centers Program. The Department will use the information to make grant awards.

[FR Doc. 94–9394 Filed 4–18–94; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Office of Inertial Confinement Fusion; Inertial Confinement Fusion Advisory Committee/Defense Programs Renewal

Pursuant to section 14(a)(2)(A) of the Federal Advisory Committee Act, and in accordance with title 41 of the Code of Federal Regulations § 101–6.1015(a), and following consultation with the Committee Management Secretariat, General Services Administration, notice is hereby given that the Charter for the Inertial Confinement Fusion Advisory Committee/Defense Programs has been renewed for a two-year period beginning in April 1994. The Committee will provide advice to the Assistant Secretary for Defense Programs, on the Inertial Confinement Fusion program.

The renewal of the Charter of the Inertial Confinement Fusion Advisory Committee/Defense Programs has been determined to be essential to the conduct of Department of Energy business and to be in the public interest in connection with the performance of duties imposed upon the Department of Energy by law. The Committee will operate in accordance with the provisions of the Federal Advisory Committee Act, the Department of Energy Organization Act (Pub. L. 95–91), and rules and regulations issued in implementation of those Acts.

Further information regarding this Advisory Committee may be obtained from Ms. Rachel M. Samuel at 202–586–3279.

Issued in Washington, DC on April 13, 1994.

Marcia L. Morris,

Deputy Advisory Committee Management Officer.

[FR Doc. 94–9401 Filed 4–18–94; 8:45 am]

BILLING CODE 6540–01–M

Floodplain Statement of Findings for the Proposed Waste Area Grouping 5, Seep Area D, Interim Removal Action at the Oak Ridge National Laboratory, Oak Ridge, TN

AGENCY: Department of Energy (DOE).

ACTION: Floodplain statement of findings.

SUMMARY: This is a Floodplain Statement of Findings for the proposed Waste Area Grouping (WAG) 5, Seep Area D, interim remedial action at the Oak Ridge National Laboratory (ORNL), prepared in accordance with 10 CFR part 1022. DOE proposes to conduct the proposed interim remedial action in the 100-year floodplain of White Oak Creek located in Roane County, Tennessee. DOE prepared a floodplain assessment describing the effects, alternatives, and measures designed to avoid or minimize potential harm to or within the affected floodplain. DOE will endeavor to allow 15 days of public review after publication of the statement of findings before implementing the proposed action.

FOR FURTHER INFORMATION CONTACT: Information on the proposed action, including maps of potentially disturbed floodplain area, is available from: Mr. Robert C. Sleeman, Director, Environmental Restoration Division, Oak Ridge Operations Office, U.S. Department of Energy, P.O. Box 2001, Oak Ridge, Tennessee 37831–8541, (615) 576–0715.

Further information on general DOE floodplain environmental review requirements is available from: Ms. Carol M. Borgstrom, Director, Office of NEPA Oversight (EH–25), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–4600 or leave a message at (800) 472–2756.

SUPPLEMENTARY INFORMATION: This is a Floodplain Statement of Findings for the proposed interim remedial action at WAG 5 at ORNL, prepared in accordance with 10 CFR part 1022. A Notice of Floodplain/Wetlands Involvement was published in the **Federal Register** [58 FR 51624 (October 4, 1993)] and a floodplain assessment was completed; no wetlands are involved in the proprosed action. DOE is proposing to capture and treat ground water that is emanating from Seep Area D as a means of reducing the amount of strontium-90 (^{90}Sr) being discharged into Melton Branch, which contributes between 10 and 15 percent of the total amount of ^{90}Sr that passes over White Oak Lake Dam and enters the Clinch River.

The proposed action is comprised of the following three components: (1) A collection component consisting of a collection structure; (2) in-ground treatment component using pipelines to carry ground-water discharge to and from a treatment chamber for capture of the ^{90}Sr in the ground-water discharge; and (3) a pumping and trucking component using a pipe transfer line to a truck transfer station for removal of ground-water discharge that has not been effectively treated for ^{90}Sr removal. Proposed activities associated with the Seep Area D interim removal action would involve less than a quarter of an acre of the 100-year floodplain of White Oak Creek. The proposed action is not expected to adversely impact the floodplain or measurably change flood levels. Rather, the proposed action would have an overall positive effect on the environment and human health by reducing the amount of radioactive contaminants entering the riverine environment.

The proposed activities associated with Seep Area D interim remedial action include extending an existing gravel road in the floodplain by about 150 feet to gain access to the seep area and installing a collection structure, a supply pipeline to, and discharge pipeline from, a treatment chamber located outside of the floodplain, a pipe transfer line to a truck transfer station also located outside of the floodplain, and a single power pole. During construction, a temporary dam, diversion pump, and flexible pipe would be installed in the floodplain to divert stream water around the construction site.

The collection structure would consist of a gravel bed located under Melton Branch to intercept the ground-water discharge, a concrete cover to isolate the gravel bed from Melton Branch, and pumps and piping for transferring the discharge water to either the treatment chamber or truck transfer station. A different structure, but of similar design, would be installed if final field monitoring data indicate that such a structure would better divert and collect the ground-water discharge. Regardless of final design, the effects of any such structure on the floodplain would be negligible. Ground-water discharge in the seep area would be collected in the gravel bed and pumped either to the treatment chamber or a truck transfer station. The treatment chamber would contain an ion-exchange medium to remove ^{90}Sr. (An ion-exchange medium is a chemical compound, such as zeolite, that selectively adsorbs ^{90}Sr, thereby removing this radionuclide from the ground-water discharge.) Upon entering the treatment chamber, the ground-water discharge would pass through the ion-exchange medium and then be released to Melton Branch. Pumping to the truck transfer station would take place if the ion-exchange medium does not remove sufficient ^{90}Sr (the criteria for removal has been established at 90 percent as measured from water samples taken from the treatment chamber supply and discharge pipelines). Tanker trucks would transfer the ground water from the storage tank to the ORNL Process Waste Treatment Plant for processing. The Process Waste Treatment Plant is an existing, permitted facility.

The proposed action has been designed to avoid or minimize impacts to the floodplain; negligible adverse impacts to the floodplain are expected to occur as a result of taking the proposed action. Best management practices would be strictly adhered to for all proposed activities. Sediment control measures, such as silt fences and diversion ditches would be used. Excavated soil would be sampled to determine the level of contamination, if any. To minimize the possibility of any contaminated soil entering the nearby creeks, contaminated soil would be disposed of according to ORNL construction guidelines. Where possible, disturbed areas would be graded to preconstruction contours, seeded, and allowed to return to their natural state. Construction is estimated to take between 3 and 5 months. Construction activities would be scheduled during the dry season and would be substantially reduced and curtailed during unfavorable weather

Several alternatives to the proposed action were considered, including no action, in-ground treatment without a pipe transfer line to a truck transfer station, collection and transfer to the Process Waste Treatment Plant by tanker truck without in-ground treatment, collection and transfer to the Process Waste Treatment Plant by pipeline without in-ground treatment, and on-site treatment. The no-action alternative was deemed least desirable because of the release of ^{90}Sr from the seep area since continued release would not be protective of human health and the environment. The other alternatives were excluded on the basis of efficiency, implementability, and cost. Effects upon the floodplain would not be measurably reduced under any of the other alternatives to the proposed action.

The proposed action has been designed to avoid or minimize impacts to the floodplain and no significant adverse impacts to the floodplain are expected to occur. The proposed action does conform to applicable State floodplain standards. DOE will endeavor to allow 15 days of public review after publication of the statement of findings prior to implementing the proposed action.

James J. Fiore,

Director, Office of Eastern Area Programs, Office of Environmental Restoration.

[FR Doc. 94–9405 Filed 4–18–94; 8:45 am]

BILLING CODE 6450–01–P

Golden Field Office; Amendment to a Solicitation for Financial Assistance Applications: Indian Energy Resource Development, DE–FG48–94R810502

AGENCY: Department of Energy.

ACTION: Notice.

SUMMARY: The Office of Technical and Financial Assistance, Assistant Secretariat for Energy Efficiency and Renewable Energy, through the Golden Field Office, intends to amend a solicitation availability notice which first appeared in the March 11, 1994 **Federal Register**. The amendment changes and clarifies certain aspects of the solicitation. Individuals who previously requested a copy of the solicitation will be automatically mailed a copy of the amendment. This amendment also extends the closing date for receipt of applications until May 20, 1994.

DATES: The anticipated release date for the amendment is on or after April 12, 1994.

ADDRESSES: Requests for the amendment are available from: Indian Energy Resource Development Program, U.S. Department of Energy, Denver Support Office, 2801 Youngfield Street suite 380, Golden, CO 80401–2266, (303) 231–5750, ext. 132.

SUPPLEMENTARY INFORMATION: The amendment modifies or clarifies certain sections of the solicitation including: [1] Eligibility Requirements and Restrictions, (e.g., describes what entities can apply directly for assistance and adds non-profit entities as allowable prime applicants under the definition of "private sector person"); [2] Application Instructions; [3] Conditions and Notices; and [4] Required Application Forms.

Applications must be received by 3 p.m., Mountain Daylight Savings Time, May 20, 1994 at the following address: Indian Energy Resource Development Program; U.S. Department of Energy; Denver Support Office; 2801 Youngfield Street—suite 380; Golden, CO 80401–2266.

Issued this day in Golden, CO.

Christine A. Phoebe,

Director, Administrative Division.

[FR Doc. 94–9402 Filed 4–18–94; 8:45 am]

BILLING CODE 6450–01–M

Financial Assistance Award; Intent To Award Cooperative Agreement to National Governors' Association

AGENCY: United States Department of Energy.

ACTION: Notice of non-competitive financial assistance award.

SUMMARY: The Department of Energy announces that, pursuant to 10 CFR 600.6(a)(5), it is making a discretionary financial assistance award based on the criterion set forth at 10 CFR 600.7(b)(2)(i)(D) to the National Governors' Association (NGA) under proposed Cooperative Agreement Number DE-FC01–94EW30330. The total estimated funding in the amount of $3,136,517 will be provided to NGA for this effort. NGA currently has an agreement with DOE to facilitate site treatment plan approval by States and the Environmental Protection Agency (EPA) by providing a forum for regulators to review and discuss technical policy and implementation issues concerning site plans and to actively participate in the development of these plans. Funding for the proposed agreement will allow NGA to conduct reviews of DOE conceptual and draft site treatment plans, participate in discussions with DOE on related

Federal Facility Compliance Act of 1992 (FFCAct) issues, and review other related documents not specifically required by the legislature, but having a bearing on the site treatment process.

The Department of Energy has determined in accordance with 10 CFR 600.7(b)(2)(i)(D) that NGA's unique institutional ties to the State governments included in this project are required because of the need to balance individual State interests with national perspectives in the development of DOE's mixed waste treatment plans.

NGA is the only organization that collectively represents all of the nation's Governors on matters of national and State policy. This organization's ability to access and mobilize its member governments on multi-state task forces and committees is needed to provide assessment of key issues identified in the FFCAct and facilitate issue resolution.

The NGA's Center of Policy and Research has substantial expertise in Federal and State environmental programs and hosting forums for identifying and resolving critical policy and implementation issues.

The period of performance is 16 months from the date of award.

FOR FURTHER INFORMATION CONTACT:

U.S. Department of Energy, Office of Placement and Administration, Attn: Phyllis P. Morgan, HR–531.24, 1000 Independence Avenue SW., Washington, DC 20585.

Scott Sheffield,

Director, Headquarters Operations Division B, Office of Placement and Administration.

[FR Doc. 94–9403 Filed 4–18–94; 8:45 am]

BILLING CODE 6450–01–P

Golden Field Office; Notice of Federal Assistance Award to Photonic Sensor Systems, Inc.

AGENCY: Department of Energy.

ACTION: Notice of noncompetitive financial assistance award.

SUMMARY: The U.S. Department of Energy (DOE), pursuant to the DOE Financial Assistance Rules, 10 CFR 600.7, is announcing its intention to award a cooperative agreement to Photonic Sensor Systems, Inc. (PSS) for continuation of a project currently being conducted under a cooperative agreement with Georgia Tech Research Corp. (GTRC), (an affiliate of the Georgia Institute of Technology) for development of a sensor system to monitor gaseous nitrogen (in the form of ammonia).

ADDRESSES: Questions regarding this announcement may be addressed to the U.S. Department of Energy, Golden Field Office, 1617 Cole Blvd., Golden, Colorado 80401, Attention: Mr. Matt Barron, Contract Specialist. The Contracting Officer is John W. Meeker.

SUPPLEMENTARY INFORMATION: With assistance from DOE through Cooperative Agreement # DE–FC02–89ID12905, GTRC developed an optical sensor for real time detection of ammonia. The original application was to monitor ammonia transfer from agricultural croplands, and thereby reduce the amount of nitrogen fertilizer used; however, PSS has determined that the sensor can also facilitate the use of ammonia in a variety of industrial applications such as large scale refrigeration where the use of ammonia as the refrigerant has efficiency advantages in many applications. PSS proposes to continue development of the sensor through commercial prototype and evaluation of this prototype in full-scale agricultural and industrial settings.

DOE has performed a review in accordance with 10 CFR 600.7 and has determined that the activity to be funded is necessary to the satisfactory completion of, and is a continuation of, an activity presently being funded by DOE, and for which competition for support would have a significant adverse effect on continuity and satisfactory completion of the activity. Also, PSS the new participant, now has the exclusive domestic capability to perform the activity successfully based on the recent acquisition of both the critical patent rights and technical expertise.

DOE funding for the proposed activity is estimated to be $451,000 and PSS's share is estimated to be $426,000 for a total of $877,000 over a three year project period.

Issued in Chicago, Illinois, on March 30, 1994.

Alan E. Smith,

Director, Information Management and Support Division.

[FR Doc. 94–9404 Filed 4–18–94; 8:45 am]

BILLING CODE 6450–01–M

Opportunities for Industrial Partnering With the New Independent States of the Former Soviet Union

AGENCY: Department of Energy, Albuquerque Operations Office.

ACTION: Workshop for Industrial Partnering with the Multiprogram National Laboratories and the New Independent States of the Former Soviet Union (NIS IPP).

SUMMARY: Today's notice is announcing a workshop for the Industrial Partnering Program with the New Independent States (NIS) of the Former Soviet Union. U.S. private sector entities including industry, universities, foundations and other organizations which have a strong interest in promoting, and investing in, commercial relationships between U.S. entities and NIS institutes are invited to attend.

The purpose of the workshop is to describe to academia and U.S. private sector entities (1) the scope of the NIS Industrial Partnering Program, (2) the terms of a DOE-U. S. Industry Coalition (USIC) partnership arrangement, (3) the opportunities available to USIC members, and (4) the terms and conditions of USIC membership. Suggestions for improving the program will also be solicited.

DATES: DOE will hold a workshop on April 25, 1994, in Albuquerque, New Mexico. A reception will be held on the evening of April 24. Workshop attendees must preregister. A registration fee will be charged at the time of registration. Copies of the presentation materials will be available at the Workshop. Workshop Minutes, along with the attendance list and answers to questions that would be of interest to multiple attendees, will be distributed to the attendees after the Workshop.

FOR FURTHER INFORMATION CONTACT: Additional information about the Workshop (including the registration fee) for the DOE-NIS Industrial Partnering Program can be obtained by calling (505) 845–4555. Written requests can be sent to the U.S. Department of Energy, Albuquerque Operations Office, Energy and Technologies Division, P.O. Box 5400, Albuquerque, NM 87185–5400. FAX requests may be sent to (505) 845–5960. When requesting information, please provide the name and address of your company, a "point-of-contact," telephone number, and FAX number.

SUPPLEMENTARY INFORMATION: The Foreign Operations Appropriations Act of 1994 contains a provision (section 575) designating $35,000,000 for a "Ukraine/Russia Stabilization Partnerships Program." The Secretary of Energy has been charged with the implementation of the program, which allowed for the inclusion of the other New Independent States (NIS), and is now referred to as the "NIS Industrial Partnering Program."

The program will have two principal components. Both are intended to assist NIS institutes with converting from defense to commercial applications

thereby reducing the potential for the proliferation of weapons of mass destruction. The first component is designed to engage the scientists and engineers at key technical and scientific institutes of the NIS in non-defense activities. This component is an expansion of unclassified cooperative non-defense research and development activities that have been conducted for some time between individual DOE National Laboratories and individual NIS institutes.

The second component is designed to assist in stabilizing the NIS technical and scientific infrastructure, to encourage the commercialization of NIS technologies, and promote the development in the NIS of market-oriented economies. A number of cost-shared international industrial partnerships will be formed, each involving at least one DOE National Laboratory, one NIS institute, and at least one U.S. industrial entity, whose contribution to the success of the partnership will be critical. A significant portion of the U.S. Government contribution to support the program is intended for NIS institutes to spur follow-on trade and investment by U.S. industry.

In July 1993, DOE sponsored a meeting, involving representatives from the National Laboratories and representatives of U.S. private sector entities with experience in NIS-to-U.S. technology transfer and commercialization. As a result of that, and subsequent meetings, it was concluded that a program of commercial industry-selected partnerships to invest in NIS technologies would be facilitated if a consortium of U.S. private sector entities could be established. The Secretary of Energy would then enter into a cooperative agreement with such a consortium, using the authority, and under the terms set out in the Atomic Energy Act of 1954, the National Competitiveness Technology Transfer Act of 1989, the Cooperative Research Act of 1984, and other applicable statutes. The consortium would be required to give special attention to the needs of small businesses under the program.

Accordingly, U.S. industry representatives have voluntarily formed and incorporated the U.S. Industry Coalition (USIC) with an interim Board of Directors. Membership in USIC will be required for participation in cost-sharing projects that involve the section 575 funds. Membership in USIC will be open to all U.S. entities, including universities, consortia, and corporations incorporated in the United States.

Program questions may be raised during the Question and Answer periods of the Workshop. Questions that would be of interest to multiple attendees may be included in the Workshop Minutes which will be distributed to attendees after the Workshop.

Issued in Albuquerque, NM, April 7, 1994.

Richard A. Marquez,

Assistant Manager for Management and Administration.

[FR Doc. 94–9406 Filed 4–18–94; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulation Commission

[Docket No. RP94–157–001]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

April 13, 1994.

Take notice that on April 8, 1994, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to be effective April 1, 1994:

Substitute Fourth Revised Sheet No. 25
Substitute Fourth Revised Sheet No. 26
Substitute Fourth Revised Sheet No. 27
Substitute Fourth Revised Sheet No. 28
Substitute Third Revised Sheet No. 30A
Substitute Third Revised Sheet No. 30B
Substitute Third Revised Sheet No. 30C
Substitute Third Revised Sheet No. 30D

Columbia is tendering this filing in compliance with the order issued by the Federal Energy Regulatory Commission (Commission) on March 31, 1994 in the instant docket (Order). The Order required Columbia to file (1) revised tariff sheets incorporating current rates for Tennessee Gas Pipeline; and (2) workpapers demonstrating that Columbia will only collect costs attributable to Columbia Gulf during the remainder of the term of the T–1 contract.

Columbia states that copies of the filing were served upon the Company's 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. All such protests should be filed on or before April 20, 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 Columbia's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–9341 Filed 4–18–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ES94–21–000]

Interstate Power Co.; Application

April 13, 1994.

Take notice that on April 4, 1994, Interstate Power Company filed an application under section 204 of the Federal Power Act seeking authorization to issue and deliver to the City of Lansing, Iowa and the City of Clinton, Iowa separate securities in the form of Pollution Control Refunding Revenue Bond Obligations in the amount of $13,250,000, and to refund a like amount of its outstanding Pollution Control Revenue Bond Obligations which previously were issued in connection with the financing of pollution control facilities at the Lansing Unit No. 4 near Lansing, Iowa and at the M.L. Kapp Unit No. 2 near the City of Clinton, Iowa. Also, Interstate requests exemption from the Commission's competitive bidding and negotiated placement regulations.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before May 4, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–9342 Filed 4–18–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ES94–22–000]

Interstate Power Co.; Notice of Application

April 13, 1994.

Take notice that on April 4, 1994, Interstate Power Company filed an application under section 204 of the Federal Power Act seeking authorization

to issue not more than $60 million of short-term debt on or before December 31, 1995, with a final maturity date no later than December 31, 1996.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before May 4, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–9343 Filed 4–18–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP91–126–013]

Koch Gateway Pipeline Co.; Revised Report of Refunds

April 13, 1994.

Take notice that on March 30, 1994, Koch Gateway Pipeline Company (Koch Gateway) tendered for filing a revised report of refunds. The refund report supersedes the previous filing made on February 22, 1994. Such report was submitted in compliance with Section VI(C) of the Joint Stipulation and Agreement filed September 30, 1991 and approved by the Federal Energy Regulatory Commission ("Commission") by order issued October 22, 1991. The revised refund report corrects an allocation, error found in the February 22, 1994, filing.

Koch Gateway states that the total dollar amount was correct, however, individual shippers were allocated erroneous amounts. The previous filing inadvertently had included discounted MDQ's for a variety of shippers. The revised refund report shows the correct allocation and the net effect on all customers. Additionally, in accordance with § 154.67(c)(2)(iii) of the Commission's Regulations, interest is included on the refund amounts as reflected on revised Appendix A to the filing.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Regulations. All such protests should be filed on or before April 20, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary,

[FR Doc. 94–9344 Filed 4–18–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–145–000]

Pacific Gas Transmission Co.; Technical Conference

April 13, 1994.

In the Commission's order issued on March 25, 1994, in the above-captioned proceeding, the Commission held that the filing raises issues for which a technical conference is to be convened. The conference to address the issues has been scheduled for Thursday, April 28, 1994 at 10 a.m. in a room to be designated at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426. All interested persons and Staff are permitted to attend.

Lois D. Cashell,

Secretary.

[FR Doc. 94–9345 Filed 4–18–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–206–000]

Pacific Gas Transmission Co.; Notice of Change in Rates

April 13, 1994.

Take notice that on April 11, 1994, Pacific Gas Transmission Company (PGT) submitted for filing pursuant to Section 4 of the Natural Gas Act and § 154.63 of the Commission's Regulations thereunder, certain tariff sheets to add Paragraph 39 to the Transportation General Terms and Conditions of PGT's FERC Gas Tariff, First Revised Volume No. 1–A to govern the sales of gas that may be made from time to time, under PGT's blanket sales certificate, to dispose of gas that is in excess of PGT's operational requirements and to grant a limited waiver of the requirements of Order No. 497 with respect to such sales.

PGT requests that the Commission act expeditiously on this filing and make Paragraph 39 effective and grant waiver of Order No. 497 no later than April 18, 1994. PGT states that waiver of the 30-day notice period is necessary because PGT may have to dispose of excess gas to maintain the integrity of its pipeline system before the 30-day notice period expires.

PGT states that a copy of this filing has been served on PGT's jurisdictional customers and interested state commissions.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before April 20, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–9346 Filed 4–18–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MT94–2–000]

Texas-Ohio Pipeline, Inc.; Notice of Compliance Filing

April 13, 1994.

Take notice that on February 16, 1994, Texas-Ohio Pipeline, Inc. (Texas-Ohio) filed revised tariff sheets to be included in its Statement of Terms and Conditions, submitted pursuant to the requirements of 18 CFR part 284. Texas-Ohio states that the tariff sheets set forth procedures applicable to transactions with its marketing affiliates as required by § 250.16(b) of the Commission's Regulation, 18 CFR 250.16(b).

Texas-Ohio states that the purpose of the filing is to comply with the Commission's December 23, 1993 "Order" in Docket No. MG93–5–000.

Texas-Ohio states that copies of its filing were served on all parties to this proceeding, customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before April 20, 1994.

Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–9347 Filed 4–18–94; 8:45 am]

BILLING CODE 6717–01–M

Office of Hearings and Appeals

Issuance of Proposed Decisions and Orders; Week of March 7 Through March 11, 1994

During the week of March 7 through March 11, 1994, the proposed decisions and orders summarized below were issued by the Office of Hearings and Appeals of the Department of Energy with regard to applications for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR part 205, subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of these proposed decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays.

Dated: April 7, 1994.

Richard W. Dugan,

Acting Director, Office of Hearings and Appeals.

Carson Petroleum Co., Lansing, Ohio, LEE–0055, Reporting Requirements

Carson Petroleum Co. filed an Application for Exception from the Energy Information Administration (EIA) requirement that it file Form EIA–782B, the "Reseller/Retailers' Monthly Petroleum Product Sales Report." In considering the request, the DOE found that the firm was not suffering a gross inequity or serious hardship. Accordingly, on March 10, 1994, the DOE issued a Proposed Decision and Order determining that the exception request should be denied.

Dick's Oil Co., Belle Fourche, South Dakota, LEE–0067, Reporting Requirements

Dick's Oil Co. filed an Application for Exception from the Energy Information Administration (EIA) requirement that it file Form EIA–782B, the "Resellers'/Retailers' Monthly Petroleum Product Sales Report." In considering this request, the DOE found that the firm was not suffering gross inequity or serious hardship. Accordingly, on March 8, 1994, the DOE issued a Proposed Decision and Order determining that the exception request should be denied.

[FR Doc. 94–9407 Filed 4–18–94; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–211037; FRL–4776–6]

TSCA Section 21 Petition; Response to Citizens' Petition

AGENCY: Environmental Protection Agency (EPA).

ACTION: Response to citizens' petition.

SUMMARY: On December 22, 1993, the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America-UAW (UAW) petitioned EPA under section 21 of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2620, to issue test rules under section 4 of TSCA to develop data to aid in the determination of whether machining fluids pose an unreasonable risk to public health or the environment. This Notice announces EPA's response to UAW's petition.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545B, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION:

I. Summary of Petition and Response

On December 22, 1993, EPA received a petition under section 21 of TSCA from UAW. The petitioner subsequently agreed at EPA's request to extend the statutory deadline for EPA review until April 12, 1993. The petitioner requested that EPA issue test rules under section 4 of TSCA to evaluate whether machining fluids pose an unreasonable risk to public health or the environment. UAW requests the testing because it believes that although the available epidemiology data is sufficient to establish the hazards of machining fluids as mixtures, more and better toxicology data is needed to characterize the health and environmental risks resulting from exposure to particular components or partial mixtures of machining fluids.

The petitioner alleges that sufficient evidence exists to establish that occupational exposure to machining fluids at currently permissible levels poses a risk of cancer and adverse effects on respiratory function. UAW says that the information derived from the additional testing requested, including measurements of environmental release in the occupational setting, would contribute to refining control strategies. It asserts that such information would more clearly define the toxicity of specific components constituting machining fluids and of different combinations of those components. The petitioner also believes that additional testing data will provide needed information regarding workplace exposure to specific components or partial mixtures of machining fluids.

The petitioner does not identify the specific chemical substances or chemical mixtures for which testing is requested. UAW states that the petition applies to all machining fluids, including generic categories such as straight oils, soluble oils, and synthetic fluids, and drawing compounds for metal stamping which are similar in composition to machining fluids. EPA estimates that the UAW petition potentially applies to hundreds of chemical substances or mixtures of chemical substances.

The petitioner says that test rules issued in response to the petition should include, but not be limited to requiring: mutagenicity, respiratory irritancy, and sensitization bioassays of

machining fluid components, partial combinations and in-use machining fluids; carcinogenesis bioassays for selected classes of components; chemical analysis of bulk fluids and aerosols for nitrosamines, bacterial degradation products (including endotoxin) and higher molecular weight polynuclear aromatic hydrocarbon formation from use; and health effects studies. In addition, the petitioner requests test rules requiring measurement of release to the environment of various machining fluid components to gauge workplace exposure from airborne machining fluid components.

On December 9, 1993, UAW petitioned the Occupational Health and Safety Administration (OSHA) to lower the current OSHA Permissible Exposure Limit (PEL) for oil mist from machining fluids. The UAW petition to OSHA includes a request that OSHA approach EPA to determine the need for test rules for particular ingredients of metalworking fluids, using authority under TSCA. The UAW petition to OSHA, a copy of which was filed with the TSCA section 21 petition, is accompanied by a paper entitled "Health Effects of Occupational Exposure to Machining Fluids," which contains a summary of selected epidemiological studies of cancer and respiratory diseases among workers exposed to machining fluids. In a statement made at the time of the filing, UAW president Owen Bieber said that additional joint union-company studies are underway at General Motors, Ford, and Chrysler, and that within a few years, study sponsors will know far more about, among other things, what specific ingredients in machining fluids are causing health problems for workers.

EPA believes that additional testing of machining fluids may be necessary to adequately characterize the health effects of these fluids on exposed workers. However, EPA has decided that it is not in a position at this time to conclude that the requisite section 4 criteria have been met for the hundreds of chemical substances and mixtures to which the petition arguably applies. Before deciding to require testing of machining fluids, EPA will work with OSHA and the National Institute of Occupational Safety and Health (NIOSH) in a specially convened Interagency Workgroup to identify specific components of machining fluids, the combinations in which these chemical substances are used in the workplace, and the level of workplace exposure to these chemical substances, and then determine which chemical substances, if any, have been adequately tested in the past or are currently undergoing testing.

In addition, before imposing testing requirements, EPA must determine which machining fluid chemicals meet the section 4 standards for presenting potentially unreasonable risks or evidencing adequate release or exposure to require testing under TSCA. A more detailed discussion of these standards is contained in Unit II.A. of this Notice. EPA anticipates that it will be able to complete the phase of this process that will result in decisions on whether to initiate section 4 test rules within 1 year.

Over the last several years, EPA has also taken a number of additional initiatives as described in Unit IV of this Notice. These activities help to address potential adverse health effects on workers exposed to machining fluids.

II. Background

A. Statutory Requirements

Section 21 of TSCA provides that any person may petition EPA to initiate proceedings for the issuance of rules under sections 4, 6, and 8 of TSCA. A section 21 petition must set forth the facts which the petitioner believes establish the need for the rules requested. EPA is required to grant or deny the petition within 90 days. If EPA grants the petition, the Agency must promptly commence an appropriate proceeding. If EPA denies the petition, the Agency must publish its reasons in the **Federal Register**. Within 60 days of denial, the petitioner may commence a civil action in a U.S. district court to compel the initiation of the rulemaking requested in its petition. The court must, for a petition for a new rule, provide an opportunity for the petition to be considered *de novo*. After hearing the evidence, the court can order EPA to initiate the action requested if the petitioner has demonstrated, by a preponderance of the evidence, support for particular conclusions described in section 21. In a challenge to an EPA denial of a section 21 petition requesting a section 4 rule, the petitioner would have to demonstrate by a preponderance of the evidence that information available to the Agency is insufficient to permit a reasoned evaluation of the effects of a chemical substance or mixture, and that the chemical substance or mixture either may present an unreasonable risk of injury or will be produced in substantial amounts and may result in significant or substantial human exposure or substantial environmental release, and that testing is necessary to characterize the risks.

Section 21 does not provide specific direction as to how the Agency should evaluate a citizen's petition, but merely states that EPA must grant or deny within 90 days. However, there are standards under section 4 for issuing regulations, and in determining whether to grant or deny, EPA must consider whether the requirements for section 4 rulemaking can be met. Under section 4 of TSCA, EPA may issue rules to require chemical manufacturers and processors to test the chemical substances and mixtures (chemicals) that they produce. To issue a section 4 rule on a chemical, EPA must find either that activities involving the chemical may present an unreasonable risk of injury to health or the environment, or that the chemical is or will be produced in substantial quantities and that there is or will be significant or substantial human exposure to the chemical or that the chemical is or will be released to the environment in substantial quantities. In addition, EPA must find that existing data are insufficient to determine or predict the effects of the chemical and that testing is necessary to develop that data. EPA must be able to make all of the above findings to issue a test rule; if EPA believes on the basis of the information obtained from the petition, and from its investigation during the 90–day review period, that it cannot make all of the necessary findings, EPA will deny the section 21 petition.

One of the criteria most relevant to a section 21 petition is whether testing is necessary. Section 4 expands the concept of sufficiency provided in the section 21 standards established for the purposes of district court review, requiring that EPA find that testing a chemical is necessary to develop the data needed to evaluate the chemical before it may issue a rule requiring testing of that chemical.

B. Description of Machining Fluid Problems

Machining fluids, also called metalworking fluids, are used to lubricate and cool industrial equipment and the metal being shaped during a variety of machining operations. These may include metal removing operations such as cutting or drilling, metal forming such as stamping or drawing, or similar operations. In its petition to OSHA, UAW states that NIOSH estimates that up to 10 million U.S. workers are routinely exposed to oil mists from machining fluids. Exposure is primarily occupational; however, there are limited exposure data. There may be as many as 400 commercial products (EPA, 1992) belonging to one of four major metalworking fluid types:

straight and soluble oils and semi-synthetic and synthetic fluids. All but the synthetic fluids contain mineral oil. There are no standard formulations of chemical components among commercial machining fluids. The following Table 1, which is illustrative only, indicates the diversity and use patterns of the generic types of machining fluids and components:

Table 1.—Typical Additives Which May be Found in Various Metalworking Fluids

	Straight[1] oil	Soluble oil	Semi-synthetic	Synthetic
Base.				
Mineral oil	X	X	X	
Additive.				
Surfactant		X	X	
Coupler		X	(X)	
Thickener				X
Detergent	X	X	X	X
Plasticizer			(X)	X
Anti-Misting	X			
Oiliness Agent	X			
Dispersant	X			
Extreme Pressure	X	X	(X)	
Passivator	X			
Anti-Foam		X	X	X
Alkaline Reserve	X	X	X	X
Solid Lubricant	X	(X)		
Odor Mask	X	X	X	(X)
Corrosion Inhibitor	X	X	X	X
Anti-Microbial Agent	X	X	X	X

[1] The term "straight oil" and "insoluble oil" may be used interchangeably.

Notes:

X-Indicates that it is likely that this additive is found in the fluid.

(X)—Indicates that this additive is occasionally found in the fluid. Either the additive is in a small percentage of the formulated products of this type, or there is no advantage to having the additive in the product.

Sources: Atmenkins, Howell, Luke, Leiter, 1994; Nachtman, 1990.

UAW attached a list of 14 epidemiology studies to its OSHA petition, along with a general description of the findings of these studies. Eight studies have been published; the remaining six studies have not been published and presumably have undergone peer review. These studies covered several operations including grinding operations in which inhalation of fine particles of the material being machined became a concern, as well as exposures in machining operations that did not involve grinding. The UAW-represented plants in the studies made a variety of products, using different processes with different machining fluid compositions and presumably different exposure levels. Taken together, the studies covered workers in foundry and engine plants exposed to substances characterized as straight, soluble, and insoluble oils, synthetic water-based cutting fluids, other synthetic fluids, cutting oils, metal fumes, abrasives, dusts, oil smoke, coolants, organic solvents, and nitrosamines. The studies found some evidence of increased risks of esophageal, rectal, laryngeal and stomach cancer. However, information regarding the level of exposure was limited or lacking altogether. For example, only two of the studies provided any quantitative measurement of exposure and both measures were reflective of current rather than historical levels to which workers were exposed.

According to UAW, excess stomach cancers were found in seven of the nine studies conducted at the UAW-represented plants. Of all 14 studies listed, however, only three studies actually found a statistically significant increased risk of stomach cancer (Austin et al., unpublished; Park et al. 1988; Silverstein et al. 1988). UAW has commented that it "believe[s] that there is sufficient evidence to conclude that exposure to machining fluids poses a risk of occupational cancer and adverse effects of respiratory health at levels permitted by the current OSHA Permissible Exposure Limit." The epidemiology studies are consistent with toxicology studies, which have generally shown that the respiratory tract is sensitive to the effects of machining fluid exposure. The increased incidence of cancer and respiratory effects in the epidemiology studies were associated with several types of machining fluid oils.

III. EPA's Approach to Obtaining Information on Workplace Health Risks from Exposure to Machining Fluids

EPA agrees with UAW that laboratory work on machining fluids should be expanded and that additional testing may be needed to more clearly define the toxicity of specific components of machining fluids and of different combinations of those components. However, EPA is not at this time convinced of the necessity to initiate section 4 test rules under TSCA for all the more than 400 components of machining fluids and the many hundreds of combinations of those components that are in use today. EPA believes that before it issues test rules, existing laboratory data must be reviewed to determine which machining fluid components have already been tested adequately. EPA believes that it is important for OSHA and NIOSH to help decide, possibly with additional input from both unions and industry, which of the hundreds of untested or inadequately tested machining fluid components or combinations are most likely to increase health risks to workers because they appear to have the greatest potential toxicity or are found in the most widely used machining fluids.

To select machining fluid chemicals for testing in response to this petition, EPA has recently formed an Interagency Workgroup with representatives from EPA, OSHA, and NIOSH. This group will review information regarding the composition of currently-used machining fluids and existing health

effects and exposure data on machining fluids, and will recommend specific chemicals for testing to the OSHA/NIOSH/EPA Committee (ONE Committee).

The ONE Committee was established pursuant to a formal Memorandum of Understanding (MOU) in 1988 to provide a focal point for coordination and exchange of information on occupational issues including toxic chemical assessment and regulatory activities of the three agencies. The Mine Safety and Health Administration (MSHA) was later added to the Committee.

Following review of the Interagency Workgroup's recommendations for testing (including monitoring) of specific machining fluid chemical substances or mixtures, the ONE Committee will refer data needs for specific chemical substances or mixtures to EPA for development of proposed test rules. EPA will then undertake to make the necessary findings under section 4 and develop test rules covering the recommended substances or mixtures. The identity and number of specific chemicals referred for testing will depend on the selections of the Interagency Workgroup, as reviewed by the ONE Committee. EPA has received letters from OSHA and NIOSH officials expressing their approval of the Interagency Workgroup's formation, appointing representatives to serve on the group, and indicating their understanding that the purpose of the group is to assist in addressing UAW's concerns regarding occupational health risks associated with exposure to machining fluids.

Prior to receiving the ONE Committee's referral of data needs the Interagency Workgroup's recommendations of substances or mixtures for testing, and Agency review with regard to section 4 criteria, EPA is not in a position to require testing for the hundreds of combinations of machining fluid chemical substances (or some subset thereof) which are currently in use. Specifically, EPA needs to select the chemicals and combinations that will support the findings required under TSCA section 4 before EPA can promulgate a test rule. In addition to evaluating the toxicity of chemicals and mixtures found in machining fluids, EPA needs to evaluate the potential exposure that occurs during use. Moreover, thermal and degradation products, and particulates from the metal work being machined can add to the potentially toxic exposures. These issues may need further review.

It should also be noted that EPA probably cannot promulgate a TSCA section 4 test rule for one category of additives mentioned in the petition. Section 3 of TSCA excludes certain types of chemicals from the definition of "chemical substances," and therefore from regulation under TSCA, including chemicals "manufactured, processed, or distributed in commerce, for use as pesticides." When biocides are added to machining fluids to act as pesticides, they would not normally be the subject of a TSCA section 4 rule. However, they are regulated by EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) 7 U.S.C. 136 *et seq.* and EPA has authority to require health and environmental data under FIFRA.

In summary, the Agency recognizes that additional laboratory testing may be needed to determine the toxicity of inadequately tested machining fluids. In addition, studies to better characterize worker exposure to machining fluids may be needed. EPA agrees with UAW that exposure to toxic machining fluid components and combinations of such components should be minimized. EPA also agrees with UAW that EPA, OSHA, and NIOSH should work together to determine the need for TSCA section 4 rules for particular ingredients and mixtures of metalworking fluids. EPA has initiated actions that will enable EPA, OSHA and NIOSH to navigate through the complex and extremely large universe of machining fluid components and mixtures to select appropriate substances for testing. The agencies may also seek the assistance of unions and industry in this effort. EPA believes that consultation with unions and industry may be particularly useful in handling nomenclature and product definition issues that must be resolved prior to promulgating test rules under section 4.

IV. Specific Actions to Address Workplace Exposure to Toxic Machining Fluid Components

Prior to receiving the December 22, 1993 petition, EPA had identified machining fluids as a potential source for concern. EPA had also begun to evaluate the toxicity of these materials.

On June 28, 1990, EPA received a letter from Dr. Franklin Mirer of UAW indicating UAW's intent to submit a petition under TSCA section 21 requesting TSCA section 4 carcinogenicity testing of cutting oil components and formulations. In response to this letter and a TSCA section 8(e) submission, EPA initiated a review of the toxicity of machining oil components and mixtures under its screening level risk management process (RM1). After reviewing available data on oil-based metalworking fluids, EPA concluded on September 9, 1992, that there were insufficient data at that time to define the agent(s) of concern for toxicity testing, and EPA presented this conclusion to the ONE Committee. As a result of this review, EPA decided to group machining fluid additives by their use (e.g., anti-oxidants, biocides, etc.) into use clusters for screening with respect to potential human risk, ecological risk, and pollution prevention. To date, 11 such clusters have been identified and are under review.

In addition, the following actions were not contemplated by EPA in response to any UAW initiative. These actions have been taken previously or are planned unilaterally by EPA to reduce, among other things, workplace exposure to certain toxic components of machining fluids.

EPA recently completed an investigation of chlorinated paraffins and olefins (CP/Os), substances used extensively in cutting fluids. Chlorinated paraffins (CPs) came to the attention of EPA in 1977, when the National Toxicology Program (NTP) nominated them for testing. Earlier that year, an international group of CP manufacturers had formed a Consortium to test their products for both health and environmental effects. EPA had discussed the planned testing with the Consortium and had accepted the Consortium's proposal for voluntary health and environmental effects testing of CPs. Consequently, EPA at that time did not propose a section 4(a) rule requiring such health or environmental effects testing. Following completion of testing by industry in 1984, EPA tentatively estimated that CPs could pose potential risks to aquatic life at concentrations at or below the concentrations that might be expected to occur frequently in the environment. In addition, NTP, the International Agency for Research on Cancer, and the State of California had classified short chain CPs as probable human carcinogens.

In September of 1993, EPA concluded that CP/Os do not present a general environmental risk, although a few cities with heavy concentrations of metalworking operations were identified in which CP/O water concentrations could reach levels of concern to some aquatic species. The investigation also concluded that CP/Os may pose cancer risks to specific limited populations, primarily to workers using metalworking fluids and thus exposed to CP/Os in oil mists. EPA also concluded that, to a lesser extent, CP/Os also could pose potential cancer risks to

small populations of subsistence fish-eaters in a few metropolitan areas, and possibly to anyone exposed to dioxin that might be generated during metalworking operations or when spent fluids are incinerated. Consequently, EPA is proposing to list CP/Os on the Toxic Release Inventory (TRI), based primarily on concerns about potential cancer risks. In addition, EPA has communicated to OSHA the potential occupational risk to metalworkers at the current PEL.

On May 12, 1993, (58 FR 27944) EPA promulgated a Significant New Use Rule (SNUR) under TSCA for alkali metal nitrites (AMNs), another frequent machining fluid additive. EPA has determined that the use of AMNs as ingredients in machining fluids containing amines may result in significant exposure to *N*-nitrosamines and pose a significant cancer risk to human health. The SNUR applies to any person that manufactures, imports, or processes AMNs for use as an ingredient in machining fluids containing amines. Such persons must notify EPA 90 days before undertaking the activity. This time period gives EPA an opportunity to evaluate the intended use of the AMNs in question to ensure that workers are protected from the risks of exposure to *N*-nitrosamines.

Finally, to address concerns over environmental releases of machining fluids and components, EPA is planning to propose the Metal Products and Machinery Phase I Effluent Guideline by November 1994. This guideline, which is scheduled for promulgation by May 1996, is intended to cover facilities that manufacture, rebuild or maintain metal parts, products or machines and that discharge effluent to surface waters and indirectly to publicly owned treatment facilities. The phase I guideline will cover the aerospace, aircraft, electronic equipment, hardware, mobile industrial equipment, ordnance, and stationary equipment industries. The guideline will regulate discharges of several pollutants, including some substances that are components of machining fluids or that constitute machining fluids.

V. Public Record

EPA has established a public record of those documents the Agency considered in reviewing this petition. The record consists of documents located in the file designated by docket Number OPPTS–211037, located at the TSCA Nonconfidential Information Center (NCIC). This Docket is available for inspection from 12 noon to 4 p.m., Monday through Friday, except legal holidays, in TSCA NCIC, Rm. E–G102, 401 M St., SW., Washington, DC 20460.

List of Subjects

Environmental protection.

Dated: April 12, 1994.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 94–9422 Filed 4–18–94;8:45 a.m.]

BILLING CODE 6560–50–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Scientific Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) has made final findings of scientific misconduct in the following case:

Keith A. Caruso, Cornell University. An inquiry conducted by Cornell University Medical College found that Dr. Caruso, while a medical student in the Department of Psychiatry, altered, fabricated, and destroyed primary laboratory data while learning techniques for insulin receptor binding on erythrocytes at the Columbia College of Physicians and Surgeons; this work was supported by grants from the National Institute of Mental Health. Dr. Caruso admitted to these acts of alteration, falsification and destruction of primary data. ORI has accepted the university's findings, and Dr. Caruso has signed an agreement with ORI accepting the finding of scientific misconduct and the administrative actions previously imposed by Cornell University. This agreement was made final on April 6, 1994. ORI has determined that the university's administrative actions were sufficient, and has not imposed any further Public Health Service actions. The fabricated data did not appear in any scientific publications.

FOR FURTHER INFORMATION CONTACT: Director, Division of Research Investigations, Office of Research Integrity, 301–443–5330.

Lyle W. Bivens,

Director, Office of Research Integrity.

[FR Doc. 94–9381 Filed 4–18–94; 8:45 am]

BILLING CODE 4160–17–M

[GN# 2231]

Correction of Notice of Findings of Scientific Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Correction.

SUMMARY: A Notice beginning on page 14623 in the issue of March 29, 1994, entitled "Findings of Scientific Misconduct" is hereby reprinted in its entirety because of typographical errors in the original printing:

John C. Hiserodt, M.D., Ph.D.: An inquiry conducted by the University of Pittsburgh and an investigation conducted by the Office of Research Integrity found that Dr. Hiserodt deliberately and knowingly falsified four figures and one table in two research grant applications submitted to the National Institutes of Health, and deliberately and knowingly fabricated a laboratory notebook to cover-up the falsifications in the grant applications. In reporting research results on antigen recognition by natural killer cells, Dr. Hiserodt falsely reported that a purportedly unique protein had a molecular weight of 48 kilodaltons by altering photographs of autoradiograms, falsely reported that this protein had been found in human cells, falsely reported the results of a gene sequence in response to questions raised by NIH grant reviewers about his experimental findings, and fabricated a laboratory notebook to cover-up the falsified research when questions about it were raised by investigating officials. Dr. Hiserodt has been debarred from receiving Federal grant or contract funds for a period of five years beginning March 9, 1994. In addition, any institution receiving PHS research support involving Dr. Hiserodt must monitor the accuracy of his research for an additional two-year period following the five-year debarment (for a total period of seven years) beginning March 9, 1999. He has also been prohibited from serving on PHS Advisory Committees or review groups for seven years beginning February 25, 1994. Dr. Hiserodt is also required to request correction of the article "The Expression and Functional Involvement of Laminin-like Molecules in Non-MHC Restricted Cytotoxicity by Human Leu-19+/CD3-Natural Killer Lymphocytes," Journal of Immunology, Vol. 141, 3318–23, 1988, to indicate that Figure 2 in the article may not be relied upon.

FOR FURTHER INFORMATION CONTACT: Director, Division of Research Investigations, Office of Research Integrity, 301–443–5330.

Lyle W. Bivens,

Director, Office of Research Integrity.

[FR Doc. 94–9382 Filed 4–18–94; 8:45 am]

BILLING CODE 4160–17–M

Administration for Children and Families

[Program Announcement No. 93656–941]

Temporary Child Care for Children With Disabilities and Crisis Nurseries Program

AGENCY: Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF), Department of Health and Human Services (DHHS).

ACTION: Announcement of the availability of financial assistance and request for applications from States to support demonstration projects to provide temporary child care for children with disabilities and children with chronic illnesses, and crisis nurseries for abused and neglected children and children at risk of abuse and neglect.

SUMMARY: The Administration on Children, Youth and Families (ACYF) announces the availability of fiscal year 1994 funds for competing new discretionary grants under the Temporary Child Care for Children with Disabilities and Crisis Nurseries Program. Funding for ACYF grants and the Cooperative Agreement identified in this announcement is authorized by legislation governing ACF programs in the Administration on Children, Youth and Families.

This announcement contains all of the necessary application material to apply for these grants and the Cooperative Agreement.

DATES: The closing date for the submission of all applications under this announcement is June 20, 1994.

ADDRESSES: Applications may be mailed to the Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade, SW., 6th Floor East, OFM/DDG, Washington, DC 20447. (Reference announcement number and priority area.)

Hand delivered applications are accepted during the normal working hours of 8 a.m. to 4:30 p.m., Monday through Friday, on or prior to the established closing date at: Administration for Children and Families, Division of Discretionary Grants, 6th Floor OFM/DDG, 901 D Street, SW., Washington, DC 20447.

FOR FURTHER INFORMATION CONTACT: Administration on Children, Youth and Families, Children's Bureau, P.O. Box 1182, Washington, DC 20013, Telephone: Ory Cuellar (202) 205–8899 or Shirley Haile-Howard (202) 205–8788.

SUPPLEMENTARY INFORMATION: The Administration on Children, Youth and Families (ACYF) administers national programs for children and youth, works with States and local communities to develop services which support and strengthen family life, seeks out joint ventures with the private sector to enhance the lives of children and their families, and provides information and other assistance to parents.

The concerns of ACYF extend to all children from birth through adolescence. Many of the programs administered by the agency focus on children from low-income families; children and youth in need of foster care, adoption or other child welfare services; preschool children; children with disabilities; abused and neglected children; runaway and homeless youth; and children from American Indian and migrant families.

Within ACYF, the Children's Bureau's Division of Child Welfare plans, manages, coordinates and supports child welfare services programs. It administers the Foster Care and Adoption Assistance Program, the Child Welfare Services State Grants Program, the Child Welfare Services Research, Demonstration and Training Programs, the Independent Living Initiatives Program, the Adoption Opportunities Program, the Temporary Child Care for Children With Disabilities and Crisis Nurseries Program, the Abandoned Infants Assistance Program, the Child Care and Development Block Grant Program, the State Dependent Care Planning and Development Program and the recently enacted Family Preservation and Family Support program.

The Children's Bureau programs are designed to promote the welfare of all children, including disabled, homeless, dependent or neglected children and their families. The programs aid in preventing and remedying the neglect, abuse and exploitation of children. The programs also encourage the strengthening of the family unit to help alleviate the unnecessary separation of children from their families.

This program announcement consists of four parts. Part I provides information on the goals of the Children's Bureau and the statutory authorities for awarding grants. Part II describes the programmatic priorities for which applications are being solicited. Part III provides information on the application review process. Part IV provides information and instructions for the development and submission of applications.

Part I—General Information

A. Background

The Temporary Child Care for Children With Disabilities and Crisis Nurseries Act of 1986 (the Act), as amended, authorizes grants to States to assist public and private agencies in developing temporary child care or respite care services for children with disabilities and crisis nurseries for children who are abused or neglected, at risk of abuse and neglect, or in families receiving protective services. These programs are intended to maintain and support the family unit and strengthen the parent-child bond. Programs were funded under this Act in fiscal years 1988, 1989, 1990, 1991, and 1993. In FY 1992, ACYF funded, through a limited competition, final continuations grants for projects originally funded in FY 1990.

B. Statutory Authorities Covered Under This Announcement

The Temporary Child Care for Children With Disabilities and Crisis Nurseries Program provides demonstration grants to States to assist private and public agencies in developing temporary child care (respite care) for children with disabilities and crisis nurseries for children at risk of child abuse and neglect. Authorization: Temporary Child Care for Children With Disabilities and Crisis Nurseries Act of 1986, as amended, Public Law 102–295, 42 U.S.C. 5117a, 5117b, 5117c.

CFDA: 93.656

C. Eligibility Requirements

Eligibility requirements are referenced under each priority area.

D. Availability and Allocation of Funds

The Administration for Children, Youth and Families proposes to award approximately 30 grants in varying amounts up to $200,000 per budget period and one Cooperative Agreement in varying amounts throughout the project period but with the first three years limited to $600,000 per budget period. Award amounts are indicated in the discussion of each priority area.

Part II—Programmatic Priorities for Funding

The priority areas identified in this announcement are derived from legislative mandates as well as Departmental goals and initiatives. The priorities reflect the state of current knowledge as well as emerging issues which have come to ACYF's attention by several means including consultation with advocates, policymakers, and practitioners in the field.

The priorities seek to focus attention on and to encourage demonstration efforts to obtain new knowledge and improvements in service delivery for the solution of particular problems and to promote the dissemination and utilization of the knowledge and model practices developed under these priorities.

A. Structure of Priority Area Descriptions

This section presents the basic set of issues that must be addressed in the application. Typically, they relate to project design, evaluation, and community involvement. This section also asks for specific information on the proposed project. Inclusion and discussion of these items in the applicant's proposal is important since they will be used by the reviewers in evaluating the proposal against the evaluation criteria. Project products, continuation of the project effort after the Federal support ceases, and dissemination/utilization activities, if appropriate, should also be addressed.

Each priority area is composed of the following sections:

• *Eligible Applicants*: This section specifies the type of organization which is eligible to apply under the particular priority area. Specific restrictions are also noted, where applicable.

Each priority area description contains information about the types of agencies and organizations which are eligible to apply under that priority area. Since eligibility varies among priority areas depending on statutory provisions, it is critical that the Eligible Applicants section under each specific priority area be read carefully.

• *Purpose*: This section presents the basic focus and/or broad goal(s) of the priority area.

• *Background*: This section briefly discusses the current state-of-the-art and/or current state-of practice that supports the need for the particular priority area activity and provides relevant information on projects previously funded by ACYF and/or other State models, where applicable.

• *Minimum Requirements for Project Design*: This section presents the basic set of issues that must be addressed in the application. Typically, they relate to project design, evaluation, and community involvement. This section also asks for specific information on the proposed project. The inclusion and discussion of these items in the applicant's proposal is important since they will be used by the reviewers in evaluating the proposal against the evaluation criteria. Project products, continuation of the project effort after the Federal support ceases, and dissemination/utilization activities, if applicable, should also be addressed.

• *Project Duration*: This section specifies the maximum allowable length of time for the project period; it refers to the amount of time for which Federal funding is available.

• *Federal Share of Project Cost*: This section specifies the amount of Federal support for the project.

The term budget period refers to the interval of time (usually 12 months) into which a multi-year period of assistance (project period) is divided for budgetary and funding purposes. The term project period refers to the total time a project is approved for support, including any extensions.

• *Matching Requirement*: This section specifies the minimum non-Federal contribution, either through cash or in-kind match, that is required. Applicants are encouraged to meet their match requirements through cash contributions. Grantees must provide at least 25 percent of the total approved cost of the project. The total approved cost of the project is the sum of the ACYF share and the non-Federal share. Therefore, a project requesting $50,000 in Federal funds must include a match of at least $16,666 (25 percent of the total project cost of $66,666).

• *Anticipated Number of Projects To Be Funded*: This section specifies the number of projects that ACYF anticipates it will fund in the priority area.

B. List of Priority Areas Included in This Announcement

1.01A—Temporary Child Care for Children with Disabilities and Chronically Ill Children
1.01B—Crisis Nurseries
1.02—National Resource Center for Respite and Crisis Care Services

C. Priority Area Descriptions and Requirements

1.01A Temporary Child Care for Children With Disabilities and Chronically Ill Children and 1.01B Crisis Nurseries

Eligible Applicants: Only State agencies designated by the Governor of the State to carry out programs funded under the Temporary Child Care for Children With Disabilities and Crisis Nurseries Act of 1986, as amended (42 U.S.C. 5117a and 5117b) are eligible to apply. Other State agencies carrying out similar programs are ineligible.

States, including those currently receiving financial assistance under these programs, may apply under each priority area described below. A separate application, however, must be submitted under each priority area. Only one application per State may be submitted under each priority area. Applications must clearly indicate whether they are being submitted under 1.01A, Temporary Child Care for Children with Disabilities and Chronically Ill Children, or 1.01B, Crisis Nurseries.

Purpose: To support States in their efforts to assist private and public agencies in developing two types of services:

• In-home or out-of-home temporary non-medical child care (respite care) for children with disabilities and children with chronic or terminal illnesses, including children with AIDS or AIDS-related conditions (priority area 1.01A); and

• Crisis nurseries for abused and neglected children, children at risk of abuse and neglect, or children in families receiving protective services (priority area 1.01B).

Special attention should be paid in both priority areas to the needs of drug-affected infants.

42 U.S.C. Section 5117a: Temporary Child Care for Children With Disabilities and Chronically Ill Children (Priority Area 1.01A)

Background: The Act authorizes temporary child care programs for children with disabilities and requires applicants seeking temporary child care funds to define disabilities using the definition in the Individuals with Disabilities Education Act:

* * * The term children with disabilities means children—(A)(i) with mental retardation, hearing impairments including deafness, speech or language impairments, visual impairments including blindness, serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and (ii) who, by reason thereof, need special education and related services.

(B) The term children with disabilities for children aged 3 to 5, inclusive, may at a State's discretion, include children—(i) experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development; and,

(ii) who, by reason thereof; need special education and related services * * * (Public Law 102–119)

The purpose of establishing a temporary child care program (also known as respite care) for children with disabilities or who are chronically or terminally ill is to alleviate social, economic, and financial stress among the families of such children. Such care provides the families or primary caregivers with periods of temporary relief from the pressures of the demanding child care routine. thus preventing severe family stress.

The following components may be included in temporary child care or respite care projects:

- 24-hour services;
- Access to primary medical services;
- Referral to counseling/therapy services;
- Staff training, including child abuse/neglect reporting responsibilities;
- Public awareness programs; and
- Linkages to other family support and/or family preservation services.

42 U.S.C. Section 5117b: Crisis Nurseries (Priority Area 1.01B)

Background: A crisis nursery is defined in section 42 U.S.C. Section 5117c(d) to mean a center providing temporary emergency services and care for children. Crisis nurseries are child care facilities which protect children by providing a safe environment at a time when the chances of neglect or abuse in the home are increased.

The programs offer parents the option of "time out" as a preventive measure in reducing the incidence of child maltreatment. They are designed to: (1) Develop a safe environment as a resource for children at risk of abuse; (2) deliver non-punitive, non-threatening services as a resource to caregivers of at-risk children; and (3) utilize existing community-based services to further diminish the potential for the maltreatment of children in families experiencing crisis. Services funded under 42 U.S.C. Section 5117b must be provided without fee and may be provided for a maximum of 30 days in any year. Crisis nurseries must also provide referral to support services.

The following components may be included in crisis nursery programs:

- 24-hour services;
- Referral to counseling/therapy services, including out-of-home placement (when appropriate);
- Access to primary medical services;
- Staff training, including child abuse/neglect reporting responsibilities;
- Public awareness programs; and
- Linkages to other family support and/or family preservation services.

Minimum Requirements for Project Design: 1.01A—Temporary Child Care for Children With Disabilities and Chronically Ill Children, and 1.01B - Crisis Nurseries

In order to successfully compete under one or both of these priority areas, the applicant should:

- Provide a letter addressed to the Commissioner, Administration on Children, Youth and Families, and signed by the Governor which certifies that the State agency applying for funding is the State agency designated to carry out programs funded under 42 U.S.C. Sections 5117a and 5117b of the Temporary Child Care for Children With Disabilities and Crisis Nurseries Act.
- Provide documentation of the State's commitment to develop a State plan for coordination among agencies carrying out programs and activities provided by the State pursuant to a temporary child care grant under 42 U.S.C. Section 5117a. (Section 5117c(a)(1)(A)(v))
- Describe collaborative efforts with programs funded through the Child Care and Development Block Grant.
- Describe collaborative efforts with other family preservation and/or support programs including how the project(s) funded under this program will be family-centered and incorporated into an integrated service system being planned under the Family Preservation and Family Support program authorized in Title IV-B, Subpart 2 of the Social Security Act.
- Describe the proposed State program to assist private and public agencies or organizations in providing in-home or out-of-home temporary, non-medical care to children with disabilities and children with chronic or terminal illnesses, including drug-related conditions and children with AIDS or AIDS-related conditions, or crisis nurseries for abused and neglected children.

(1) If the State has previously received an award under this statute, describe the types of services being provided and the geographical sites served utilizing these funds.

(2) If the funds being requested would be used to enhance services previously or currently supported under this statute, substantial detailed documentation must be provided on the increased need for services such as the existence of waiting lists or an increase in the population of the geographical area.

(3) If the funds being requested would be used to expand services to geographical sites not previously or currently supported under this statute, describe the process that was used or will be used to select the sites. Particularly encouraged are sites which would serve homeless families, families living in public housing projects or American Indian communities and/or other minority families.

- Describe the services to be provided, the agencies and organizations that would provide the services and the criteria that would be employed in the selection of children and families for participation in the project. (42 U.S.C. Section 5117c(a)(1)(A)(i))
- Describe State plans for the submission of an annual report to the Secretary evaluating the programs that are funded, including information on costs, number of participants, impact on family stability, incidence of child abuse and neglect and such other information as the Secretary may require. Describe fully how this requirement would be met and specifically describe how the data required to conduct this evaluation and to generate the information would be collected. (42 U.S.C. 5117c(C))
- Describe a plan for dissemination of the results of the programs and projects funded under the Act. (42 U.S.C. 5117c(a)(1)(A)(iii))
- Discuss plans for continuation of the program after the federally funded project period has ended.
- Provide assurances and adequate budget funds to enable at least one key person from the State agency and one key person from each service provider site receiving funds from the grant to attend an annual three day conference in Washington, DC.
- Provide assurances that travel to these conferences would not be subject to any limitations on travel which may be imposed by the State on its employees.
- Provide the following assurances as required by statute:

(1) That not more than 5 percent of the funds made available under each section of the Act would be used for State administrative costs.

(2) That projects funded by the State would be of sufficient size, scope and quality to achieve the objectives of the program.

(3) That, in the distribution of funds under the Temporary Child Care program, the State would give priority consideration to agencies and organizations which have experience in working with disabled, terminally ill, and chronically ill children and their families and which serve communities which demonstrate the greatest need for such services.

(4) That, in the distribution of funds under the Crisis Nurseries program, the State would give priority consideration to agencies and organizations with experience in working with abused or

neglected children and their families; in working with children at high risk of abuse and neglect and their families; and in serving communities which demonstrate the greatest need for such services.

(5) That Federal funds made available under these programs would be used to supplement and, to the extent practicable, increase the amount of State and local funds available for these purposes, and in no case supplant such State or local funds.

(6) That the State would use the definition of children with disabilities found in Public Law 102–119, the Individuals with Disabilities Education Act, in implementing programs under the Temporary Child Care program.

(7) That all agencies and organizations funded under the Temporary Child Care for Children with Disabilities program would provide child care only on a sliding fee scale with hourly and daily rates.

(8) That the services provided under the Crisis Nurseries program would be provided without fee and for a maximum of 30 days in any year.

Federal Share of Project Costs: The maximum Federal share may not exceed $200,000 for the first 12-month budget period or $600,000 for a 3-year project period.

Matching or Cost Sharing Requirements: The applicant must provide at least 25 percent of the total cost of the project. The total approved cost of the project is the sum of the ACYF share and the non-Federal share. The non-Federal share may be cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting $600,000 in Federal funds must include a match of at least $200,000 (25 percent of the total project cost of $800,000).

Non-Federal share contributions may exceed the minimum specified when the applicant is able to do so. An applicant should ensure the availability of any amount proposed as match prior to including it in the budget. The non-Federal share must be met by a grantee during the life of the project. Otherwise, ACF will disallow any unmatched Federal funds.

Project Duration: The length of the project may not exceed 36 months.

Anticipated Number of Projects to be Funded: It is anticipated that approximately 30 projects, 15 under each priority area, 1.01A and 1.01B, will be funded.

Length of Proposal: The length of the proposal should not exceed 60 pages, including all preprinted forms and appendices. Refer to Part IV for additional information regarding proposal requirements and limitations.

CDFA: 93.656 Temporary Child Care for Children With Disabilities and Crisis Nurseries Act of 1986, as amended, Title II, Public Law 102–295, 42 U.S.C. 5117a, 5117b, 5117c

1.02 National Resource Center for Respite and Crisis Care Services

Eligible Applicants: Only State agencies designated by the Governor of the State to carry out programs funded under Sections 5117a and 5117b of the Temporary Child Care for Children With Disabilities and Crisis Nurseries Act (the Act), including current grantees under the Act, are eligible to apply. Other State agencies carrying out similar programs are ineligible to apply.

Purpose: The purpose of this Resource Center is to assist in the coordination, exchange of information, continuing development and improvement of the types of services described in Sections 5117a and 5117b of the Temporary Child Care for Children With Disabilities and Crisis Nurseries Act. The Resource Center will also assist programs providing respite care services pursuant to the Family Preservation and Family Support program authorized in Title IV–B, Subpart 2 of the Social Security Act. The Resource Center will assist in the coordination, the dissemination of information about, and the continuing development and improvement of these respite care services. These services will be provided by the Resource Center whether or not the service providers receive Federal funds from the programs authorized under these Acts. The services to be provided are:

(1) In-home or out-of-home temporary non-medical child care (respite care) for children with disabilities and children with chronic or terminal illnesses (Section 5117a), including children with AIDS or AIDS-related conditions and drug-affected infants and children;

(2) Crisis nurseries for abused and neglected children, children at risk of abuse and neglect, and children in families receiving protective services, (Section 5117b), including drug-affected infants and children;

(3) Respite care as part of a system of family preservation services designed to assist families in crisis or at risk of having their children placed in foster care; and,

(4) Respite care as a part of a system of family support services designed to work with families before a crisis occurs to enhance child development and increase family stability.

Background: Since 1988, the Children's Bureau in the Department of Health and Human Services has awarded 145 grants to States to support respite care services and crisis nurseries under the Temporary Child Care for Children With Disabilities and Crisis Nurseries Program. Through these State agency grantees, over 250 local service providers have been recipients of the $52,106,552 awarded thus far. In addition, other projects, not utilizing Federal funds available under this program, have been developed and implemented in local communities designed to address the needs of similar target populations.

In FY 1993 the Children's Bureau awarded grants to 24 States with funds earmarked for expanding respite care and crisis nurseries services within the States.

Respite care programs funded under the Temporary Child Care program are designed to alleviate social, economic, and financial stress among families of all children and, particularly, children with disabilities or children who are chronically or terminally ill through the provision of short-term, non-medical child care. Such respite care provides families or primary care givers with periods of temporary relief from the pressures of the demanding child care routine, thus preventing severe family stress. Respite care programs generally provide 24-hour services, access to medical services; referral access to counseling/therapy; staff training, including child abuse/neglect reporting responsibilities; and public awareness efforts.

Crisis Nurseries programs are designed to protect children by providing a safe environment at a time when the chances of neglect or physical abuse in the home are increased. These programs offer parents the option of time out as a preventive measure to reduce the incidence of child maltreatment. In general, crisis nursery programs provide many of the same services as respite care programs but also place greater emphasis on intervention, remediation and prevention services including referrals for out-of-home placement, when appropriate.

Other community programs also provide respite care as an integrated part of their services. New legislation recently established Subpart 2 of Title IV–B of the Social Security Act, entitled the Family Preservation and Support Services, which encourages and enables States to develop, establish or expand and operate programs for family preservation and community-based family support services. These programs

are family-centered and will focus on strengthening the family unit. Family preservation services will assist families in crisis when the child is at imminent risk of being placed in out-of-home care because of abuse and/or neglect. Family support services will focus on activities aimed at increasing the strength and stability of families.

Existing programs vary considerably in terms of quality, experience and methodology. However, the demand for services is increasing as the number of single-parent families, families in poverty, and stress on families increases; as fewer disabled children are institutionalized; and as substance abuse impacts greater numbers of children and families. Additional resources are needed to assist in identifying, developing and utilizing effective program practices, information and materials in order to meet this demand.

Minimum Requirements for Project Design

In order to successfully compete under this priority area, the application should:

- Provide a letter addressed to the Commissioner, Administration on Children, Youth and Families, and signed by the Governor which certifies that the State agency applying for funding is the State agency designated to carry out the program.
- Demonstrate knowledge about the problems and issues involved in providing services for children with disabilities and children at risk of abuse and neglect.
- Provide documentation of the commitment to improving the quality of respite care and crisis nurseries program and services.
- Describe a plan for identifying emerging issues from the fields of child welfare (including family preservation and family support), developmental disabilities, and child health, particularly as they relate to prenatal drug exposure and pediatric HIV infection.
- Describe a plan for preparing and disseminating information and policy papers to the field which address these emerging issues.
- Describe a plan for promoting collaboration among agencies within states and communities.
- Describe a plan that will establish an advisory committee to provide overall guidance and support to the Resource Center.
- Describe a plan for coordinating activities with other national Resource Centers, Research Centers and Clearinghouses funded by HHS and other organizations to assure effective utilization of resources and avoid duplication of effort.
- Describe a plan for holding at least one national conference per year, in collaboration with the Children's Bureau, for relevant service providers.
- Describe a strategy for identifying and disseminating information about innovative and/or exemplary programs.
- Describe how the training and technical assistance needs of States identified by the HHS Regional Offices will be met.
- Describe a strategy for providing technical assistance to programs to improve the quality and rigor of their evaluations.
- Describe the applicant's experience in providing training and technical assistance on a variety of program models serving economically, racially and culturally diverse populations.
- Describe a strategy for identifying, documenting and developing innovative and/or exemplary resources such as training curricula and manuals and for assisting the field in adapting such resources to meet specific needs.
- Describe a plan for providing technical assistance, training and consultation to service providers and to State agencies to improve professional competency, to insure service coordination and integration, and to promote the utilization of resources and best practices related to the management and administration of respite care programs and crisis nurseries.
- Describe a plan for ensuring that the staff of the Resource Center are racially and culturally reflective of the population being served.
- Describe a plan for developing a national network of professionals in the field to serve as consultants, for linking these individuals with agencies requesting assistance, for ensuring that the network is racially and culturally diverse, and for ensuring the quality of the consultation provided.
- Provide assurances that at least one key staff member would attend an annual four-day meeting in Washington, DC, and at least three additional two-day meetings in Washington, DC with Children's Bureau staff, grantees, service providers, and/or policymakers each year.
- Provide assurances that not more than 5 percent of the funds awarded would be used for State administrative costs.
- Agree to enter into a Cooperative Agreement which will require the grantee to submit to the Children's Bureau for review and approval: workplans, including, as appropriate, activities involving Headquarters and Regional Office staff; lists of topics to be covered in technical assistance resources, syntheses, summaries and literature reviews; topics, times and places for conferences; topics for any collection of original data; and draft reports, conference agendas and other materials prior to their finalization and dissemination by the grantee. (A Cooperative Agreement is Federal Assistance in which substantial Federal involvement is anticipated. The respective responsibilities of Federal staff and the awardee are negotiated prior to the award.)

The grantee shall also cooperate, to the extent that its budget will allow, with the Children's Bureau in meetings, briefings, or other forums to disseminate knowledge gained from its work with States and local communities.

Federal Share of Project Costs: The maximum Federal share may notexceed $600,000 for the first 12-month budget period or $1,800,000 for the first 3-years of the project. Funding for years 4 and 5 may exceed $600,000 per budget period based on a comprehensive needs assessment submitted by the grantee.

Matching Requirement: There is no matching requirement.

Project Duration: The length of the project may not exceed 60 months.

Anticipated Number of Projects to be Funded: It is anticipated that one project will be funded as a Cooperative Agreement.

Length of Proposal: There is no page limitation on applications submitted under this priority area.

CDFA: 93.656 Temporary Child Care for Children With Disabilities and Crisis Nurseries Act of 1986, as amended, 42 U.S.C. 5117

D. Available Funds

The ACYF intends to award new grants and a Cooperative Agreement under this announcement during fiscal year 1994.

Applications for continuation grants funded under this program beyond the first year's budget period, but within the total project period, will be entertained in subsequent years on a non-competitive basis, subject to the availability of funds and a determination that continued funding would be in the best interest of the Federal government. Applicants are advised that the Administration has proposed the consolidation of this program into the Child Care and Development Block Grant (CCDBG) beginning in FY 1995.

In addition, for priority areas 1.01A and 1.01B, non-competitive funding for subsequent years will be based on a

program staff review of project status and performance, and evidence that the program is part of an integrated system of services described in an approved State plan as mandated by Title IV–B, Subpart 2, of the Social Security Act, pursuant to the Family Preservation and Family Support program. If the Temporary Child Care for Children With Disabilities and Crisis Nurseries program is consolidated with CCDBG, ACYF will encourage States to consider continuing those projects funded under these priority areas. For priority area 1.02, non-competitive funding beyond year three will be based on the project's responsiveness to customers' needs.

Part III—Review Process

A. Eligible Applicants

Before applications are reviewed, each application will be screened to determine that the applicant organization is an eligible applicant as specified under the selected priority area. Applications from organizations which do not meet the eligibility requirements for the priority area will not be considered or reviewed in the competition, and the applicant will be so informed.

B. Review Process and Funding Decisions

Timely applications from eligible applicants will be reviewed and scored competitively. Experts in the field, generally persons from outside of the Federal government, will use the evaluation criteria listed in Section C, Evaluation Criteria, to review and score the applications. The results of this review are a primary factor in making funding decisions.

The ACYF reserves the option of discussing applications with, or referring them to, other Federal or non-Federal funding sources when this is determined to be in the best interest of the Federal government or the applicant. It may also solicit comments from ACYF Regional Office staff, other Federal agencies, interested foundations, national organizations, specialists, experts, States and the general public. These comments, along with those of the expert reviewers, will be considered by ACYF in making funding decisions.

In making decisions on awards, ACYF may give preference to applications which focus on or feature: Minority populations; programs which are part of an integrated system of family support services and/or family preservation services; a substantial innovative strategy with the potential to improve theory or practice in the field of human services; a model practice or set of procedures that holds the potential for replication by organizations involved in the administration or delivery of human services; substantial involvement of volunteers; substantial involvement (either financial or programmatic) of the private sector; a favorable balance between Federal and non-Federal funds available for the proposed project; the potential for high benefit for low Federal investment; a programmatic focus on those most in need; and/or substantial involvement in the proposed project by national or community foundations.

To the greatest extent possible, efforts will be made to ensure that funding decisions reflect an equitable distribution of assistance among the States, and geographical regions of the country, rural and urban areas, and ethnic populations. In making these decisions, the Assistant Secretary and HHS Senior Staff may also take into account the need to avoid unnecessary duplication of efforts.

C. Evaluation Criteria

A panel of at least three reviewers (primarily experts from outside the Federal government) will review the applications. Applicants should ensure that they address each minimum requirement in the priority area description under the appropriate section of the Program Narrative Statement.

Reviewers will determine the strengths and weaknesses of each proposal in terms of the evaluation criteria listed below, provide comments and assign numerical scores. The point value following each criterion heading indicates the maximum numerical weight that each section may be given in the review process.

Applications under all priority areas will be evaluated against the following criteria.

1. *Objective and Need for Assistance* (20 points). The extent to which the application pinpoints any relevant physical, economic, social, financial, institutional or other problems requiring a solution; demonstrates the need for the assistance; states the principal and subordinate objectives of the project; provides supporting documentation or other testimonies from concerned interests other than the applicant; and includes and/or references relevant data. The application must identify the precise location of the project and area to be served by the proposed project. Maps and other graphic aids may be attached.

2. *Results or Benefits Expected* (20 points). The extent to which the application identifies the results and benefits to be derived, the extent to which they are consistent with the objectives of the proposal, and the extent to which the application indicates the anticipated contributions to policy, practice, theory and/or research. The extent to which the proposed project costs are reasonable in view of the expected results.

3. *Approach* (35 points). The extent to which the application outlines a sound and workable plan of action pertaining to the scope of the project, and details how the proposed work will be accomplished; cites factors which might accelerate or decelerate the work, giving acceptable reasons for taking the proposed approach as opposed to others; describes and supports any unusual features of the project, such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvements; provides for projections of the accomplishments to be achieved; and lists the activities to be carried out in chronological order, showing a reasonable schedule of accomplishments and target dates.

The extent to which, when applicable, the application identifies the kinds of data to be collected and maintained, and discusses the criteria to be used to evaluate the results and successes of the project. The extent to which the application describes the evaluation methodology that will be used to determine if the needs identified and discussed are being met and if the results and benefits identified are being achieved. The extent to which the application identifies each organization, agency, consultant, or other key individuals or groups who will work on the project, along with a description of the activities each will undertake and the nature of their effort or contribution.

4. *Staff Background and Organization's Experience* (25 points). The extent to which the background of the project director/principal investigator and key project staff (including name, address, training, educational background and other qualifying experience) and the experience of the organization demonstrate the applicant's ability to effectively and efficiently administer the project. The extent to which the application describes the relationship between the proposed project and other relevant work planned, anticipated or underway by the applicant.

Part IV—Instructions for the Development and Submission of Application

This Part contains information and instructions for submitting applications in response to this announcement. Application forms are provided along with a checklist for assembling an application package. Please copy and use these forms in submitting an application.

Potential applicants should read this section carefully in conjunction with the information contained within the specific priority area under which the application is to be submitted. The priority area descriptions are presented in Part II.

A. Required Notification of the State Single Point of Contact

The Temporary Child Care for Children with Disabilities and Crisis Nurseries Program is covered under Executive Order 12372, Intergovernmental Review of Federal Programs, and 45 CFR Part 100, Intergovernmental Review of Department of Health and Human Services Program and Activities. Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

All States and territories, except Alabama, Alaska, Connecticut, Hawaii, Idaho, Kansas, Louisiana, Minnesota, Montana, Nebraska, Oklahoma, Oregon, Pennsylvania, Virginia, Washington, American Samoa and Palau, have elected to participate in the Executive Order process and have established State Single Point of Contact (SPOCs). Applicants from these 17 jurisdictions need take no action regarding E.O. 12372. Otherwise, applicants should contact their SPOCs as soon as possible to alert them to the prospective applications and receive any necessary instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which may trigger the accommodate or explain rule.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade, SW., 6th Floor East, OFM/DDG, Washington, DC 20447.

A list of the Single Points of Contact for each State and Territory is included as Appendix B of this announcement.

B. Deadline for Submission of Applications

Deadline: Applications shall be considered as meeting the announced deadline if they are either:

1. Mailed on or before the deadline date to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade, SW., 6th Floor East, OFM/DDG, Washington, DC 20447.

2. Mailed on or before the deadline date and received by the granting agency in time for the independent review under DHHS GAM Chapter 1–62. (Applicants are cautioned to request a legibly dated U.S. Postal Service postmark or to obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private Metered postmarks shall not be acceptable as proof of timely mailing.)

3. Hand delivered during the normal working hours of 8 a.m. to 4:30 p.m., Monday through Friday, on or before to the established closing date to: Administration for Children and Families, Division of Discretionary Grants, 901 D Street, SW., 6th Floor OFM/DDG, Washington, DC 20447.

Late Applications: Applications which do not meet the criteria stated above are considered late applications. The granting agency shall notify each late applicant that its application will not be considered in the current competition.

Extension of Deadlines: The granting agency may extend the deadline for all applicants because of acts of God such as floods, hurricanes, etc., or when there is a widespread disruption of the mails. However, if the granting agency does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicants.

C. Instructions for Preparing the Application and Completing Application Forms

The SF 424, 424A, 424B, and certifications have been reprinted for your convenience in preparing the application. See Appendix A. You should reproduce single-sided copies of these forms from the reprinted forms in the announcement, typing your information onto the copies. Please do not use forms directly from the **Federal Register** announcement, as they are printed on both sides of the page.

Please prepare your application in accordance with the following instructions:

1. SF 424 Page 1, Application Cover Sheet

Please read the following instructions before completing the application cover sheet. An explanation of each item is included. Complete only the items specified.

Top of Page. Enter the single priority area number under which the application is being submitted. An application should be submitted under only one priority area.

Item 1. Type of Submission—Preprinted on the form.

Item 2. Date Submitted and Applicant Identifier—Date application is submitted to ACYF and applicant's own internal control number, if applicable.

Item 3. Date Received By State—State use only (if applicable).

Item 4. Date Received by Federal Agency—Leave blank.

Item 5. Applicant Information

Legal Name—Enter the legal name of the applicant organization. For applications developed jointly, enter the name of the lead organization only. There must be a single applicant for each application.

Organizational Unit—Enter the name of the primary unit within the applicant organization which will actually carry out the project activity. Do not use the name of an individual as the applicant. If this is the same as the applicant organization, leave the organizational unit blank.

Address—Enter the complete address that the organization actually uses to receive mail, since this is the address to which all correspondence will be sent. Do not include both street address and P.O. box number unless both must be used in mailing.

Name and telephone number of the person to be contacted on matters involving this application (give area code)—Enter the full name (including academic degree, if applicable) and

telephone number of a person who can respond to questions about the application. This person should be accessible at the address given here and will receive all correspondence regarding the application.

Item 6. Employer Identification Number (EIN)—Enter the employer identification number of the applicant organization, as assigned by the Internal Revenue Service, including, if known, the Central Registry System suffix.

Item 7. Type of Applicant—Self-explanatory.

Item 8. Type of Application—Preprinted on the form.

Item 9. Name of Federal Agency—Preprinted on the form.

Item 10. Catalog of Federal Domestic Assistance Number and Title—Enter the Catalog of Federal Domestic Assistance (CFDA) number assigned to the program under which assistance is requested and its title, as indicated in the relevant priority area description.

Item 11. Descriptive Title of Applicant's Project—Enter the project title. The title is generally short and is descriptive of the project, not the priority area title.

Item 12. Areas Affected by Project—Enter the governmental unit where significant and meaningful impact could be observed. List only the largest unit or units affected, such as State, county, or city. If an entire unit is affected, list it rather than subunits.

Item 13. Proposed Project—Enter the desired start date for the project and projected completion date.

Item 14. Congressional District of Applicant/Project—Enter the number of the Congressional district where the applicant's principal office is located and the number of the Congressional district(s) where the project will be located. If statewide, a multi-State effort, or nationwide, enter 00.

Item 15. *Estimated Funding Levels*

In completing 15a through 15f, the dollar amounts entered should reflect, for a 17-month or less project period, the total amount requested. If the proposed project period exceeds 17-months, enter only those dollar amounts needed for the first 12 months of the proposed project.

Item 15a. Enter the amount of Federal funds requested in accordance with the preceding paragraph. This amount should be no greater than the maximum amount specified in the priority area description.

Items 15b–e. Enter the amount(s) of funds from non-Federal sources that will be contributed to the proposed project. Items b–e are considered cost-sharing or matching funds. The value of third party in-kind contributions should be included on appropriate lines as applicable. For more information regarding funding as well as exceptions to these rules, see Part I, Section D, and the specific priority area description (Part II, Section C).

Item 15f. Enter the estimated amount of income, if any, expected to be generated from the proposed project. Do not add or subtract this amount from the total project amount entered under item 15g. Describe the nature, source and anticipated use of this income in the Project Narrative Statement.

Item 15g. Enter the sum of items 15a–15e.

Item 16a. Is Application Subject to Review by State Executive Order 12372 Process? Yes.—Enter the date the applicant contacted the SPOC regarding this application. Select the appropriate SPOC from the listing provided at the end of Part IV. The review of the application is at the discretion of the SPOC. The SPOC will verify the date noted on the application. If there is a discrepancy in dates, the SPOC may request that the Federal agency delay any proposed funding until September 1994.

Item 16b. Is Application Subject to Review By State Executive Order 12372 Process? No.—Check the appropriate box if the application is not covered by E.O. 12372 or if the program has not been selected by the State for review.

Item 17. Is the Applicant Delinquent on any Federal Debt?—Check the appropriate box. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include audit disallowances, loans and taxes.

Item 18. To the best of my knowledge and belief, all data in this application/preapplication are true and correct. The document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded.—To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for signature of this application by this individual as the official representative must be on file in the applicant's office, and may be requested from the applicant.

Item 18a–c. Typed Name of Authorized Representative, Title, Telephone Number—Enter the name, title and telephone number of the authorized representative of the applicant organization.

Item 18d. Signature of Authorized Representative—Signature of the authorized representative named in Item 18a. At least one copy of the application must have an original signature. Use colored ink (not black) so that the original signature is easily identified.

Item 18e. Date Signed—Enter the date the application was signed by the authorized representative.

2. *SF 424A—Budget Information—Non-Construction Programs*

This is a form used by many Federal agencies. For this application, Sections A, B, C, E and F are to be completed. Section D does not need to be completed.

Sections A and B should include the Federal as well as the non-Federal funding for the proposed project covering the first year budget period.

Section A—Budget Summary. This section includes a summary of the budget. On line 5, enter total Federal costs in column (e) and total non-Federal costs, including third party in-kind contributions, but not program income, in column (f). Enter the total of (e) and (f) in column (g).

Section B—Budget Categories. This budget, which includes the Federal as well as non-Federal funding for the proposed project, covers the first year budget period if the proposed project period exceeds 12 months. It should relate to item 15g, total funding, on the SF 424. Under column (5), enter the total requirements for funds (Federal and non-Federal) by object class category.

A separate itemized budget justification for each line item is required. The types of information to be included in the justification are indicated under each category. For multiple year projects, it is desirable to provide this information for each year of the project. The budget justification should immediately follow the second page of the SF 424A.

Personnel—Line 6a. Enter the total costs of salaries and wages of applicant/grantee staff. Do not include the costs of consultants, which should be included on line 6h, Other.

Justification: Identify the principal investigator or project director, if known. Specify by title or name the percentage of time allocated to the project, the individual annual salaries, and the cost to the project (both Federal and non-Federal) of the organization's staff who will be working on the project.

Fringe Benefits—Line 6b. Enter the total cost of fringe benefits, unless treated as part of an approved indirect cost rate.

Justification: Provide a break-down of amounts and percentages that comprise fringe benefit costs, such as health insurance, FICA, retirement insurance, etc.

Travel—6c. Enter total costs of out-of-town travel (travel requiring per diem) for staff of the project. Do not enter costs for consultant's travel or local transportation, which should be included on Line 6h, Other.

Justification: Include the name(s) of traveler(s), total number of trips, destinations, length of stay, transportation costs and subsistence allowances.

Equipment—Line 6d. Enter the total costs of all equipment to be acquired by the project. Equipment is defined as non-expendable tangible personal property having a useful life of more than one year and an acquisition cost of $5,000 or more per unit.

Justification: Equipment to be purchased with Federal funds must be justified. The equipment must be required to conduct the project, and the applicant organization or its subgrantees must not have the equipment or a reasonable facsimile available to the project. The justification also must contain plans for future use or disposal of the equipment after the project ends.

Supplies—Line 6e. Enter the total costs of all tangible expendable personal property (supplies) other than those included on Line 6d.

Justification: Specify general categories of supplies and their costs.

Contractual—Line 6f. Enter the total costs of all contracts, including (1) procurement contracts (except those which belong on other lines such as equipment, supplies, etc.) and (2) contracts with secondary recipient organizations, including delegate agencies. Also include any contracts with organizations for the provision of technical assistance. Do not include payments to individuals on this line. If the name of the contractor, scope of work, and estimated total costs are not available or have not been negotiated, include on Line 6h, "Other."

Justification: Attach a list of contractors, indicating the names of the organizations, the purposes of the contracts, and the estimated dollar amounts of the awards as part of the budget justification. Whenever the applicant/grantee intends to delegate part or all of the program to another agency, the applicant/grantee must complete this section (Section B, Budget Categories) for each delegate agency by agency title, along with the supporting information. The total cost of all such agencies will be part of the amount shown on Line 6f. Provide backup documentation identifying the name of contractor, purpose of contract, and major cost elements. Applicants who anticipate procurements that will exceed $5,000 (non-governmental entities) or $25,000 (governmental entities) and are requesting an award without competition should include a sole source justification in the proposal which at a minimum should include the basis for contractor's selection, justification for lack of competition when competitive bids or offers are not obtained and basis for award cost or price.

(Note: Previous or past experience with a contractor is not sufficient justification for sole source.)

Construction—Line 6g. Not applicable. New construction is not allowable.

Other—Line 6h. Enter the total of all other costs. Where applicable, such costs may include, but are not limited to: insurance; medical and dental costs; noncontractual fees and travel paid directly to individual consultants; local transportation (all travel which does not require per diem is considered local travel); space and equipment rentals; printing and publication; computer use; training costs, including tuition and stipends; training service costs, including wage payments to individuals and supportive service payments; and staff development costs. Note that costs identified as "miscellaneous" and honoraria are not allowable.

Justification: Specify the costs included.

Total Direct Charges—Line 6i. Enter the total of Lines 6a through 6h.

Indirect Charges—6j. Enter the total amount of indirect charges (costs). If no indirect costs are requested, enter none. Generally, this line should be used when the applicant (except local governments) has a current indirect cost rate agreement approved by the Department of Health and Human Services or another Federal agency.

Local and State governments should enter the amount of indirect costs determined in accordance with HHS requirements. When an indirect cost rate is requested, these costs are included in the indirect cost pool and should not be charged again as direct costs to the grant.

Justification: Enclose a copy of the indirect cost rate agreement.

Total—Line 6k. Enter the total amounts of lines 6i and 6j.

Program Income—Line 7. Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount.

Justification: Describe the nature, source, and anticipated use of program income in the Program Narrative Statement.

Section C—Non-Federal Resources. This section summarizes the amounts of non-Federal resources that will be applied to the grant. Enter this information on line 12 entitled Totals. In-kind contributions are defined in 45 CFR 74.51 and 45 CFR 92.3, as property or services which benefit a grant-supported project or program and which are contributed by non-Federal third parties without charge to the grantee, the subgrantee, or a cost-type contractor under the grant or subgrant.

Justification: Describe third party in-kind contributions, if included.

Section D—Forecasted Cash Needs. Not applicable.

Section E—Budget Estimate of Federal Funds Needed For Balance of the Project. This section should only be completed if the total project period exceeds 12 months.

Totals—Line 20. For projects that will have more than one budget period, enter the estimated required *Federal* funds for the second budget period (months 13 through 24) under column (b) First. If a third budget period will be necessary, enter the Federal funds needed for months 25 through 36 under (c) Second. Columns (d) and (e) are not applicable in most instances, since ACF funding is almost always limited to a three-year maximum project period. Columns (d) and (e) would be used in the case of a 60 month project.

Section F—Other Budget Information.

Direct Charges—Line 21. Not applicable.

Indirect Charges—Line 22. Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Remarks—Line 23. If the total project period exceeds 12 months, you must enter your proposed non-Federal share of the project budget for each of the remaining years of the project.

3. Project Summary Description

Clearly mark this separate page with the applicant name as shown in item 5 of the SF 424, the priority area number as shown at the top of the SF 424, and the title of the project as shown in item 11 of the SF 424. The summary description should not exceed 300 words. These 300 words become part of the computer database on each project.

Care should be taken to produce a summary description which accurately and concisely reflects the proposal. It should describe the objectives of the project, the approaches to be used and the outcomes expected. The description should also include a list of major products that will result from the proposed project, such as software packages, materials, management procedures, data collection instruments, training packages, or videos (please note that audiovisuals should be closed captioned). The project summary description, together with the information on the SF 424, will constitute the project abstract. It is the major source of information about the proposed project and is usually the first part of the application that the reviewers read in evaluating the application.

At the bottom of the page, following the summary description, type up to 10 key words which best describe the proposed project, the service(s) involved and the target population(s) to be covered. These key words will be used for computerized information retrieval for specific types of funded projects.

4. Program Narrative Statement

The Program Narrative Statement is a very important part of an application. It should be clear, concise, and address the specific requirements mentioned under the priority area description in Part II.

The narrative should provide information concerning how the application meets the evaluation criteria (see Section C, Part III), using the following headings:

(a) *Objectives and Need for Assistance;*

(b) *Results and Benefits Expected;*

(c) *Approach;* and

(d) *Staff Background and Organization's Experience.*

The specific information to be included under each of these headings is described in Section C of Part III, Evaluation Criteria.

The narrative should be typed double-spaced on a single-side of an 8½ x 11 plain white paper, with one inch margins on all sides. All pages of the narrative (including charts, references/footnotes, tables, maps, exhibits, etc.) must be sequentially numbered, beginning with Objectives and Need for Assistance as page number one. Applicants should not submit reproductions of larger size paper, reduced to meet the size requirement.

The length of the application, including the application forms and all attachments, should not exceed 60 pages. A page is a single side of an 8½ x 11 sheet of paper. Applicants are requested not to send pamphlets, brochures or other printed material along with their application as these pose xeroxing difficulties. These materials, if submitted, will not be included in the review process if they exceed the 60-page limit. Each page of the application will be counted to determine the total length.

5. Organizational Capability Statement

The Organizational Capability Statement should consist of a brief (two to three pages) background description of how the applicant organization (or the unit within the organization that will have responsibility for the project) is organized, the types and quantity of services it provides, and/or the research and management capabilities it possesses. This description should cover capabilities not included in the Program Narrative Statement. It may include descriptions of any current or previous relevant experience, or describe the competence of the project team and its demonstrated ability to produce a final product that is readily comprehensible and usable. An organization chart showing the relationship of the project to the current organization should be included.

6. Part IV—Assurances/Certifications

Applicants are required to file an SF 424B, Assurances—Non-Construction Programs and the Certification Regarding Lobbying. Both must be signed and returned with the application. In addition, applicants must certify their compliance with: (1) Drug-Free Workplace Requirements; and (2) Debarment and Other Responsibilities. Copies of these assurances/certifications are reprinted at the end of this announcement and should be reproduced, as necessary. A duly authorized representative of the applicant organization must certify that the applicant is in compliance with these assurances/certifications. A signature on the SF 424 indicates compliance with the Drug Free Workplace Requirements, and Debarment and Other Responsibilities certifications.

D. Checklist for a Complete Application

The checklist below is for your use to ensure that your application package has been properly prepared.

—One original, signed and dated application, plus two copies. Applications for different priority areas are packaged separately;

—Application is from an organization which is eligible under the eligibility requirements defined in the priority area description (screening requirement);

—Application length does not exceed 60 pages, unless otherwise specified in the priority area description.

A complete application consists of the following items in this order:

—Application for Federal Assistance (SF 424, REV 4–88);

—A completed SPOC certification with the date of SPOC contact entered in line 16, page 1 of the SF 424;

—Budget Information—Non-Construction Programs (SF 424A, REV 4–88);

—Budget justification for Section B—Budget Categories;

—Table of Contents;

—Letter from the Internal Revenue Service to prove non-profit status, if necessary;

—Copy of the applicant's approved indirect cost rate agreement, if appropriate;

—Project summary description and listing of key words;

—Program Narrative Statement (See Part III, Section C);

—Organizational capability statement, including an organization chart;

—Any appendices/attachments;

—Assurances—Non-Construction Programs (Standard Form 424B, REV 4–88);

—Certification Regarding Lobbying; and

—Certification of Protection of Human Subjects, if necessary.

E. The Application Package

Each application package must include an original and two copies of the complete application. Each copy should be stapled securely (front and back if necessary) in the upper left-hand corner. All pages of the narrative (including charts, tables, maps, exhibits, etc.) must be sequentially numbered, beginning with page one. In order to facilitate handling, please do not use covers, binders or tabs. Do not include extraneous materials as attachments, such as agency promotion brochures, slides, tapes, film clips, minutes of meetings, survey instruments or articles of incorporation.

Do not include a self-addressed, stamped acknowledgment card. All applicants will be notified automatically about the receipt of their application. If acknowledgment of receipt of your application is not received within eight weeks after the deadline date, please notify ACYF by telephone at (202) 690–7016.

Dated: April 13, 1993.

Olivia A. Golden,

Commissioner, Administration on Children, Youth and Families.

BILLING CODE 4184–01–P

Appendix A

APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

2. DATE SUBMITTED	Applicant Identifier
3. DATE RECEIVED BY STATE	State Application Identifier
4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

1. TYPE OF SUBMISSION:

Application	Preapplication
☐ Construction	☐ Construction
☐ Non-Construction	☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, state, and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify): _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ – ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT:		14. CONGRESSIONAL DISTRICTS OF:	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:		
a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE_____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

BILLION CODE 4184-01-C

Instructions for the SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item and Entry

1. Self-explanatory.

2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).

3. State use only (if applicable).

4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.

5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.

6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.

7. Enter the appropriate letter in the space provided.

8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:

—"New" means a new assistance award.

—"Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.

—"Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.

9. Name of Federal agency from which assistance is being requested with this application.

10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.

11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

12. List only the largest political entities affected (e.g., State, counties, cities).

13. Self-explanatory.

14. List the applicant's Congressional District and any District(s) affected by the program or project.

15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.

16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.

17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.

18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BILLING CODE 4184–01–P

BUDGET INFORMATION — Non-Construction Programs

OMB Approval No. 0348-0044

SECTION A – BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B – BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

Standard Form 424A (4-88)

BILLING CODE 4184-01-C

SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 -19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION

(Attach additional Sheets if Necessary)

21. Direct Charges:	22. Indirect Charges:
23. Remarks	

SF 424A (4-88) Page 2
Prescribed by OMB Circular A-102

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Instructions for the SF–424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a–k of Section B.

Section A. Budget Summary

Lines 1–4, Columns (a) and (b).

For applications pertaining to a single Federal grant program (Federal Domestic Assistance Catalog number) and not requiring a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a single program requiring budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in Column (a) and the respective catalog number on each line in Column (b).

For applications pertaining to multiple programs where one or more programs require a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1–4, Columns (c) through (g).

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5—Show the totals for all columns used.

Section B. Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1–4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Line 6a–i—Show the totals of Lines 6a to 6h in each column.

Line 6k—Show the amount of indirect cost.

Line 6k—Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants or decrease as shown in Columns (1)–(4), Line 6k should be the same as the sum of amounts in Section A, Columns (e) and (f) on Line 5.

Line 7—Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Lines 8–11—Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a)—Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b)—Enter the contribution to be made by the applicant.

Column (c)—Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d)—Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e)—Enter totals of Columns (b), (c), and (d).

Line 12—Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13—Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15—Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16–19—Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20—Enter the total for each of the Columns (b)–(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21—Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22—Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23—Provide any other explanations or comments deemed necessary.

Assurances—Non-Construction Programs

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728–4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88–352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the education Amendments of 1972, as amended (20 U.S.C. §§ 1681–1683, and 1685–1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101–6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92–255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd–3 and 290 ee–3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to non-discrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91–646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1505–1508 and 7324–7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a–7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327–333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Act of 1973 (P.L. 93–234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91–190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93–523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93–205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a–1 et seq.).

14. Will comply with P.L. 93–348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89–544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

Signature of Authorized Certifying Official

Title

Applicant Organization

Date Submitted

Appendix B—Executive Order 12372—State Single Points of Contact

Arizona

Mrs. Janice Dunn, Attn: Arizona State Clearinghouse, 3800 N. Central Avenue, 14th Floor, Phoenix, Arizona 85012, Telephone (602) 280–1315

Arkansas

Tracie L. Copeland, Manager, State Clearinghouse, Office of Intergovernmental Services, Department of Finance and Administration, P.O. Box 3278, Little Rock, Arkansas 72203, Telephone (501) 682–1074

California

Glenn Stober, Grants Coordinator, Office of Planning and Research, 1400 Tenth Street, Sacramento, California 95814, Telephone (916) 323–7480

Colorado

State Single Point of Contact, State Clearinghouse, Division of Local Government, 1313 Sherman Street, Room 520, Denver, Colorado 80203, Telephone (303) 866–2156

Delaware

Ms. Francine Booth, State Single Point of Contact, Executive Department, Thomas Collins Building, Dover, Delaware 19903, Telephone (302) 736–3326

District of Columbia

Rodney T. Hallman, State Single Point of Contact, Office of Grants Management and Development, 717 14th Street, NW., Suite 500, Washington, DC 20005, Telephone (202) 727–6551

Florida

Florida State Clearinghouse, Intergovernmental Affairs Policy Unit, Executive Office of the Governor, Office of Planning and Budgeting, The Capitol, Tallahassee, Florida 32399–0001, Telephone (904) 488–8441

Georgia

Mr. Charles H. Badger, Administrator, Georgia State Clearinghouse, 254 Washington Street, SW., Atlanta, Georgia 30334, Telephone (404) 656–3855

Illinois

Steve Klokkenga, State Single Point of Contact, Office of the Governor, 107 Stratton Building, Springfield, Illinois 62706, Telephone (217) 782–1671

Indiana

Jean S. Blackwell, Budget Director, State Budget Agency, 212 State House, Indianapolis, Indiana 46204, Telephone (317) 232–5610

Iowa

Mr. Steven R. McCann, Division of Community Progress, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, Telephone (515) 281–3725

Kentucky

Ronald W. Cook, Office of the Governor, Department of Local Government, 1024 Capitol Center Drive, Frankfort, Kentucky 40601, Telephone (502) 564–2382

Maine

Ms. Joynce Benson, State Planning Office, State House Station #38, Augusta, Maine 04333, Telephone (207) 289–3261

Maryland

Ms. Mary Abrams, Chief, Maryland State Clearinghouse, Department of State Planning, 301 West Preston Street, Baltimore, Maryland 21201–2365, Telephone (301) 225–4490

Massachusetts

Karen Arone, State Clearinghouse, Executive Office of Communities and Development, 100 Cambridge Street, Room 1803, Boston, Massachusetts 02202, Telephone (617) 727–7001

Michigan

Richard S. Pastula, Director, Michigan Department of Commerce, Lansing, Michigan 48909, Telephone (517) 373–7356

Mississippi

Ms. Cathy Mallette, Clearinghouse Officer, Office of Federal Grant Management and Reporting, 301 West Pearl Street, Jackson, Mississippi 39203, Telephone (601) 960–2174

Missouri

Ms. Lois Pohl, Federal Assistance Clearinghouse, Office of Administration, P.O. Box 809, Room 430, Truman Building, Jefferson City, Missouri 65102, Telephone (314) 751–4834

Nevada

Department of Administration, State Clearinghouse, Capitol Complex, Carson City, Nevada 89710, Telephone (702) 687–4065, Attention: Ron Sparks, Clearinghouse Coordinator

New Hampshire

Mr. Jeffrey H. Taylor, Director, New Hampshire Office of State Planning, Attn: Intergovernmetnal Review, Process/James E. Bieber, 2½ Beacon Street, Concord, New Hampshire 03301, Telephone (603) 271–2155

New Jersey

Gregory W. Adkins, Acting Director, Division of Community Resources, N.J. Department of Community Affairs, Trenton, New Jersey 08625–0803, Telephone (609) 292–6613

Please direct correspondence and questions to:

Andrew J. Jaskolka, State Review Process, Division of Community Resources, CN 814, Room 609, Trenton, New Jersey 08625–0803, Telephone (609) 292–9025

New Mexico

George Elliott, Deputy Director, State Budget Division, Room 190, Bataan Memorial Building, Santa Fe, New Mexico 87503, Telephone (505) 827–3640, FAX (505) 827–3006

New York

New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, Telephone (518) 474–1605

North Carolina

Mrs. Chrys Baggett, Director, Office of the Secretary of Admin., N.C. State Clearinghouse, 116 W. Jones Street, Raleigh, North Carolina 27603–8003, Telephone (919) 733–7232

North Dakota

ND Single Point of Contact, Office of Intergovernmental Assistance, Office of Management and Budget, 600 East Boulevard Avenue, Bismarck, North Dakota 58505–0170, Telephone (701) 224–2094

Ohio

Larry Weaver, State Single Point of Contact, State/Federal Funds Coordinator, State Clearinghouse, Office of Budget and Management, 30 East Broad Street, 34th Floor, Columbus, Ohio 43266–0411, Telephone (614) 466–0698

Rhode Island

Mr. Daniel W. Varin, Associate Director, Statewide Planning Program, Department of Administration, Division of Planning, 265 Melrose Street, Providence, Rhode Island 02907, Telephone (401) 277–2656

Please direct correspondence and questions to:

Review Coordinator, Office of Strategic Planning

South Carolina

Omeagia Burgess, State Single Point of Contact, Grant Services, Office of the Governor, 1205 Pendleton Street, Room 477, Columbia, South Carolina 29201, Telephone (803) 734–0494

South Dakota

Ms. Susan Comer, State Clearinghouse Coordinator, Office of the Governor, 500 East Capitol, Pierre, South Dakota 57501, Telephone (605) 773–3212

Tennessee

Mr. Charles Brown, State Single Point of Contact, State Planning Office, 500 Charlotte Avenue, 309 John Sevier Building, Nashville, Tennessee 37219, Telephone (615) 741–1676

Texas

Mr. Thomas Adams, Governor's Office of Budget and Planning, P.O. Box 12428, Austin, Texas 78711, Telephone (512) 463–1778

Utah

Utah State Clearinghouse, Office of Planning and Budget, ATTN: Carolyn Wright, Room 116 State Capitol, Salt Lake City, Utah 84114, Telephone (801) 538–1535

Vermont

Mr. Bernard D. Johnson, Assistant Director, Office of Policy Research and Coordination, Pavilion Office Building, 109 State Street, Montpelier, Vermont 05602, Telephone (802) 828–3326

West Virginia

Mr. Fred Cutlip, Director, Community Development Division, West Virginia Development Office, Building #6, Room 553, Charleston, West Virginia 25305, Telephone (304) 348–4010

Wisconsin

Mr. William C. Carey, Federal/State Relations, Wisconsin Department of Administration, 101 South Webster Street, P.O. Box 7864, Madison, Wisconsin 53707, Telephone (608) 266–0267

Wyoming

Sheryl Jeffries, State Single Point of Contact, Herschler Building, 4th Floor, East Wing, Cheyenne, Wyoming 82002, Telephone (307) 777–7574

Guam

Mr. Michael J. Reidy, Director, Bureau of Budget and Management Research, Office of the Governor, P.O. Box 2950, Agana, Guam 96910, Telephone (671) 472–2285

Northern Mariana Islands

State Single Point of Contact, Planning and Budget Office, Office of the Governor, Saipan, CM, Northern Mariana Islands 96950

Puerto Rico

Norma Burgos/Jose H. Caro, Chairman/Director, Puerto Rico Planning Board, Minillas Government Center, P.O. Box 41119, San Juan, Puerto Rico 00940–9985, Telephone (809) 727–4444

Virgin Islands

Jose L. George, Director, Office of Management and Budget, #41 Norregade Emancipation Garden Station, Second Floor, Saint Thomas, Virgin Islands 00802

Please direct correspondence to:

Linda Clarke, Telephone (809) 774–0750

BILLING CODE 4184–01–P

Appendix C

U.S. Department of Health and Human Services
Certification Regarding Drug-Free Workplace Requirements
Grantees Other Than Individuals

By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F. The regulations, published in the May 25, 1990 Federal Register, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the Department of Health and Human Services (HHS) determines to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, HHS, in addition to any other remedies available to the Federal Government, may taken action authorized under the Drug-Free Workplace Act. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment.

Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios.)

If the workplace identified to HHS changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see above).

Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

"Controlled substance" means a controlled substance in Schedules I through V of the Controlled Substances Act (21 USC 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15).

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

"Employee" means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All "direct charge" employees; (ii) all "indirect charge" employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace; (2) The grantee's policy of maintaining a drug-free workplace; (3) Any available drug counseling, rehabilitation, and employee assistance programs; and, (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and, (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or, (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant (use attachments, if needed):

Place of Performance (Street address, City, County, State, ZIP Code)_____

_____

Check ___ if there are workplaces on file that are not identified here.

Sections 76.630(c) and (d)(2) and 76.635(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central receipt point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517-D, 200 Independence Avenue, S.W., Washington, D.C. 20201.

DGMO Form#2 Revised May 1990

BILLING CODE 4184-01-C

Appendix—Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

By signing and submitting this proposal, the applicant, defined as the primary participant in accordance with 45 CFR Part 76, certifies to the best of its knowledge and believe that it and its principles:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any Federal Department or agency;

(b) Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicated or otherwise criminally or civilly charged by a governmental entity (Federal, State of local) with commission of any of the offenses enumbered in paragraph (1) (b) of this certification; and

(d) Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

The inability of a person to provide the certification required above will not necessarily result in denial of participation in this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the Department of Health and Human Services[HHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

The prospective primary participant agrees that by submitting this proposal, it will include the clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transaction. "provided below without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions (To Be Supplied to Lower Tier Participants)

By signing and submitting this lower tier proposal, the prospective lower tier participant, as defined in 45 CFR Part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

(b) Where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal.

The prospective lower tier participant further agrees by submitting this proposal that it will include this clause entitled "certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions. "Without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

State for Loan Guarantee and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL "Disclosure Form to Report Lobbying," in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature

Title

Organization

Date

BILLING CODE 4184-01-P

Appendix E

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by 0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change For Material Change Only: year _____ quarter _____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier ____, *if known*: Congressional District, *if known*:	Congressional District, *if known*:
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, *if applicable*: _____
8. Federal Action Number, *if known*:	9. Award Amount, *if known*: $
10. a. Name and Address of Lobbying Entity *(if individual, last name, first name, MI)*:	b. Individuals Performing Services *(including address if different from No. 10a)* *(last name, first name, MI)*:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment *(check all that apply)*:	13. Type of Payment *(check all that apply)*:
$ _____ ☐ actual ☐ planned	☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____
12. Form of Payment *(check all that apply)*: ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____	

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16.	
Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____

Federal Use Only:	Authorized for Local Reproduction Standard Form - LLL

[FR Doc. 94–9276 Filed 4–18–94; 8:45 am]

BILLING CODE 4184–01–C

Administration on Aging

White House Conference on Aging; Recognition of Activities; Extension of Recognition Period

AGENCY: White House Conference on Aging, AoA, HHS.

ACTION: Notice; extension of recognition period.

SUMMARY: The 1995 White House Conference on Aging (WHCOA) published a document in the Federal Register on March 17, 1994, page 12609, announcing its intention to recognize local and regional activities, events and programs developed by outside organizations during 1994. The WHCOA is extending the period for recognition to April 30, 1995.

FOR FURTHER INFORMATION CONTACT: Judy Satine, White House Conference on Aging, 501 School St. SW., 8th floor, Washington, DC 20024, 202–245–7826.

Fernando M. Torres-Gil,

Assistant Secretary for Aging.

[FR Doc. 94–9423 Filed 4–18–94; 8:45 am]

BILLING CODE 4130–02–M

Centers for Disease Control and Prevention

[Announcement—501]

Public Health Conference Support Grant Program

Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of funds in fiscal year (FY) 1995 for the Public Health Conference Support Grant Program. The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to all of Healthy People 2000 priority areas, except HIV Infection (a separate announcement for HIV entitled, "Public Health Conference Support Cooperative Agreement Program for Human Immunodeficiency Virus (HIV) Prevention" will be published). (For ordering a copy of "Healthy People 2000," see the section "Where To Obtain Additional Information.")

Authority

This program is authorized under section 301 (42 U.S.C. 241) and section 310 (42 U.S.C. 242n) of the Public Health Service Act.

Smoke-Free Workplace

The Public Health Service strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Eligible Applicants

Eligible applicants include non-profit and for-profit organizations. Thus, universities, colleges, research institutions, hospitals, other public and private (e.g., community-based, national, and regional) organizations, State and local health departments or their bona fide agents, federally recognized Indian tribal governments, Indian tribes or Indian tribal organizations, and small, minority and/or women-owned businesses are eligible for these grants.

Availability of Funds

Approximately $300,000 is expected to be available in FY 1995 to fund approximately 15–20 awards. The awards range from $1,000 to $30,000 with the average award being approximately $15,000. The awards will be made for a 12-month budget and project period. The funding estimates may vary and are subject to change, based on the availability of funds.

Use of Funds

1. CDC funds may be used for direct cost expenditures: salaries, speaker fees, rental of necessary equipment, registration fees, and transportation costs (not to exceed economy class fare) for non-Federal employees.

2. CDC funds may Not be used for the purchase of equipment, payments of honoraria, alterations or renovations, organizational dues, entertainment or personal expenses, cost of travel and payment of a Federal employee, nor per diem or expenses other than local mileage for local participants.

3. CDC funds may Not be used for reimbursement of indirect costs.

4. Although the practice of handing out novelty items at meetings is often employed in the private sector to provide participants with souvenirs, Federal funds Cannot be used for this purpose.

5. CDC funds may be used for only those parts of the conference specifically supported by CDC as documented in the grant award.

Purpose

The purpose of the conference support grants is to provide Partial support for specific non-Federal conferences in the areas of health promotion and disease prevention information/education programs, (Except HIV Infection). Applications are being solicited for conferences on: (1) Chronic disease prevention; (2) infectious disease prevention; (3) control of injury or disease associated with environmental, home, and work-place hazards; (4) environmental health; (5) occupational safety and health; (6) control of risk factors such as poor nutrition, smoking, lack of exercise, high blood pressure, and stress; (7) health education and promotion; (8) laboratory practices; and (9) efforts that would strengthen the public health system. Because conference support by CDC creates the appearance of CDC co-sponsorship, there will be active participation by CDC in the development and approval of those portions of the agenda supported by CDC funds. In addition, CDC will reserve the right to approve or reject the content of the full agenda, speaker selection, and site selection. CDC funds will not be expended for non-approved portions of meetings. Contingency awards will be made allowing usage of only 10% of the total amount to be awarded until a final full agenda is approved by CDC. This will provide funds for costs associated with preparation of the agenda. The remainder of funds will be released only upon approval of the final full agenda. CDC reserves the right to terminate co-sponsorship if it does not concur with the final agenda.

Because CDC's mission and programs relate to the promotion of health and the prevention of disease, disability, and premature death, only conferences focusing on such programmatic areas will be considered. Those topics concerned with health-care and health-service issues and areas other than prevention should be directed to other public health agencies.

Program Requirements

Grantees must meet the following requirements:

A. Manage all activities related to program content (e.g., objectives, topics, attendees, session design, workshops, special exhibits, speakers, fees, agenda composition, and printing). Many of these items may be developed in concert with assigned CDC project personnel.

B. Provide draft copies of the agenda and proposed ancillary activities to CDC for approval. Submit copy of final agenda and proposed ancillary activities to CDC for approval.

C. Determine and manage all promotional activities (e.g., title, logo, announcements, mailers, press, etc.).

CDC must review and approve any materials with reference to CDC involvement or support.

D. Manage all registration processes with participants, invitees, and registrants (e.g., travel, reservations, correspondence, conference materials and hand-outs, badges, registration procedures, etc.).

E. Plan, negotiate, and manage conference site arrangements, including all audio-visual needs.

F. Participate in the analysis of data from conference activities that pertain to the impact on prevention.

Letter of Intent

Potential applicants must submit a one typewritten page Letter of Intent that briefly describes the title, location, purpose, and date of the proposed conference and the intended audience (number and profession). This letter should also include the estimated total cost of the conference and the percentage of the total cost being requested from CDC. The One Page Limitation Must be Observed or the Letter of Intent will be Returned Without Review.

Letters of Intent will be reviewed by program staff for consistency with CDC's health promotion and disease prevention goals and priorities and the purpose of this program. An invitation to submit a final application will be made on the basis of the proposed conference's relationship to the CDC funding priorities and on the availability of funds.

Evaluation Criteria

Applications will be reviewed and evaluated according to the following criteria (Total 100 Points):

A. Proposed Program and Technical Approach (25 points)

Evaluation will be based on the relevance of the conference to CDC's mission and program activities.

B. Applicant Capability (10 points)

Evaluation will be based on the adequacy of applicant's resources (additional sources of funding, organization's strengths, staff time, etc.) available for the project.

C. The Qualification of Program Personnel (20 points)

Evaluation will be based on the extent to which the proposal has described: (a) The qualifications, experience, and commitment of the principal staff person, and his/her ability to devote adequate time and effort to provide effective leadership; (b) the competence of associate staff persons, discussion leaders, speakers, and presenters to accomplish the proposed conference; and (c) the degree to which the application demonstrates the knowledge of nationwide information and education efforts currently underway which may affect, and be affected by, the proposed conference.

D. Conference Objectives (25 points)

Evaluation will be based on the overall quality, reasonableness, feasibility, and logic of the designed conference objectives, including the overall workplan and timetable for accomplishment. Evaluation will also be based on the likelihood of accomplishing conference objectives as they relate to disease prevention and health promotion goals, and the feasibility of the project in terms of operational plan.

E. Evaluation Methods (20 points)

Evaluation will be based on the extent to which evaluation mechanisms for the conference will be able to adequately assess increased knowledge, attitudes, and behaviors of the target attendees.

F. Budget Justification and Adequacy of Facilities (Not Scored)

The proposed budget will be evaluated on the basis of its reasonableness, concise and clear justification, and consistency with the intended use of grant funds. The application will also be reviewed as to the adequacy of existing and proposed facilities and resources for conducting conference activities.

Executive Order 12372 Review

Applications are not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

Public Health System Reporting Requirements

This program is subject to the Public Health System Reporting Requirements. Under these requirements, all community-based nongovernmental applicants must prepare and submit the items identified below to the head of the appropriate State and/or local health agencies in the program area(s) that may be impacted by the proposed project no later than the receipt date of the Federal application. The appropriate State and/or local health agency is determined by the applicant. The following information must be provided:

a. A copy of the face page of the application (SF 424).

b. A summary of the project entitled "Public Health System Impact Statement" (PHSIS), not to exceed one page, and include the following:

(1) A description of the population to be served;

(2) A summary of the services to be provided; and

(3) A description of the coordination plans with the appropriate State and/or local health agencies.

If the State and/or local health official should desire a copy of the entire application, it may be obtained from the State Single Point of Contact (SPOC) or directly from the applicant.

Catalog Of Federal Domestic Assistance (CFDA)

The Catalog of Federal Domestic Assistance Number is 93.283.

Letter of Intent and Application Submission and Deadline

The Original and Two Copies of the Letter of Intent must be submitted by the following deadline dates in order to be considered in the application cycles.

(Facsimiles are not Acceptable.)

Letter of intent due dates	Application deadline
October 17, 1994	January 9, 1995.
April 3, 1995	June 5, 1995.

Following submission of a Letter of Intent, successful applicants will receive a written notification to submit an application for funding. Applications may be accepted by CDC only after the Letter of Intent has been reviewed by CDC and written invitation from CDC has been received by prospective applicant. An invitation to submit an application does not constitute a commitment to fund the applicant.

The original and two copies of the application must be submitted on PHS Form 5161–1 and in accordance with the schedule below. The schedule also sets forth the earliest possible award date.

Application deadline	Earliest possible award dates
January 9, 1995	April 7, 1995.
June 5, 1995	August 11, 1995.

The Letter of Intent and the Applications must be submitted on or before the deadline date to: Carolyn J. Russell, Grants Management Officer, Attention: Karen Reeves, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Mailstop E–09, room 300, Atlanta, GA 30305.

1. Deadline

Letters of Intent and Applications shall be considered as meeting the deadline if they are either:

A. Received on or before the deadline date, or

B. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks will not be acceptable as proof of timely mailing.)

2. Late Applications

Applications that do not meet the criteria in 1.A. or 1.B. above are considered late applications and will be returned to the applicant.

Where To Obtain Additional Information

To receive additional written information call (404) 332–4561. You will be asked to leave your name, address, and phone number and will need to refer to Announcement 501. You will receive a complete program description, information on application procedures, and application forms.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained form Karen Reeves, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 300, Mailstop E–09, Atlanta, GA 30305, telephone (404) 842–6596. Programmatic technical assistance may be obtained from Bruce Granoff, Program Analyst, Public Health Practice Program Office, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., Mailstop E–42, Atlanta, GA 30333, telephone (404) 639–0425.

Please refer to Announcement 501 when requesting information and when submitting your Letter of Intent and application in response to the announcement.

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) referenced in the "Introduction" through the Superintendent of Documents, Government Printing Office, Washington DC 20402–9325, telephone (202) 783–3238.

Dated: April 12, 1994.

Robert L. Foster,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94–9336 Filed 4–18–94; 8:45 am]

BILLING CODE 4163–18–P

Food and Drug Administration

Request for Nominations for Members on Public Advisory Committees; Food Advisory Committee

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting nominations for members to serve on the Food Advisory Committee (the committee) in FDA's Center for Food Safety and Applied Nutrition. Nominations will be accepted for current vacancies and vacancies that will or may occur on the committee during the next 24 months.

FDA has special interest in ensuring that women, minority groups, and the physically handicapped are adequately represented on advisory committees and, therefore, extends particular encouragement to nominations for appropriately qualified female, minority, or physically handicapped candidates. Final selection from among qualified candidates for each vacancy will be determined by the expertise required to meet specific agency needs and in a manner to ensure appropriate balance of membership.

DATES: Nominations should be received by May 19, 1994.

ADDRESSES: All nominations for membership, except for consumer-nominated members, should be sent to Catherine M. DeRoever (address below). All nominations for the consumer-nominated members should be sent to Susan K. Meadows (address below).

FOR FURTHER INFORMATION CONTACT:

Regarding all nominations for membership, except for consumer-nominated members: Catherine M. DeRoever, Center for Food Safety and Applied Nutrition (HFS–22), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4251.

Regarding all nominations for consumer-nominated members: Susan K. Meadows, Office of Consumer Affairs (HFE–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5006.

SUPPLEMENTARY INFORMATION: FDA is requesting nominations for members to serve on the advisory committee listed below. Individuals should have expertise in the activity of the committee.

Food Advisory Committee: One vacancy needs to be filled immediately (nonconsumer/industry representative vacancy). Also, seven vacancies will occur June 30, 1994, including one for a consumer representative and one for an industry representative, and eight vacancies will occur June 30, 1995, including one for a consumer representative and one for an industry representative.

The committee provides advice primarily to the Director, Center for Food Safety and Applied Nutrition, and as needed, to the Commissioner of Food and Drugs and other appropriate officials, on emerging food safety, food science, and nutrition issues that FDA considers of primary importance in the next decade. The committee also provides advice and makes recommendations on ways of communicating to the public the potential risks associated with these issues and recommends approaches to be considered in addressing them.

Criteria for Members

Persons nominated for membership on the committee shall be knowledgeable in the fields of life sciences, food science, risk assessment, or other relevant scientific disciplines. The committee may include technically qualified members who are identified with consumer interests and are recommended by either a consortium of consumer-oriented organizations or other interested persons. Representatives of industry interests will serve as liaisons to the regulated industry. The term of office is up to 4 years.

Nomination Procedures

Interested persons may nominate one or more qualified persons for membership on the committee. Nominations shall state that the nominee is willing to serve as a member of the committee and appears to have no conflict of interest that would preclude committee membership. Additionally, the nominee's mailing address, telephone number, and curriculum vitae must accompany the nominations. Potential candidates will be asked by FDA to provide detailed information concerning such matters as financial holdings, employment, consultancies, and research grants and/or contracts to permit evaluation of possible sources of conflict of interest.

Criteria for Consumer-Nominated Members

Selection of representatives of consumer interests will be conducted through procedures that include use of a consortium of consumer organizations which has the responsibility for screening, interviewing, and recommending candidates for the agency's selection. Candidates from this group, like all other candidates for membership on the committee, should possess appropriate qualifications to understand and contribute to the committee's work.

Industry Representatives

Regarding nominations for members representing industry interests, a letter will be sent to each person or organization that has made a nomination and to other organizations that have expressed an interest in participating in the selection process together with a complete list of all such organizations and the nominees. The letter will state that it is the responsibility of each nominator or organization that has expressed an interest in participating in the selection process to consult with the others and to provide a consensus slate of possible members representing industry interests within 60 days. In the event that a slate of nominees has not been provided within 60 days, the agency will select an industry representative for each such vacancy from the entire list of industry nominees to avoid delay or disruption of the work of the committee. The agency is particularly interested in nominees that possess the essential scientific credentials needed to participate fully and knowledgeably in the committee's deliberations. In addition to this expertise, the agency believes that it would be an advantage to the committee's work if the individual(s) had special insight and direct experience into specific industry-wide issues, practices, and concerns that might not otherwise be available to others not similarly situated.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to advisory committees.

Dated: April 13, 1994.

Linda A. Suydam,

Interim Deputy Commissioner for Operations.

[FR Doc. 94–9349 Filed 4–18–94; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 94M–0064]

Cardiac Pacemakers, Inc.; Premarket Approval of the 0060 Series ENDOTAK® Lead System

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Cardiac Pacemakers, Inc., St. Paul, MN, for premarket approval, under section 515 of the Federal Food, Drug, and Cosmetic Act (the act), of the 0060 Series ENDOTAK® Lead System (the ENDOTAK® Lead System). After reviewing the recommendation of the Circulatory System Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of August 26, 1993, of the approval of the application.

DATES: Petitions for administrative review by May 19, 1994.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Doris J. Terry, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–594–1523.

SUPPLEMENTARY INFORMATION: On December 19, 1991, Cardiac Pacemakers, Inc. (CPI), St. Paul, MN 55112, submitted to CDRH an application for premarket approval of the ENDOTAK® Lead System. The ENDOTAK® Lead System consists of the following: The ENDOTAK® C Lead Models 0060, 0062, 0064; Lead Stylet Models 6824 and 6825; ENDOTAK® SQ Patch Lead Model 0063; commercially available AICD™ Y Connector Model 6836; and Model 0056 Bipolar Positive Fixation Lead and Adapter. The ENDOTAK® Lead System is used with commercially available AICD™ Models 1550, 1555, and 1600. The ENDOTAK® Lead System is a transvenous defibrillation lead system and is intended for the treatment of ventricular tachyarrhythmias in patients who are at high risk of sudden cardiac death. Such patients are defined as those who have experienced one or more of the following: (1) Survived at least one episode of cardiac arrest presumably due to hemodynamically unstable ventricular tachyarrhythmias unassociated with acute myocardial infarction; or (2) recurrent ventricular tachyarrhythmias in the absence of such previous arrest and are inducible into sustained hypotensive ventricular tachycardia or ventricular fibrillation despite conventional antiarrhythmic drug therapy.

A major consideration in choosing the ENDOTAK® Lead System is that it does not require a thoracotomy. The physician should weigh its advantages against the patient's ability to withstand additional electrophysiological testing (arrhythmia induction and conversion testing), and a possible thoracotomy, should the lead system prove ineffective.

Various factors, such as cardiomegaly or drug therapy, may necessitate repositioning of the defibrillating leads or substitution of one lead system for another in order to facilitate arrhythmia conversion. In some cases, reliable arrhythmia conversion may not be obtained with any leads at the available AICD™ energy levels.

Bipolar pacemakers may be used with the ENDOTAK® Lead System and AICD™ pulse generator as long as the pacemaker and AICD™ pulse generator do not interact causing AICD™ pulse generator nondetection or false detection.

The ENDOTAK® SQ Patch Lead is intended for chronic subcutaneous or submuscular implantation in conjunction with an ENDOTAK® C Lead. The ENDOTAK® SQ Patch Lead is not intended for epicardial or pericardial placement.

On April 14, 1993, the Circulatory System Devices Panel of the Medical Devices Advisory Committee, an FDA advisory committee, reviewed and recommended approval of the application. On August 26, 1993, CDRH approved the application by a letter to the applicant from the Deputy Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of

experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before May 19, 1994, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Devices and Radiological Health (21 CFR 5.53).

Dated: April 5, 1994.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 94–9348 Filed 4–18–94; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 94M–0067]

MBf USA, Inc.; Premarket Approval of AWARE Test System

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by MBf USA, Inc., Boca Raton, FL, for premarket approval, under section 515 of the Federal Food, Drug, and Cosmetic Act (the act), of the AWARE Test System. The Clinical Chemistry and Toxicology Devices Panel recommendation of approval, with conditions, was made at a November 4, 1991, panel meeting. Approval was originally sought for over-the-counter (OTC) use by the applicant. However, FDA has decided that this panel meeting did not consider various issues, and so the panel will resume deliberating OTC use at a second meeting. As a result of the need for a second panel meeting, the applicant revised the indications for use to reflect a more limited use. After reviewing the recommendation of the Clinical Chemistry and Toxicology Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of January 18, 1994, of the approval of the application.

DATES: Petitions for administrative review by May 19, 1994.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Kaiser J. Aziz, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–594–1243.

SUPPLEMENTARY INFORMATION: On December 13, 1990, American Drug Screens, Inc., Oklahoma City, OK 73108, submitted to CDRH an application for premarket approval of the AWARE Test System. The device system has since been sold to MBf USA, Inc., 5100 Town Center Circle, suite 440, Boca Raton, FL 33486. This device is indicated for use as a specimen collection container and mailing kit and for drug analysis to determine if significant levels of marijuana, cocaine, amphetamines, phencyclidine (PCP), and/or codeine or morphine are present in a urine sample. It is restricted to use by physicians or professionals who counsel or treat individuals in connection with drug abuse. This system is not indicated for employee drug abuse testing, and it is not available with chain of custody. It is for in vitro diagnostic use only, and it is not for sale or distribution to pharmacies.

On November 4, 1991, the Clinical Chemistry and Toxicology Devices Panel of the Medical Devices Advisory Committee, an FDA advisory committee, reviewed and recommended approval, with conditions, of the application. On January 18, 1994, CDRH approved the application by a letter to the applicant from the Acting Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before May 19, 1994, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Devices and Radiological Health (21 CFR 5.53).

Dated: April 5, 1994.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 94–9353 Filed 4–18–94; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 94M–0065]

Leocor, Inc.; Premarket Approval of Corflo™ Models 5S, 7.5S, and 7.5PT PTCA Catheter and Hemoperfusion Pump

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the supplemental application by Leocor, Inc., Houston, TX, for premarket approval, under section 515 of the Federal Food, Drug, and Cosmetic Act (the act), of the Corflo™ Models 5S, 7.5S, and 7.5PT PTCA Catheter and Hemoperfusion Pump. After reviewing the recommendation of the Circulatory System Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of February 15, 1994, of the approval of the supplemental application.

DATES: Petitions for administrative review by May 19, 1994.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Tara A. Ryan, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–594–1197.

SUPPLEMENTARY INFORMATION: On December 3, 1990, Leocor, Inc., Houston, TX, 77058, submitted to CDRH a supplemental application for premarket approval of the Corflo™ Models 5S, 7.5S, and 7.5PT PTCA Catheter and Hemoperfusion Pump. The device is indicated as follows:

Percutaneous transluminal coronary angioplasty (PTCA) can be indicated by the physician in patients with significant coronary artery disease who are acceptable candidates for coronary artery bypass graft surgery and who meet one of the following selection criteria:

- Single or multiple vessel atherosclerotic coronary artery disease that is concentric and accessible to a dilation catheter.
- Coronary artery disease of the native coronary arteries and/or coronary artery bypass grafts of some patients who have previously undergone coronary artery bypass graft surgery and who have recurrence of symptoms and (a) progression of disease or (b) stenosis and closure of the grafts.
- Hemoperfusion can be indicated by the physician in patients who cannot tolerate the inflation times necessary to achieve the desired stenosis reduction. Intolerance to inflation is demonstrated by anginal pain and/or ST segment elevation, and/or hemodynamic instability (systemic blood pressure drop) and/or arrhythmias.

On June 4, 1991, the Circulatory System Devices Panel of the Medical Devices Advisory Committee, an FDA advisory committee, reviewed and recommended approval of the supplemental application. On February 15, 1994, CDRH approved the supplemental application by a letter to the applicant from the Acting Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before May 19, 1994, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Devices and Radiological Health (21 CFR 5.53).

Dated: April 5, 1994.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 94–9355 Filed 4–18–94; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 94M–0068]

KC Pharmaceuticals, Inc.; Premarket Approval of K–C Sterile Preserved Saline Solution

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by KC Pharmaceuticals, Inc., Pomona, CA, for premarket approval, under section 515 of the Federal Food, Drug, and Cosmetic Act (the act), of the K–C Sterile Preserved Saline Solution. The device is to be manufactured under an agreement with Steridyne Laboratories, Inc., Hollywood, CA, which has authorized KC Pharmaceuticals, Inc., to refer to information contained in its approved premarket approval application (PMA) and related supplements for the STERIDYNE STERILE PRESERVED SALINE SOLUTION. FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of February 28, 1994, of the approval of the application.

DATES: Petitions for administrative review by May 19, 1994.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: James F. Saviola, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–594–1744.

SUPPLEMENTARY INFORMATION: On May 14, 1993, KC Pharmaceuticals, Inc.,

3220 Producer Way, Pomona, CA 91768, submitted to CDRH an application for premarket approval of the K–C Sterile Preserved Saline Solution. The K–C Sterile Preserved Saline Solution is indicated for use in the rinsing, heat disinfection, and storage of soft (hydrophilic) contact lenses. The application includes authorization from Steridyne Laboratories, Inc., 3238 Canyon Lake Dr., Hollywood, CA 90068, to refer to information contained in its approved PMA and related supplements for STERIDYNE STERILE PRESERVED SALINE SOLUTION. In accordance with the provisions of section 515(c)(2) of the act (21 U.S.C. 360e(c)(2)) as amended by the Safe Medical Devices Act of 1990 (Pub. L. 101–629), this PMA was not referred to the Ophthalmic Devices Panel, an FDA advisory panel, for review and recommendation because the information in the PMA substantially duplicates information previously reviewed by this panel.

On February 28, 1994, CDRH approved the application by a letter to the applicant from the Acting Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the Federal Register. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before May 19, 1994, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: April 5, 1994.

Joesph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 94–9352 Filed 4–18–94; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 94M–0063]

Medtronic, Inc.; Premarket Approval of the Medtronic® Transvene® Lead System

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Medtronic, Inc., Minneapolis, MN, for premarket approval, under section 515 of the Federal Food, Drug, and Cosmetic Act (the act), of the Medtronic® Transvene® Lead System. After reviewing the recommendation of the Circulatory System Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of December 9, 1993, of the approval of the application.

DATES: Petitions for administrative review by May 19, 1994.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Doris J. Terry, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–594–1523.

SUPPLEMENTARY INFORMATION: On April 1, 1992, Medtronic, Inc., Minneapolis, MN, 55432, submitted to CDRH an application for premarket approval of the Medtronic® Transvene® Lead System. The device is a transvenous defibrillation lead system and is intended for single long-term use, and each lead is designed to be used only with a compatible Medtronic, Inc., implantable tachyarrhythmia control device along with at least one other Medtronic, Inc., defibrillator lead. The lead system has application where implantable tachyarrhythmia cardioversion or defibrillation systems are indicated. Current medical research indicates that such patients should: (1) Have survived at least one episode of a cardiac arrest, presumably due to a ventricular tachyarrhythmia as evidenced by resuscitation using a transthoracic defibrillator. The ventricular tachyarrhythmia should not have been caused by an acute myocardial infarction; or (2) in the absence of a prior cardiac arrest, have poorly tolerated sustained ventricular tachycardia and/or ventricular fibrillation, which occurs spontaneously, or can be induced, despite the best antiarrhythmic drug therapy.

The natural history of patients with hemodynamically stable sustained ventricular tachycardia is not well defined. While this patient population was included in the Transvene® lead clinical study, no conclusions were drawn from the data obtained on this specific patient group.

Prior to a Transvene® implant, it is strongly recommended that patients undergo a complete cardiac evaluation, which should include extensive electrophysiologic testing. Also, extensive electrophysiologic evaluation and testing of the safety and efficacy of the proposed pacing, cardioversion, or defibrillation therapies are recommended during and after the implantation of the Transvene® system.

On August 2, 1993, the Circulatory System Devices Panel of the Medical Devices Advisory Committee, an FDA advisory committee, reviewed and recommended approval of the application. On December 9, 1993, CDRH approved the application by a letter to the applicant from the Acting Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH

based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before May 19, 1994, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Devices and Radiological Health (21 CFR 5.53).

Dated: April 5, 1994.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 94–9350 Filed 4–18–94; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 94M–0060]

Stellar Contact Lens, Inc.; Premarket Approval of OP–3™ (Lotifocon A) Rigid Gas Permeable Contact Lens (Clear and Tinted)

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Stellar Contract Lens, Inc., Chicago, IL, for premarket approval, under section 515 of the Federal Food, Drug, and Cosmetic Act (the act), of the OP–3™ (lotifocon A) Rigid Gas Permeable Contact Lens (Clear and Tinted). FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of January 24, 1994, of the approval of the application.

DATES: Petitions for administrative review by May 19, 1994.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: James F. Saviola, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–594–1744.

SUPPLEMENTARY INFORMATION: On September 8, 1992, Stellar Contact Lens, Inc., Chicago, IL 60611, submitted to CDRH an application for premarket approval of the OP–3™ (lotifocon A) Rigid Gas Permeable Contact Lens (Clear and Tinted). The device is indicated for daily wear for the correction of visual acuity in not-aphakic persons with nondiseased eyes that are myopic or hyperopic. The lens may be worn by persons who may exhibit astigmatism of 2.50 diopters or less that does not interfere with visual acuity. The tinted lens contains the color additive listing provisions of 21 CFR 74.3206.

In accordance with the provisions of section 515(c)(2) of the act as amended by the Safe Medical Devices Act of 1990, this premarket approval application (PMA) was not referred to the Ophthalmic Devices Panel, an FDA advisory panel, for review and recommendation because the information in the PMA substantially duplicates information previously reviewed by this panel. On January 24, 1994, CDRH approved the application by a letter to the applicant from the Acting Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before May 19, 1994, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Devices and Radiological Health (21 CFR 5.53).

Dated: April 5, 1994.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 94–9351 Filed 4–18–94; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 94M–0061]

Nissel, Ltd.; Premarket Approval of S–38™ Soft (Polymacon) Contact Lens

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Nissel, Ltd., Hertfordshire, England, for premarket approval, under section 515 of the Federal Food, Drug, and Cosmetic Act (the act), of the S–38™ Soft (polymacon) Contact Lens. The device is to be manufactured under an agreement with Allergan Optical, Irvine, CA, and OSI Corp., South San Francisco, CA, which have authorized Nissel, Ltd., to incorporate information contained in the approved premarket approval application and related supplements for the Hydron® (polymacon) Hydrophilic Contact Lenses. FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of November 26, 1993, of the approval of the application.

DATES: Petitions for administrative review by May 19, 1994.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: James F. Saviola, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–594–2080.

SUPPLEMENTARY INFORMATION: On July 16, 1992, Nissel, Ltd., Hertfordshire, England, submitted to CDRH an application for premarket approval of the S–38™ Soft (polymacon) Contact Lens. The S–38™ Soft (polymacon) Contact Lens is indicated for daily wear for the correction of visual acuity in aphakic and not-aphakic persons with nondiseased eyes that are myopic or hyperopic. The lens may be worn by persons who may exhibit astigmatism of 1.50 diopters or less that does not interfere with visual acuity. In addition, the lens is to be disinfected using either a heat or chemical lens care system. The application includes authorization from Allergan Optical, Irvine, CA 92713–9534, and OSI Corp., South San Francisco, CA 94080, to incorporate information contained in the approved premarket approval application and related supplements for Hydron® (polymacon) Hydrophilic Contact Lenses. In accordance with the provisions of section 515 (c)(2) of the act as amended by the Safe Medical Devices Act of 1990, this PMA was not referred to the Ophthalmic Devices Panel of the Medical Devices Advisory Committee, an FDA advisory committee, for review and recommendation because the information in the PMA substantially duplicates information previously reviewed by this panel. On November 26, 1993, CDRH approved the application by a letter to the applicant from the Acting Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

The labeling of the S–38™ Soft (Polymacon) Contact Lens states that the lens is to be used only with certain solutions for disinfection and other purposes. The restrictive labeling informs new users that they must avoid using certain products, such as solutions intended for use with hard contact lenses only.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the Federal Register. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before May 19, 1994, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Devices and Radiological Health (21 CFR 5.53).

Dated: April 5, 1994.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 94–9424 Filed 4–18–94; 8:45 am]

BILLING CODE 4160–01–F

Public Health Service

[GN# 2232]

National Center for Health Statistics; The ICD–9–CM Coordination and Maintenance Committee

AGENCY: National Center for Health Statistics, HHS.

ACTION: Notice of meeting.

SUMMARY: The ICD–9–CM Coordination and Maintenance Committee (C&M) will be holding its first meeting of the year on May 5, 1994. The C&M is a public forum for the presentation of proposed modifications to the International Classification of Diseases, ninth revision, clinical modification.

DATES: The meeting will be held on May 5, 1994 from 9 a.m.–5 p.m.

ADDRESSES: The Hubert H. Humphrey building, rm. 703A, 200 Independence Ave. Washington, DC.

FOR FURTHER INFORMATION CONTACT: Amy Blum 301–436–4216.

SUPPLEMENTARY INFORMATION: Tentative agenda.

Ruptured appendix	Dislocation of knee.
Cystic Fibrosis	Postpartum depression.
External foreign body	H. pylori.

Paraneoplastic syndrome	Complication codes.
Lung transplant	Coronary stent.
Debridement of skin	Gamma knife radiosurgery.

Addenda

Sue Meads,

R.R.A., Co-chair, ICD–9–CM Coordination and Maintenance Committee.

[FR Doc. 94–9383 Filed 4–18–94; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N–94–3714; FR–3397–N–02]

NOFA for Public and Indian Housing Family Investment Centers; Amendment and Announcement of OMB Control Number

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Amendment of NOFA and announcement of OMB control number.

SUMMARY: This notice amends a NOFA that was published in the **Federal Register** on February 28, 1994 (59 FR 9592) to: (1) Revise the application availability and deadline dates; (2) extend the activities eligible for funding to include acquisition and new construction; (3) decrease the amount of funds made available for Family Investment Centers (FIC) for Public and Indian Housing; and (4) announce the OMB control number issued for the information collection requirements.

FOR FURTHER INFORMATION CONTACT: Bertha M. Jones, Office of Resident Initiatives, Department of Housing and Urban Development, 451 7th Street SW., room 4233, Washington, DC 20410; telephone (202) 708–4233. To provide service for persons who are hearing- or speech-impaired, this number may be reached via TDD by dialing the Federal Information Relay Service on 1–800–877–TDDY, 1–800–877–8339, or 202–708–9300. (Telephone numbers, other than "800" TDD numbers, are not toll-free.)

SUPPLEMENTARY INFORMATION: Because of unforeseen circumstances, the availability of the application kit for the funds announced in this NOFA has been delayed. Therefore, the Department also is extending the deadline for applications accordingly. In addition, this amendment issues an interpretation that is the result of inquiries following the publication of the NOFA, and publishes the control number assigned by OMB for the information collection requirements associated with this NOFA.

The Department also is announcing that it will be making available from FIC $5 million for a Youth Development Initiative that will be announced in the **Federal Register** in a separate NOFA. The Youth Development Initiative will be a grant competition under FIC, as a part of "Operation Safe Home," a major Clinton Administration Initiative that addresses the larger problem of violence in America's low-income communities. Five $1 million grants will be awarded to Public Housing Authorities for innovative strategies for curbing crime among youth, and for youth leadership and development programs that will provide young individuals in public housing with better access to comprehensive education, employment opportunities, and supportive services to achieve self-sufficiency.

Accordingly, FR Doc. 94–4413, the NOFA for Public and Indian Housing Family Investment Centers, published at 59 FR 9592 (February 28, 19942) is amended as follows:

1. In the Summary on page 9592, column 1, the first sentence is amended by revising the total amount of funding available under the NOFA from "$74 million" to "$69 million".

2. On page 9592, column 1, the paragraph following the heading "Dates" is revised to read as follows:

Application kits will be available beginning April 22, 1994. The application deadline will be 4:30 p.m., local time, on July 22, 1994.

3. On page 9592, column 2, the text following the heading "Paperwork Reduction Act Statement" and preceding the heading "I. Purpose and Substantive Description" is revised to read as follows:

The information collection requirements contained in this notice have been approved by the Office of Management and Budget, under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520), and assigned OMB control number 2577–0189.

4. Under the heading "Allocation Amounts" on page 9592, in the third column, the first sentence of the second paragraph is amended by revising the total amount of funding available under the NOFA from "$74 million to "$69 million", and two new sentences are added to the end of the second paragraph, to read as follows:

In addition, the Department intends to make $5 million available for antiviolence programs that provide education and employment opportunities for youth in public housing under the Administration's Operation Safe Home Initiative. A separate NOFA announcing these funds and soliciting applications also is expected to be published soon in the **Federal Register**.

5. On page 9594, column 1, paragraph (c) under the paragraph heading "(2) Eligible Activities." is revised to read as follows:

The renovation, acquisition, or construction of facilities located near the premises of one or more HA developments to accommodate the provision of supportive services. Under this NOFA, acquisition and new construction will be treated the same as substantial rehabilitation (renovation/conversion) activities, for such purposes as ranking and submission requirements.

6. On page 9598, column 3, under the paragraph beginning "(12) A certification that:", the word "and" is removed at the end of paragraph (b); the period is removed at the end of paragraph (c) and is replaced with "; and"; and a new paragraph (d) is added, to read as follows:

(12) * * *

(d) If new construction is undertaken, the HA has looked at other appropriate facilities and cannot make those usable for FIC purposes.

* * * * *

7. On page 9600, column 1, before the heading "IV. Corrections to Deficient Applications", the word "and" is removed at the end of paragraph (b); the period is removed at the end of paragraph (c) and is replaced with "; and"; and a new paragraph (d) is added, to read as follows:

(20) * * *

(d) If new construction is undertaken, the HA has looked at other appropriate facilities and cannot make those usable for FIC purposes.

* * * * *

8. The following Appendix is added at the end of the NOFA on page 9601 after the signature line in the third column:

Appendix—HUD Field Offices

Region I

Jurisdiction: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont

Boston, Massachusetts Regional Office

HUD-Boston Regional Office, Room 375, Thomas P. O'Neill, Jr. Federal Building, 10 Causeway Street, Boston, Massachusetts 02222–1092, (617) 565–5234

Bangor, Maine Office (D)

HUD-Bangor Office, Casco Northern Bank Building, 23 Main Street, Bangor, Maine 04401–6394, (207) 945–0467

Burlington, Vermont Office (D),

HUD-Burlington Office, Room 244, Federal Building, 11 Elmwood Avenue, P.O. Box 879, Burlington, Vermont 05402–0879, (802) 951–6290

Hartford, Connecticut Office (A)

HUD-Hartford Office, 330 Main Street, Hartford, Connecticut 06106–1860, (203) 240–4523

Manchester, New Hampshire Office (B)

HUD-Manchester Office, Norris Cotton Federal Building, 275 Chestnut Street, Manchester, New Hampshire 03103–2487, (603) 666–7681

Providence, Rhode Island Office (B)

HUD-Providence Office, 330 John O. Pastore Federal Building, and U.S. Post Office—Kennedy Plaza, Providence, Rhode Island 02903–1785, (401) 528–5351

Region II

Jurisdiction: New York, New Jersey,

New York Regional Office

HUD-New York Regional Office, 26 Federal Plaza, New York, New York 10278–0068, (212) 264–6500

Albany, New York Office (C)

HUD-Albany Office, 52 Corporate Circle, Albany, New York 12203–5121, (518) 464–4200

Buffalo, New York Office (A)

HUD-Buffalo Office, 5th Floor, Lafayette Court, 465 Main Street, Buffalo, New York 14203–1780, (716) 846–5755

Camden, New Jersey Office (C)

HUD-Camden Office, 2nd Floor, Hudson Building, 800 Hudson Square, Camden, New Jersey 08102–1156, (609) 757–5081

Newark, New Jersey Office (A)

HUD-Newark Office, 13th Floor, One Newark Center, Newark, New Jersey 07102–5260, (201) 622–7900

Region III

Jurisdiction: Pennsylvania, Washington DC, Maryland, Delaware, Virginia, West Virginia

Philadelphia Regional Office,

HUD-Philadelphia Regional Office, Liberty Square Building, 105 South 7th Street, Philadelphia, Pennsylvania 19106–3392, (215) 597–2560

Baltimore, Maryland Office (A)

HUD-Baltimore Office, 5th Floor, City Crescent Building, 10 South Howard Street, Baltimore, Maryland 21201–2505, (410) 962–2520

Charleston, West Virginia Office (B)

HUD-Charleston Office, Suite 708, 405 Capitol Street, Charleston, West Virginia 25301–1795, (304) 347–7000

Pittsburgh, Pennsylvania Office (A)

HUD-Pittsburgh Office, 412 Old Post Office Courthouse, 7th Avenue & Grant Street, Pittsburgh, Pennsylvania 15219, (412) 644–6428

Richmond, Virginia Office (A)

HUD-Richmond Office, The 3600 Centre, 3600 West Broad Street, P.O. Box 90331, Richmond, Virginia 23230–0331, (804) 278–4507

Washington, DC Office (A)

HUD-Washington, DC Office, Suite 300, Union Center Plaza, Phase II, 820 First Street, NE, Washington, DC 20002–4205, (202) 275–9200

Wilmington, Delaware Office (D)

HUD-Wilmington Office, Suite 850, 824 Market Street, Wilmington, Delaware 19801–3016, (302) 573–6300

Region IV

Jurisdiction: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, Caribbean, Virgin Islands

Atlanta, Georgia Regional Office

Richard B. Russell Federal Building, 75 Spring Street, S.W., Atlanta, Georgia 30303–3388, (404) 331–5136

Birmingham, Alabama Office (A)

HUD-Birmingham Office, Suite 300, Beacon Ridge Tower, 600 Beacon Parkway West, Birmingham, Alabama 35209–3144, (205) 290–7617

Caribbean Office (A)

HUD-Caribbean Office, New San Juan Office Building, 159 Carlos E. Chardon Avenue, San Juan, Puerto Rico 00918–1804 (809) 766–6121

Columbia, South Carolina Office (A)

HUD-Columbia Office, Strom Thurmond Federal Building, 1835 Assembly Street, Columbia, South Carolina 29201–2480, (803) 765–5592

Coral Gables, Florida Office (A)

HUD-Coral Gables Office, Gables One Tower, 1320 South Dixie Highway, Coral Gables, Florida 33146–2911, (305) 662–4500

Greensboro, North Carolina (A)

HUD-Greensboro Office, Koger Building, 2306 West Meadowview Road, Greensboro, North Carolina 27407–3707, (919) 547–4001

Jackson, Mississippi Office (A)

HUD-Jackson Office, Dr. A.H. McCoy Federal Building, 100 West Capitol Street, Room 910, Jackson, Mississippi 39269–1096, (601) 965–5308

Jacksonville, Florida Office (A)

HUD-Jacksonville Office, Suite 2200, Southern Bell Tower, 301 West Bay Street, Jacksonville, Florida 32202–5121, (904) 232–2626

Knoxville, Tennessee (A)

HUD-Knoxville Office, Third Floor, John J. Duncan Federal Building, 710 Locust Street, S.W., Knoxville, Tennessee 37902–2526, (615) 545–4384

Louisville, Kentucky Office (A)

HUD-Louisville Office, 601 West Broadway, P.O. Box 1044, Louisville, Kentucky 40201–1044, (502) 582–5251

Memphis, Tennessee Office (C)

HUD-Memphis Office, Suite 1200, One Memphis Place, 200 Jefferson Avenue, Memphis, Tennessee 38103–2335, (901) 544–3367

Nashville, Tennessee Office (B)

HUD-Nashville Office, Suite 200, 251 Cumberland Bend Drive, Nashville, Tennessee 37228–1803, (615) 736–5213

Orlando, Florida Office (C)

HUD-Orlando Office, Suite 270, Langley Building, 3751 Maguire Boulevard, Orlando, Florida 32803–3032, (407) 648–6441

Tampa, Florida Office (C)

HUD-Tampa Office, Suite 700, Timberlake Federal Building Annex, 501 East Polk Street, Tampa, Florida 33602–3945, (813) 228–2501,

Region V

Jurisdiction: Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin

Chicago, Illinois Regional Office

HUD-Chicago Regional Office, Ralph Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, Illinois 60604–3507, (312) 353–5680

Cincinnati, Ohio Office (B)

HUD-Cincinnati Office, Room 9002, Federal Office Building, 550 Main Street, Cincinnati, Ohio 45202–3253, (513) 684–2884

Cleveland, Ohio Office (B)

HUD-Cleveland Office, Fifth Floor, Renaissance Building, 1350 Euclid Avenue, Cleveland, Ohio 44115–1815, (216) 522–4065,

Columbus, Ohio Office (A)

HUD-Columbus Office, 200 North High Street, Columbus, Ohio 43215–2499, (614) 469–5737,

Detroit, Michigan Office (A)

HUD-Detroit Office, Patrick V. McNamara Federal Building, 477 Michigan Avenue, Detroit, Michigan 48226–2592, (313) 226–7900,

Flint, Michigan Office (C)

HUD-Flint Office, Suite 200, 605 North Saginaw Street, Flint, Michigan 48502–1953, (313) 766–5112,

Grand Rapids, Michigan Office (B)

HUD-Grand Rapids Office, 2922 Fuller Avenue, N.E., Grand Rapids, Michigan 49505–3499, (616) 456–2100,

Indianapolis, Indiana Office (A)

HUD-Indianapolis Office, 151 North Delaware Street, Indianapolis, Indiana 46204–2526, (317) 226–6303,

Milwaukee, Wisconsin Office (A)

HUD-Milwaukee Office, Suite 1380, Henry S. Reuss Federal Plaza, 310 West Wisconsin Avenue, Milwaukee, Wisconsin 53203–2289 (414) 297–3214,

Minneapolis-St. Paul, Minnesota (A)

HUD-Minneapolis-St. Paul Office, 220 Second Street, South, Minneapolis, Minnesota 55401–2195, (612) 370–3000,

Springfield, Illinois Office (D)

HUD-Springfield Office, Suite 206, 509 West Capitol Street, Springfield, Illinois 62704–1906, (217) 492–4085,

Region VI

Jurisdiction: Arkansas, Louisiana, New Mexico, Oklahoma, Texas

Fort Worth, Texas Regional Office

HUD-Fort Worth Regional Office, 1600 Throckmorton, P.O. Box 2905, Fort Worth, Texas 76113–2905, (817) 885–5401,

Albuquerque, New Mexico (C)

HUD-Albuquerque Office, 625 Truman Street, N.W., Albuquerque, New Mexico 87110–6443, (505) 262–6463,

Dallas, Texas Office (C)

HUD-Dallas Office, Room 860, 525 Griffin Street, Dallas, Texas 75202–5007, (214) 767–8359,

Houston, Texas Office (B)

HUD-Houston Office, Suite 200, Norfolk Tower, 2211 Norfolk, Houston, Texas 77098–4096, (713) 653–3274,

Little Rock, Arkansas Office (A)

HUD-Little Rock Office, Suite 900, TCBY Tower, 425 West Capitol Avenue, Little Rock, Arkansas 72201–3488, (501) 324–5931,

Lubbock, Texas Office (C)

HUD-Lubbock Office, Federal Office Building, 1205 Texas Avenue, Lubbock, Texas 79401–4093, (806) 743–7265,

New Orleans, Louisiana Office (A)

HUD-New Orleans Office, Fisk Federal Building, 1661 Canal Street, New Orleans, Louisiana 70112–1887, (504) 589–7200,

Oklahoma City, Oklahoma Office (A)

HUD-Oklahoma City Office, Murrah Federal Building, 200 N.W. 5th Street, Oklahoma 73102–3202, (405) 231–4181,

San Antonio, Texas Office (A)

HUD-San Antonio Office, Washington Square Building, 800 Dolorosa Street, San Antonio, Texas 78207–4563, (512) 229–6800,

Shreveport, Louisiana Office (C)

HUD-Shreveport Office, Joe D. Waggoner Federal Building, 500 Fannin Street, Shreveport, Louisiana 71101–3077, (318) 266–5385,

Tulsa, Oklahoma Office (C)

HUD-Tulsa Office, Suite 110, Boston Place, 1516 South Boston Avenue, Tulsa, Oklahoma 74119–4032, (918) 581–7435,

Region VII

Jurisdiction: Iowa, Kansas, Missouri, Nebraska

Kansas City, Kansas Regional Office

HUD-Kansas City Regional Office, Room 200, Gateway Tower II, 400 State Avenue, Kansas City, Kansas 66101–2406, (913) 551–5462,

Des Moines, Iowa Office (B)

HUD-Des Moines Office, Room 239, Federal Building, 210 Walnut Street, Des Moines, Iowa 50309–2155, (515) 284–4512,

Omaha, Nebraska Office (A)

HUD-Omaha Office, Executive Tower Centre, 10909 Mill Valley Road, Omaha, Nebraska 68154–3955, (402) 492–3101

St. Louis, Missouri Office (A)

HUD-St. Louis Office, Third Floor, Robert A. Young Federal Building, 1222 Spruce Street, St. Louis, Missouri 63103–2836, (314) 539–6560

Region VIII

Jurisdiction: Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming

Denver, Colorado Regional Office

HUD-Denver Regional Office, 633 17th Street, Denver, Colorado 80202–3607, (303) 672–5448

Casper, Wyoming Office (D)

HUD-Casper Office, 4225 Federal Office Building, 100 East B Street, P.O. Box 120, Casper, Wyoming 82602–1918, (307) 261–5252

Fargo, North Dakota Office (D)

HUD-Fargo Office, Federal Building, 657 2nd Avenue North, P.O. Box 2483, Fargo, North Dakota 58108–2483, (701) 239–5136

Helena, Montana Office (C)

HUD-Helena Office, Room 340, Federal Office Building, Drawer 10095, 301 South Park, Helena, Montana 59626–0095, (406) 449–5205

Salt Lake City, Utah Office (C)

HUD-Salt Lake City Office, Suite 550, 257 Tower, 257 East 200 South, Salt Lake City, Utah 84111–2048, (801) 524–5379

Sioux Falls, South Dakota Office (D)

HUD-Sioux Falls Office, Suite I–201, 2400 West 49th Street, Sioux Falls, South Dakota 57105–6558, (605) 330–4223

Region IX

Jurisdiction: Arizona, California, Hawaii, Nevada, Guam, American Samoa

San Francisco, California Regional Office

HUD-San Francisco Regional Office, Philip Burton Federal Building & U.S. Courthouse, 450 Golden Gate Avenue, P.O. Box 36003, San Francisco, California 94102–3448, (415) 556–4752

Indian Programs Office

HUD-Indian Programs Office, Suite 1650, Two Arizona Center, 400 North 5th Street, Phoenix, Arizona 85004–2361, (602) 379–4156

Fresno, California Office (C)

HUD-Fresno Office, Suite 138, 1630 East Shaw Avenue, Fresno, California 93710–8193, (209) 487–5033

Honolulu, Hawaii Office (A)

HUD-Honolulu Office, Suite 500, Seven Waterfront Plaza, 500 Ala Moana Blvd. Honolulu, Hawaii 96813–4918, (808) 541–1323

Los Angeles, California Office (A)

HUD-Los Angeles Office, 1615 West Olympic Boulevard, Los Angeles, California 90015–3801, (213) 251–7122

Las Vegas, Nevada Office (C)

HUD-Las Vegas Office, Suite 205, 1500 East Tropicana Avenue, Las Vegas, Nevada 89119–6516, (702) 388–6500

Phoenix, Arizona Office (B)

HUD-Phoenix Office, Suite 1600, Two Arizona Center, 400 North 5th Street, Phoenix, Arizona 85004–2361, (602) 379–4434

Reno, Nevada Office (C)

HUD-Reno Office, 1575 DeLucchi Lane, Suite 114, P.O. Box 30050, Reno, Nevada 89502–6581, (702) 784–5356

Sacramento, California Office (B)

HUD-Sacramento Office, Suite 200, 777 12th Street, Sacramento, California 95814–1977, (916) 551–1351

San Diego, California Office (C)

HUD-San Diego Office, Suite 300, Mission City Corporate Center, 2365 Northside Drive, San Diego, California 92108–2712, (619) 557–5310

Santa Ana, California Office (C)

HUD-Santa Ana Office, 3 Hutton Centre, Suite 500, Santa Ana, California 92707–5764, (714) 957–7333

Tucson, Arizona Office (C)

HUD-Tucson Office, Suite 700, Security Pacific Bank Plaza, 33 North Stone Avenue, Tucson, Arizona 85701–1467, (602) 670–6237

Region X

Jurisdiction: Alaska, Idaho, Oregon, Washington

Seattle, Washington Regional Office

HUD-Seattle Regional Office, Suite 200, Seattle Federal Office Building, 909 First Avenue, Seattle, Washington 98104–1000, (206) 220–5101

Anchorage, Alaska Office (A)

HUD-Anchorage Office, Suite 401, University Plaza Building, 949 East 36th Avenue, Anchorage, Alaska 99508–4135, (907) 271–4170

Boise, Idaho Office (C)

HUD-Boise Office, Suite 220, Park IV, 800 Park Boulevard, Boise, Idaho 83712–7743, (208) 334–1990

Portland, Oregon Office (A)

HUD-Portland Office, 520 S.W. 6th Avenue, Portland, Oregon 97204–1596, (503) 326–2561

Spokane, Washington Office (C)

HUD-Spokane Office, 8th Floor East, Farm Credit Bank Building, West 601 First Avenue, Spokane, Washington 99204–0317, (509) 353–2510

Dated: April 11, 1994.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 94–9320 Filed 4–18–94; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–962–4230–05; AA–6645–A]

Alaska Native Claims Selection; Notice for Publication

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of section 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(a), will be issued to Afognak Native Corporation, formally known as Natives of Afognak, Inc., for approximately 63.82 acres. The lands involved are in the vicinity of Kodiak, Alaska.

Lot 1, U.S. Survey No. 9127, Alaska.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Kodiak Daily Mirror. Copies of decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until May 19, 1994, to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

Terry R. Hassett,

Chief, Branch of Gulf Rim Adjudication.

[FR Doc. 94–9373 Filed 4–18–94; 8:45 am]

BILLING CODE 4310–JA–M

[(WY–920–04–4120–03); WYW132118]

Notice of Invitation for Coal Exploration License

AGENCY: Bureau of Land Management, Interior, Wyoming.

SUMMARY: Pursuant to section 2(b) of the Mineral Leasing Act of February 25, 1920, as amended by section 4 of the Federal Coal Leasing Amendments Act of 1976, 90 Stat. 1083, 30 U.S.C. (b), and to the regulations adopted as Subpart 3410, Title 43, Code of Federal Regulations, all interested parties are hereby invited to participate with Powder River Coal Company on a pro rata cost sharing basis in its program for the exploration of coal deposits owned by the United States of America in the following-described lands in Campbell County, Wyoming:.

T. 41 N., R. 70 W., 6th P.M., Wyoming
Sec. 6: Lots 10 thru 13, 18, thru 21;
Sec. 7: Lots 6 thru 11, 14 thru 19;
Sec. 18: Lots 5, 12, 13 and 20;
T. 42 N., R. 70 W., 6th P.M. Wyoming
Sec. 26: Lots 9 thru 16;
Sec. 27: Lots 9 thru 16;
Sec. 29: Lots 9 thru 16;
Sec. 30: Lots 13 thru 20;
Sec. 31: Lots 5 thru 20;
Sec. 33: Lots 1 thru 16;
Sec. 34: Lots 1 thru 16;
Sec. 35: Lots 1 thru 16;
T. 41 N., R. 71 W., 6th P.M., Wyoming
Sec. 1: Lots 5 thru 20;
Sec. 2: Lots 5, 6, 11 thru 13, 20;
Sec. 12: Lots 1, 2, 4, 7, 8;
Sec. 24: Lot 2;
T. 42 N., R. 71 W., 6th P.M., Wyoming
Sec. 24: Lot 4;
Sec. 25: Lots 9 thru 15;
Sec. 26: Lots 5, 9, 10;
Sec. 35: Lots 1, 2, 7 thru 10, 15, 16,

Containing 6711.55 acres, more or less.

All of the coal in the above-described land consists of unleased Federal coal within the Powder River Basin Known Recoverable Coal Resource Area. The purpose of the exploration program is to obtain overburden geochemistry geological structures, coal qualities, and water monitoring sites.

ADDRESSES: The proposed exploration program is fully described and will be conducted pursuant to an exploration plan to be approved by the Bureau of Land Management. Copies of the exploration plan are available for review during normal business hours in the following offices (serialized under number WYW132118): Bureau of Land Management, Wyoming State Office, 2515 Warren Avenue, P.O. Box 1828, Cheyenne, Wyoming 82003; and, Bureau of Land Management, Casper District Office, 1701 East 'E' Street, Casper, Wyoming 82601. The proposed exploration program is fully described and will be conducted pursuant to an exploration plan to be approved by the Bureau of Land Management. Copies of the exploration plan are available for review during normal business hours in the following offices (serialized under number WYW132118): Bureau of Land Management, Wyoming State Office, 2515 Warren Avenue, P.O. Box 1828, Cheyenne, Wyoming 82003; and, Bureau of Land Management, Casper District Office, 1701 East 'E' Street, Casper, Wyoming 82601.

SUPPLEMENTARY INFORMATION: This notice of invitation will be published in The News-Record of Gillette, Wyoming, once each week for two consecutive weeks beginning the week of April 18, 1994, and in the **Federal Register**. Any party electing to participate in this exploration program must send written notice to both the Bureau of Land Management and Powder River Coal Company no later than thirty (30) days after publication of this invitation in the **Federal Register**. The written notice should be sent to the following addresses: Robert J. Shevling, Powder River Coal Company, Galler Box 3034, Gillette, Wyoming 82717, and the Bureau of Land Management, Wyoming State Office, Chief, Branch of Mining Law and Solid Minerals, P.O. Box 1828, Cheyenne, WY 82003. The foregoing is published in the **Federal Register** pursuant to Title 43 Code of Federal Regulations, 3410.2–1(c)(1).

Veron G. Rulli,

Acting Chief, Branch of Mining, Law and Solid Minerals.

[FR Doc. 94–9416 Filed 4–18–94; 8:45 am]

BILLING CODE 4310–22–M

Bureau of Reclamation

All-American Canal Lining Project, Imperial County, CA

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability of the final environmental impact statement/final environmental impact report: INT FES–94–9.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, as amended, and section 21002 of the California Environmental Quality Act, Reclamation and the Imperial Irrigation District have issued a joint final environmental impact statement/final environmental impact report (FEIS/FEIR) on a proposed canal lining project. Reclamation proposes to conserve about 67,700 acre-feet of water, annually lost through seepage from the federally owned, unlined All-American Canal, for beneficial use in southern California. The canal delivers 3.3 million acre-feet of water annually from the Colorado River for the Imperial Valley and Coachella Valley.

ADDRESSES: Single copies of the FEIS/FEIR may be obtained on request to the regional director at the address below:

- Regional Director, Bureau of Reclamation, Lower Colorado Region, P.O. Box 61470, Attention: LC–150, Boulder City, NV 89006–1470; telephone: (702) 293–8560.

Copies of the FEIS/FEIR are also available for public inspection and review at the following locations:

- Bureau of Reclamation, Technical Liaison Division, Department of the Interior, 1849 C Street, NW., room 7615, Washington, DC 20240; telephone: (202) 208–4054.
- Bureau of Reclamation, Denver Office Library, Building 67, room 167, Denver Federal Center, 6th and Kipling, Denver, CO 80225; telephone: (303) 236–6963.
- Bureau of Reclamation, Yuma Projects Office, 7301 Calle Agua Salada, Yuma, AZ 85366; telephone: (602) 343–8100.
- Metropolitan Water District of Southern California, Resources Division, 350 South Grand Avenue, Los Angeles, CA 90071; telephone: (213) 250–6518.
- Imperial Irrigation District, Public Information Office, 333 East Barioni Boulevard, Imperial, CA 92251; telephone: (619) 339–9426.

Libraries

California

Coachella Public Library.
El Centro Public Library.
Imperial Public Library.
Indio Public Library.
San Diego Public Library.
Brawley Public Library.
Los Angeles Public Library (Main Library).

Arizona

Yuma Public Library.

FOR FURTHER INFORMATION CONTACT: Regional Environmental Officer, Bureau of Reclamation, Lower Colorado Region, P.O. Box 61470, Attention: LC–150, Boulder City, NV 89006–1470; telephone: (702) 293–8560; or Michael Remington, Imperial Irrigation District, P.O. Box 937, Imperial, CA 92251; telephone: (619) 339–9426.

SUPPLEMENTARY INFORMATION: The preferred alternative presented in the FEIS/FEIR is to construct a new concrete-lined canal parallel to the 23-mile reach of the existing unlined canal from 1 mile west of Pilot Knob to Drop 3.

The project is authorized by Public Law 100–675. The Imperial Irrigation District proposes to construct the project with funds provided by the Metropolitan Water District of Southern California (MWD) in accordance with Public Law 100–675. The conserved water would be utilized by MWD and other California water agencies holding Colorado River water delivery contracts with the Secretary of the Interior.

The environmental aspects of primary concern are the potential loss of wetlands habitat along the All-American Canal that have been induced by canal seepage, the loss of terrestrial habitat, and the reduction in the canal fishery.

These potential losses would be mitigated by enhancing unaffected wetlands along the canal, acquiring and protecting terrestrial habitat, and replacing canal fishery habitat.

The FEIS/FEIR presents the preferred alternative and four other alternatives, including the no Federal action alternative, describes the existing environment and the environmental consequences of project construction, and presents the proposed mitigation plan. It also documents the comments received during the 90-day public review of the draft environmental impact statement/draft environmental impact report and presents Reclamation's responses to comments.

Dated: April 5, 1994.

J. William McDonald,

Assistant Commissioner—Resources Management.

[FR Doc. 94–9390 Filed 4–18–94; 8:45 am]

BILLING CODE 4310–94–M

Geological Survey

Advisory Committee on Water Data for Public Use

AGENCY: U.S. Department of the Interior.

ACTION: Notice of an open meeting of the Advisory Committee on Water Data for Public Use (ACWDPU).

SUMMARY: Notice is hereby given of a meeting of the ACWDPU. The theme of the meeting is "Water Use and Water Conservation." The proposed agenda for the meeting includes a panel discussion on Water Information Needs for Water Use and Water Conservation. To obtain information on water-resources issues at the local level, the ACWDPU will tour the Orange County Water District. In addition, Federal and non-Federal officials will present information about the Intergovernmental Task Force on Monitoring Water Quality (ITFM); the effects of earthquakes and mud slides on water supply and distribution systems; and other aspects of water-information programs and activities. Also, the ACWDPU will review the recent activities of the National Water Quality Assessment Council. On Wednesday and Thursday, May 18–19, 1994, representatives of the ACWDPU will work in smaller groups drafting recommendations related to the ITFM.

The ACWDPU consists of representatives of water-resources-oriented groups, including national, State, and regional organizations; Native Americans; professional and technical societies; public interest groups; private industry; and the academic community. Its principal responsibility is to advise the Federal Government, through the U.S. Department of the Interior, on activities and plans related to Federal water-information programs and the effectiveness of those programs in meeting the Nation's water-information needs. The Director of the U.S. Geological Survey (USGS) chairs the ACWDPU.

DATES: The meeting will convene at 9 a.m. on Tuesday, May 17, 1994, and will adjourn at 4 p.m. on Thursday, May 19, 1994.

ADDRESSES: Sheraton Anaheim Hotel, 1015 W. Ball Road, Anaheim, California.

FOR FURTHER INFORMATION CONTACT: Nancy Lopez, Chief, Office of Water Data Coordination; 417 National Center; Reston, Virginia 22092. Telephone: (703) 648–5014; Fax: (703) 648–6802.

SUPPLEMENTARY INFORMATION: This meeting is open to the public. A half hour has been set aside for public comment beginning at 11:30 a.m., Thursday, May 19, 1994. Persons wishing to make a brief presentation (up to 5 minutes) are asked to provide a written request with a description of the general subject area to Nancy Lopez at the above address no later than noon, May 12, 1994, to reserve space on the agenda. It is requested that 30 copies of a written statement for the record be submitted to Ms. Lopez at the time of the meeting. We will distribute these copies to the members of the ACWDPU and place them in the official file. Any member of the public may submit written information and/or comments to Ms. Lopez for distribution to the ACWDPU.

Dated: April 8, 1994.

Robert M. Hirsch,

Deputy to the Director.

[FR Doc. 94–9372 Filed 4–18–94; 8:45 am]

BILLING CODE 4310–31–M

Minerals Management Service

Information Collection Submitted to the Office of Management and Budget (OMB) for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to OMB for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collections of information and related forms may be obtained by contacting the Bureau's Clearance Officer at the telephone number listed below. Comments and suggestions on the proposal should be made directly to the Bureau Clearance Officer and to the Office of Management

and Budget; Paperwork Reduction Project (1010–0050); Washington, DC 20503, telephone (202) 395–7340, with copies to Chief, Engineering and Standards Branch; Engineering and Technology Division; Mail Stop 4700; Minerals Management Service; 381 Elden Street; Herndon, Virginia 22070–4817.

Title: 30 CFR Part 250, Subpart J, Pipelines and Pipeline Rights-of-Way
OMB approval number: 1010–0050

Abstract: The MMS proposes to amend the regulations at 30 CFR 250.158 to include various safety-related regulations regarding the design and operating procedures of production platforms and pipelines in the Outer Continental Shelf (OCS). The proposed rule will reduce or prevent the unintentional release of hydrocarbons from pipelines on or near offshore platforms during emergency situations to reduce the potential for explosions or fires.

Bureau form number: None
Frequency: Varies
Description of respondents: Federal OCS oil and gas lessees
Estimated completion time: 36.13 hours
Annual responses: 1,826
Recordkeeping hours: 2,940
Annual burden hours: 68,926
Bureau clearance officer: Arthur Quintana, (703) 787–1239

Dated: March 14, 1994.

Henry G. Bartholomew,

Deputy Associate Director for Operations and Safety Management.

[FR Doc. 94–9374 Filed 4–18–94; 8:45 am]

BILLING CODE 4310–MR–M

Information Collection Submitted for Review

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related form and explanatory material may be obtained by contacting Jeane Kalas at (303) 231–3046. Comments and suggestions on the requirement should be made directly to the bureau clearance officer at the telephone number listed below and to the Office of Management and Budget, Paperwork Reduction Project, (1010–0033), Washington, DC 20503, telephone (202) 395–7340.

Title: Payor Information Form (PIF) Oil and Gas
OMB Approval Number: 1010–0033

Abstract: Data collected on PIF's are used to establish payor accounts for all mineral leases on Federal and Indian lands using accounting identification numbers assigned by the Minerals Management Service (MMS). Changes in the paying responsibilities on the lease are also reported on the PIF. The MMS is then able to maintain, reconcile, and audit lease accounts through the use of its computerized Auditing and Financial System. This information will enable MMS to determine payors responsible for paying rentals and royalties to MMS and the percentage of sales or production on which royalties are to be paid.

Bureau Form Number: MMS–4025
Frequency: On occasion
Description of Respondents: Oil and gas lessees, onshore and offshore.
Estimated Completion Time: One-half hour
Annual Responses: 25,000
Annual Burden Hours Including Recordkeeping: 14,200
Bureau Clearance Officer: Arthur Quintana (703) 787–1101

Dated: March 22, 1994.

James W. Shaw,

Associate Director for Royalty Management.

[FR Doc. 94–9375 Filed 4–18–94; 8:45 am]

BILLING CODE 4310–MR–M

National Park Service

Brices Cross Roads National Battlefield Site, et al. Jurisdictional Transfer

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Honorable Kirk Fordice, Governor of Mississippi, by Agreement signed on December 1, 1993, has approved the request of the National Park Service to convey concurrent jurisdiction over lands and waters administered by the National Park Service in the following units of the National Park System in the State of Mississippi;

Brices Cross Roads National Battlefield Site
Gulf Islands National Seashore
Tupelo National Battlefield
Vicksburg National Military Park, excluding the national cemetery
Natchez National Historical Park

Jurisdiction was accepted by National Park Service Deputy Director John Reynolds by Agreement dated February 25, 1994.

DATES: Concurrent jurisdiction pursuant to the Agreement became effective upon acceptance by the National Park on February 25, 1994.

Robert L. Deskins,

Acting Regional Director, National Park Service, Southeast Region.

[FR Doc. 94–9387 Filed 4–18–94; 8:45 am]

BILLING CODE 4310–70–M

Delaware and Lehigh Navigation Canal National Heritage Corridor Commission Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces an upcoming meeting of the Delaware and Lehigh Navigation Canal National Heritage Corridor Commission. Notice of this meeting is required under the Federal Advisory Committee Act (Pub. L. 92–463).

MEETING DATE AND TIME: Wednesday, April 20, 1994; 1:30 p.m. until 4:30 p.m.

ADDRESSES: The Heritage Conservancy (Formerly known as the Bucks County Conservancy), 85 Old Dublin Pike, Doylestown, PA 18901.

The agenda for the meeting will focus on implementation of the Management Action Plan for the Delaware and Lehigh Canal National Heritage Corridor and State Heritage Park. The Commission was established to assist the Commonwealth of Pennsylvania and its political subdivisions in planning and implementing an integrated strategy for protecting and promoting cultural, historic and natural resources. The Commission reports to the Secretary of the Interior and to Congress.

SUPPLEMENTARY INFORMATION: The Delaware and Lehigh Navigation Canal National Heritage Corridor Commission was established by Public Law 100–692, November 18, 1988.

FOR FURTHER INFORMATION CONTACT: Executive Director, Delaware and Lehigh Navigation Canal, National Heritage Corridor Commission, 10 E. Church Street, room P–208, Bethlehem, PA 18018, (610) 861–9345.

Dated: April 13, 1994.

John McKenna,

Acting Regional Director, Mid-Atlantic Region.

[FR Doc. 94–9388 Filed 4–18–94; 8:45 am]

BILLING CODE 4310–70–M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before

April 9, 1994. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by May 4, 1994.

Carol D. Shull,

Chief of Registration, National Register.

Arizona

Pima County

Dos Lomitas Ranch, Organ Pipe NM, Ajo vicinity, 94000426.

California

Fresno County

Fresno Memorial Auditorium, 2425 Fresno St., Fresno, 94000427.

Los Angeles County

Ebell of Los Angeles, 743 S. Lucerne Blvd., Los Angeles, 94000401.

San Diego County

Aztec Bowl, Hardy Ave. between 55th St. and Campanile Dr., San Diego State University, San Diego, 94000402.

San Mateo County

New Sequoia Theater Building, 2211–2235 Broadway, Redwood City, 94000431.

Tuolumne County

Groveland Hotel, 18767 Main St. (CA 120), Groveland, 94000428.

Colorado

Prowers County

Granada Relocation Center, Approx. 1 mi. SW of Granada, Granada vicinity, 94000425.

Florida

Pinellas County

Old Belleair Town Hall, 903 Ponce de Leon Blvd., Belleair, 94000421.

Georgia

Barrow County

Downtown Winder Historic District, Roughly bounded by Broad, Jackson, Candler and Athens Sts., Winder, 94000412.

Illinois

Champaign County

Hazen Bridge, Newcomb Twp. Rd. 85 across the Sangamon R., Mohomet vicinity, 94000433.

Fulton County

Parlin Library, 210 E. Chestnut St., Canton, 94000434.

Peoria County

Pleasant Grove School, .6 mi. W of Eden Rd., on Pleasant Grove Rd., Eden vicinity, 94000435.

Rock Island County

Chippiannock Cemetery, 2901 Twelfth St., Rock Island, 94000437.

St. Clair County

Rutter Store, 7346 IL 15, St. Libory, 94000436.

Sangamon County

Keys, Alvin S., House, 1600 Park Dr., Springfield, 94000432.

Iowa

Henry County

Ball, Dr., J.O. and Catherine, House, 500 W. Monroe St., Mt. Pleasant, 94000404.

Kansas

Butler County

El Dorado Missouri Pacific Depot, 430 N. Main St., El Dorado, 94000429.

Elk County

Elk Falls Pratt Truss Bridge (Metal Truss Bridges Kansas MPS), Off Montgomery St., across the Elk R., Elk Falls vicinity, 94000403.

Kingman County

Doney-Clark House, 817 W. Sherman St., Kingman, 94000409.

Reno County

Wolcott, Frank D., House, 100 W. 20th Ave., Hutchinson, 94000408.

Louisiana

Pointe Coupee Parish

Bergeron, Jean Baptiste, House (Louisiana's French Creole Architecture MPS), 13769 Chenal Rd., Jarreau, 94000407.

St. James Parish

Lutcher & Moore Cypress Lumber Co., Ltd., Headquarters Building, 2049 Railroad St., Lutcher, 94000411.

Massachusetts

Berkshire County

Mill River Historic District, Roughly bounded by Main St. and River Church, Southfield, Clayton, School, and Hayes Hill Rds., Town of New Marlborough, Mill River, 94000423.

Norfolk County

Minot's Ledger Lighthouse Shore Station, Gulf Island, Border St., Cohasset, 94000424.

New Jersey

Hunterdon County

Frenchtown Historic District, Bounded by 12th St., Washington St., the Delaware R. and Nishisakawick Cr., Frenchtown, 94000438.

Ohio

Columbiana County

Middle Sandy Presbyterian Church, Homeworth Rd., Homeworth, 94000414.

Cuyahoga County

Archwood Congregational Church, 2800 Archwood Ave., Cleveland, 94000416.

Hill, James, House, 1840 W. 58th St., Cleveland, 94000415.

Lorain Station Historic District, 9005–10134 Lorain Ave., Cleveland, 94000417.

Rose Hill and Community House, Jct. of Cahoon and Lake Rds., Bay Village, 94000413.

Pennsylvania

Franklin County

Rocky Spring Presbyterian Church, Rocky Spring Rd., approx. 5 mi. NH of Funk Rd., Letterkennytownship, Chambersburg vicinity, 94000430.

Texas

Galveston County

Willis-Moody Mansion, 2618 Broadway, Galveston, 94000410.

Washington

King County

Faust-Ryan House (Bothell MPS), 18604 104th Ave., Bothell, 94000405.

Leamington Hotel and Apartments, 317 Marion St., Seattle, 94000419.

Pierce County

Walker Apartment Hotel, 405 Sixth Ave., Tacoma, 94000420.

Snohomish County

North Creek School, 22711 31st Ave., SE., Bothell, 94000406.

Winningham Farm, 3214 228th St. SE., Bothell, 94000418.

Wisconsin

Milwaukee County

Hest Washington-North Hi-Mount Boulevards Historic District, 4701-5929 W. Washington Blvd.; 1720–2049 N. Hi-Mount Blvd., Milwaukee, 94000422.

Wyoming

Natrona County

Archeological Site No. 48NA83, Address Restricted, Arminto vicinity, 94000440.

Sublette County

Archeological Site No. 48SU354, Address Restricted, Big Piney vicinity, 94000439.

[FR Doc. 94–9389 Filed 4–18–94; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32458]

Kyle Railways, Inc.—Continuance in Control Exemption—Port Railroads, Inc.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: Under 49 U.S.C. 10505, the Commission exempts from the regulatory requirements of 49 U.S.C. 11343, et seq., the continuance in

control of Port Railroads, Inc. (PRI) by Kyle Railways, Inc., (Kyle) when PRI becomes a carrier, subject to standard labor protective conditions. PRI is a wholly owned noncarrier subsidiary of Kyle that will become a rail carrier by leasing and operating about 107.438 miles of railroad from the Southern Pacific Transportation Company (SPTC) in Finance Docket No. 32457, Port Railroads, Inc.—Lease and Operation Exemption—Southern Pacific Transportation Company (ICC Notice of Exemption filed February 15, 1994).

DATES: This exemption is effective on May 19, 1994. Petitions to stay must be filed by May 4, 1994. Petitions to reopen must be filed by May 9, 1994.

ADDRESSES: Send pleadings referring to Finance Docket No. 32458 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423, and

(2) Fritz R. Kahn, Klein & Bagileo, suite 120, 1101 30th Street, NW., Washington, DC 20007.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 927–5660. (TDD for hearing impaired: (202) 927–5721.)

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. (Assistance for the hearing impaired is available through TDD services (202) 927–5721).

Decided: April 7, 1994.

By the Commission, Chairman McDonald, Vice Chairman Phillips, Commissioners Simmons and Philbin.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–9384 Filed 4–18–94; 8:45 am]

BILLING CODE 7035–01–P

[Docket No. AB–227 (Sub-No. 4X)]

Wheeling & Lake Erie Railway Company—Abandonment Exemption—In Stark and Wayne Counties, OH

Wheeling & Lake Erie Railway Company (W&LE) has filed a notice of exemption under 49 CFR Part 1152 subpart F—Exempt Abandonments to abandon its line of railroad, known as the Dalton Branch, extending from milepost 16.4 in Massillon, Stark County, OH to the end of track at milepost 7.0 in Dalton, Wayne County, OH, a distance of 9.4 miles.

W&LE has certified that:

(1) No local traffic has moved over the line for at least 2 years;

(2) No overhead traffic has moved or could move over the line (the stub-ended Dalton Branch is not a through route and thus cannot be utilized for overhead traffic);

(3) No formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and

(4) The requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on May 19, 1994, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29[3] must be filed by April 29, 1994. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by May 9, 1994, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicant's representative: Thomas J. Litwiler, Two Prudential Plaza, 45th Floor, 180 North Stetson Ave., Chicago, IL 60601.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio.*

W&LE has filed an environmental report which addresses the abandonment's effects, if any, on the environmental and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by April 22, 1994. Interested persons may obtain a copy of the EA by writing to SEA (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: April 8, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–9385 Filed 4–18–94; 8:45 am]

BILLING CODE 7035–01–P

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[1] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Environmental Analysis in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980

In accordance with 42 U.S.C. 9622(d) and 28 CFR 50.7, notice is hereby given that on March 30, 1994, a proposed consent decree in *United States of America* v. *The Carborundum Company, et al.*, Civil Action No. 94–1484–WGB, was lodged with the United States District Court for the District of New Jersey. The United States' complaint sought injunctive relief and recovery of response costs under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) against The Carborundum Company, Cooper Industries, Inc., Curtiss-Wright Corporation, E.I. Dupont de Nemours & Company, Engelhard Corporation, Fluid Conditioning Products, Inc., Kearfott Guidance & Navigation Corporation, Inc., Schering Corporation, and Scovill, Inc. in regard to remediation of hazardous substances found at the Caldwell Trucking Site in the Town of Fairfield, New Jersey, a National Priorities List facility. The consent decree provides, *inter alia*, that the

defendants will conduct remediation of the soils and sludges and ground water contamination at the Caldwell Trucking Site and pay $1,960,000 in past response costs to the United States incurred in connection with the Site.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *The Carborundum Company, et al.*, D.J. Ref. 90–11–3–952.

The proposed consent decree may be examined at the office of the United States Attorney, 970 Broad St., room 502, Newark, N.J. 07102 and at the Region II office of the Environmental Protection Agency, 26 Federal Plaza, New York, New York 10278. The proposed consent decree may also be examined at the Consent Decree Library, 1120 G St. NW., 4th Floor, Washington, DC 20005, 202–624–0892. A copy of the proposed consent decree (excluding Appendices) may be obtained in person or by mail from the Consent Decree Library, 1120 G St. NW., 4th Floor, Washington, DC 20005. In requesting a copy, please enclose a check in the amount of $30.00 (25 cents per page reproduction cost) payable to the "Consent Decree Library."

John C. Cruden,

Chief, Environmental Enforcement Section, Environment & Natural Resources Division.

[FR Doc. 94–9376 Filed 4–18–94; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that on March 24, 1994, a Consent Decree in *United States* v. *CPS Chemical Company, Inc.*, Civil Action No. 94–1376 (AMW), was lodged with the United States District Court for the District of New Jersey. The proposed Consent Decree requires the Defendant to pay a civil penalty of $85,000, and obligates the Defendant to comply with the New Jersey State Implementation Plan and all permits and certificates issued thereunder.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States* v. *CPS Chemical Company, Inc.*, D.J. Ref. 90–5–2–1–1712.

The proposed Consent Decree may be examined at the office of the United States Attorney, District of New Jersey, Westminster Square Building, 10 Dorrance Street, 10th Floor, Providence, Rhode Island 02903; at the Region II Office of the Environmental Protection Agency, 26 Federal Plaza, New York, New York 10278; and at the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed Consent Decree can be obtained in person or by mail from the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, DC 20005. In requesting a copy of the Consent Decree, please enclose a check in the amount of $2.50 (25 cents per page reproduction costs) payable to the "Consent Decree Library."

John C. Cruden,

Chief, Environmental Enforcement Section.

[FR Doc. 94–9377 Filed 4–18–94; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that two proposed consent decrees in *United States* v. *City of Jacksonville, Ark.*, Civil Action No. LR–C–94–196, were lodged on April 6, 1994 with the United States District Court for the Eastern District of Arkansas. The proposed consent decrees are *de minimis* settlements with the City of Jacksonville under Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9606, 9607. The settlements resolve the City of Jacksonville's liability with respect to the Jacksonville and Rogers Road Municipal Landfill Sites located in Jacksonville, Arkansas.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decrees. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *City of Jacksonville, Ark.*, DOJ Ref. #90–11–3–814.

The proposed consent decrees may be examined at the office of the United States Attorney, 425 W. Capital, 5th floor, Little Rock, Arkansas 72201; the Region VI Office of the Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202; and at the Consent Decree Library, 1120 G Street NW., 4th floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street NW., 4th floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $110.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 94–9378 Filed 4–18–94; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to CERCLA

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Malitovsky Cooperage Co., et al.*, Civil Action No. 89–2115, was lodged on March 31, 1994 with the United States District Court for the Western District of Pennsylvania. This proposed consent decree would resolve this cost recovery action under Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9607, for the Malitovsky Drum Site, once a drum reconditioning business and later an abandoned waste disposal facility in Pittsburgh, Pennsylvania, for a payment of $750,000 toward reimbursement of expenditures from the Superfund to conduct removal actions at the Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Malitovsky Cooperage Co., et al.*, DOJ Ref. # 90–11–3–541.

The proposed consent decree may be examined at the Office of the United States Attorney, 7th Avenue and Grant Street, Pittsburgh, PA 15219; the Region III Office of the Environmental Protection Agency, 841 Chestnut Street, Philadelphia, PA 19107; and at the Consent Decree Library, 1120 G Street NW., 4th floor, Washington, DC 20005,

202–624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street NW., 4th floor, Washington, DC 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $6.00 (25 cents per page reproduction costs), payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 94–9379 Filed 4–18–94; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree; Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *TABC, Inc.*, Civil Action No. CV 94–2242–RSWL (C.D. Cal.), was lodged on April 8, 1994 with the United States District Court for the Central District of California. In the complaint in that action, the United States seeks from defendant TABC, Inc. ("TABC") civil penalties and injunctive relief under section 113(b) of the Clean Air Act (the "Act"), 42 U.S.C. 7413(b), for TABC's use at its truck bed manufacturing facility in Long Beach, California, of automobile coatings that exceed the volatile organic compound limits allowed by the Act and the California State Implementation Plan ("SIP"). The proposed consent decree requires TABC to operate two add-on controls TABC installed in 1990 and 1991 to ensure compliance with the SIP and to pay a penalty of $485,000.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Washington, D.C. 20044, and should refer to *United States* v. *TABC, INC.*, DOJ Ref. #90–5–2–1–1304.

The proposed consent decree may be examined at the office of the United States Attorney, Central District of California, 300 North Los Angeles Street, Los Angeles, California 90012; at the Region IX office of the Environmental Protection Agency, 75 Hawthorne Street, San Francisco, California 94105; and at the Consent Decree Library, 1120 G Street NW., 4th floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $5.00 (25 cents per page reproduction costs), payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 94–9380 Filed 4–18–94; 8:45 am]

BILLING CODE 4410–01–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 U.S.C. 3303a(a).

DATES: Request for copies must be received in writing on or before June 3, 1994. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESSES: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in the parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending:

1. Department of the Air Force (N1–AFU–92–26). Records relating to manufacturing methods.

2. Department of the Air Force (N1–AFU–94–5). Routine records of closing bases.

3. Department of the Army (N1–AU–94–2). Routine and facilitative records relating to Human Immunodeficiency Virus (HIV) programs.

4. Defense Contract Audit Agency (N1–372–94–2). Records relating to routine investigations and audits conducted by the General Services Administration.

5. Department of Health and Human Services, Administration for Children and Families (N1–292–90–6). Comprehensive schedule for the Office of Family Assistance.

6. Department of Health and Human Services, Administration for Children and Families (N1–292–92–2). Comprehensive File of the Executive Secretariat, Office of Family Assistance.

7. Department of the Interior, U.S. Geological Survey (N1–57–94–1).

Fragmentary digital tapes used to produce negatives for map construction.

8. Department of Interior, Bureau of Mines (N2–70–94–1). Raw data notebooks from field experiment stations, 1926–1958.

9. Department of Justice, Criminal Division (N1–60–93–13). Money Laundering Section case files.

10. Department of Justice, Criminal Division (N1–60–93–16). International prisoner transfer case files.

11. Department of State, Information Services (N1–59–93–14). Clearance files for the series Foreign Relations of the United States. (This schedule does not cover records accumulated by the Office of the Historian, the office with primary responsibility for the clearance of Foreign Relations series volumes.)

12. Department of State, All Foreign Service Posts (N1–84–93–14). Reports generated by the Non-Immigrant Visa Computer Assisted Processing System.

13. Department of the Treasury, Internal Revenue Service (N1–58–93–4). Administrative records relating to Employee Benefits and Exempt Organizations operations within the offices of the Associate Chief Counsel.

14. ACTION, Office of Management and Budget (N1–362–94–2). Grantee and program reports relating to compliance with civil rights, age non-discrimination, and handicapped accessibility requirements.

15. National Aeronautics and Space Administration, Engineering and Facilities Directorate, Kennedy Space Center (N1–255–94–4). Rolling Beam umbilical structure test date files, 1983–1985.

16. National Aeronautics and Space Administration (N1–255–94–5). Audiovisual items culled from a permanently valuable collection of Vandenberg launch site photos, slides, films, and negatives because they are duplicative or otherwise lack historical value.

17. National Archives and Records Administration (N1–GRS–94–1). General Records Schedule item for Federal Employee's Pay Comparability Act (FEPCA) records.

18. Peace Corps (N1–490–94–4). Donor files of the Peace Corps Partnership Program and information release cards from the Office of Returned Volunteer Services.

19. U.S. General Accounting Office (N1–411–94–1). Revisions to the Comprehensive Records Schedule.

Dated: April 11, 1994.

Trudy Huskamp Peterson,

Acting Archivist of the United States.

[FR Doc. 94–9386 Filed 4–18–94; 8:45 am]

BILLING CODE 7515-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Humanities Panel Meetings

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: David C. Fisher, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) trade secrets and commercial or financial information obtained from a person and privileged or confidential; or (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that those meetings will be closed to the public pursuant to subsections (c)(4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* May 2, 1994.
Time: 8 a.m. to 5:30 p.m.
Room: M–14.
Program: This meeting will review Summer Seminars for College Teachers applications for directing seminars in 1995 in Art, Drama, Film, Music, Communications, and Rhetoric, submitted to the Division of Fellowships and Seminars, for projects June 1, 1995.

2. *Date:* May 2, 1994.
Time: 9 a.m. to 5:30 p.m.
Room: 315.
Program: This meeting will review proposals submitted to the March 15, 1994 deadline in the Leadership Opportunity in Science & Humanities Education, submitted to the Division of Education Programs, for projects beginning after June 1, 1995.

3. *Date:* May 2–3, 1994.
Time: 8:30 a.m. to 5 p.m.
Room: 716.
Program: This meeting will review applications submitted to Humanities Projects in Media Program during the March 11, 1994 deadline, submitted to the Division of Public Programs, for projects beginning after June 1, 1995.

4. *Date:* May 3, 1994.
Time: 8 a.m. to 5:30 p.m.
Room: M–14.
Program: This meeting will review Summer Seminars for College Teachers applications for directing seminars in 1995 in Linguistics and Foreign and Comparative Literature, submitted to the Division of Fellowships and Seminars, for projects beginning after June 1, 1995.

5. *Date:* May 9, 1994.
Time: 9 a.m. to 5 p.m.
Room: 430.
Program: This meeting will review applications for Conferences projects in Interpretive Research, submitted to the Division of Research Programs, for projects beginning after October 1, 1994.

6. *Date:* May 9, 1994.
Time: 9 a.m. to 5:30 p.m.
Room: 315.
Program: This meeting will review proposals submitted to the March 15, 1994 deadline in the Leadership Opportunity in Science and Humanities Education, for projects beginning after October, 1994.

7. *Date:* May 9–10, 1994.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications submitted to Humanities Projects in Media program during the March 11, 1994 deadline, submitted to the Division of Public Programs, for projects beginning after June, 1994.

8. *Date:* May 12, 1994.
Time: 9 a.m. to 5:30 p.m.
Room: 315.
Program: This meeting will review proposals submitted to the April 1, 1994 deadline in the Higher Education Programs, for projects beginning after October, 1994.

9. *Date:* May 12, 1994.
Time: 9 a.m. to 5 p.m.
Room: 430.
Program: This meeting will review Subventions Program applications in World History, Anthropology, and Archaeology, submitted to the Division of Research Programs, for projects beginning after October 1, 1994.

10. *Date:* May 13, 1994.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications submitted to Humanities Projects in Media program during the March 11, 1994 deadline, for projects beginning after June, 1994.

11. *Date:* May 16, 1994.
Time: 9 a.m. to 5:30 p.m.
Room: 315.
Program: This meeting will review proposals submitted to the April 1, 1994

deadline in the Higher Education Program, submitted to the Division of Education Programs, for projects beginning after October, 1994.

12. *Date:* May 17, 1994.
Time: 9 a.m. to 5 p.m.
Room: 430.
Program: This meeting will review Subventions Program applications in Literature, Philosophy, Music, and Theater, submitted to the Division of Research Programs, for projects beginning after October 1, 1994.

13. *Date:* May 18, 1994.
Time: 9 a.m. to 5:30 p.m.
Room: 315.
Program: This meeting will review proposals submitted to the April 1, 1994 deadline in the Higher Education Program, for projects beginning after October, 1994.

14. *Date:* May 19, 1994.
Time: 9 a.m. to 5 p.m.
Room: 430.
Program: This meeting will review Subventions Program applications in Literature, and Visual Arts, submitted to the Division of Research Programs, for projects beginning after October 1, 1994.

15. *Date:* May 20, 1994.
Time: 9 a.m. to 5:30 p.m.
Room: 315.
Program: This meeting will review proposals submitted to the April 1, 1994 deadline in the Higher Education Program, for projects beginning after October, 1994.

16. *Date:* May 23, 1994.
Time: 9 a.m. to 5 p.m.
Room: 430.
Program: This meeting will review Subventions Program applications in U.S. History and American Studies, submitted to the Division of Research Programs, for projects beginning after October 1, 1994.

17. *Date:* May 24, 1994.
Time: 9 a.m. to 5:30 p.m.
Room: 315.
Program: This meeting will review proposals submitted to the April 1, 1994 deadline in the Higher Education Program, for projects beginning after October, 1994.

David C. Fisher,

Advisory Committee Management Officer.

[FR Doc. 94–9315 Filed 4–18–94; 8:45 am]

BILLING CODE 7536–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Subcommittee Meeting on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on Wednesday, May 4, 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, May 4, 1994—5 p.m. Until the Conclusion of Business

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 position 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 cancelled 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. (EDT). 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: April 13, 1994.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 94–9363 Filed 4–18–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–335, 50–389, 50–250, 50–251]

Receipt of Petition for Director's Decision Under 10 CFR 2.206

Notice hereby given that by Petition dated March 7, 1994, Thomas J. Saporito, Jr. (Petitioner), has requested that the NRC taken action with regard to the Florida Power and Light Company. Specifically, the Petitioner requests that the NRC: (1) Submit an amicus curiae brief to the Department of Labor (DOL) regarding his complaints number 89–ERA–007 and 89–ERA–017 concerning the Petitioner's claim that the licensee retaliated against him for engaging in protected activity during his employment at Turkey Point Nuclear Station in violation of 10 CFR 50.7; (2) institute a show cause proceeding pursuant to 10 CFR 2.202 to modify, suspend or revoke the licensee's licenses authorizing the operation of Turkey Point; and (3) institute a show cause proceeding pursuant to 10 CFR 2.202 and order the licensee to provide the Petitioner with a "make whole" remedy, including but not limited to, immediate reinstatement to his previous position, back wages and front pay with interest, compensatory damages for pain and suffering, and a posting requirement to offset any "chilling effect" Petitioner's discharge may have had upon other employees at the Turkey Point and St. Lucie Nuclear Stations.

The Petitioner's stated bases for his requests can be summarized as follows: (1) Although the NRC generally defers to the DOL process before taking action against a licensee, in this case the Administrative Law Judge (ALJ) rendered a decision, enabling the NRC to take the action Petitioner requests, particularly to offset any "chilling effect" which may have resulted from the licensee's action; (2) under the Memorandum of Understanding (MOU) with DOL, there are times NRC actions are warranted notwithstanding the ongoing DOL process because of the significance of the issues to public health and safety; (3) the record in this case contains evidence which was ignored by the ALJ, and the NRC should weigh the entire record in determining whether the licensee violated the Energy Reorganization Act (ERA) and 10 CFR 50.7; (4) the ALJ erred in several respects as a matter of law in reaching his decision that the Petitioner was not discriminated against; (5) the adverse action by the licensee occurred immediately after the Petitioner was in contact with the NRC and filed complaints under the ERA with DOL; (6) the licensee's actions against the Petitioner constitute a "hostile work environment" and the NRC is mandated by Congress to ensure that a non-hostile work environment exists at NRC-licensed facilities; (7) the NRC has a duty to ensure that licensee employers maintain a work environment which encourages employees to raise safety

issues, which is not the situation at Turkey Point because of the licensee's continuing retaliation against employees who do so; (8) the licensee illegally interrogated Petitioner about his protected activity; (9) if the NRC fails to act, it will contradict its own regulations that recognize the right of employees to bypass management and report their concerns directly to the NRC; (10) the NRC has expressly defined "protected activities"; (11) the licensee's request that Petitioner be examined by a company doctor was unjustified; (12) the licensee's disparate treatment of Petitioner was illegal and must be challenged by the NRC; and (13) the NRC is required to act by virtue of its regulations at 10 CFR 50.9 which provide that the DOL process is an extension of NRC authority.

The request is being treated pursuant to 10 CFR 2.206 of the Commission's regulations. The request has been referred to the Director, Office of Enforcement.

A copy of the Petition is available for inspection at the Commission's Public Document Room at 2120 L Street, NW., Washington, DC 20555.

Dated at Rockville, Maryland, this 7th day of April 1994.

For the Nuclear Regulatory Commission.

James Lieberman,

Director, Office of Enforcement.

[FR Doc. 94–9364 Filed 4–18–94; 8:45 am]

BILLING CODE 7590–01–M

Tennessee Valley Authority, Watts Bar Nuclear Plant; Receipt of Petition for Director's Decision Under 10 CFR 2.206

[Docket Nos. 50–390 and 50–391]

Notice is hereby given that by letter dated February 25, 1994 George M. Gillilan (Petitioner) has requested that the Nuclear Regulatory Commission (NRC): (1) Immediately impose a $25,000 per day fine on the Tennessee Valley Authority (TVA) until all reprisal, intimidation, harassment and discrimination actions involving the Petitioner are settled to the Petitioner's satisfaction, and (2) appoint an independent arbitration board to review all past Department of Labor suits and EEO complaints filed against TVA concerning the Watts Bar Nuclear Plant. Since this latter remedy is beyond the scope of the Commission's authority, it has been denied.

As basis for this relief, the Petitioner asserts that due to his reporting of safety concerns to the Commission, TVA management has subjected him to continuous intimidation, harassment, discrimination and reprisal actions, that his name has been placed on a blackball list that has been circulated nationwide preventing him from obtaining suitable employment outside of TVA and that this has affected his mental and physical health.

The request is being treated pursuant to 10 CFR 2.206 of the Commission's regulations. The request has been referred to the Director, Office of Enforcement. By letter dated April 7, 1994, the portion of the Petitioner's request that asked for immediate action has been denied. As provided by § 2.206, appropriate action will be taken on this request within a reasonable time. A copy of the Petition is available for inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555.

Dated at Rockville, Maryland, this 7th day of April 1994.

For the Nuclear Regulatory Commission.

James Lieberman,

Director, Office of Enforcement.

[FR Doc. 94–9365 Filed 4–18–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 030–01204, License No. 01–00643–02 EA 92–204]

Department of Veterans Affairs Medical Center, Birmingham, AL; Order Imposing Civil Monetary Penalty

I

The Department of Veterans Affairs Medical Center, Birmingham, Alabama (Licensee) is the holder of Byproduct Material License No. 01–00643–02 (License), issued by the U.S. Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR parts 30 and 35. The Licensee is authorized to possess and use byproduct material for diagnostic and therapeutic nuclear medicine procedures, and for research and development purposes. This is a broad scope license and use of licensed material on humans is permitted by or under the supervision of a physician authorized by the Licensee's Radiation Safety Committee, subject to the training and experience requirements in 10 CFR Part 35, Subpart J. The License was most recently amended on April 10, 1992, and was due to expire on July 31, 1992. The License is currently under timely renewal.

II

On September 13, 1991, an allegation was received by the NRC relating to possible administrations of radiopharmaceuticals in excess of prescribed dosages and possible falsification of records to conceal the misadministration. As a result, an investigation was conducted by the NRC Office of Investigations from October 9, 1991, through September 14, 1992.

The results of the investigation indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the Licensee by letter dated September 13, 1993. The Notice addressed the nature of the violations, the provisions of the NRC's requirements that had been violated, and the amount of the civil penalty proposed for the violations.

The Licensee responded to the Notice by two letters dated November 9, 1993. In its response, the Licensee admitted Violations A and C.1, denied Violations B and C.2, and requested partial mitigation of the civil penalty based on its prior performance.

III

After consideration of the Licensee's response and the statements of fact, explanation, and argument for partial mitigation contained therein, the NRC staff has determined, as set forth in the Appendix to this Order, that the violations occurred as stated and that the penalty proposed for the violations designated in the Notice should be imposed.

IV

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, *it is hereby ordered* That: The Licensee pay a civil penalty in the amount of $10,000 within 30 days of the date of this Order, by check, draft, money order, or electronic transfer, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

V

The Licensee may request a hearing within 30 days of the date of this Order. A request for hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, with a copy to the Commission's Document Control Desk, Washington, DC, 20555. Copies also shall be sent to the Assistant General Counsel for Hearings and Enforcement at the same address and to the Regional Administrator, NRC Region II, 101

Marietta Street, NW., suite 2900, Atlanta, Georgia 30323.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issues to be considered at such a hearing shall be:

(a) Whether the Licensee was in violation of the Commission's requirements as set forth in Violation B and Violation C.2 of the Notice referenced in Section II above, and

(b) Whether, on the basis of such violations and the additional violations set forth in the Notice of Violation that the Licensee admitted, this order should be sustained.

Dated at Rockville, Maryland, this 8th day of April 1994.

For the Nuclear Regulatory Commission.

James Lieberman,

Director, Office of Enforcement.

Appendix—Evaluations and Conclusion

On September 13, 1993, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for three violations identified during an investigation conducted by the NRC Office of Investigations (OI) from October 9, 1991 through September 14, 1992. Department of Veterans Affairs (Licensee) responded to the Notice in two letters dated November 9, 1993. In its responses, the Licensee admitted Violations A and C.1, denied Violations B and C.2, and requested partial mitigation of the civil penalty based on its prior performance and lack of evidence of actual harm to any patient or member of the public. The NRC's evaluations and conclusion regarding the Licensee's requests are as follows:

Restatement of Violation B

10 CFR 35.53 requires, in part, that a licensee measure the activity of each radiopharmaceutical dose that contains more than 10 microcuries of a photon-emitting radionuclide before medical use.

Contrary to the above, the technologist failed to measure three radiopharmaceutical doses that contained more than 10 microcuries of a photon-emitting radionuclide administered to patients on July 22, 1991.

Summary of Licensee Response to Violation B

The Licensee denied this violation and indicated that the evidence does not support the technologist's alleged failure to measure the radiopharmaceutical doses on July 22, 1991. In support of its denial, the Licensee stated that the count rates of these doses when compared with the count rates of seven doses administered within sixty days of July 22, 1991, reflect doses within acceptable limits. Therefore, argues the Licensee, it is not credible that this could be a chance result in the absence of measuring by the technologist.

NRC Evaluation of Licensee's Response to Violation B

The Licensee presented data to indicate that the doses administered on July 22, 1991, had count rates similar to those previously administered. This data, however, provides no information which would indicate that the does administered to patients on July 22, 1991, were measured in a dose calibrator at the appropriate setting for Technetium–99m. The information is not material to Violation B in that your analyses provides information relating to the activity of material as measured during the scans themselves, but not whether activity was measured in the dose calibrator prior to administration.

As stated in the NRC letter transmitting the Notice, the NRC's conclusion that the technologist failed to measure the dosages was based on: (1) The setting of a different isotope channel on both dose calibrators during the time the technologist stated he measured three patient doses, (2) the missing radioactive material, (3) the high volume of radioactive material recorded by the technologist on the patient dose log, and (4) the technologist's past history of committing errors and omissions in patient dose records.

If proper measurements had occurred, the technologist would have noticed the improper radionuclide channel (i.e., Thallium) and reset it when measuring the doses. The technologist would not have recorded the high volumes on the patient dose log. The technologist admitted that the volumes in the records were fabricated, indicating that he had no knowledge of the amount of doses administered providing further evidence that he has not measured the doses. The Licensee's response did not address any of the evidence which indicated that the dosages had not been measured prior to administration.

Moreover, the staff disagrees with the Licensee's argument that it is not credible to have the count rate of the seven doses favorably compare with the doses administered on July 22, 1991, in the absence of measuring the dose in the dose calibrator. An experienced technologist, knowing a prescribed radiopharmaceutical dose, may approximate with some success the radiopharmaceutical dose by approximating the volume of the material. However, this method is not reliable to assess the radiopharmaceutical dose and does not meet the requirement in 10 CFR 35.53(a) to measure each radiopharmaceutical dosage in a dose calibrator.

The preponderance of the evidence in this case indicates that the technologist failed to measure the doses. The NRC concludes that the violation did occur as stated in the Notice.

Restatement of Violation C.2

10 CFR 35.21 requires, in part, that the licensee, through the Radiation Safety Officer (RSO): (1) Ensure that radiation safety activities are being performed in accordance with approved procedures and regulatory requirements in the daily operation of the licensee's byproduct material program; and (2) that the RSO investigate misadministrations and other deviations from approved radiation safety practice and implement corrective actions as necessary.

Contrary to the above, the licensee failed to conduct a prompt and adequate investigation of possible misadministrations of radiopharmaceuticals to patients during the week of July 22 through 26, 1991. Specifically, once notified of the allegation, the RSO failed to obtain a copy and review a letter from the acting supervisor describing the possible misadministrations or to interview individuals who had first-hand knowledge that was material to the investigation.

Summary of Licensee's Response to Violation C.2

The Licensee denied that Violation C.2 constituted a breach of regulations. While it admitted that the regulations require the RSO to investigate misadministrations, the Licensee stated that the regulations provide no standard for the performance of the investigation and do not require that the investigation be performed in a "prompt or adequate" manner or to the satisfaction of the NRC. The Licensee stated that it conducted an investigation concerning this matter.

The Licensee also stated that during the enforcement conference held on February 16, 1993, Mr. Ebneter, Regional Administrator, Region II, pointed out that there was no regulation that tells the Licensee what has to be included in an investigation. The Licensee also stated that Dr. Mallett, Deputy Director, Division of Radiation Safety and Safeguards, Region II, indicated that he was comfortable with the Licensee's statement that it has looked at the rates (as part of the investigation) and expressed satisfaction with the results of the Licensee's investigation.

The Licensee denied that the investigation was not prompt or thorough, since the RSO was summoned back to duty from vacation to look into the matter, the technologist at fault was counseled, and the NRC notified. The Licensee's investigation concluded from statistical studies that there was no misadministration and that the errors were ones of record-keeping. In addition, the Licensee stated that the NRC has not suggested what additional information or result could have been obtained had the investigation been performed differently.

NRC Evaluation of Licensee's Response to Violation C.2

The need for the Licensee to perform investigations that are prompt and adequate is implicit in 10 CFR 35.21. One purpose of the requirement for an investigation of a possible misadministration is to determine whether there has, in fact, been any misadministration. Further, the Commission's regulations require the licensee to implement as necessary and, ensure corrective actions are taken. This protects individual patients and prevents future or potential misadministrations. An

investigation that is not prompt and not adequate cannot achieve these goals nor preclude potential or recurring violation. Accordingly, the NRC rejects the Licensee's argument. In view of the above, the issue is whether the Licensee's investigation was in fact prompt and adequate.

The NRC recognizes that the RSO was summoned back from vacation and initiated an investigation within a few days of the request for his return, that the technologist at fault was counseled, and that the NRC was notified.

However, the NRC maintains that the Licensee's investigation was not adequate as defined in the NRC regulations. Section 35.21 of 10 CFR part 35, requires, in part, that a Licensee investigate misadministrations and other deviations from approved radiation safety practices and "* * * *implement corrective actions as necessary*" (emphasis added). The NRC does expect, and the regulations do require, that such investigations be adequate to meet the purpose of the investigations—the implementation of effective corrective actions.

The investigation conducted by the Licensee was not adequate to determine the root cause of the problems and thus, the Licensee's corrective actions were ineffective, as evidenced by the technologist's continual failures to record the administered radiopharmaceutical activity and volume and the lack of supervisory oversight (see pages 75 and 76 of the transcribed enforcement conference). During the enforcement conference referenced in the Licensee's response, the NRC pointed out that the Licensee did not perform an adequate investigation (P 75 and 76). The two specific issues contained in the Notice, failure to review the letter that described the possible misadministration and failure to interview individuals who had first-hand knowledge of this matter, are examples of inadequacies in the investigation that led to the Licensee's inability to determine the root cause and take effective corrective actions.

With regard to Mr. Ebneter's statement that there was no regulation that tells the Licensee what has to be included in investigations, it is true that the NRC regulations do not prescribe the exact methodology for conducting investigations. As discussed above in this section and by Mr. Ebneter during the enforcement conference, however, the investigation results are important and the regulations do prescribe that the investigation must be adequate to implement effective corrective actions.

Concerning Dr. Mallett's statement that he was comfortable with the Licensee's review of the count rates, the NRC notes that Dr. Mallett's statement was not intended to suggest that the NRC considered the investigation adequate; the statement was limited to what it said—that Dr. Mallett was comfortable with that one aspect of the investigation (i.e., the Licensee's review of the count rates). The Licensee's assertion that this meant Dr. Mallett was satisfied with the investigation as a whole appears to have been taken out of context. Within the context of the full meeting, it is clear the NRC did not conclude that the investigation had been adequate.

The NRC concludes that the violation did occur as stated in the Notice.

Summary of Licensee's Request for Mitigation

The Licensee stated that Violation B and Violation C.2 did not occur. The Licensee stated that there is no evidence of harm to any patient or member of the public, even of a minor nature. The Licensee further stated that the evidence does not demonstrate a misadministration of dosages on July 22, 1991 and that the technologist who administered the doses denied administering excessive doses to patients on July 22, 1991.

The Licensee further contended that the errors were essentially record-keeping errors of the Severity Level IV or V type that might be aggregated to Severity Level III or IV but are not Severity Level II violations. In addition, the Licensee stated that its performance has improved over the past year as demonstrated by the last two NRC inspections. Thus, the Licensee argues, in accordance with the Enforcement Policy, the NRC should not have escalated the penalty 50 percent for poor past performance because its performance is improving.

NRC Evaluation of Licensee's Request Mitigation

The arguments made by the Licensee concerning the acceptability of the doses and the lack of evidence of harm to patients or members of the general public do not relate to the requirement to measure dosages prior to administration or to the requirements to perform adequate investigation of possible misadministrations. Further, the Licensee's contention that the evidence does not demonstrate misadministration of doses, or excessive or inadequate doses, is not pertinent to the violation cited. The Licensee was not cited for administering excessive or inadequate doses, or misadministrations. These arguments only provide information that the Licensee believes that excessive dosages were not administered.

With regard to the Licensee's request to reduce the severity level from a Severity Level II to a Severity Level III or Severity Level IV, the NRC notes that Section IV of the Enforcement Policy (i.e., 10 CFR part 2, Appendix C) states, in part, that "Supplements I through VIII provide examples and serve as guidance in determining the severity level for violations in each of the eight activity areas. However, the examples are neither exhaustive nor controlling * * *. The NRC reviews each case being considered for enforcement action on its own merits to ensure that the severity of the violation is characterized at the level best suited to the significance of the particular violation. In some cases special circumstances may warrant an adjustment to the severity level characterization."

In this case, the NRC had a very significant regulatory concern as noted in the cover letter to the Notice. There were numerous instances where patient dosages were not measured, numerous instances where patient dosages were not accurately recorded prior to administration, and for an extended period of time, effective corrective actions were not taken. The severity of the violations was exacerbated by the technologist's continual failures to accurately record patient dosages despite repeated counseling, and by the failure on the part of the Chairman of the Radiation Safety Committee to take strong and effective corrective actions in the face of the known repeated violations on the part of the technologist. Given these circumstances and the very significant regulatory concern surrounding this case, a Severity Level II Problem categorization was warranted, in accordance with Section IV of the Enforcement Policy.

With reference to the Licensee's performance, the NRC recognizes that inspections of the Licensee during the period of late 1992 and 1993 have not shown the same level of poor performance as identified in 1991 and early 1992. The Enforcement Policy statement regarding improved performance relates to performance during the period of either the last two years prior to the inspection at issue or the period of the last two inspections prior to the inspection at issue, whichever is longer. Thus, any improvement in performance subsequent to the inspection at issue may not be considered as part of any mitigation for the licensee performance factor.

NRC Conclusion

Based on its evaluation of the Licensee's responses, the NRC concludes that Violations B and C.2 did occur as stated, that all violations delineated in the Notice were properly categorized in aggregate as a Severity Level II problem, and that an adequate basis for mitigation of the proposed civil penalty has not been provided by the Licensee. Accordingly, a civil monetary penalty in the amount of $10,000 should be imposed by order.

[FR Doc. 94–9336 Filed 4–18–94; 8:45 am]
BILLING CODE 7590–01–M

RESOLUTION TRUST CORPORATION

Coastal Barrier Improvement Act; Property Availability; Orchard Acres, New London County, CT; Berkshire Valley, Morris County, NJ

AGENCY: Resolution Trust Corporation.
ACTION: Notice.

SUMMARY: Notice is hereby given that the properties known as Orchard Acres, located in Colchester, New London County, Connecticut, and Berkshire Valley, located in Jefferson, Morris County, New Jersey, 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 July 18, 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(s): Mr. John Leinmiller (Orchard Acres) or Mr. Merrill Freedman (Berkshire Valley), Resolution Trust Corporation, Valley Forge Field Office, P.O. Box 1500, Valley Forge, PA 19482–1500, (800) 782–6326; Fax (610) 650–0881.

SUPPLEMENTARY INFORMATION: The Orchard Acres property is located in the northwest portion of Colchester, New London County, Connecticut. The site has a potential for archeological resources and is adjacent to Salmon River State Forest. The Orchard Acres property consists of approximately 71.21 acres of undeveloped land in three tracts. The site is primarily wooded and contains some partially improved areas.

The Berkshire Valley property is located on Berkshire Valley Road, Cedar Terrace, and New Jersey Route 15 in the northwest portion of Morris County in the Township of Jefferson. The site contains wetlands and is adjacent to the Berkshire Valley Wildlife Management Area. The Berkshire Valley property consists of approximately 146 acres of undeveloped land with rugged, wooded terrain. Topographic relief at this site is significant, varying approximately 300 feet with large rock outcrops throughout 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 July 18, 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, Public Law 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: April 12, 1994.

Resolution Trust Corporation.

William J. Tricarico,

Assistant Secretary.

[FR Doc. 94–9327 Filed 4–18–94; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–33900; File No. SR–Amex–94–10]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange, Inc. Relating to the Minimum Fractional Change for Trading in Standard & Poor's Depositary Receipts

April 12, 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 April 7, 1994, the American Stock Exchange, Inc. ("Amex or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. 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 proposed to amend Rule 127, Commentary .01 to provide that the minimum fractional change applicable to trading of Standard & Poor's ("S&P") Depositary Receipts ("SPDRs") shall be 1/64 of $1.00.[1] The text of the proposed rule change is available at the Office of the Secretary, 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 self-regulatory organization 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 self-regulatory organization 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 Purposes of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Amex Rule 127 provides parameters for the minimum fractional change for dealings in securities on the Exchange. Commentary .01 to Rule 127 provides that for securities listed under Amex Rule 1000 *et seq.*, Portfolio Depositary Receipts ("PDRs"), the minimum fractional change shall be 1/32 of $1.00. One issuance of PDRs, SPDRs, is currently trading on the Exchange. The Exchange now proposes to reduce the minimum fractional change applicable to SPDRs to 1/64.

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[1] The Commission notes that, although SPDRs currently are listed and traded on the Amex, it is conceivable that other national securities exchanges or the National Association of Securities Dealers, Inc. could apply for authority to list and trade SPDRs. At the present time, however, the Intermarket Trading System ("ITS") is not capable of accommodating quotes in 1/64's. Telephone conversation between Thomas Demchek, SIAC, and Beth Stekler, Attorney, Division of Market Regulation, SEC, on April 12, 1994. Accordingly, if other securities exchanges and/or national securities associations file for permission to list and trade SPDRs, the Commission would at that time be required to re-evaluate the adequacy and sufficiency of ITS in conjunction with section 11A's statutory mandate to assure fair competition between the exchanges.

In approving trading of PDRs in 1/32's, the Commission stated that such trading would enhance market liquidity and should promote more accurate pricing, tighter quotations and reduced price fluctuations. The Commission also noted that such trading should allow customers to receive the best possible execution of their transactions in these securities.[2]

The Exchange believes the benefits identified by the Commission in connection with trading PDRs in 1/32's will be further enhanced by trading SPDRs in 1/64's. Such trading should further reduce price fluctuations based on the underlying index for the particular issuance (i.e., S&P 500 Index). Such trading parameters should benefit retail customers, institutions, and other market participants that invest in or trade SPDRs. In addition, a narrower quotation spread should make such securities more useful professionals who may hedge their positions in futures or other derivative markets.

The Exchange will issue an Information Circular to members and member organizations relating to trading SPDRs in 1/64's prior to commencement of such trading.

2. Statutory Basis

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 intended to promote just and equitable principles of trade, to facilitate transactions in securities, and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no 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

The foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange and therefore has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 thereunder. At any time within 60 days of the filing of such proposed 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 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 at 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 the Amex. All submissions should refer to File No. Sr–Amex–94–10 and should be submitted by May 10, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–9398 Filed 4–18–94; 8:45 am]

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[2] See Securities Exchange Act Release No. 31794 (January 29, 1993), 58 FR 7272 (February 5, 1993) (File No. SR–Amex-92–45).

[Release No. 34–33901; File No. SR–CHX–93–28]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 to Proposed Rule Change Relating to Corporate Governance Issues

April 12, 1994.

I. Introduction

On October 21, 1993, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the Exchange's Charter, Constitution, and rules relating to corporate governance issues. On March 29, 1994, the CHX submitted Amendment No. 1 to the rule filing.[3] Specifically, the changes concern: (i) The limitation of Governor monetary liability under Delaware law, (ii) providing more flexibility in setting the dates for the annual meeting and election, (iii) providing more flexibility in the number of Governors who can serve on the Executive and Finance Committees, and (iv) granting the President full voting powers on the Executive Committee.

The proposed rule change was published for comment in Securities Exchange Act Release No. 33318 (December 10, 1993), 58 FR 66042 (December 17, 1993). No comments were received on the proposal. This order approves the proposed rule change as amended.

II. Description of the Proposal

Liability of Governors

Delaware's General Corporation Law permits the adoption of a provision in the Certificate of Incorporation of a Delaware corporation that limits or eliminates the potential monetary liability of directors to the corporation or its shareholders by reason of their conduct as directors under certain circumstances. Such a provision does not apply to acts or omissions of directors occurring prior to the approval of the provision by shareholders and the filing of the amendment to the Certificate of Incorporation with the Secretary of State of Delaware.

Because the CHX is a Delaware Corporation, the amendment to Article Eleventh of its Certificate of Incorporation is based on section 102(b)(7) of the Delaware Corporations Code.[4] Section 102(b)(7) permits corporations to include in their certificates of incorporation a provision limiting or eliminating the personal liability of directors to the corporation and its shareholders for monetary damages for a breach of their fiduciary duty. The statute does not permit the limitation or elimination of director's liability under the following circumstances: (1) A breach of the director's duty of loyalty, (2) acts or

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1993).

[3] Letter from J. Craig Long, Foley & Lardner, to Katherine Simmons, Attorney, SEC, dated March 28, 1994. Amendment No. 1 clarified certain language in the proposal.

[4] Del. Code Ann. title 8, § 102(b)(7) (1993).

omissions not in good faith or which involve intentional misconduct or a knowing violation of the law, (3) unlawful payment of dividends or unlawful stock purchases or redemptions, or (4) any transaction from which the director derives an improper personal benefit.[5] In addition, the statute does not permit the adoption of any provision that would eliminate or limit the liability of a director for any act or omission occurring prior to the date when such provision becomes effective.[6]

The Delaware statute does not eliminate a director's fiduciary duty, but rather prevents the imposition of monetary damages in the event of a breach of that duty. Other legal remedies for breach of fiduciary duty, such as rescission and injunction, remain available under the Delaware provision.

The amendment to the CHX's Certificate of Incorporation limits the liability of Governors to the fullest extent of Delaware Law. The amendment includes the exclusions from limited liability enumerated in Delaware section 207(b)(7) and adds an exclusion where liability arises directly or indirectly as a result of a violation of a federal securities laws. The amendment also eliminates Governor monetary liability for acts occurring after the amendment becomes effective to the fullest extent from time to time permitted by Delaware law, thus automatically incorporating any future statutory revisions limiting Governor liability.[7]

Annual Meeting and Election

Instead of holding one annual meeting, the amendment to Article IV, section 2 of the CHX's Constitution provides for two annual meetings to be held in April: An annual election meeting and an annual report meeting. The Board will have the flexibility to annually determine on which business days in April to hold the meetings. The annual election meeting will be held to vote for Governors and the Nominating Committee. The annual report meeting will be held to provide management, the Board, and members an opportunity to discuss the previous year's results and current issues facing the Exchange. The Board could determine to have these meetings on the same day or different days in April.

Composition of the Executive and Finance Committees

The amendment to Article V, Section 4 of the CHX's Constitution and Article IV, Rule 2 of its Rules provides that the specified number of Governors who may serve on the Executive and Finance Committees are minimums. Currently the Executive Committee is composed of 7 Board members plus the President and Chairman of the Board as ex-officio members.[8] The Finance Committee is composed of 5 Board members plus the two ex-officio members. The number of Committee members could be increased if the Vice Chairman and the Board so determine.

Voting Powers of the President and Chairman

Article VI, Section 4 of the CHX's Constitution provides that the President is "a member of the Board of Governors and an ex-officio member, without the right to vote, of all committees except the Nominating, Audit, and Compensation Committees." The rule change grants the president voting power on the Exchange's Committees of which he is an ex-officio member if so designated in the CHX's Constitution or Rules. The rule change to Article V, Section 4 of the CHS's Constitution grants the President full voting powers on the Executive Committee. In addition, the rule change adds Judiciary Committees and the Committee on Organization and Governance to the list of committees of which the president is not an ex-officio member.

Article VI, Section 2 of the CHX's Constitution provides that the Chairman of the Board of Governors is "an ex-officio member, without the right to vote except as otherwise designated in this Constitution, of all committees except the Nominating Committee." The rule change allows to Exchange to designate the Chairman's right to vote on committees in the Exchange's Rules as well as the Constitution. The rule change to Article IV, Rules 7 and 9 of the Exchange's Rules grants the Chairman of the Board full voting powers on the Committee on Organization and Governance and the Compensation Committee. In addition, the rule change to Article VI, Section 2 of the Constitution specifies that the Chairman is not a member of any Judiciary Committee.

Miscellaneous

Finally, the rule change replaces the term "Public Governor" with "non-member Governor" and provides the definition of the term in Article IV, Rule 7 of the CHX's Rules to state that "the term non-member Governor shall mean a Governor who is unaffiliated with the Exchange or any broker or dealer in securities, as defined in Article III, Section 2 of the Exchange's Constitution." The rule change also adds the term "non-member Governor" to Article IV, Rule 8.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and with the requirements of Section 6(b) of the Act.[9] In particular, the Commission believes that the proposal is consistent with sections 6(b)(1), (3), and (5) of the Act.[10] Section 6(b)(1) requires that an exchange be organized and have the capacity to carry out the purposes of the Act and to comply, and to enforce compliance by its members and persons associated with its members with the Act, the rules and regulations thereunder, and the rules of the exchange. Section 6(b)(3) of the Act requires, among other things, that the rule of an exchange assures a fair representation of its members in the selection of its directors and administration of its affairs. Section 6(b)(5) requires, among other things, that the rules of an exchange be designed, in general, to protect investors and the public interest.

The Commission believes that the proposed rule change to limit Governor monetary liability to the Exchange and its members is consistent with the requirements of the Act.[11] In reaching

[5] *Id.*

[6] *Id.*

[7] A similar amendment to the Constitution was approved by the Board, the membership and the Securities and Exchange Commission in late 1989 and early 1990. Securities Exchange Act Release No. 27625 (January 16, 1989), 55 FR 2470 (January 24, 1990). However, the requisite number of membership votes was not obtained to amend the Certificate of Incorporation under the then existing voting requirement. The CHX put the 1989 proposal to a vote of its members in 1990. At that time, the Exchange's rules requiring only a majority of the members present at a meeting to approve a change to the Constitution, while requiring a majority of the entire membership to approve changes to the Certificate of Incorporation. The Exchange was able to pass the amendment to the Constitution, but did not have sufficient votes to amend its Certificate of Incorporation. The discrepancy in the number of votes needed to amend the Constitution and the Certificate of Incorporation was removed in the Exchange's corporate restructuring which the Commission approved in 1992. Securities Exchange Act Release No. 31633 (December 22, 1992), 57 FR 62402 (December 30, 1992). The standard for amending both the CHX's Constitution and Certificate of Incorporation is now a majority of the members present at a meeting.

[8] An ex-officio member is one who is the member of a board or committee by virtue of his or her title to a certain office.

[9] 15 U.S.C. 78f(b) (1988).

[10] 15 U.S.C. 78f(1), (3), and (5) (1988).

[11] The Commission approved the same rule change for the CHX in Securities Exchange Act Release No. 27625 (January 16, 1989), 55 FR 2470

Continued

its determination to approve this rule change, the Commission has considered the potential impact that the proposal will have on the special role and responsibilities of the Board of Governors of a registered national securities exchange under the Act.[12]

The Board of Governors of a national securities exchange has a crucial role in ensuring that the exchange meets its responsibilities as a self-regulatory organization under the Act. In view of this, the CHX proposal is limited so that the exemption from monetary damages is not available where liability is based, directly or indirectly, on a violation of the federal securities laws.

At the same time, the Commission recognizes that national securities exchanges, such as the CHX, are incorporated under state law and, as such, are generally entitled to take advantage of provisions under state corporation codes to the extent they are consistent with the federal securities laws. The proposed rule change adequately balances the need to retain the special responsibilities of directors of national securities exchanges with the desire of the Exchange to adopt state law provisions pertaining to its corporate structure. The rule change allows the Exchange to take advantage of section 102(b)(7) of the Delaware Corporations Code as would any other organization incorporated in Delaware, except where the imposition of monetary actions involves a violation of the federal securities laws. Accordingly, Governors of the CHX will still be subject to the full panoply of damages in actions involving violations of the federal securities laws.[13]

The Commission believes that the CHX's proposal to split its annual meeting and provide for an annual election meeting and an annual report meeting will allow Exchange members to better concentrate on the respective issues. The annual election meeting will be held to vote for Governors and the Nomination Committee. The annual report meeting will be held to provide management, the Board, and members an opportunity to discuss the previous year's results and current issues facing the Exchange. Because each of these meetings is of extreme importance and may involve lengthy discussions, the Commission believes holding two separate meetings is appropriate and consistent with section 6(b)(3) of the Act which requires that the rules of the exchange assures a fair representation of its members in the selection of its directors and administration of its affairs.[14]

The CHX's Constitution provides that appointments to the Executive Committee are made by the Vice Chairman of the Board with the approval of the Board of Governors.[15] In December 1992, the Commission approved changes to the CHX's organization and governance,[16] including changes to the Exchange's Executive Committee. Before that rule change, the Executive Committee was comprised of six Governors and the Chairman, Vice Chairman, and President. The rule change removed the Vice Chairman from the Executive Committee and provided instead for seven Governors. In addition, the Chairman was designated as the Committee's Chairman with full voting powers. The President, however, remained an ex-officio member of the Committee without the power to vote.

In approving the 1992 changes to the Exchange's Executive Committee, the Commission emphasized concerns about floor domination of the governance of the Exchange.[17] When appointing the Executive Committee members the CHX's Constitution directs the Vice Chairman to assure the geographic diversity of the Governors appointed to that Committee.[18] Consistent with this directive, the Executive Committee has traditionally consisted of two public Governors, two "upstairs" member Governors, and two floor member Governors.[19] The Exchange represented at the time of the 1992 changes that it continued to support such diversity in the Executive Committee and expected its future composition to be consistent with past practices.[20]

The rule change now under consideration provides that the Executive Committee will be comprised of *at least* seven floor governors. This change allows the Vice Chairman, with Board approval, to expand the number of governors serving on the Executive Committee. While the Commission believes that the Exchange should be able to expand the number of Governors serving on the Committee if such expansion is necessary for the efficient administration of Exchange business, the Commission expects the Exchange to maintain the relative representation of the various geographic groups on the Committee and would be concerned if the Committee was dominated by a particular group (*e.g.*, floor members). The CHX has represented that it will continue to support diversity in the Executive Committee. Specifically, the CHX has indicated that the Vice Chairman will appoint additional governors, should the number be increased from seven, in a manner which will continue fair representation of public Governors, "upstairs" member Governors, and floor member Governors

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(January 24, 1990); the Pacific Stock Exchange, Inc. in Securities Exchange Act Release No. 27466 (November 22, 1989), 54 FR 49380 (November 30, 1989); and the Midwest Clearing Corp. in Securities Exchange Act Release No. 27446 (November 16, 1989), 54 FR 48707 (November 24, 1989).

[12] The Powers and responsibilities of the CHX's Board of Governors are set out in the Exchange's Constitution. Under Article III, Section 1, the Board of Governors is authorized to manage the business of the Exchange and is vested with all powers necessary for the government of the Exchange, including the regulation of the business conduct of members and member organizations and the promotion of the welfare, objects and purposes of the Exchange. Furthermore, Section 1 provides that the Board may establish Rules governing the qualifications for membership and the requirements for remaining a member in good standing. The Board is also given the power to fill vacancies in any office, including the Board of Governors, but excluding the Nominating Committee, until the next annual meeting. The Board also has the power to interpret the Constitution and Rules of the Exchange, and any interpretation made by it remains final and conclusive.

[13] To the extent there is any concern that the imposition of monetary damages against Board members for violations of federal securities laws would deter persons from acting on CHX's Board of Governors, the Commission notes that Article X of the CHX's Constitution and Article Eleventh of the CHX's Certificate of Incorporation allows the Exchange to provide indemnification to members of its Board of Governors, within the limits permitted by Delaware law, to safeguard them from expense and liability for actions that they take in such capacity in good faith in furtherance of, or without belief that such actions are opposed to, the best interests of the CHX and is members.

[14] The Commission notes that the proposal could allow the annual election meeting to take place prior to the annual report meeting. Before setting the meeting times, the Exchange should consider that the report meeting may provide information to members that is relevant to their election of Governors at the annual election meeting.

[15] *See* Article V, Section 4 of the CHX's Constitution.

[16] *See* Securities Exchange Act Release No. 31633 (December 22, 1992), 57 FR 62402 (December 30, 1992).

[17] Section 6(b)(3) of the Act requires that the rules of an exchange assure a fair representation of its members in the selection of its directors and administration of its affairs and provide that one or more directors represent issuers and investors and not be associated with a member of the exchange or a broker-dealer. The Executive Committee wields most of the powers of the full Board between Board meetings. As a result, floor domination of the Executive Committee (like floor domination of the Board) may violate Section 6(b)(3)'s requirement of fair representation.

[18] Art. V., Sec. 4 of the CHX's Constitution.

[19] The Exchange indicated that the seventh Governor member of the Executive Committee (created by the departure of the Vice Chairman) would be appointed ad hoc, depending on the strengths and weaknesses of individual Board members and the needs of the Exchange. Telephone conversation between J. Craig Long, Vice President, General Counsel and Secretary, MSE, and Beth Stekler, Staff Attorney, SEC, on December 18, 1992.

[20] *See* letter from John L. Fletcher, Vice Chairman, and Homer J. Livingston, President-Designate, MSE, to Brandon C. Becker, Deputy Director, Division of Market Regulation, SEC, dated December 17, 1992.

as required by the CHX's Constitution.[21] The Commission therefore believes that the proposal is consistent with section 6(b)(3) of the Act.

For the reasons discussed below, the Commission also is approving changes to the Exchange's Executive Committee, Finance Committee, Committee on Organization and Governance, and Compensation Committee. The Commission notes that although there is no provision in the CHX's Constitution specifically directing geographic diversity in the Governors appointed to committees other than the Executive Committee,[22] Section 6(b)(3) of the Act requires that the rules of an exchange assure a fair representation of its members in the administration of its affairs. The Commission believes that the fair representation provision of Section 6(b)(3) requires the Exchange to ensure that all of its committees have a diversity of governors (*i.e.*, public Governors, "upstairs" member Governors, and floor member Governors).

Preliminarily, the Commission believes the rule change to Article VI, Sections 2 (Chairman) and 4 (President) to provide that the Chairman and President are ex-officio members of all Executive Committees (except those specified in the provisions) without the right to vote unless "otherwise designated in the Constitution or the Rules" is consistent with the Act. The rule change allows the Exchange to indicate if the Chairman or President has the right to vote on a particular Committee in the Section or Rule pertaining to each Committee.

The Commission believes that giving the President full voting powers on the Executive Committee is consistent with the President's voting powers on the Board. The Commission notes that the Executive Committee has full Board authority to act between Board meetings on most issues. In addition, because the Exchange's Constitution requires that the president not be a member of the Exchange or affiliated in any way with a member organization during his incumbency,[23] granting the President voting powers does not change the presentation on the Executive Committee of any particular group. Therefore, this rule change is consistent with sections 6(b) (1) and (3) of the Act.

The Commission also believes that the Exchange's proposal to allow the Vice Chairman, with Board Approval, to expand the number of Governors serving on the Finance Committee is consistent with the requirements of Section 6(b)(1) of the Act because the rule change is designed to enhance the governance process of the Exchange. The Finance Committee reviews annual profit plans and budgets for the Exchange and its subsidiaries, reviews the financial condition of the Exchange and its subsidiaries, reviews the performance of Exchange investments, formulates investment policy, and makes recommendations to the management or Board. Because this Committee has an important function involving a wide range of financial issues, the Commission believes it is reasonable that the Exchange may decide that additional Governors are necessary for the Committee to fulfill its duties.

Additionally, the Commission believes that the rule change to give the Chairman full voting rights as a member of the Compensation Committee and the Committee on Organization and Governance is consistent with Sections 6(b) (1) and (3) of the Act. The Compensation Committee is responsible for establishing the compensation of the President and for coordinating with the President to determine a comprehensive corporate compensation and benefits policy.[24] The Committee on Organization and Governance is responsible for periodically reviewing the organization and governance structure of the Exchange and its subsidiaries, and for making recommendations to the Board of Governors with respect thereto.[25] The Chairman is appointed by the Board of Governors from among the 24 Governors, and may accordingly be an "up-stairs" member, a floor member, or a public governor. Granting the Chairman voting rights on the Compensation Committee and the Committee on Organization and Governance, therefore, may change the relative representation of one of these constituencies. The Commission expects that the Exchange will ensure fair representation on these Committees consistent with section 6(b)(3) of the Act.

The Commission believes that the rule change providing that neither the Chairman nor the President are ex-officio members of any Judiciary Committee also is consistent with Sections 6(b)(1) and (5) of the Act. Article IV, Rule 5 of the Exchange's Rules states that "the President shall appoint five disinterested members of the Exchange and/or general partners or officers of member organizations as a Judiciary Committee" whenever a disciplinary matter is to be reviewed in accordance with the Rules. The rule change specifies that the Chairman and President are not ex-officio members of any Judiciary Committee.

Finally, the Commission believes that the rule change replacing "Public Governor" with "non-member Governor" and defining the term as a "Governor who is unaffiliated with the Exchange or any broker or dealer in securities, as defined in Article III, Section 2 of the Exchange's Constitution," serves to provide consistency within the CHX's Constitution and Rules, and has no substantive effect. The Commission notes, however, that "non-member Governors" are intended to be representatives of the public and that the term is synonymous with the Commission's use of the term "public Governor" in general, and in this order and the order approving the 1992 changes to the CHX's organization and governance.[26] This interpretation is consistent with Section 6(b)(3) of the Act, which requires that the Exchange provide that one or more directors be representatives of issuers and investors and not be associated with a member of the exchange, broker, or dealer.

The Commission finds good cause for approving Amendment No. 1 to the rule change prior to the thirtieth day after publication of notice of filing thereof. Amendment No. 1 made a non-substantive change to the proposal by including in the rules the Constitutional definition that a non-member Governor is unaffiliated with the Exchange or any broker or dealer in securities.[27] The CHX's proposed rule change was published in the **Federal Register** for the full statutory period and no comments were received.[28]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1. 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

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[21] Telephone conversation between Craig Long, Foley & Lardner, and Katherine Simmons, Division of Market Regulation, SEC (January 26, 1994).

[22] *See* Art. V., Sec. 4 of the CHX's Constitution and text accompanying note 14, *supra*.

See article IV, Section 4 of the CHX's Constitution.

[24] See Article IV, Rule 7 of the CHX's Rules.

[25] See Article IV, Rule 9 of the CHX's Rules.

[26] *See supra* note 15 and accompanying text.

[27] *See supra* note 3.

[28] *See* Securities Exchange Act Release No. 33318 (December 10, 1993), 58 FR 66042 (December 17, 1993).

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 at 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 the CHX. All submissions should refer to File No. SR–CHX–93–28 and should be submitted by May 10, 1994.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[29] that the proposed rule change (SR–CHX–93–28) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[30]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–9318 Filed 4–18–94; 8:45 am]

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[Release No. 34–33902; File No. SR–NASD–94–21]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Fees on Members

April 13, 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 April 7, 1994, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The NASD has designated this proposal as one constituting a fee under § 19(b)(3)(A)(ii) of the Act, which renders the rule effective upon the Commission's receipt of this filing. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing a rule change to amend Schedule A to the By-Laws [1] to increase the charges, as set forth in section 13 of Schedule A,[2] for the review of certain advertisements and sales literature. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

Schedule A to the By-Laws

* * * * *

Section 13. Service Charge for Advertisement, Sales Literature, and Other Such Material Filed or Submitted

There shall be a service charge for each and every item of advertisement, sales literature, and other material, whether in printed, video or other form, filed with or submitted to the Association, except for items that are filed or submitted in response to a written request from the Association's Advertising *Regulation* Department issued pursuant to the spot check procedures set forth in the Association's Rules of Fair Practice and Government Securities Rules, as follows: (1) For printed material reviewed, *$50.00* [$25.00] plus *$10.00* [$5.00] for each page reviewed in excess of *10* [5] pages; and (2) for video or audio media, *$50.00* [$25.00] plus *$10.00* [$5.00] per minute for each minute *of tape* reviewed in excess of *10* [5] minutes.

[In addition, w]*W*here a member requests expedited review of material submitted to the Advertising *Regulation* Department there shall be a[n additional] service charge of *$500.00* [$200] per item *plus $25 for each page reviewed in excess of 10 pages.* Expedited review shall be completed within three business days, not including the date the item is received by the Advertising *Regulation* Department, unless a shorter or longer period is agreed to by the Advertising *Regulation* Department. The Advertising *Regulation* Department may, in its sole discretion, refuse requests for expedited review.

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The NASD's Advertising Regulation Department began offering an expedited review process in February, 1991 for those members who desired review and comment of advertising and sales literature that was faster than the normal review and comment process, which is ten business days. The expedited process is completed within three business days. Over the past three years, use of the expedited process has increased far beyond the NASD's expectation. The expedited filing process has become standard operating procedure for many of the program's most frequent users and many items filed are frequently more difficult to review because they contain new concepts and approaches requiring greater time for research and analysis. The increase in the number of expedited filings has led to a significant increase in the amount of administrative processing and has made it more difficult to provide service within the ten-day turnaround time for normal filings.

The NASD is proposing an amendment to Section 13 of Schedule A to the NASD By-Laws which establishes a fee structure that will give members the ability to choose the level of service that best fits their needs, taking into consideration the costs related to that level. Each of the specific fees would be increased, including the service charge for expedited service. However, the service charge for expedited service would no longer be imposed in addition to the base service charge and the number of pages or minutes of video that triggers an additional fee would be increased, *i.e.*, from 5 to 10 pages and from 5 to 10 minutes. The text of the amendment identifies each of the changes to the fees. The NASD is requesting that the amendment be implemented on May 1, 1994.

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act,[3] which require that the rules of the

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[29] 15 U.S.C. 78S(B)(2) (1988).

[30] 17 CFR 200.30–3(a)(12) (1993).

[1] *NASD Manual*, Schedules to the By-Laws, Schedule A (CCH) ¶ 1751 *et seq.*

[2] *NASD Manual*, Schedules to the By-Laws, Schedule A, Sec. 13 (CCH) ¶ 1764.

[3] 15 U.S.C. § 78o-3

Association provide for the equitable allocation of dues, fees and other charges among members in that the proposed rule equitably adjusts the fees assessed for the review of advertising and sales literature to accurately reflect the time spent and level of analysis performed per item submitted for review.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to section 19(b)(3)(A)(ii) of the Act and subparagraph (e) of rule 19b–4 thereunder in that it constitutes a due, fee or other charge. The rule will be implemented on May 1, 1994.

At any time within 60 days of the filing of a rule change pursuant to section 19(b)(3)(A) of the Act, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–94–21 and should be submitted by May 10, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–9316 Filed 4–18–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33903; File No. SR–NASD–94–20]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Administration of the Association

April 13, 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 April 8, 1994, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The NASD has designated this proposal as one constituting an administrative matter under Section 19(b)(3)(A)(iii) of the Act, which renders the rule effective upon the Commission's receipt of this filing. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing a rule change to amend Schedule B to the NASD By-Laws[1] to assign all U.S. Pacific territories and possessions to NASD District 2. Below is the text of the proposed rule change. Proposed new language is italicized.

Schedule B to the By-Laws

The number and territorial boundaries of the several districts established as provided in section 1 of Article VIII and the number of Governors elected from the several districts established as provided in Section 4(b) of Article VII of the By-Laws of the Corporation are as follows:

* * * * *

District No. 2 In the State of California, that part of the State South or East of the Counties of Monterey, San Benito, Fresno and Inyo[;], and, in the State of Nevada, that part of the State South or East of the Counties of Esmeralda and Nye, *and, all Pacific possessions and territories of the United States.*

One Governor shall be elected from and by the members of the Corporation eligible to vote in District 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, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Under the Act, the NASD is obligated to ensure fair representation, of its members.[2] Article VII, section 4(b) to the NASD By-Laws authorizes the Board to consider the fairness of the representation of members by the current administrative district structure[3] and, whenever the Board finds unfairness in such representation, to change the number and boundaries of the administrative districts. Changes are necessary to the existing administrative district structure from time to time to address significant demographic shifts in the NASD's membership and to ensure fair and effective district representation on the Board. The Board noted that whereas the representation of District 7 currently includes United States territorial possessions in the Caribbean, the Canal Zone and the Virgin Islands, no comparable representation exists for U.S. Pacific

[1] *NASD Manual*, Schedules to the By-Laws, Schedule B (CCH) ¶1772

[2] Section 15A(b)(4) of the Act requires that "[T]he rules of the association [NASD] assure a fair representation of its members in the selection of its directors and administration of its affairs and provide that one or more directors shall be representative of issuers and investors and not be associated with a member of the association, broker, or dealer."

[3] For purposes of administration, the NASD has divided the United States, its territories and possessions into "districts" the boundaries of which are established by the Board of Governors.

territories and possessions. The proposed rule change thus remedies this lack of representation by amending Schedule B to the By-Laws to assign all U.S. Pacific territories and possessions to NASD District 2.

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(4) of the Act,[4] which require that the rules of the Association provide for the fair representation of its members in the selection of its directors and administration of its affairs in that the proposed rule change ensures the fair representation of members in the district structure.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(iii) of the Act and subparagraph (e) of Rule 19b-4 thereunder in that it constitutes solely an administrative matter of the Association.

At any time within 60 days of the filing of a rule change pursuant to section 19(b)(3)(A) of the Act, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by May 10, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–9317 Filed 4–18–94; 8:45 am]

BILLING CODE 8010–01–M

[4] 15 U.S.C. 78o–3

SMALL BUSINESS ADMINISTRATION

[Declaration of Economic Injury Disaster Loan Area #8216]

Mississippi (With contiguous counties in Arkansas and Louisiana); Declaration of Disaster Loan Area

Bolivar, Coahoma, Panola, Quitman, Sunflower, Tallahatchie, Tunica and Washington Counties and the contiguous counties of De Soto, Grenada, Humphreys, Issaquena, Lafayette, LeFlore, Sharkey, Tate and Yalobusha in the State of Mississippi; Chicot, Crittenden, Desha, Lee and Phillips Counties in the State of Arkansas; and East Carroll County in the State of Louisiana constitute an economic injury disaster area as a result of a severe ice storm which occurred February 9–10, 1994. Eligible small businesses without credit available elsewhere and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance until the close of business on January 9, 1995 at the address listed below: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, Georgia 30308.

or other locally announced locations. The interest rate for eligible small businesses and small agricultural cooperatives is 4 percent.

The economic injury numbers assigned to this disaster are: for the State of Mississippi, 821600; for the State of Arkansas, 821700; and for the State of Louisiana, 821800.

(Catalog of Federal Domestic Assistance Program No. 59002)

Dated: April 8, 1994.

Erskine B. Bowles,

Administrator.

[FR Doc. 94–9308 Filed 4–18–94; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Economic Injury Disaster Loan Area #8229]

Pennsylvania; Declaration of Disaster Loan Area

Cumberland County and the contiguous counties of Adams, Dauphin, Franklin, Perry and York in the State of Pennsylvania constitute an economic injury disaster area as a result of a fire at 325 Cemetary Avenue in Carlisle which occurred December 5, 1993. Eligible small businesses without credit available elsewhere and small agricultural cooperatives with credit available elsewhere may file applications for economic injury assistance until the close of business on January 9, 1995 at the address listed below: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, Georgia 30308.

or other locally announced locations. The interest rate for eligible small businesses and small agricultural cooperatives is 4 percent.

The economic injury numbers assigned to this disaster is 822900.

(Catalog of Federal Domestic Assistance Program No. 59002)

Dated: April 8, 1994.

Erskine B. Bowles,

Administrator.

[FR Doc. 94–9309 Filed 4–18–94; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 94–028]

Application for Recertification of Cook Inlet Regional Citizens' Advisory Council

AGENCY: Coast Guard, DOT.

ACTION: Notice of availability; request for comments.

SUMMARY: The Coast Guard announces the availability of the application for recertification of the Cook Inlet Regional Citizens' Advisory Council (CIRCAC) for the period from June 1, 1994 through May 31, 1994. The Coast Guard seeks comments on the application from interested groups. The Coast Guard will publish a later notice in the **Federal Register** to notify the public of its

decision regarding the recertification request.

DATES: Comments must be received on or before June 3, 1994.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G–LRA/3406) (CGD 94–028), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001, or may be delivered to room 3406 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477. Comments will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters, between the hours of 8 a.m. to 3 p.m., Monday through Friday, except Federal holidays. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelops.

FOR FURTHER INFORMATION CONTACT: Mrs. Janice Jackson, Marine Environmental Protection Division, (202) 267–0500.

SUPPLEMENTARY INFORMATION: Under the Oil Terminal and Oil Tanker Environmental Oversight and Monitoring Act of 1990 (33 U.S.C. 2732) (the Act), the Coast Guard may certify, on an annual basis, an alternative voluntary advisory group (advisory group) in lieu of Regional Citizens' Advisory councils for Cook Inlet and Prince William Sound Alaska. The Coast Guard published guidelines on December 31, 1992, to assist groups seeking recertification under the Act (57 FR 62600). The Coast Guard issued a policy statement on July 7, 1993 (58 FR 36505), to clarify the factors that the Coast Guard would be considering in making its determination as to whether advisory groups should be certified in accordance with the Act; and the procedures which the Coast Guard would follow in meeting its certification responsibilities under the Act.

The Coast Guard has received an application for recertification of CIRCAC, the currently certified advisory group for the Cook Inlet region. In accordance with the review and certification process contained in the policy statement, the Coast Guard now solicits comments from interested groups including oil terminal facility owners and operators, owners and operators of crude oil tankers calling at the terminal facilities, and fishing, aquacultural, recreational and environmental citizens groups, concerning the recertification application of CIRCAC. At the conclusion of the comment period, the Coast Guard will review all application materials and comments received and will take one of the following actions:

(a) Recertify the advisory group under 33 U.S.C. 2732(o).

(b) Issue a conditional recertification for a period of 90 days, with a statement of any discrepancies which must be corrected to qualify for recertification for the remainder of the year.

(c) Deny recertification of the advisory group if the Coast Guard finds that the group is not broadly representative of the interests and communities in the area or is not adequately fostering the goals and purposes of the Act.

The Coast Guard will notify CIRCAC by letter of the action taken on its application. A notice will be published in the **Federal Register** to advise the public of the Coast Guard's determination.

Dated: April 14, 1994.

A.E. Henn,

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

[FR Doc. 94–9413 Filed 4–18–94; 8:45 am]

BILLING CODE 4910–14–M

Federal Aviation Administration

Research, Engineering and Development Advisory Committee

Pursuant to section 10(A)(2) of the Federal Advisory Committee Act (Pub. L. 92–362; 5 U.S.C. App. I), notice is hereby given of a meeting of the Federal Aviation Administration (FAA) Research, Engineering and Development (R,E&D) Advisory Committee to be held Wednesday, May 11, 1994, at 8:30 a.m. The meeting will take place at the Federal Aviation Administration Technical Center, Atlantic City International Airport, Atlantic City, New Jersey.

The agenda for this meeting will include a report on the Flight Service Technology Subcommittee activity, as well as an update on the status of the Aviation System Capacity, Human Factors, and Compatible Land Use efforts. In addition, the FAA Technical Center will provide an overview of their research programs.

Attendance is open to the interested public but limited to space available. With the approval of the Committee Chairman, members of the public may present oral statements at the meeting. Persons interested in presenting oral statements, obtain information, or plan to access the facility to attend the meeting should contact Ms. Jan Peters, ASD–3, at (202) 287–8543, in the Office of the Associate Administrator for System Engineering and Development, 800 Independence Avenue, SW., Washington, DC 20591, or Ms. Holly Baker, ACT–5, at (609) 485–5613, in the Office of the Director, FAA Technical Center, Atlantic City International Airport, Atlantic City, NJ 08405.

Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on April 13, 1994.

Martin T. Pozesky,

Executive Director, Research, Engineering and Development Advisory Committee.

[FR Doc. 94–9428 Filed 4–18–94; 8:45 am]

BILLING CODE 4910–13–M

Intent To Rule on Application To Impose and Use and Impose Only the Revenue From a Passenger Facility Charge (PFC) at Portland International Airport, Portland, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use and impose only the revenue from a PFC at Portland International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before May 19, 1994.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address.

J. Wade Bryant, Manager,
Seattle Airports District Office, SEA-ADO,
Federal Aviation Administration, 1601 Lind Avenue SW., suite 250, Renton, WA 98055–4056.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. John Brockley, Aviation Director at the following address:

P.O. Box 3529, Portland, OR 97208.

Air carriers and foreign air carriers may submit copies of written comments previously provided to Portland International Airport under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT:

Ms. Renee Hall, (206) 227–2662; Seattle Airports District Office, SEA-ADO; Federal Aviation Administration; 1601 Lind Avenue SW., suite 250, Renton, WA 98055–4056. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use and impose only the revenue from a PFC at Portland International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On April 8, 1994, the FAA determined that the application to impose and use and impose only the revenue from a PFC submitted by the Port of Portland was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, or later than June 30, 1994.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: July 1, 1994.

Proposed charge expiration date: June 30, 1999.

Total estimated PFC revenue: $56,000,000.00.

Brief description of proposed project(s): Impose and Use projects: Runway 10R/28L (South) rehabilitation; Runway 10L/28R (North) rehabilitation; Terminal apron between concourses C & D rehabilitation; Taxiway H, D & weather service apron rehabilitation; Rehabilitate north ramp from concourse E to GA area; Rehabilitate fire station west road; Construct taxiway C high speed exists; Airfield emergency generator upgrade; Construct snow and ice control materials storage facility; Construct equipment storage shed; Storm water treatment ponds; Construct new taxiway from concourse C to taxiway E; Fillet paving A5, A6 & A7; Purchase emergency mobile command unit; Install runway distance remaining markers; Install centerline lights on taxiway A from A2 to taxiway E to taxiway M, Phase 2; Install centerline lights on taxiway T from concourse E to A, Phase 2; Apron widening at concourse D; Install centerline lights on taxiway C from exit C1 to taxiway E, Phase 2; Light 10L lead On/Off at A1 and A7; NE fillet widening at B5 from taxiway T to concourse B; Install centerline lights on taxiway C from C6 to C8 w/lead On/Off; Relocate fire station; Replace E–89; Replace F–81; Add 3rd lane to Airport Way Westbound; Add 2nd lane to 82nd Avenue and 3rd lane to Airport Way Eastbound; Roadway signing improvements; Extend East Frontage Road; Signalize Airport Way and West Frontage Road; Enplaning roadway expansion, Phase 2; Central utility plant boiler expansion and upgrade; Federal inspection station expansion; Replace terminal roofs; Renovate concourse B & C security check points; Federal inspection station screening point;

Impose only projects: Taxiway A and connectors rehabilitation; Runway 2/20 rehabilitation; Taxiway F rehabilitation; Taxiway GA rehabilitation.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: The carriage in air commerce of persons for compensation or hire as a commercial operator, but not an air carrier, of aircraft having a maximum seating capacity of less than twenty passengers or a maximum payload capacity of less than 6,000 pounds. "Air Taxi/ Commercial Operator" shall also include, without regard to number of passengers or payload capacity, revenue passengers transported for student instruction, nonstop sightseeing flights that begin and end at the same airport and are conducted within a 25 statute mile radius of the Airport, ferry or training flights, aerial photography or survey charters, and fire fighting charters.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue SW., suite 540 Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Portland International Airport.

Issued in Renton, Washington on April 8, 1994.

David A. Field,

Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 94–9429 Filed 4–18–94; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

April 12, 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: 1557–0153
Form Number: None
Type of Review: Extension
Title: Other Real Estate Owned (12 CFR 34)
Description: Under 12 U.S.C. 29, a national bank must have OCC approval to possess OREO beyond five years. Also, a bank must notify OCC that it needs to expend funds to develop or improve OREO. The information collections in Subpart E of 12 CFR Part 34 implement the statutory requirements.
Respondents: Businesses or other for-profit, Small businesses or organizations
Estimated Number of Respondents: 2,846
Estimated Burden Hours Per Respondent: 1 hour, 6 minutes
Frequency of Response: On occasion
Estimated Total Reporting Burden: 3,960 hours
Clearance Officer: John Ference, (202) 874–4697, Comptroller of the Currency, 250 E Street S.W., 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. 94–9396 Filed 4–18–94; 8:45 am]

BILLING CODE 4810–33–P

Public Information Collection Requirements Submitted to OMB for Review

April 12, 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: 1545–0182
Form Number: IRS Form 4782
Type of Review: Revision
Title: Employee Moving Expense Information
Description: 26 CFR 31.6051–1(e) requires employers to give employees a statement showing a detailed breakdown of reimbursements or payments of moving expenses. The information is used by employees to figure their moving expense deduction on their income tax return.
Respondents: Individuals or households, State or local governments, Businesses or other for-profit
Estimated Number of Respondents/ Recordkeepers: 1,039,500
Estimated Burden Hours Per Respondent/Recordkeeper:

	Record-keeping	Preparing the form
Part I	3 hr., 21 min	3 min.
Part II	6 hr., 56 min	7 min.
Parts I and II	9 hr., 34 min	10 min.

Frequency of Response: Annually
Estimated Total Reporting Burden: 4,565,254 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. 94–9397 Filed 4–18–94; 8:45 am]

BILLING CODE 4830–01–P

Sunshine Act Meetings

Federal Register

Vol. 59, No. 75

Tuesday, April 19, 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).

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, April 25, 1994.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: April 15, 1994

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-9492 Filed 4-15-94; 11:55 am]

BILLING CODE 6210-01-P

UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE-94-12]

TIME AND DATE: April 22, 1994 at 9:30 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436.

STATUS: Open to the public.

1. Agenda for future meeting
2. Minutes
3. Ratification List
4. Inv. No. 731-TA-645 (Final) (Certain Calcium Aluminate Cement Clinker from France)—briefing and vote
5. Outstanding action jackets:
   1. GC-94-030; APO breach in an investigation under Title VII of the Tariff Act of 1930.
   2. O/TA & TA-94-008; Reports on H.R. 3148, H.R. 3152, H.R. 3202, H.R. 3448 and H.R. 3522.
   3. O/TA & TA-94-009; Reports on S. 1754, H.R. 3151, H.R. 3176, H.R. 3199 and H.R. 3644.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

CONTACT PERSON FOR MORE INFORMATION: Donna R. Koehnke, Secretary, (202) 205-2000.

Issued: April 14, 1994.

Donna R. Koehnke,

Secretary.

[FR Doc. 94-9575 Filed 4-15-94; 3:11 pm]

BILLING CODE 7020-02-U

DEPARTMENT OF JUSTICE

UNITED STATES PAROLE COMMISSION

Public Announcement

Pursuant to the Government in the Sunshine Act

(Public Law 94-409) [5 U.S.C. Section 552b]

DATE AND TIME: Tuesday, April 19, 1994, 9:30 a.m.

PLACE: 5550 Friendship Boulevard, Chevy Chase, Maryland, 20815.

STATUS: Closed—Meeting.

MATTERS CONSIDERED: The following matters will be considered during the closed portion of the Commission's Business Meeting:

Appeals to the Commission involving approximately nine cases decided by the National Commissioners pursuant to a reference under 28 C.F.R. 2.27. These cases were originally heard by an examiner panel wherein inmates of Federal prisons have applied for parole or are contesting revocation of parole or mandatory release.

AGENCY CONTACT: Tom Kowalski, Case Operations, United States Parole Commission, (301) 492-5962.

Dated: April 13, 1994.

Michael A. Stover,

General Counsel, U.S. Parole Commission.

[FR Doc. 94-9539 Filed 4-15-94; 2:42 pm]

BILLING CODE 4410-01-M

DEPARTMENT OF JUSTICE

UNITED STATES PAROLE COMMISSION

Public Announcement

Pursuant to the Government in the Sunshine Act

(Public Law 94-409) [5 U.S.C. Section 552b]

TIME AND DATE: 1:30 p.m., Tuesday, April 19, 1994.

PLACE: 5550 Friendship Boulevard, Chevy Chase, Maryland, 20815.

STATUS: Open.

MATTERS TO BE CONSIDERED: The following matters have been placed on the agenda for the open Parole Commission meeting:

1. Approval of minutes of previous Commission meeting.
2. Reports from the Chairman, Commissioners, Legal, Chief of Staff, Case Operations, and Administrative Sections.
3. Discussion on Violence in the Workplace.
4. Proposed Rule regarding Parole Eligible Prisoners Convicted of First Degree Murder.
5. Proposed Policy Change regarding the Length of Supervised Release Terms in Transfer Treaty Cases.
6. Presentation on the Community Control Project Comprehensive Sanction Center.
7. Proposed Rule regarding Rating the Offenses of Unlawful Possession and Distribution of Ammunition.
8. Proposal to Modify Subchapter D-Sexual Offenses-232(d).
9. Proposal to Revise the Rules and Procedures Manual Relating to Transfer Treaty Cases.
10. Proposal that the Commission adopt a Victim/Witness Questionnaire.
11. Proposal that the Commission adopt a Definition regarding Dangerous Offenders.
12. Proposal that Subpoenaed Witnesses be given an Information Sheet and a Notification Request.
13. Modification of § 2.62 with Regard to the Computation of a Release Date.

AGENCY CONTACT: Tom Kowalski, Case Operations, United States Parole Commission, (301) 492-5962.

Dated: April 13, 1994.

Michael A. Stover,

General Counsel, U.S. Parole Commission.

[FR Doc. 94-9540 Filed 4-15-94; 2:42 pm]

BILLING CODE 4410-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of April 18, 25, May 2, and 9, 1994.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of April 18

There are no meetings scheduled for the Week of April 18.

Week of April 25—Tentative

Monday, April 25

2:00 p.m.

Briefing on Status of Action Plan for Fuel Cycle Facilities and Alternative Regulatory Approaches, (Public Meeting) (Contact: Ted Sherr, 301–504–3371)

Tuesday, April 26

2:00 p.m.
Briefing on Systematic Regulatory Analysis of HLW Program (Public Meeting) (Contact: Joseph Holonich, 301–504–3439)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Wednesday, April 27

3:00 p.m.
Briefing on Proposed Changes to NRC's Program for Protecting Allegers Against Retaliation (Public Meeting) (Contact: James Lieberman, 301–504–2741)

Thursday, April 28

10:00 a.m.
Briefing on Electricity Forecast from Energy Information Administration (EIA) Annual Energy Outlook (Public Meeting) (Contact: Mary Hutzler, 202–586–2222)

Week of May 2—Tentative

There are no meetings scheduled for the Week of May 2.

Week of May 9—Tentative

There are no meetings scheduled for the Week of May 9

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring my Commission vote on this date.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (Recording)—(301) 504–1292.

CONTACT PERSON FOR MORE INFORMATION: William Hill, (301) 504–1661.

Dated April 14, 1994.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 94–9479 Filed 4–15–94; 8:45 am]

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federal register

Tuesday
April 19, 1994

Part II

Environmental Protection Agency

48 CFR Part 1501, et al.
Acquisition Regulation Concerning Conflicts of Interest; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

48 CFR Parts 1501, 1509, 1510, 1512, 1527 and 1552

[FRL–4862–5]

Acquisition Regulation Concerning Conflicts of Interest

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final rule amends the EPA Acquisition Regulation (EPAAR) coverage on organizational conflicts of interest for all EPA contracts. In addition, it adds EPAAR coverage on conflicts of interest related to contractor personnel working under EPA Superfund contracts and conflicts of interest related to contractors' future work which may jeopardize Superfund work. Under this rule, contracts funded through EPA's Superfund program will contain clauses: requiring contractor employees working on EPA Superfund contracts to sign confidentiality agreements; requiring a contractor to notify the Agency immediately of any conflicts of interest regarding contractor personnel working on the EPA contract; and restricting a contractor's future contracts, outside of those with EPA, when such contracts may conflict with the work performed for EPA. These changes are necessary to avoid actual or potential conflicts of interest in work performed under EPA Superfund contracts.

EFFECTIVE DATE: This rule is effective May 19, 1994.

FOR FURTHER INFORMATION CONTACT: Environmental Protection Agency, Office of Acquisition Management (3802F), 401 M Street SW., Washington, DC 20460, attn: Calvin C. McWhirter (202) 260–9165.

SUPPLEMENTARY INFORMATION:

A. Background

Federal Acquisition Regulation (FAR) section 9.501 defines an organizational conflict of interest as existing when "because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the Government, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage." Under EPA's Superfund program, contractors are often asked to assist the Agency in designing remedial actions to clean up hazardous waste sites, in identifying potentially responsible parties (PRPs) at hazardous waste sites and in implementing actions to effect the cleanup. After identification of PRPs for specific sites, the Agency will attempt to secure private party conducted response action or to expend Superfund Trust Funds to conduct response action and to recover costs expended for cleanup either through consent agreements or litigation.

Under the Superfund program it is essential that contractors not enter into outside contracts or use personnel which might result in an actual or potential conflict of interest. In addition, since litigation may continue for several years after a contractor has completed work and the contractor may be asked to testify on the work performed for EPA, it is essential that actual or potential conflicts of interest be avoided even after the contract work has been completed.

In addition to organizational conflicts of interest, EPA must ensure that contractor personnel assigned to work on EPA contracts are free from personal conflicts of interest that might impair their ability to perform the required work in an impartial manner. EPAAR clauses have been developed which will require EPA's Superfund contractors to ensure that actual or potential personal conflicts of interest regarding contractor personnel are identified and reported to the EPA Contracting Officer.

These clauses shall be incorporated into new solicitations and new contracts. Clauses for contracts existing as of the effective date of this rule shall be negotiated by the EPA Contracting Officer, on a case-by-case basis, and shall be substantially similar to the clauses required by this rule.

The Agency has developed a Long Term Contracting Strategy to more effectively manage the Superfund program over the next ten years. The clauses in this rule reflect the changing nature of the Superfund program. Although we intend to implement the Strategy with minimal program disruption, there may be some changes to the form of some existing Superfund contracts. Therefore, we anticipate the clauses in this rule may require updating to reflect ongoing changes to the Superfund program.

This rule was published as a proposed rule in the **Federal Register** on April 26, 1990, at 55 FR 17724. Twenty-two public comments were received. We express our appreciation to all the interested organizations for the time they took in studying the proposed rule and preparing comments. As a result of these comments, we have made a number of revisions to the rule. In seriously considering all of the comments, we implemented recommendations that would improve the quality of the rule and minimize the burden to the contractor community, yet ensure that EPA's programs are adequately protected. Part B of the preamble summarizes the general issues raised and provides EPA's response and Part C of the preamble addresses section-specific comments.

In addition, the numbering in EPAAR subpart 1509.5 is being amended to conform with numbering changes to FAR subpart 9.5. These changes are made solely to conform to the FAR numbering scheme and do not otherwise affect the existing EPAAR.

B. General Comments

1. Response to EPA Conflict of Interest Rule

Many commenters expressed support for an EPA rule on conflict of interest although some recommended that EPA withdraw the proposed rule. We welcome public support and are committed to implementing a conflict of interest rule that protects the integrity of the Superfund and other EPA programs.

2. Previously Issued Conflict of Interest Guidance

Many commenters expressed concern that the January 1990, memorandum from the Director of the EPA's Procurement and Contracts Management Division, which conveyed general guidance on conflict of interest to Superfund contract staff and Superfund contractors, was not published with the proposed rule and formally open for public comments. Some also expressed concern with issues it raised and requested that it be rescinded. Others mentioned that they were pleased that the proposed rule was a considerable improvement over the January 1990, guidance. It was EPA's intent that the proposed rule supersede the January 1990, guidance. We would like to make it clear that this final rule and its preamble discussion supersedes the January 1990, guidance and the proposed rule.

3. Justification for Special Conflict of Interest Provisions

Some commenters questioned EPA's authority to implement a conflict of interest rule and questioned the need for an EPA rule on conflicts of interest stating that adequate safeguards exist. Others contended that there is no balance between the benefits to be achieved compared to the cost of compliance.

We disagree. FAR subpart 1.3 provides agencies with the authority to

implement supplemental acquisition regulations to satisfy specific needs of the agency. We have developed the conflict of interest rule to address the specific requirements of EPA's Superfund and other programs since sufficient coverage is not provided by existing regulations.

In the past few years, the General Accounting Office (GAO) in conducting reviews of EPA's programs, the EPA in performing management studies of the Superfund program, and Congressional Committees have all concluded that EPA's existing conflict of interest procedures are inadequate to protect its programs. The GAO in its report "Superfund Contracts: EPA's Procedures for Preventing Conflicts of Interest Need Strengthening" (GAO/RCED–899–57), dated February 1989, and EPA, in the Administrator's Management Review of the Superfund Program (1989), pointed out the special vulnerability of the Superfund program and strongly recommended that action be taken to strengthen EPA's existing procedures.

EPA is responsible for leading the nation's efforts to protect and clean up the environment. This includes the development of environmental standards, control of toxic substances and the cleanup of hazardous wastes, as well as enforcement of applicable laws and regulations. Historically, the Agency has relied heavily upon contractors to accomplish its mission, and much of this work is highly sensitive, particularly in the Superfund program. The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA or Superfund) 42 U.S.C. 9601–9675, consists of Public Law 96–510 (Dec. 11, 1980) and the amendments made by subsequent enactments. It provides for liability, compensation, cleanup and emergency response for hazardous substances released into the environment and the cleanup of hazardous waste disposal sites. Because EPA has the dual responsibility of cleanup and enforcement and because its contractors are often involved in both activities, and may conduct work for EPA and the private sector, it is imperative that EPA contractors are free of conflicts so as not to jeopardize CERCLA response and enforcement/cost recovery actions (hereinafter referred to as enforcement).

This rule focuses primarily on performance after contract award, unlike FAR which focuses on conflict of interest issues related to contractor eligibility for award. Under Superfund contracts, work is performed at multiple sites and new and constantly changing cleanup priorities make it impossible for EPA to identify, prior to contract award, all site locations where work will be performed. In addition, it is impossible for EPA to predict, prior to contract award, enforcement actions against PRPs at specific sites. Moreover, such cases may take years to resolve. Therefore, EPA must address conflicts of interest during and after contract performance to effectively monitor conflicts and safeguard Superfund enforcement.

U.S. Department of Justice and EPA attorneys, enforcing CERCLA, stress the importance of avoiding conflicts of interest in the Superfund program. Conflicts of interest discovered after work has begun can create costly delays in cleanup of sites when EPA must mitigate damage resulting from conflicts to safeguard cleanup work and enforcement from further prejudice. Therefore, it is imperative that EPA contractors do not perform work for PRPs that conflicts with work performed for the Agency. Conflicts arise because of differing interests of the EPA and PRPs. EPA's primary concern is to assure that adequate environmental protection is provided, as opposed to the primary interests of PRPs, who are usually motivated to keep costs minimized. Because these conflicts often arise in the context of adversarial enforcement proceedings, such conflicts and leaks of sensitive enforcement information not only jeopardize cases at the litigation stage, but also weaken the Government's position both in obtaining PRP commitment to clean up sites and in cost recovery negotiations with PRPs. To date, EPA has the potential to seek over $4.5 billion in cost recovery; the stakes are high.

EPA must preserve the integrity of the Superfund Program from conflicts of interest and cannot afford to jeopardize the success of cost recovery actions and impede PRP cleanup of hazardous waste sites. A contractor's conflict of interest can harm our Superfund litigation (either cost recovery litigation under section 107 of CERCLA, or litigation for injunctive relief under section 106) in several ways: (1) By creating a conduit for confidential government information, including potential litigation and negotiation strategies, which may be leaked to the parties with opposing interests in the litigation, (2) by subjecting the credibility of EPA witnesses and/or the work they perform on behalf of EPA to attack, and (3) by causing the work performed by that contractor to be redone, raising potential issues in cost recovery litigation as to whether the cost of the extra work is recoverable. This rule requires EPA contractors to disclose all conflicts of interest so that EPA will have the opportunity to consider the significance of the conflict and to take appropriate measures to avoid, mitigate, or neutralize the conflict of interest.

EPA has indeed faced several actual conflict situations which demonstrate the need for the Agency to strengthen its conflict of interest procedures in order to protect the public interest: One such conflict involved a contractor which had performed a removal action for EPA on a hazardous waste-contaminated site and which was currently doing research work for EPA pertaining to that site. Another office of the contractor's company agreed to serve as an expert witness in the EPA cost recovery litigation on behalf of one of the PRPs and, thus, against EPA, without knowledge or approval of the Agency. The contractor's work in performing the removal action and research for EPA in anticipation of cost recovery litigation conflicted directly with the contractor's serving as an expert witness on behalf of one of the PRPs. Further, the contractor proceeded to convey confidential information to the PRP in the context of trying to explain to the PRP why there was no conflict. Although settlement negotiations proceeded in this case, the strength of the Agency's position was significantly weakened because the contractor was working for both parties and confidential sensitive information had been divulged to the PRP.

Many of the issues in Superfund litigation ultimately are matters of expert technical opinion for which EPA relies on contractor personnel, e.g., support of remedy selection and findings that sites present "imminent and substantial endangerment" to the public. In that role, contractors may be privy to the government's litigation and negotiation strategies and other privileged and confidential information. The above case has taught us that contractor "side switching" carries a strong potential for the passing of confidential information to defendants, even if unintentionally.

In another actual case, a contractor was performing remedial investigation/feasibility study work for both the EPA and a major PRP on a contiguous site. Well over a quarter of a million dollars had been expended by EPA prior to the discovery of the conflict. Work subsequently had to be stopped and all work which had been completed by the contractor had to be either redone and/or verified for accuracy and completeness by another independent contractor. In addition to the fiscal drain on the Superfund Program that this

causes, we are also likely to be faced in cost recovery litigation with a defense argument that such "double expense" is unnecessary and unrecoverable. This may also increase the time and expense that the litigation and negotiation require, not including the potential millions of dollars at risk during the cost recovery/enforcement action itself.

Still another conflict case in which cost recovery litigation was adversely impacted involved a subcontractor who was performing PRP searches, negotiation support, and oversight of PRP work on a site for the EPA. The subcontractor not only had a significant financial relationship with the PRPs of that site, but was also representing and performing related work for the PRPs on the same site. The repercussions of this conflict involved not only a significant delay in the Agency's ability to cleanup the site, but also tens of thousands of dollars in transition costs to remove and replace the subcontractor.

EPA's concerns regarding conflicts of interest are very real. As EPA continues to clean up the environment and to try to recover the costs of the cleanup from PRPs, EPA seeks, through this rule, to protect the public from delays and increased costs. For example, EPA contractors may perform remedial design work for EPA by developing plans and specifications for a selected cleanup remedy at a site. If that contractor also works for a PRP to assess the contamination at the same site, EPA, PRPs, and the public may question the integrity and objectivity of the work the contractor has performed for EPA. Moreover, EPA could face difficulty in utilizing the contractor's expertise and experience in supporting the merits of EPA's enforcement case. Judges and juries may doubt the credibility of a factual or expert witness who has performed conflicting work and may have inconsistent opinions. Another example of how EPA's enforcement could be jeopardized in the future would be if a contractor who performs technical enforcement support for EPA, including searches for and case histories of PRPs, subsequently or concurrently worked for the PRP on the same case. Again, contractors performing this and other types of Superfund work are often privy to sensitive EPA litigation information and case management plans and could divulge such information to the PRP. If such information was leaked or otherwise divulged intentionally or unintentionally, the Government's case may be damaged by disclosure to the PRP of litigation strategy. In addition, if documents deemed confidential and privileged were released, such documents could then be admitted into evidence in opposition to the Government's case.

We disagree with commenters that the Agency has not considered the balance between the cost of the rule and the benefits to EPA of avoiding conflicts. We believe there must be uniform regulatory requirements to raise contractors' awareness and understanding of conflict of interest problems and the procedures needed to prevent them. Over the past few years, the development of this rule with its strong conflict of interest provisions has created a heightened sensitivity to conflict of interest matters throughout EPA's programs and the contractor community. As a result, we are already seeing an increase in contractors reporting of potential conflicts to the Agency. Certainly, with the tremendous cost of cleaning up the environment, we need to ensure the integrity of our procurement program and cannot afford to jeopardize our enforcement actions and impede PRP cleanup of hazardous waste sites. EPA has seriously considered the cost of the rule and has worked to minimize the rule's burden to the contractor community, yet ensure adequate protection of its programs.

4. Pending FAR Regulations and Consistency With OFPP Policy Letter 89–1

Some commenters expressed concern with the publication of EPA's rule prior to the publication of the pending FAR regulations, and some expressed concern that the proposed rule is inconsistent with and goes beyond the existing regulations and OFPP Policy Letter 89–1. On October 22, 1990, the interim regulations were published as FAC 90–1, amending the FAR subpart 9.5 on conflicts of interest. On October 25, 1991, the interim rule was converted to a final rule. We have carefully reviewed our rule to ensure its harmony with FAR subpart 9.5. The rule specifically addresses the unique requirements of the Superfund program which are not covered by other regulations. To safeguard our enforcement actions and ensure the integrity of our cleanup program, it is essential that we monitor not only conflicts of interest prior to award, but also conflicts during and after performance. These special provisions are not inconsistent with FAR subpart 9.5.

5. Definition of Conflicts of Interest

A number of comments concerned the definition of types of conflicts of interest. The term "conflict of interest" in this rule has the same definition as contained in FAR Subpart 9.5. EPA has not adopted any unique or agency specific definitions for types of conflicts of interest. EPA also has included the term "personal conflicts of interest" which is not defined in the FAR. For clarity, we have provided a definition of personal conflict of interest in EPAAR Clause 1552.209–73, Notification of Conflicts of Interest Regarding Personnel. A personal conflict of interest is "a relationship of an employee, subcontractor employee, or consultant with an entity that may impair the objectivity of the employee, subcontractor employee, or consultant in performing the contract work."

6. Apparent Conflict of Interest

A number of commenters objected to the expansion of conflict of interest to include the term "apparent" and indicated that the term was too vague and was not defined in the rule. To be consistent with FAR Subpart 9.5, this term has been removed from the rule. Nevertheless, EPA strongly supports the OFPP approach on this issue and will fully comply with section 6(d) of OFPP Policy Letter 89–1, which mandates, "Federal procurement officials shall encourage contractors to consider carefully the potential for conflicts of interest in all of their activities associated with federal procurement, and shall be sensitive to the appearance of conflicts of interest in any contracting actions." A comment was also received which stressed that contractors that work for both private and public parties should avoid and mitigate both actual conflicts of interest and the appearance of conflicts in order to protect the public interest. Accordingly, our contractors should be sensitive to the appearance of conflicts of interest in all contract actions.

7. Potential and Actual Conflicts of Interest

Several commenters took exception to EPA's inclusion of the term "potential" to describe a particular type of conflict as being too vague and overly restrictive, and one commenter stated that the term "actual conflict" was undefined and contrary to the FAR. We disagree and are retaining the terms in the rule. The concept of potential conflicts is well established in acquisition regulations. FAR Subpart 9.5 provides examples of situations involving potential conflicts of interest and also includes the term "actual" conflict of interest.

8. Significant Conflict of Interest

Some commenters recommended that EPA only be concerned with the reporting of significant conflicts of

interest. We disagree. It is unacceptable for contractors to report only conflicts which they consider significant. All actual and potential conflicts of interest that are identified must be reported to the appropriate EPA Contracting Officer. In accordance with the process set out in FAR Section 9.504, the EPA Contracting Officer identifies and evaluates conflicts, makes a determination of whether a conflict is significant and determines if the conflict can be avoided, mitigated, or neutralized.

9. Restriction of Contracting Officer's Decision Making Authority

Two comments received expressed concern that the rule will infringe upon or eliminate the Contracting Officer's decision making authority on conflicts of interest. In particular, the comments stressed that it is important that Contracting Officers make decisions on a case-by-case basis and that EPA is abrogating its responsibilities by placing the full burden on contractors to disclose conflicts of interest no matter how insignificant or immaterial.

Nothing in this rule restricts the Contracting Officer from making decisions on conflicts of interest on a case-by-case basis. In fact, Contracting Officers are required to make decisions on a case-by-case basis in accordance with FAR subpart 9.5. The existing EPAAR requires contractor disclosure of conflicts and the rule does not change this responsibility. This disclosure requirement does not mean that the Contracting Officer will find that every reported conflict is significant or that it cannot be avoided, neutralized, or effectively mitigated, but rather allows the Contracting Officer the opportunity to carefully evaluate the facts of each case and make an informed determination that protects our programs and the public interest. Clearly, both EPA and its contractors have a continuing responsibility to identify and prevent conflicts of interest in federal procurement. However, it is not feasible or practicable for EPA to routinely search and review contractors' business records to unearth conflicts. Such action would be inappropriate and intrusive. Therefore, as a practical matter, we must require contractors to report conflicts.

10. Limitation of Disclosure

One commenter recommended that EPA revise the rule to address disclosure of client information regarding the same subject matter as the instant solicitation, or directly relating to such subject matter as the instant solicitation. The commenter recommended either limiting disclosure to information connected to the solicitation or to work performed in the same state or region where the work for EPA will be performed.

EPA requires disclosure of conflict of interest information related to the work performed or that will be performed for EPA. We do not require the submission of unrelated client or other information. All that is required is sufficient information for the EPA Contracting Officer to make an informed conflict of interest determination.

11. Disclosure of Client Information

One comment raised the concern that contractors may be unable to divulge work performed for clients and the dollar value, since this information as well as client lists are routinely claimed to be confidential.

The rule does not require the release of client lists or the reporting of the dollar value of work performed for clients. Rather, we require that a contractor disclose sufficient information to the Contracting Officer so that the Contracting Officer can make an informed decision. In most cases, this would involve the name of a client creating the potential conflict or the contractor, particularly if the client is a PRP on the site, and information regarding the nature of the work. Each case is different and there may be occasions where a client routinely claims confidentiality for the release of its name and other information concerning the conflict. If a disclosure waiver cannot be obtained from the client, the contractor should explore with the Contracting Officer suitable alternatives for providing information sufficient to permit the Contracting Officer to render an informed decision on the conflict. We urge contractors to identify confidential business information and stress that EPA is committed to protecting sensitive business and other information to the full extent permitted by law.

12. Availability of PRP Listings

Commenters expressed the concern that contractors can not identify all conflicts of interest unless EPA informs contractors of all of the PRPs and of the possibility of future enforcement actions. They further stated that contractors are unable to sign the certifications accurately unless they know these facts. Several commenters also suggested that to avoid delays in contractor disclosure and certifications, EPA should furnish up-to-date listings of PRPs.

EPA acknowledges the fact that PRPs are continually being identified and that contractors will not always have sufficient knowledge of all PRPs at the time certification is submitted. We require contractors to certify to the best of their knowledge and belief at the time of the certification. It is not EPA's intention to hold a contractor accountable for information which the contractor did not know or have reason to know at the time the certification was executed. We wish to stress, however, that disclosure of conflicts is a continuing obligation, and certification is a statement that should demonstrate a contractor has made a good faith effort to disclose all potential conflicts of interest. In order to alleviate contractors' concerns, the time period for the submission of the work assignment certification has been extended to permit a more reasonable time period for contractors to contact EPA and obtain the most current information concerning PRPs and future enforcement actions pertaining to sites identified in the work assignments or contract. The term "work assignment" in this rule includes other similar tasking documents such as a delivery order or a technical direction document. EPA is committed to providing contractors with the list of known PRPs for sites at the time of work assignment issuance. EPA is currently working to make available to all Contracting Officers the Superfund Enforcement Tracking System (SETS) report, which tracks PRPs by site. This report is available to the public through the National Technical Information Service (NTIS), Springfield, Virginia.

13. Period of Record for Conflict of Interest Checks

One commenter requested clarification of the period to be searched for organizational and personal conflicts of interest. The commenter suggested that the organizational check include all prior work performed by the contractor but that the personal conflict of interest check be limited to the period of time that the individual is employed by the company or for a one year period, whichever is greater.

In accordance with FAR 9.5, EPA will require all contractors who have at least three years of records to search back through the immediately preceding three years of records. For contractors who do not have three years of records to search, a transition period for searches will be implemented requiring the contractor to search any records that it has until, over time, three years of records are accumulated. Contractors, however, are always required to report any conflicts of which they are aware. We emphasize that a contractor is not

required to collect, maintain or search records on personal conflicts of interest. The requirement on the contractor is to inform its employees, performing work under or related to EPA contracts, of their obligation to report conflicts of interest. It is the employees' responsibility to review their current and past activities and to report potential conflicts of interest to their employers.

14. Elimination of Conflicts by Full Disclosure of Contractor Roles

One commenter stated that EPA should focus on full disclosure of roles, since where full and open disclosure of a contractor's role exists no conflict of interest can occur. We disagree. Although we certainly believe in openness regarding the role of contractors in EPA's procurement program, we fail to see how full disclosure of the role of contractors eliminates the existence of conflicts. Rather, it is contractor disclosure of potential conflicts to EPA that provides the opportunity to avoid, mitigate, or neutralize conflicts.

15. Centralized Decision Making

Many comments were received recommending the establishment of a centralized decision making function with an administrative contracting officer at EPA headquarters having the responsibility for decisions on all conflict of interest requests. It was pointed out that this would achieve consistency in conflict of interest determinations.

We have seriously considered this as an option and have rejected it. A central administrative contracting officer would not have the necessary background or knowledge of the individual contracts to make well informed conflict of interest determinations. We believe that a decentralized approach to conflict of interest decision making, where determinations are made by the EPA Contracting Officer for the contract on a case-by-case basis, is the more effective approach.

16. Objective Standards for Determining Conflicts of Interest

One commenter requested that meaningful objective standards be adopted to evaluate significant personal and organizational conflicts of interest.

FAR subpart 9.5 provides definitions and general rules pertaining to conflict of interest, but do not include objective standards. Conflict of interest is a subject for which objective standards are difficult to formulate. However, this does not mean that conflicts cannot be described through definitions and general rules. In addition to the examples included in the FAR, EPA Contracting Officers receive training and assistance on conflict of interest issues from the conflict of interest staff within EPA's Office of Acquisition Management. Therefore, Contracting Officers will have available examples and precedents to assist them in their conflict of interest determinations.

17. Limited EPA Resources To Administer Conflict of Interest

One commenter expressed concern that EPA would not have the resources to efficiently administer the rule, and other commenters recommended that EPA provide examples of conflicts of interest to help Contracting Officers respond consistently and wisely and prevent delays associated with these new regulations.

We believe the Agency has sufficient staff to administer these regulations. In the past, response times were sometimes delayed not because of a lack of resources but because of insufficient training and experience. EPA is committed to a comprehensive conflict of interest training program for its Contracting Officers and project personnel. The training will include a collection of case studies and examples upon which to base conflict of interest decisions.

18. Applicability of the Rule to Superfund Work Outside EPA

Another commenter, expressing support for the rule, suggested that the EPA should consider and clarify how the provisions in the rule can be enforced equally with respect to all Superfund contracts, whether they are let by EPA or other Federal agencies, such as the U.S. Army Corps of Engineers, or the States.

This rule applies only to contracts awarded by EPA. EPA can encourage the use of similar provisions in contracts for Superfund work awarded by other agencies or States. However, it cannot require agencies or States to include similar provisions in those contracts. EPA is currently exploring the possibility of including its clauses in agreements that pertain to Superfund work in contracts awarded by other agencies or States.

19. Applicability of the Rule to Contractor Work for the Public Sector

Some commenters suggested that the rule apply to EPA contracts only and have no bearing on work performed for other Federal agencies. It was pointed out that the rule lacks a discussion of how the restrictions in this rule bear on the ability of contractors to seek similar work from other Federal agencies and the States. Particular concern was raised that EPA not restrict its contractors from working simultaneously for other agencies such as the Department of Energy (DOE) and the Department of Defense (DOD) since this would be contrary to the public interest.

The EPA is committed to working closely with other agencies and States to ensure the effective and expedited cleanup of hazardous waste sites throughout the country and encourages the use of the best cleanup technology available. It is not our intention to restrict EPA contractors from working for the public sector. We strongly encourage contractors to perform work for other Federal agencies and States when such work does not create a conflict of interest problem which would impair the contractor's objectivity in performing work for EPA or damage the integrity of the EPA's cleanup and enforcement actions. We have intentionally made no distinction between the public and private sector in the rule's reporting requirements. To safeguard our programs, we must require that all actual or potential conflicts of interest be identified, avoided, mitigated, or neutralized.

The EPA has the responsibility to ensure compliance by Federal and State agencies with the requirements of CERCLA and the amendments made by subsequent enactments. Because of EPA's enforcement responsibility, the interests of EPA and other public organizations will not always be parallel and may at times be distinctly at odds. For example, the interests of the EPA and DOD or DOE may be very different regarding the terms of Federal Facility cleanup agreements. Therefore, it is important that our contractors are not placed in conflict situations. When an actual or potential conflict of interest exists with work that a contractor may wish to perform with another organization, whether public or private, the contractor shall report it to its EPA Contracting Officer so that an informed determination can be made based on a careful review of the facts, the legal and program considerations, and the best interest of the United States.

20. Qualified Contractors

One commenter stated that EPA may not attract the most qualified contractors or best expertise as a result of implementing the conflict of interest regulations. We disagree. EPA promotes full and open competition and attracts the most highly qualified contractors to its procurement program. Securing qualified contractors and eliminating conflicts of interest are not opposing

goals. In fact, most of the highly qualified firms which compete for EPA contracts have systems established within their organizations to identify and eliminate conflicts of interest.

21. Flow Down of the Clause to Subcontractors and Consultants

A number of commenters stated that the categories of subcontractors and consultants exempted from the flow down of the conflict of interest clauses are too limited. They specifically questioned why the "non-discretionary technical or engineering services, including treatability studies," exempted in the proposed clause, EPAAR 1552.209–74, Limitation of Future Contracting (LOFC), are not included in the flow down exemptions of all of the rule's conflict of interest clauses.

In developing this rule, we carefully evaluated the types of work performed by subcontractors and consultants under EPA's contracts, and identified certain classes of work that pose a minimal risk of conflict of interest. They include well drilling, fence erecting, plumbing, utility hookups, security guard services, and electrical services. We exempted these classes from the flow down provisions of all of the rule's EPAAR conflict of interest clauses. In addition, for the LOFC clause only, we also exempted subcontractors and consultants who perform "non-discretionary technical and engineering services, including treatability studies." Although we believe that non-discretionary technical and engineering services could pose some risk to the Agency, particularly since this category is so broad, we were able to exempt this work from the LOFC clause because sufficient protection was provided through coverage by the basic conflict of interest clauses, (EPAAR 1552.209–71 Organizational Conflicts of Interest, EPAAR 1552.209–73 Notification of Conflicts of Interest Regarding Personnel, and EPAAR 1552.227–76 Project Employee Confidentiality Agreement.)

In the case of "treatability studies", we recognize that this type of work may have a high risk of conflict of interest, yet we believe it is in the public interest to promote innovative technology and exempt such subcontract work from any limitations on future contracting. However, because there may be a high risk of conflict for this type of work, it is essential that protection is provided by flow down of the basic conflict of interest clauses.

22. Expansion of the Class of Exemptions for Subcontractor Flow Down

Several commenters requested that we broaden the classes of work to be exempt from the flow down requirements which apply to subcontractors and consultants in all of the conflict of interest clauses. Some provided specific suggestions of additional categories to be exempted including: Laboratory services, industrial hygiene, selected geotechnical consulting, medical surveillance, transportation services, and graphics printing.

We have given serious consideration to the commenters' recommendations and believe that categorically exempting these types of work from flow down would pose an unacceptable risk of conflict of interest to the Agency. For example, if a laboratory services subcontractor were also providing environmental consulting services for a specific site in support of a PRP's legal position, it would be a conflict of interest for the same subcontractor to then take or analyze samples for the EPA from the same site. In addition, if a transportation subcontractor has a relationship with a disposal facility that is a PRP on a site, it would be a conflict of interest for that same transportation subcontractor to also perform work at or relating to the site for EPA, or involving the disposal facility. Each of the other recommended categories also poses such risks, and the Agency cannot categorically exempt them. However, we recognize there may be special cases in which these type of activities can be excluded and each clause allows for Contracting Officers to authorize such exemptions. Thus, we have added a provision permitting a contractor to request in writing that the Contracting Officer exempt from the flow-down requirements of the Limitation of Future Contracting clauses a particular subcontract or consultant agreement for nondiscretionary technical or engineering services not specifically exempted in the clauses, including laboratory analysis. The Contracting Officer will review and evaluate each request on a case-by-case basis, before approving or disapproving the request.

23. Costs Associated With Flow Down of Clauses to Subcontractors

Commenters expressed concern about the costs associated with the flow down requirements of the rule's clauses. One commenter asked if EPA is willing to pay for the costs associated with the LOFC flow down provision.

The allowable and allocable costs associated with this rule may be chargeable to EPA contracts in accordance with the provisions of FAR part 31. This would also apply to allowable and allocable costs associated with this rule, which are incurred by non-exempt subcontractors or consultants, except that such costs would be submitted to EPA's prime contractor rather than to EPA. We anticipate that costs associated with future contracting requests under an LOFC clause will be minimal and would be performed as a part of the normal bid and proposal effort.

24. Expansion of Subcontractor Flow Down Exemption To Apply To Prime Contractors

Some commenters also requested that prime contractors be exempt from the LOFC or other conflict of interest clauses when work to be performed under the prime contract is one of the exemptions identified in the flow down section of the clauses.

We disagree. EPA prime contracts include a wide variety of tasks, many of which pose a high risk for conflict of interest. However, in the unlikely event that an EPA prime contractor only performed the type of work exempted in a specific subcontractor flow down provision, the contractor could request from the Contracting Officer an exemption from inclusion of that conflict of interest clause.

25. Small and Minority Business Concerns

Two commenters raised concern that the rule conflicts with the EPA Administrator's initiative to provide more work to small and minority owned businesses and with Congressional intent to promote contracting with small business. The commenters asserted that small firms cannot absorb the high costs of maintaining complex conflict of interest systems. Other commenters expressed concern that the LOFC clause will hurt small businesses that need local markets because small businesses do not have the operational breadth that larger firms possess to avoid regions where conflicts may exist.

It is essential that we avoid, mitigate, or neutralize conflicts of interest in all EPA contracting. However, we recognize the importance of small and minority owned businesses and strongly support their active participation in our procurement programs. We are currently implementing a Long Term Contracting Strategy for the Superfund program that will enhance the competitive environment and provide greater opportunities for small business

participation by creating smaller, regionally based contracts and subcontracting opportunities under these contracts.

Small businesses currently participate in the Superfund and other EPA programs primarily as subcontractors. As detailed in our discussion of flow down exemptions, a number of categories of subcontracts are specifically exempt from the requirements of the entire rule and "non-discretionary technical and engineering services" subcontract work is exempt from all LOFC clause provisions. This substantially minimizes cost and associated burdens for many small businesses participating in our programs at both the local and national level. Moreover, at any time, a small business operating as either a prime contractor or a subcontractor may request waiver of clause requirements for nondiscretionary work which poses a minimal risk of conflict of interest.

EPA does not require any special type of system to identify and report conflicts. Each contractor determines its own procedures for searching and identifying conflicts of interest, and in some cases, it may already have a process in place to identify conflicts in its commercial business. We anticipate that the scope of a company's procedures would be commensurate with the company's size and complexity, and for small businesses any system would be less complex and detailed.

26. Applicability of Rule to Related Organizations

Several comments were received concerning the applicability of the rule to affiliates and other related organizations. A few commenters encouraged EPA to publish a uniform policy regarding the disclosure burden of contractors for work performed by parent and affiliate corporations as well as partnerships and other businesses. Most commenters opposed the burden of extending disclosure to conflicts of interest associated with related organizations, and stressed that it may be difficult to obtain information from affiliates regardless of common ownership.

The issues regarding applicability of the rule to related organizations are complex. The rule does not specifically address related organizations, and it is not our intent to extend search and certification requirements to related organizations and create unnecessary reporting burdens. However, we do require our contractors to make a good faith effort to report conflicts as they are identified. If an EPA contractor is aware of a potential conflict or has reason to believe a related organization may create a conflict of interest for the contractor, checking with that organization to verify whether a conflict exists would certainly be warranted.

If a contractor reports a conflict of interest involving a related organization and includes information which is designated as sensitive or proprietary, the EPA will protect such information from unauthorized disclosure. An opportunity to so mark such information shall be afforded to the submitter of the information.

27. Application of the Rule to Other Units of a contractor's Organization Which Do Not Perform Environmental Work

One commenter wanted to know the extent to which the rule applies to other units of a contractor's organization which do not perform environmental work. The commenter further stated that it is unfair to restrict service areas of a firm that are unrelated to environmental consulting work or to the contractor unit working on an EPA contract.

This rule applies to the corporation or other legal entity that has entered into a contract with EPA, and makes no distinction between separate divisions or units of the EPA contractor's organization. The fact that a part of the organization does not perform environmental work does not necessarily mean it would not have a conflict of interest. EPA only restricts its contractors from work which poses a significant conflict of interest to the Agency. We require our contractors to identify all potential conflicts of interest and notify the EPA prior to entering into a contract for types of work identified in the LOFC clause as posing a significant risk of conflict. This provides the EPA an opportunity to evaluate such work and prevent conflicts that may jeopardize work performed for EPA or ongoing enforcement actions.

28. Establishment of New Organizational Units To Avoid Conflicts of Interest

A comment was received that expressed concern about a contractor establishing new "units" with the purpose of allowing the contractor to perform in different program areas where it might otherwise be precluded due to a conflict of interest. The comment included a suggestion that there should be a deterrent to allowing this type of loophole.

EPA requires that contractors report to the EPA Contracting Officer all potential conflicts of interest with work performed for EPA. While there may be instances where an organizational conflict of interest may be mitigated effectively, all such potential conflict situations must be reported to the EPA so that the Contracting Officer can make an informed determination based on a careful evaluation of the facts and program and enforcement concerns.

29. Contractor Authority To Decline EPA Work

One comment stated that an EPA contractor should be allowed to decline specific work assignments because of a conflict with other work that the contractor may have accepted after the EPA contract was awarded. We disagree. The contractor does not have the discretion to reject a work assignment. The contractor must report all conflicts of interest to the EPA Contracting Officer who evaluates conflicts, makes a determination of whether a conflict is significant and determines if the conflict can be avoided, mitigated, or neutralized. Under the terms of an EPA contract, a contractor is required to accept and perform work issued under work assignments. Where there is an overriding public interest to perform the work when a conflict of interest exists, the Contracting Officer may decide that the work should be performed despite the inability to avoid, mitigate, or neutralize the conflict. For example, if an emergency situation exists and immediate action is needed to stabilize a site to prevent injury to nearby residents, the Contracting Officer may determine that performance on the work assignment is necessary regardless of the contractor's inability to avoid, mitigate, or neutralize a conflict at the site.

30. Contractor's Right To Stop Work

Commenters stated that a contractor should have the right to stop performance if it reasonably believes that there would not be a significant impact upon the Agency as a result of the work stoppage. We disagree. The contract requires performance, and work may be stopped only by the Contracting Officer. The Government's right to control costs incurred as a result of stopping work must be protected.

31. Time Limit for Responding to Conflict of Interest Requests

Several commenters stated there should be a time limit, such as three or ten days, established for Contracting Officers to respond to any conflict of interest notification or LOFC request. Commenters further suggested that contractors should be able to assume that approval, if required, has been given if a response has not been

received from EPA within ten days. The commenters stated that contractors may not only be placed in a position which may cause them to lose business due to slow responses by EPA, but also may be subject to bid bond forfeitures or other penalties for failure to accept a contract if time limits are not included in the rule. Also, for Federal contracts, contractors may risk having their bids found non-responsive if the bid is conditioned upon EPA granting approval to enter into the contract.

Since each conflict of interest situation is unique and has varying degrees of complexity and because contractors often do not initially provide sufficient information for a Contracting Officer to make a timely decision, the establishment of an arbitrary time limit is not appropriate. We do not agree with the suggestion that failure to respond within ten days should automatically be interpreted as approval. Arbitrary time limits can result in procedural questions over submission and receipt dates and create delays. Although set response times are not included in the rule, EPA is committed to providing timely responses. We have clarified our LOFC clauses to indicate that contractors may seek an expedited response regarding their initial LOFC requests by submitting their requests to the Contracting Officer and the next level within the Contracting Officer's organization.

32. Review Process

Several comments recommended that EPA institute an appeal process for contractors that want a review of an adverse conflict of interest decision made by a Contracting Officer. The decision on any conflict of interest determination is the responsibility of the EPA Contracting Officer. We have clarified the review process available for LOFC requests if a contractor disagrees with the decision of a Contracting Officer. The contractor may file a request with the Contracting Officer for reconsideration or the contractor may request that a Contracting Officer determination be reviewed at a higher administrative level. Filing a request for reconsideration however, does not preclude a contractor from seeking review at the next administrative level. The LOFC clause has been modified to include the review process.

33. Modification of Existing Contracts

Comments were received which took exception to a unilateral placement of conflict of interest clauses into existing contracts. EPA does not intend to unilaterally place the new EPAAR clauses into existing contracts. Clauses substantially similar to these clauses shall be negotiated by the Contracting Officer for existing contracts, on a case-by-case basis, as stated in the general prescription to the clauses. The general prescription to the clauses, cited in the proposed rule as paragraph (c), EPAAR 1509.508, Solicitation provision and contract clauses, is redesignated, under the final rule, as EPAAR 1509.507–2, Contract clause, to conform with recent numbering changes to FAR Subpart 9.5.

34. General Comments Concerning Improper Restriction of Competition and Its Effects

Commenters expressed concern about a restriction of competition on Superfund work resulting from this rule. Commenters also stated that EPA has improperly restricted competition by placing overly broad future contracting limitations affecting sites, types of contracts, and parties with whom the contractor may contract. Commenters questioned the authority to impose "post contract" restrictions and stated that such activity should be governed by internal guidelines and market forces. Others stated that these clauses prevent EPA from having access to the most qualified sources in its contracting program. Other comments reflected an interpretation that the restrictions apply to affiliates and to contractor clients.

We disagree with these comments. The LOFC clause and its alternates are not overly broad nor do they improperly restrict competition. The LOFC clause and each alternate are focused narrowly upon areas which have a high potential for conflict. The authority for "post contract" restriction is recognized in FAR Section 9.507.

Many EPA Superfund solicitations and contracts currently include clauses similar to those contained in this rule. EPA has attracted qualified contractors and competition has not diminished. The comment concerning the limitation of competition based upon the flow down of restrictions to affiliates or to clients reflects an assumption based upon a misreading of the proposed rule. There is no flow down of restrictions to affiliates or to clients.

35. Negotiation of Specific LOFC Clauses

One comment suggested that the LOFC clause be negotiated separately for each contract. This will occur for existing contracts. However, the rule's EPAAR clauses are required for all solicitations and new contracts. The Contracting Officer may, however, consider a deviation to the inclusion or for the modification of the clause.

36. Assessment of the Cost and Economic Impacts of Limiting Work on Existing Contracts

Commenters were concerned about the limitation on business as a result of the inclusion of the LOFC clauses in existing contracts. One commenter stated that an assessment of the economic impacts of the rule has not been performed for existing contracts. The commenter further stated that the limitations contained in the LOFC clause, which will be included by modification into existing contracts, will adversely affect its future activities. The commenter's concern is that these effects were not envisioned by the contractor at the time it submitted its offer to the EPA.

The rule states that the EPAAR clauses are to be placed in all solicitations and new contracts unless a deviation is obtained. For contracts existing as of the effective date of the rule, clauses substantially similar to those in the rule are to be negotiated and incorporated into those contracts, on a case-by-case basis. EPA will not unilaterally incorporate these new clauses into existing contracts.

Concerning the cost and economic impacts of the rule, EPA has performed a cost burden analysis of the rule and recognizes that there will be some economic impact as a result of implementing these clauses. During the formulation of the LOFC clause for each existing contract, the negotiation process will assure that any specific economic attributes associated with the contract are taken into consideration.

37. Unduly Burdensome and Redundant Certifications

Several commenters stated that the certifications required by the rule are unduly burdensome and redundant, and should be deleted from the rule. Specifically, the commenters took exception to requirements for an annual certification and to the work assignment and work plan certifications.

To respond to these concerns, we have made significant reductions in the proposed rule's certification requirements. Under the final rule, all Superfund contractors are required to submit certifications, but they are no longer required to submit both annual and work assignment certifications. In addition, the requirement for work plan certifications has been eliminated, and the number of work assignment certifications has been reduced. Under the final rule, a work assignment certification is required within 20 days from the time the contractor receives a work assignment. If a subsequent work

assignment is issued to the contractor under the same contract for additional work at the same site(s) covered by the initial work assignment, an additional certification for the new work assignment is not required. This is not intended to relieve the contractor from reporting any future conflicts of interest relating to the site(s). The contractor will still be expected to search and report any conflicts of interest based upon new information which has been identified. These certification changes will significantly reduce the burden on contractors.

38. Multiple Sites Under Work Assignments, Addition of Sites to a Work Assignment and the Allocation of Costs

One commenter expressed concern that since sites and PRPs may be added to the work assignments during performance, contractors cannot certify at the work assignment acceptance phase that all conflicts have been disclosed. This concern also applies to a multi-site work assignment where sites are identified as the work arises. The commenter also expressed concern about the recovery of costs incurred for records retention pertaining to sites under multi-site contracts.

The work assignment clause requires that the contractor certify to the best of its knowledge and belief that all conflicts of interest have been reported or that no conflicts of interest exist. We recognize that all site and PRP information may not be available at the time of the certification, which under the final rule is 20 days after the contractor receives the work assignment. If a site is added to the work assignment after the certification is submitted, a subsequent certification is not required for the additional site. The certification includes a statement that the contractor recognizes its continuing obligation to identify and report any conflicts arising during performance of the work assignment pertaining to all sites.

Allowable costs associated with work performed under the contract, including records retention pertaining to sites, shall be allocated consistent with the contractor's cost accounting system. Since work assignments are so diverse, questions concerning the proper allocability of costs on a specific work assignment should be directed to the Contracting Officer.

39. Cost to Contractors Associated With Requesting Approval for Future Work After Contract Performance

Several comments were received concerning the reimbursement of costs associated with the submission of LOFC requests, filed after the expiration of the EPA contract. Another commenter expressed concern about costs contractors may incur as a result of involvement in future litigation matters.

The LOFC clause identifies work that is high risk to the Agency. The purpose of this clause is to avoid conflicts that jeopardize the Superfund program and EPA's enforcement efforts. After expiration of the contract or work assignment, contractors only have to request approval for future contracting identified in the LOFC clause. Costs associated with this approval process should be minimal and would be performed as a part of the normal bid and proposal effort.

The issue of costs associated with future involvement in litigation matters is not within the scope of this rule. However, generally if EPA requires expert witness or special litigation support for a Superfund case, it would enter into a contract for such services. For costs associated with other witness testimony, the Federal Rules of Criminal Procedure or the Federal Rules of Civil Procedure would apply.

40. FAR Coverage of Paperwork

One commenter stated that the FAR requires detailed paperwork only when necessary to examine "significant potential conflicts" and to determine appropriate mitigation measures. We agree. In accordance with FAR section 9.505, EPA's Contracting Officers examine each situation on the basis of its particular facts and exercise common sense, good judgment and sound discretion in order to minimize the paperwork burden. Only information which is sufficient to permit the Contracting Officer to identify and evaluate conflicts of interest shall be requested.

41. Paperwork Requirement and EPA Objectives

One commenter stated that the paperwork required violates the Paperwork Reduction Act and is unnecessary to achieve EPA's program objectives. We do not agree. EPA has not violated the Paperwork Reduction Act and has made every effort to minimize the paperwork burden associated with this rule consistent with achieving its objectives in the area of conflict of interest. The final rule reflects a substantial reduction in the paperwork burden to contractors participating in EPA's procurement program.

42. Paperwork Burden Concerns

Many commenters expressed concerns about the burden the rule would impose upon contractors. Several commenters stated that EPA's burden estimate was too low. One commenter stated that its conflict of interest review effort required much less time than that which was estimated by EPA. Others offered suggestions on how EPA could reduce the paperwork burden and still accomplish its objectives. These suggestions included elimination of duplicative certifications.

EPA has considered these suggestions and has made significant reductions to the paperwork burden associated with this rule. Under the final rule, contractors will not be required to submit certifications on both an annual and a work assignment basis. In addition, the work plan certification requirement has been eliminated from the proposed rule's amendment to the work assignment clause. Under the final rule, a single certification will be submitted within twenty days from the time the contractor receives the work assignment, and it will cover conflicts of interest for all effort to be performed or related to sites under the work assignment. Furthermore, if a subsequent work assignment is issued to the contractor under the same contract for additional work at the same site, an additional certification for the new work assignment is not required. The initial certification is sufficient because it requires a continuing obligation by the contractor to report any conflicts associated with the site(s). The paperwork burden associated with the LOFC clause and its alternates has been reduced because the time frames for requesting approval commence at the conclusion of the work assignment instead of the expiration date of the contract. In many cases, this will reduce the LOFC request period by several years. In the final rule, EPA has also eliminated the requirement for an annual update of the conflict of interest plan in order to reduce reporting requirements.

43. Data Base Searches and Cost Reimbursement for Paperwork Burden

Commenters stated that contractor data bases do not contain the type of information that EPA is requesting and, therefore, contractors would not be able to provide complete certifications on conflicts of interest. Other commenters expressed concerns that the development of data bases and the other administrative costs associated with the rule will not be recovered by the contractors and have not been included in the total cost for conflict of interest systems. They recommended that EPA provide a mechanism for contractors to recoup these costs.

EPA does not require that contractors establish any particular kind of information retrieval system. EPA recognizes that contractors often do not have all of the information readily accessible upon which to base their certifications. Therefore, the certifications contain the statement that the contractor is certifying to the best of its knowledge and belief as of the date of the certification.

Concerning the costs associated with the rule and a conflict of interest system, the rule states that costs associated with conflicts of interest may be chargeable to Government contracts under the provisions of FAR Part 31. Following the expiration of the contract, no certifications are required. For expired contracts, which involved efforts at sites, the costs associated with search effort associated with the LOFC clause should be minimal. These post contract costs would normally be allocated to the contractor's bid and proposal pool.

C. Section by Section Analysis

The following is a description of the final rule's EPAAR clauses and our response to comments on the specific clauses and their prescriptions which are not addressed in the preceding general comments section.

EPAAR 1552.209–71, Organizational Conflicts of Interest, is modified to specify that notification of actual or potential organizational conflicts of interest should be made prior to commencement of work. However, in emergency situations, work may begin with notification being made within five work days. The clause also identifies specific subcontracts and consultant agreements for which this clause is not required.

As a result of public comment, the following changes have been made to the proposed modification of this clause and its prescription:

—The term "apparent" has been removed from this clause and all other clauses in the rule in response to comments that the term is vague and difficult to define.

—The prescription to this clause, paragraph (c)(1) of EPAAR 1509.508, Solicitation provision and contract clauses, has been redesignated as paragraph (a), EPAAR 1509.507–2, Contract clause. In addition, the reference to FAR 9.508–2 has been removed from this paragraph since FAC 90–1 removed this section from the FAR. These minor changes have been made to conform with the numbering changes to FAR subpart 9.5 based on FAC 90–1, and are in accord with public comments urging that the final rule be consistent with any changes to the FAR.

Other comments and EPA's response include:

1. Clarification of "any work". One commenter requested that the term "any work" in paragraph (b) of the clause be clarified. "Any work" would generally refer to any billable hours to the issued work assignment. The term "work assignment" in this rule includes other similar tasking documents such as a delivery order or a technical direction document. Our intent is for contractors to report potential conflicts prior to beginning work on a contract or a work assignment issued under a contract.

2. Immediate reporting of whether a conflict of interest exists. Some commenters objected to EPA's requiring the immediate reporting of whether or not a conflict of interest exists and recommended that such reporting not be required until ten days after a work assignment is issued. Some also pointed out the difficulty in responding without knowledge of future assignments and access to reliable data on PRPs.

We disagree. Conflicts of interest must be identified immediately so we can avoid issuing work when a conflict exists. We recognize that contractors may not always have sufficient information to identify all conflicts when work assignments are issued since PRPs are continually being identified, but this should not delay a good faith disclosure of any conflicts that can be identified prior to beginning work. Moreover, in response to comments, the final rule does not require contractors to certify regarding conflicts of interest related to work assignments until 20 days after receipt of the work assignment. (See EPAAR 1552.212–71, Work Assignments, Alternate I.) Additionally, it should be noted that in emergency situations contractors may begin work immediately with notification to follow within five days.

3. Removal of Alternate I to paragraph (e). One commenter recommended that Alternate I of paragraph (e) of the clause, which applies to non-Superfund contracts, be removed. We disagree. Since the types of work exempted from flow down in paragraph (e) are unlikely to be performed in non-Superfund contracts, it would be confusing to include this language in such contracts. In the event these types of work are included in the contract, the Contracting Officer may authorize exemption.

EPAAR 1552.209–73, Notification of Conflicts of Interest Regarding Personnel, is added for Superfund contracts to ensure that contractors notify the Contracting Officer of actual or potential personal conflicts of interest prior to incurring costs for an employee where the contractor is aware that the employee has a personal conflict of interest. The clause also identifies specific subcontracts and consultant agreements for which this clause is not required.

As a result of public comment, the following changes have been made:

—The term "apparent" has been removed in response to comments that the term is vague and difficult to define.

—Paragraph (a) has been modified slightly to make the language clearer that the provisions with regard to employee personnel performing under this contract shall apply until the earlier "of the following two dates: the termination date of the affected employee(s) or the expiration date of this contract."

—Paragraph (b) has been rewritten to clarify that a contractor is responsible for reporting personal conflicts of interest regarding its subcontractor employees and consultants when such conflicts have been reported to the contractor. This clarification is made in response to public concern that a contractor is unlikely to have knowledge of the personal conflicts of interest of its subcontractors' employees and should not be held responsible for identifying such personal conflicts of interest unless they have been brought to its attention.

—The prescription to this clause, paragraph (c)(2) of EPAAR 1509.508, Solicitation provision and contract clauses, has been redesignated as paragraph (b), EPAAR 1509.507–2, Contract clause, to conform with recent numbering changes to FAR Subpart 9.5.

—The prescription language to this clause has also been changed to be consistent with the prescription to the Organizational Conflict of Interest Clause. The final prescription, paragraph (b), EPAAR 1509.507–2 Contract clause, includes a small purchase limitation threshold.

Other comments and EPA's response include:

1. Personal conflict of interest certification and disclosure. A number of commenters expressed concern that it is unfair and too burdensome to require contractors to certify that all personal conflicts had been reported. They stressed that since contractors have to rely on their employees to report such conflicts that all that should be required is a good faith effort to obtain such information. Some requested that

disclosure be limited to those personal conflicts of which the contractor has knowledge. A concern was also raised that prime contractors should not be put in a position to certify that there are no personal conflicts of interest regarding subcontractor employees.

We agree and have eliminated the personal conflict of interest certification that was included as part of the annual certification and the work plan/work assignment certification in the proposed rule. Under the final rule, all that contractors must certify, as part of either a work assignment or annual conflict of interest certification, is that they have informed their employees, working under the requirements of the work assignment or EPA contract, of their obligation to report organizational and personal conflicts of interest. (See EPAAR 1552.212–71, Work Assignments. Alternate I, and EPAAR 1552.210–80, Annual Certification.) When a contractor has been informed of a personal conflict, either by an employee or a subcontractor, or has knowledge of such a conflict, it should then report this to the EPA Contracting Officer.

2. Applicability of Privacy Act of 1974 and collection of records. One commenter raised concern that this clause could have the effect of requiring contractors to develop and maintain "systems of records [as defined in the Privacy Act of 1974 (5 U.S.C. 552a)] on individuals on behalf of the agency to accomplish an agency function." Commenters also stated that the systems of records needed would be excessively burdensome. Some also expressed concern about the flow down provisions of the clause to subcontractors in terms of records and the use of this material at the prime contractor level.

It is not EPA's intention to require contractors or their subcontractors to keep records tracking the personal conflicts individual employees may have, nor is it our intention that prime contractors keep personal conflict of interest records of their subcontractors. Such records are not necessary to comply with our reporting requirements. EPA's intent is to minimize any paperwork and administrative burden by having both prime contractors and subcontractors make their employees aware of the sensitivity and importance of conflict of interest when working on EPA projects and to place with their employees the responsibility for identifying conflicts. When the contractor is informed of a personal conflict, it should then report the conflict to EPA. When a personal conflict would arise at the subcontractor level, the subcontractor would notify the prime contractor of the conflict of interest, along with a description of actions taken to avoid, mitigate, or neutralize the conflict. The prime contractor would in turn notify EPA. If subcontractor information is sensitive, the prime contractor will consult with the Contracting Officer to determine a procedure that will allow the prime contractor to fulfill the conditions of the contract and simultaneously providing protection for the information.

3. Ownership of stock and objectivity of individuals. One commenter suggested that without criteria about ownership of stock or the knowledge about the psychology of individuals, the concept of personal conflict of interest is impossible to define in practice. We recognize that analysis of conflict situations may be difficult, and there are no objective criteria that can address every situation that might arise. The critical test that a contractor must use regarding any potential conflict is whether a conflict exists which would impair the person's objectivity in performing the work under an EPA contract.

4. Limiting disclosure requirements to key project personnel. Some commenters stated that the proposed clause was too broad and should apply to key personnel and not to personnel, such as clerical or accounting employees, who have no influence over work on a project. Some commenters connected this requirement to the system of records issue previously addressed, to demonstrate the prohibitive expense associated with the notification requirement by all personnel.

EPA has carefully considered exempting certain personnel working under an EPA contract from the requirements of the clause and has decided not to change the clause which extends the notification requirements to all personnel performing work under an EPA contract. We do not agree that employees below the level of "key personnel" do not contribute to and influence work on EPA projects. One cannot assume that personnel will always perform tasks which are limited to their generic job categories, and that such employees never have access to sensitive information and never exercise discretion that may impact work performed for EPA. The final rule simply requires that a contractor inform its employees about their responsibility to report conflicts of interest. This process is a significantly less burdensome approach to managing personal conflicts of interest. The development or maintenance of a system of records about a contractor's employees is not necessary to comply with the requirements of the Notification of Conflicts of Interest Regarding Personnel clause. Therefore, the concern about the expense associated with a system of records is not central to the issue of which personnel would be subject to the provisions of the clause.

5. Conflict of interest applied to employee level. One commenter stated that it is not clear why EPA is applying conflict of interest rules at the individual employee level and that the regulation should clarify how the "objectivity/bias" rule could be compromised at this level.

Throughout this rule, we have emphasized the special nature of Superfund work and the importance of ensuring integrity of work at sites so that the enforcement actions are not jeopardized. We believe that a contractor employee with a personal conflict of interest that impaired his objectivity in performing work for EPA could impact Superfund work. Persons working on our contracts must be able to render impartial assistance so that the integrity of the work product is not questioned. For example, if a contractor employee performed work for EPA at a site on which the employee had performed work for a PRP, and the individual was called upon to testify in court to support prior actions taken by the PRP, as well as to testify to support actions by the EPA, the credibility of the employee's testimony may be questioned. Moreover, a contractor employee with a conflict of interest stemming from a relationship with a PRP at a site could pose an unacceptable risk of disclosure of sensitive information that could impact cost recovery strategy or other enforcement action regarding the site. All we require is that personal conflicts of interest be reported so that we have the opportunity to avoid, mitigate, or neutralize conflicts that may jeopardize our programs.

6. Relationships covered by personal conflict of interest clause. One commenter requested a definition concerning the types of "relationships" that might be covered by the personal conflict of interest clause. "Relationships" may include personal, financial or business affiliations/connections which would impair a person's objectivity in performing the contract work.

7. Individual ownership of stock and mutual funds. One commenter pointed out that the term "relationship" in this clause can be interpreted either narrowly or broadly, and asked how EPA views the ownership of stock in an

entity or the owning of shares in a mutual fund which owns stock in the entity.

Since each situation is different and should be examined on a case-by-case basis, it is not appropriate to establish a position on whether certain ownership of stock in an entity would or would not create a conflict. We would generally view substantial ownership of stock in an entity as having a higher conflict of interest risk than the more passive investment in a mutual fund which normally conducts transactions without the active participation of the shareholders. However, specialized mutual funds may exist which invest in a very narrow group of stocks. Therefore, each situation should be considered on its own merits.

8. Notification to the Project Officer and to the Contracting Officer. One commenter stated that notification to the EPA Project Officer and to the Contracting Officer is redundant and unnecessary and that notification to the Contracting Officer should suffice. We have reviewed this recommendation and have decided to retain notification to the Project Officer. Personal conflicts can have an immediate impact upon work that is performed. Notification directly to the Project Officer will expedite the EPA response time in avoiding mitigating, or neutralizing such conflicts which would be beneficial to both the Agency and the contractor.

9. Remedies for non-disclosure. One commenter stated that the rule does not identify what remedies, if any, would be available to the Government in the event that EPA concludes that a personal conflict of interest was not disclosed by a contractor. The commenter further stated that appropriate action referenced in the clause could only be termination for convenience. We disagree. Remedies may include avoidance, mitigation, and neutralization of the conflict as well as any other remedies which would be permitted under the terms and conditions of the contract.

EPAAR 1552.209–74, Limitation of Future Contracting, is added for Superfund contracts to ensure that contractors do not perform work that may conflict with work performed for EPA and jeopardize Superfund enforcement actions. The clause identifies work which poses a high risk of conflict of interest and requires contractors to request approval from EPA prior to entering into such contracts. Alternates are provided that are tailored to specific types of Superfund contracts. The basic Limitation of Future Contracting (LOFC) clause is for Alternative Remedial Contracting Strategy (ARCS) contracts, and alternates are for Time Critical Rapid Response (TCRR), Technical Assistance Team (TAT), Environmental Services Assistant Team (ESAT), Technical Enforcement Support (TES), Headquarters Support, and Site Specific contracts. Depending on the type of EPA work performed, this limitation may extend for the period of the contract or from three to seven years after completion of a work assignment. The clause does not prevent contractors from submitting bids/proposals for outside work prior to receiving Contracting Officer approval. However, the clause provides that any bids/proposals are submitted at the contractor's own risk and expense. This clause must also be placed in subcontract and consultant agreements except for specific types of services listed in the clause unless otherwise authorized by the Contracting Officer.

As a result of public comment, including recommendations that the applicability of the LOFC clause and its alternates be clarified, the following changes have been made:

—The prescription to this clause, paragraph (c)(3) of EPAAR 1509.508, Solicitation provision and contract clauses, has been redesignated as paragraph (c), EPAAR 1509.507–2, Contract clause, to conform with recent numbering changes to FAR Subpart 9.5.

—The prescription to this clause has also been changed to be consistent with the prescription for the Organizational Conflict of Interest Clause. The final prescription, paragraph (c), EPAAR 1509.507–2, Contract clause, includes a small purchase limitation threshold.

—In the basic LOFC clause (ARCS) and all alternates except Alternative VI, two additional paragraphs have been added to set forth procedures for an expedited response to an initial LOFC request and for review of an adverse determination. For Alternative VI, three additional paragraphs have been added to set forth procedures for a request for waiver or modification of the clause, for an expedited response to an initial future contracting request, and for review of an LOFC adverse determination. This responds to recommendations that we identify a review process available for contractors who may question an EPA Contracting Officer's decision on an LOFC request.

—In the basic LOFC clause (ARCS) and all alternates, all references to "zone" have been changed to "assigned geographical area." This adds clarity by reflecting the new terminology in the Superfund program.

—In the basic LOFC Clause (ARCS) and all alternates, the type of Superfund contract covered by each clause is now added at the top of each clause. This reduces confusion in reading the text.

—Alternate I has been renamed "Time Critical Rapid Response" (TCRR), and we have noted in the clause prescription that this term includes TCRR, Emergency Response Cleanup Services (ERCS) and other emergency type solicitations and contracts. This change has been made to clarify the clause's applicability.

—In Alternate I (TCRR), Alternate II (TAT) and Alternate V (Headquarters Support), all references to ERCS have been changed to TCRR.

—The Field Investigative Team (FIT) Alternate LOFC clause has been removed since such work is to be included in the ARCS Superfund contracts.

—All alternates to this clause have been renumbered to reflect the removal of the FIT Alternate. All further references will be to the new numbers of the rule.

—Basic LOFC clause (ARCS) has been changed to reflect the inclusion of FIT work in ARCS contracts. Since the proposed rule's FIT LOFC clause is less restrictive than the basic LOFC clause (ARCS), language specifically tailored to FIT work in ARCS contracts is added to minimize contractor burden.

—Basic LOFC clause (ARCS) paragraph (a) has been changed in accordance with comments recommending it be consistent with paragraph (a) of its alternates, which include "free to compete for contracts on an equal basis" language. All further references will be to the new paragraph (a).

—Basic LOFC clause (ARCS) paragraphs have been relettered to reflect the change in paragraph (a) and the inclusion of a paragraph addressing FIT work. Paragraphs (a)(1) and (a)(2) are redesignated as paragraphs (b) and (c). The new FIT paragraph is designated as paragraph (d). Paragraphs previously designated as (b), (c) and (d) have been redesignated as paragraphs (e), (f), and (g). All further references will be to the new lettering of the final clause.

—In the basic LOFC clause (ARCS) and all alternates, paragraph (a) language has been changed from "It is agreed by the parties to this contract * * *" to "The parties to this contract agree * * *" This minor change was made so the LOFC clause language

conforms with the use of the active voice in other EPAAR clauses.

—Basic LOFC clause (ARCS) paragraphs (c) and (d), parallel paragraphs (c) of Alternates I (TCRR) and II (TAT) and (d) of Alternate IV (TES), and similar paragraph (c) of Alternate VI (Site Specific) have been changed as follows:

(1) These paragraphs have been rewritten to emphasize that all that is required is that contractors obtain approval prior to entering into a contract with respect to the type of work identified. This gives EPA the opportunity to evaluate such requests on a case-by-case basis and limit its contractors from performing work which would jeopardize work performed for EPA or ongoing enforcement actions. This change was made in response to public concern that this paragraph absolutely prohibited the nature of work described.

(2) In further response to public comment on these paragraphs, "other than EPA" has been added after "any party" to clarify that this clause does not cover future work a contractor may enter into for EPA.

—Basic LOFC clause (ARCS) paragraphs (c) and (d), and parallel paragraphs (c) of Alternates I (TCRR) and II (TAT) and (d) of Alternate IV (TES) have also been modified in response to comments questioning the scope of the limitation. We have clarified that all that is required is reporting of: "(1) Any work relating to CERCLA activities which pertain to a site where the Contractor previously performed work for EPA under this contract; or (2) any work that may jeopardize CERCLA enforcement actions which pertain to a site where the Contractor previously performed work for the EPA under this contract." We are concerned with evaluating future contractor work related to Superfund work performed for EPA on a site to ensure it does not jeopardize ongoing EPA Superfund work or enforcement action.

—Alternate VI (Site Specific) paragraph (c), which contains similar language addressing Site Specific contracts, has also been modified in response to comments questioning its scope. We have clarified that all that is required is reporting of: "(1) Any work relating to CERCLA activities which pertain to the site where the Contractor previously performed work for EPA under this contract; or (2) any work that may jeopardize CERCLA enforcement actions which pertain to the site where the Contractor previously performed work for the EPA under this contract." We are concerned with evaluating future contractor work related to Superfund work performed for EPA on the site covered by its contract to ensure it does not jeopardize ongoing EPA Superfund work or enforcement action.

—Alternate I (TCRR) paragraph (c) and parallel paragraphs (c) of Alternate II (TAT) and (d) of Alternate IV (TES) have further been revised. The language "during the life of the contract" and "after completion of the contract" has been changed to be consistent with the basic LOFC clause (ARCS), which tracks by tasking document, not by contract. This change is made in response to commenters' recommendations. It substantially minimizes the burden to contractors by reducing the time period for which the contractor must request approval for future work.

The new language in paragraph (c) of Alternate I (TCRR) is "during the life of the delivery order or tasking document" and "after the completion of the delivery order or tasking document". The new language in paragraph (c) of Alternate II (TAT) is "during the life of the technical direction document" and "after the completion of the technical direction document". The language in paragraph (d) of Alternate IV (TES) is now "during the life of the work assignment" and "after completion of the work assignment".

—Basic LOFC clause (ARCS) paragraph (f) and identical paragraphs (f) of Alternates I (TCRR), II (TAT), IV (TES), VI (Site Specific), (c) of Alternate III (ESAT) and (e) of Alternate V (Headquarters Support) have been modified. The language "agrees not to use it to compete with such companies" is removed. This change was made to clarify that it is not EPA's intent to restrict its contractors from using their experience gained in working on EPA contracts from competing with other companies.

—Alternate I (TCRR) paragraph (d)(3), Alternate II (TAT) paragraph (d)(3), and Alternate VI (Site Specific) paragraph (d)(2) have been revised to include "CERCLA administrative order". This modification is made in response to public comment that we cover contracts let prior to final issuance of a CERCLA or Resource Conservation and Recovery Act (RCRA) consent decree or court order.

—Alternate I (TCRR) paragraphs (d)(1) and (d)(2) language describing TAT work is changed from "Technical Assistance Team activities (TAT contracts)" to "Technical Assistance Team (TAT) type activities (e.g., TAT contracts)". This change clarifies that this provision applies to TAT type activities and that "TAT contracts" is an example of such work.

—Alternate VI (Site Specific) paragraph (d)(1) language is also changed from "Technical Assistance Team activities (TAT contracts)" to "Technical Assistance Team (TAT) type activities (e.g., TAT contracts)". This change clarifies that this provision applies to TAT type activities and that "TAT contracts" is an example of such work.

—In Alternate I (TCRR), paragraph (g), "treatability studies" has been added to the flow down exemptions to make this Alternate clause consistent with all other LOFC clauses in the rule. In addition, because the term "treatability studies" is not routinely used in TCRR contracts, we have noted in the prescription that this term includes "TCRR pilot scale studies."

—In Alternate IV (TES), we have retained the clause's paragraph (b) language instead of choosing the proposed rule's option to paragraph (b). This responds to public comment that the initial paragraph (b) is more cost effective and that implementing the other proposed option would be extremely cumbersome and expensive. In addition, we have added "during the performance period of this contract" at the beginning of the paragraph in response to comments requesting we clarify the period of applicability.

—In Alternate V (Headquarters Support), paragraph (c), we have added "unless otherwise authorized by the Contracting Officer." This change is made in response to public comments expressing concern that there may be circumstances where the nature of the work under such contracts would not pose a significant conflict for the EPA, and this clause should not categorically exempt contractors from performing work without examining requests on a case-by-case basis. We agree that the Contracting Officer shall make conflict of interest determinations on a case-by-case basis and this change reflects our intent. The objective of this and all of the LOFC clauses is to identify work which we believe may pose significant risk of conflict of interest and provide EPA the opportunity to avoid conflicts that would damage the integrity of the Superfund program.

In Alternate V (Headquarters Support) paragraph (c), FIT and Remedial

Engineering Management (REM) contracts are removed from the list of examples of contracts which include response action work. Although FIT and REM contracts included response action work, it is no longer appropriate to include them as examples since these contracts are being phased out of the Superfund program.

Other public comments and EPA's response include:

1. Applicability of LOFC clauses to types of work. One commenter requested that the LOFC clauses should be unambiguously keyed to types of work since the nature of work in different contract types overlap. We disagree. The basic LOFC clause and each alternate are identified by the Superfund program contract type, i.e., ARCS, TCRR, TAT, ESAT, TES, Headquarters Support, and Site Specific. These are the standard terms used in the Superfund program to describe types of contracts by nature of Superfund work. To key the LOFC clauses to other types of work would be confusing, ambiguous and difficult to track both for contractors and the EPA.

2. Different time periods for LOFC clause and alternates. Several commenters expressed concern that there was no justification provided for the different time periods and suggested that EPA make the reporting time frames in the LOFC clauses consistent. Additionally, commenters stated the reporting requirements should either be applicable after completion of the work assignment or reporting should be limited to the duration of the contract. Still other commenters suggested the reporting period should be no longer than three years after work assignment completion. And other commenters stated the reporting requirement after contract completion was overly restrictive if it is to be applied to any new contracting activity but would be less objectionable if site references were restricted to only National Priorities List (NPL) sites.

We agree reporting requirements for work performed at a site should be limited to a period of time after completion of the work assignment rather than after contract completion and have made the changes in the appropriate LOFC clauses. Each LOFC clause has been carefully studied and specifically tailored to fit each program with appropriate time periods based on the nature of work performed under the contract and the risk of conflict. Because each of the different programs requiring an LOFC clause has a different role in Superfund cleanup and enforcement, it is necessary for some programs to have different reporting requirements. The establishment of each time period was made after extensive discussion of program and enforcement issues. Every attempt was made, however, to be as consistent as possible without jeopardizing the Superfund program.

We disagree that reporting requirements should be limited to the duration of the contract or for only three years. These time limits would not adequately protect the interests of the Superfund program. Because environmental enforcement cases are averaging seven years from start to completion, it would be very damaging to EPA's enforcement cases if an EPA contractor could at will perform related work for a PRP at or relating to the same site after it had performed work for EPA. For example, the TES reporting requirement of seven years is necessary to avoid the potential for compromising highly sensitive enforcement support information. To reduce this time frame would significantly jeopardize our ability to enforce CERCLA. Therefore, to prevent such occurrences, it is absolutely necessary for EPA to have procedures in place which require contractors to request approval before entering into future work with PRPs that could negatively impact the work performed for EPA.

3. Limit LOFC clause to NPL sites. Several commenters recommended that the LOFC clause and its alternates apply only to NPL sites. Some expressed concern whether "sites" includes Federal Facilities and requested clarification.

We disagree that the clause should be limited to NPL sites and stress that the rule makes no distinction between private party sites and Federal Facilities. Restricting the clause's applicability to work on NPL sites would provide insufficient protection to the Superfund program. The NPL is a priority listing of hazardous waste sites which have been identified for possible long-term remedial cleanup action under Superfund. Most sites are not placed on the NPL until they have been formally evaluated and meet a Hazard Ranking System threshold. Contractors perform emergency Superfund work and pre-remedial work for EPA on many hazardous waste sites that may or may not later be placed on the NPL and also provide support for enforcement activities at non-NPL sites. It is important to protect such work from conflicts of interest particularly since we may initiate cost recovery action against PRPs for cleanup work at sites that are not yet on the NPL and may never be placed on the NPL. Moreover, work an EPA contractor may wish to perform for a private party on a non-NPL site may directly conflict with work performed for EPA and jeopardize CERCLA enforcement activities. Therefore, the LOFC clause intentionally makes no distinction between NPL and non-NPL site work in its reporting requirements.

4. "Any party". Some commenters expressed concern that the term "any party" used in the LOFC clause was too broad, and stated that the term could be interpreted to include another Federal agency. We disagree that the term is too broad and it is our intent that it include Federal agencies. The rule makes no distinction between private and public sector work in its reporting requirements. Contractors must report work which is identified as having a high risk of conflict whether it is for a private party or a Federal agency.

5. "Jeopardize CERCLA enforcement actions". One commenter recommended that the language in paragraph (c) and (d) of the basic LOFC clause (ARCS) and the parallel language in the Alternates be removed since it is difficult for contractors to determine whether proposed actions will jeopardize CERCLA enforcement actions. We disagree with this recommendation. The language is included to require contractors to request approval from the EPA Contracting Officer before entering into a contract for work which may damage our Superfund enforcement actions so that EPA has the opportunity to protect its enforcement actions from prejudice. When a contractor believes that there is a risk that work may jeopardize CERCLA enforcement actions, the contractor shall submit a request to the EPA Contracting Officer who will make the determination.

6. Define "CERCLA activities". Several commenters requested that we define "CERCLA activities" and one commenter specifically requested that we exempt from the definition activities under Sections 312 and 313 of the Superfund Amendments and Reauthorization Act of 1986 (SARA).

The scope of CERCLA activities is set out in Section 101 of CERCLA. "CERCLA activities" includes the terms "remove or removal" the terms "remedy or remedial action" and the terms "respond or response" as defined in Sections 101 (23), (24) and (25). Activities under Sections 312 and 313 of SARA are by definition excluded from the term "CERCLA activities". Sections 312 and 313 are reporting requirements in SARA Title III, "Emergency Planning and Community Right-To-Know Act of 1986", which is not part of CERCLA.

7. LOFC and unrelated sites. Commenters stated that the LOFC clauses should not be broadened but

should only cover a site where a contractor previously worked for EPA. One commenter stated that EPA had no authority to deny private contracting on an unrelated site. Another commenter stated that it would be almost impossible to administer or enforce the abstract concept of doing CERCLA work for a private client at a given site where work had not been performed before.

The first comment refers to the LOFC clause for ARCS and its alternates for TCRR, TAT, TES, and Site Specific contracts. Each of these clauses contains restrictions pertaining to sites where the contractor previously worked for EPA and on any work that may jeopardize CERCLA enforcement actions which pertain to a site where the contractor previously performed work for the EPA under the contract. This limitation is required because work on related sites could adversely affect EPA's CERCLA enforcement action at a site where the contractor previously performed work for EPA. The LOFC alternates for TCRR, TAT and TES contain limitations for geographic areas. These limitations apply only during the period of performance of the contract. They are included in the TCRR and TAT clauses because these two types of work cannot be performed by the same contractor in the same geographic area because the risk of a conflict occurring is too great. In the TES contracts, the geographic limitation on remedial and implementation work is necessary because of the risk associated with extremely sensitive litigation information, the unauthorized disclosure of which would jeopardize EPA's enforcement actions.

The second commenter uses the term "unrelated sites" in the comment concerning restrictions on private contracting. We are unclear as to the commenter's definition of this term. EPA's LOFC clause and alternates limit CERCLA work which pertains to a site, or limit work that may jeopardize enforcement actions which pertain to a site, where the contractor previously performed work for EPA under the contract. The only other site limitations are those in the TCRR, TAT and TES Alternates which pertain to sites within the geographic area of the contract. There are no restrictions to sites outside these limitations.

We agree with the commenter that stated that it would be difficult to administer or enforce the limitations that pertain to the performance of CERCLA work or work which jeopardizes enforcement actions at sites where a contractor has not performed previous work for EPA. However, EPA's intent in the LOFC clause is not to require excessive administration but rather to have contractors rely on information of which they are aware at the time they consider entering into a contract for work at other sites. No extensive searches, certifications, or control systems associated with administration are required.

8. Basic LOFC clause (ARCS) paragraphs (a) and (b)—Contractors right to compete. One commenter suggested that the clause include the same "free to compete on an equal basis" language in the alternate LOFC clauses. The commenter further stated that the clauses require clarification that, when a contractor has prepared the statement of work or other solicitation package for a private party, the restriction of the clause does not apply. Another commenter requested that the clause be expanded to provide that any contractor that contributes to the development of the statement of work or the solicitation package should be ineligible to participate in follow-on Superfund remedial action projects.

We agree with the recommendation that the clause be changed to be consistent with its alternates, which include "free to compete on an equal basis" language, and have made this change in the final clause language. We also agree with the commenter's conclusion that the restriction when a contractor has prepared a statement of work or solicitation package under the terms and conditions of a Government contract, as either a prime contractor or subcontractor, would not apply to work performed for private contractors. EPA does not generate statements of work or solicitations for the use and benefit of a private party. Therefore, no clarification to the clause is necessary.

The ARCS contracts provide for a contractor's involvement with the complete cleanup of a site from the beginning to the end, including follow-on remedial action projects. The LOFC clause for the ARCS contracts has been specifically written to accommodate the special nature of the ARCS program to take advantage of a contractor's expertise and keep the competitive base as open as possible, especially when EPA has purchased the technology. Therefore, we disagree with the comment that the clause should be expanded to make any contractors, which participate in the development of the statement of work or solicitation package, ineligible from participating in such activities. To make ARCS contractors ineligible would be overly restrictive and disruptive to the Superfund program.

9. Basic LOFC clause (ARCS) paragraph (c)—Broaden limitation. One commenter recommended that we broaden this paragraph to exclude a contractor from working for any party on any contract for the types of work specified. We disagree. Such a change would be too restrictive to ARCS contractors.

10. Alternate I (TCRR) paragraph (d)(3)—Applicability of TAT restriction. One commenter recommended that the clause be clarified to indicate the TAT restriction in the TCRR clause only applies to TAT type contracts offered by the Federal Government because if it applied to both Government and the private sector it would be overly broad and restrictive.

We disagree. The clause as written clearly requires TCRR contractors to request approval prior to performing TAT type activities, regardless of whether another Federal agency or a private party issues the contract. A TCRR contractor is required to provide cleanup services on numerous sites within its respective geographic area and this work often involves work performed in "emergency" situations. It is vital that TCRR contractors be free of conflicts to perform work for the Agency. Therefore, it is necessary to require TCRR contractors to request approval before performing any TAT type activities for any other party within its respective geographic area that result from a CERCLA administrative order, a CERCLA or RCRA consent decree or a court order.

11. Alternate II (TAT) paragraph (d)(2)—Expand competition restriction. One commenter requested we delete the language "Unless an individual design for the site has been prepared by a third party". The commenter contended that any knowledge of a site is critical and a contractor having access to a site over a long period of time would be in a better position to plan and price for unforeseen contingencies. Therefore, this would be patently unfair to other contractors.

We disagree. If the clause were to be modified as suggested, it would have the opposite effect by making the clause overly restrictive for contractors performing TAT work. Although such a contractor may have gained some knowledge about a site while working there, it would not necessarily be an unfair competitive advantage when a third party has prepared the design.

12. Alternate II (TAT) paragraph (d)(2)—Inability to plan future TAT work. One commenter suggested that this paragraph not include TAT work that a contractor plans to perform because contractors have no role in determining future TAT work and TAT

work dealing with emergencies cannot be planned.

We disagree. In many cases, TAT work is planned and advance site information is provided to contractors by EPA. Therefore, the final clause includes the requirement that a contractor shall not perform remedial construction work on a site where it has knowledge that it will be performing TAT work for EPA, unless otherwise authorized by the EPA Contracting Officer.

13. Alternate II (TAT) paragraph (d)(3)—Site specific limitations. One commenter suggested the restriction on TAT contractors be site specific rather than a restriction covering the entire zone. The commenter further stated that alternate zone contractors should be used if conflicts arise.

We disagree. TAT contracts are established to provide TAT type activities, including TCRR oversight, on potentially all sites within the geographic area. If contractors perform work for PRPs on sites within the geographic area, and if EPA were to require oversight on these sites, EPA's ability to plan and promptly commence oversight work would be significantly impaired. Geographic crossovers are possible in a few unusual circumstances. However, the administrative cost and additional time associated with this process for a number of sites pose too large a risk to the effective operation of the TAT program.

14. Alternate III (ESAT)—LOFC applicability to ESAT. One commenter recommended we delete this Alternate since an LOFC clause is not appropriate for ESAT work. We disagree. This clause contains the limitation on future performance where the contractor develops the specifications or statement of work under a Superfund contract. This limitation is common to all Superfund contracts including ESAT.

15. Alternate IV (TES) paragraph (b)—Remove or limit restriction. One commenter suggested that the TES LOFC clause be limited to CERCLA activities by a private party at the NPL sites where work was performed under TES contracts. The commenter stated that requiring future contracting requests for any work of a remedial nature within the regions covered by a TES contract is arbitrary and inconsistent with the requirements of actual site work required under other EPA contracts.

It is our intent for paragraph (b) to cover the entire geographic area covered by the contract. The TES clause coverage is different than the other clauses because of the special sensitivity of TES work which includes support for enforcement cases. We have seriously considered the recommendation to change this language. However, because of the high sensitivity of enforcement work, we believe this provision is necessary to best protect the Agency's enforcement and cost recovery cases. Moreover, because of the sensitivity of all Superfund enforcement work, the clause cannot just be limited to CERCLA activities at NPL sites.

16. Alternate IV (TES) paragraph (d)—Broaden TES LOFC restriction. One commenter recommended TES contractors should be absolutely prohibited from working for private sector PRPs in order to avoid the potential for compromising enforcement related data. Although we agree that TES work is highly sensitive, we believe the rule provides adequate measures to protect EPA's interests. To broaden the LOFC clause would be too restrictive to competition.

17. Alternate V (Headquarters Support) paragraph (c)—Response action work. Several commenters expressed concern about the vagueness of the term "response action work" and asked if it had the same meaning as the SARA definition of "response action contract". To clarify the term "response action work", we included a number of examples in the proposed and the final clause. The examples in the final clause include ARCS, TCRR, TAT, and TES contracts. It is our intention that "response action work" have the same definition as "response action contract" provided in CERCLA Section 119, as amended by SARA. However, we have included, in the prescription to this clause, authorization for the Contracting Officer to modify this paragraph to reflect any unique limitations applicable to the program requirements.

18. Alternate VI (Site Specific)—Site specific contracts for construction or other non-discretionary work. Some commenters assumed that this clause would primarily affect construction contractors and recommended that EPA not apply this clause to site specific contracts which are for construction. Another commenter suggested that work which a contractor believes is non-discretionary should also be exempted.

We disagree. When a solicitation, prime contract or work assignment is issued solely for construction work or for work that the contractor believes is non-discretionary, the offeror or contractor can request that the LOFC clause be modified or waived. The Contracting Officer has the authority to approve the request if the work does not pose a high risk of conflict to the Superfund program. Under Alternate VI, to ensure that prime contractors clearly understand they have the option of requesting a waiver from or modification of this clause when non-discretionary work is performed, language has been added to Alternate VI, describing how to obtain a waiver or modification from the Contracting Officer.

19. Alternate VI (Site Specific) paragraph (b)—Site specifications. One commenter suggested that the words "for the site" be inserted in paragraph (b) of the clause so that the clause would only apply to EPA solicitations for the site. We disagree. Specifications could be developed under a site specific contract which may be included in other EPA solicitations.

EPAAR 1552.210–80, Annual Certification, is added to require all Superfund contractors that do not provide other EPA conflict of interest certifications during contract performance to certify annually that all organizational conflicts of interest have been reported to EPA, and contractor employees have been informed of their obligation to report conflicts.

As a result of public comment, the following changes are made to the clause and its prescription:

—The proposed annual certification requirement is changed from applying to all Superfund contracts to only contracts where the contract does not include the submission of other conflict of interest certifications during contract performance. Superfund contracts requiring annual certification include: Site Specific contracts and the Contract Laboratory Program (CLP) and the Sample Management Office (SMO) contracts. This change is made in response to comments that multiple certification requirements are duplicative and overburdensome.

—To reduce reporting requirements, the update of conflict of interest plan requirement, which was included in the proposed rule's clause, EPAAR 1552.210–78, Annual Certification and Update of Conflict of Interest Plan, has been deleted. Its prescription has also been removed from the proposed rule's prescription, EPAAR 1510.011–78, Annual Certification and Update of Conflict of Interest Plan.

—The annual certification requirement in the proposed rule's EPAAR 1552.210–78 and the prescription EPAAR 1510.011–78 is designated, under the final rule, as EPAAR 1552.210–80, Annual Certification, and its prescription is EPAAR 1510.011–80, Annual Certification.

—The requirement that contractors certify annually that all personal conflicts of interest have been reported is changed to "the Contractor shall certify that it has informed its personnel who perform work under EPA contracts or relating to EPA contracts of their obligation to report personal and organizational conflicts of interest to the contractors." This change was made in response to public comments that it is unfair and overburdensome to require contractors to certify that personal conflicts have been reported since contractors have to rely on their personnel to report such conflicts.
—The term "apparent" has been removed in response to comments that the term is vague and difficult to define.
—The prescription to this clause has been changed to be consistent with the prescription to the Organizational Conflict of Interest Clause. The final prescription, EPAAR 1510.011–80, Annual Certification, includes a small purchase limitation threshold.

Other comments and our response include:

1. Timing of submittal of annual certification. One comment expressed concern that the timing of the annual certification should be changed to a date certain or tied to a company's fiscal year calendar. We retain the requirement that the annual certification cover a one year period from time of award, and all subsequent certifications shall cover successive annual periods thereafter. Such certification must be received by the Contracting Officer no later than 45 days after the close of the certification period covered. However, if a contractor has sufficient justification to change the filing date, the contractor may submit a request to the Contracting Officer who can consider the request for an adjustment and has the authority to modify the contract accordingly.

Other comments and our response include:

1. Clarification of conflict of interest plan, evaluation process and confidential data. Some commenters recommended that we clarify what should be in a conflict of interest plan and the evaluation process and exclude confidential data. Conflict of interest plans are only required for solicitations in which the Contracting Officer makes a determination that a significant potential for conflict of interest exists. Any requirements for conflict of interest plans and information regarding their evaluation will be included in individual solicitations. If any confidential information is provided, e.g., sensitive corporate structure information, the contractor should mark it accordingly and it will be safeguarded to the full extent of the law.

EPAAR 1552.212–71, Work Assignments, is amended to add two alternate clauses to be used for all Superfund contracts which do not require annual certifications. The alternate clauses require contractors to certify within 20 days of receipt of a work assignment that all actual or potential organizational conflicts of interest have been reported to the Contracting Officer, or that no actual, or potential organizational conflicts of interest exist. Where work assignments are issued under a contract for work related to a site, a contractor is only required to provide a certification for the first work assignment issued for that site under the contract. In addition, the clauses require a contractor to certify that its personnel who perform work under this work assignment or relating to this work assignment have been informed of their obligation to report personal and organizational conflicts of interest.

In response to public comments the following changes have been made:

—The work assignment certification requirement under the proposed rule has been reduced from applying to all Superfund contracts to only Superfund contracts that are not required to submit annual certifications in accordance with EPAAR 1552.210–80. This change was made in response to comments that the certification requirements were overly burdensome and duplicative.
—The final rule's prescription to the work assignment clause, paragraph (b) of EPAAR 1512.104, Contract clauses, reflects the reduction in certification requirement by stating that the work assignment certification provision is not used for contracts which require annual conflict of interest certifications (e.g., Site Specific contracts and the Contract Laboratory Program (CLP) and the Sample Management Office (SMO) contracts).
—The number of work assignment certifications required has also been reduced to minimize contractor burden. Where contracts include site work, the final clause only requires contractors to provide a conflict of interest certification for the first work assignment under the contract issued for that site. For all subsequent work for that site, under the contract, the contractor has a continuing obligation to search and report any actual or potential conflicts but no additional conflict of interest certifications are required. To reflect this obligation, the certification includes a statement that the contractor recognizes its continuing obligation to identify and report any actual or potential conflict of interest arising during performance of this work assignment or other work related to this site.
—The time of work assignment certification has been extended to 20 days after receipt of work assignment. This change was made in response to comments that five days is insufficient time to search and certify.
—Alternate I affirmatively provides that a contractor must, as a minimum requirement, search through its immediate past three years of records prior to submitting its certification. Language has been added to the clause to minimize any misunderstandings about how far back contractors must search. Although contractors are only required to affirmatively search back through the past three years of records, contractors are always required to report any conflicts of which they are aware.
—The requirement that a contractor certify that all personal conflicts of interest have been reported has been removed. The final clause requires a contractor to certify only that it has informed its personnel who perform work under this work assignment or relating to this work assignment of their obligation to report personal and organizational conflicts of interest to the contractor. This change was made in response to public comments that it is unfair and too burdensome to require contractors to certify that personal conflicts have been reported since contractors have to rely on their personnel to report such conflicts and all that should be required is a good faith effort to obtain such information.
—The term "apparent" has been removed from this clause in response to comments that the term is vague and difficult to define.
—Alternate II to the Work Assignment clause provides for a transition period for contractors who do not have three years of records to search. The contractor will be required to search any records that it has, until over time, three years of records are accumulated. The contractor is still always required to report any conflicts of which it is aware.

EPAAR 1552.227–76, Project Employee Confidentiality Agreement, is added to ensure that EPA enforcement efforts under the Superfund program are not damaged by contractor employees'

release of information which has either been provided to the contractor by the Government or first generated under contract. Employees of contractors will be prohibited from release of such information to any parties external to EPA, the Department of Justice or the contractor without permission of the EPA Contracting Officer. Superfund contractors will be required to obtain confidentiality agreements from all employees working on requirements under the contract. The contractor must also include the clause in all subcontracts and consultant agreements unless specifically excluded under this clause.

As a result of public comment, the following changes have been made:

—"Including subcontractors and consultants" is removed from paragraph (a) in response to: (1) Comments that it is redundant because of the mandatory flow down provision; and (2) commenters' mistaken interpretation that the proposed clause required contractors to maintain files for their subcontractors.

—The language in the prescription to this clause, EPAAR 1527.409 Solicitation provisions and contract clauses, has been changed to be consistent with prescription for the Organizational Conflict of Interest Clause. The final prescription includes a small purchase limitation threshold.

Other comments and EPA's response include:

1. Exemption of lower level employees. Some commenters stated that contractors' lower level employees should be exempted from the requirement that contractors obtain confidentiality agreements from all employees working under requirements of the EPA contract. We disagree. Because of the sensitivity of Superfund work and the potential for serious damage to enforcement efforts as a result of unauthorized release of information at any level, we cannot exempt any employees working under the requirements of the EPA contract. However, it is not our intention to impose an undue hardship on our contractors. To comply with this clause, it would suffice for contractors to obtain one non-disclosure agreement from its employees who work on multiple EPA contracts.

2. Scope of information. One commenter stated that it is unrealistic to limit discussion of information already in the public domain and one commenter stated that this clause should not preclude disclosure of information routinely disclosed in the normal course of business. We disagree. This clause's limitation is on data of a sensitive nature provided by the Government or first generated during contract performance. Such information should not be categorically authorized for release. However, if a contractor believes such information may be releasable, the contractor may, on a case-by-case basis, request written permission from the EPA Contracting Officer to disclose such information. Such requests will be carefully evaluated to ensure adequate protection of sensitive information.

3. Liability for post-employment release of information. One commenter expressed concern that contractors have no control over employees after their employment and that EPA should make it clear that contractors are not liable for employees who have left their employment. We agree that contractors should not be held liable for employees breaching confidentiality agreements after they have left the firm. The intent of this clause is to have contractors obtain confidentiality agreements from employees to ensure that employees are aware of their obligation not to disclose sensitive information.

D. Executive Order 12866

Under Executive Order 12866, [58 FR 51735 (October 4, 1993)] the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

E. Paperwork Reduction Act

The information collection requirements in this rule have been approved by OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and have been assigned OMB control number 2030–0023.

Public reporting burden for this collection of information is estimated to average 16 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Information Policy Branch; EPA; 401 M Street SW. (2136); Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20530, marked "Attention: Desk Officer for EPA."

F. Regulatory Flexibility Act

The rule may have moderate economic impact upon a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. The following regulatory flexibility analysis has been prepared.

Regulatory Flexibility Analysis

Conflict of Interest

1. *Purpose.* The EPA is strengthening its existing Organizational Conflict of Interest EPAAR Clause and adding additional coverage in the EPAAR to guard against conflicts of interest in work performed under Superfund contracts. Prime contractors, non-exempted subcontractors and consultants working under EPA Superfund contracts will be required to have employees working on requirements under contract sign confidentiality agreements. Prime contractors will be required to: notify EPA immediately of any conflicts of interest regarding contractor or subcontractor personnel working on the EPA contract; submit to EPA either a one time per site certification for work issued under a work assignment or an annual certification concerning disclosure of conflicts of interest; and seek Contracting Officer approval of other work when such work might conflict with work performed under an EPA contract.

2. *Affected small entities.* Small entities awarded EPA Superfund contracts or small entities serving as subcontractors or consultants under

EPA Superfund contracts will be affected. Presently, approximately 75 small entities are performing such contracts and subcontracts. It is impossible to estimate the number of small businesses that ultimately will receive EPA Superfund contracts or serve as subcontractors or consultants under these contracts and, thereby, be affected by this rule.

3. *Description of projected reporting and recordkeeping requirements.* We estimate that businesses generally maintain data on the work previously performed by the company in their normal business practices which may also be used to prevent conflicts of interest. For entities that maintain this data, there will be limited additional costs associated with reviewing, evaluating, and reporting work previously performed and future work being considered that may pose a conflict of interest. EPA does not require any special type of system to identify and report conflicts. Each contractor determines its own procedures for searching and identifying conflicts of interest, and in some cases, it may already have a process in place to identify conflicts in its commercial business. An automated system to store and retrieve information is not required in order to perform the functions associated with a conflict of interest system. We anticipate that the scope of a company's procedures would be commensurate with the company's size and complexity, and for small businesses any system should be less complex and detailed.

Since a significant portion of small business participation in EPA programs occurs under subcontracts for classes of work which are exempt under EPA's conflict of interest clauses, many small businesses will not be affected by the provisions of this rule. Moreover, at any time, a small business operating as either a prime contractor or a subcontractor may request waiver of clause requirements for non-discretionary work which poses a minimal risk of conflict of interest. The total impact upon small business should be significantly less than the impact upon large business.

Depending on the specific contract, contractors will either be required to certify annually that all actual or potential conflicts of interest have been reported to EPA during the preceding year of the contract or certify on a work assignment basis for work first performed at a site. The significant change to the final rule, in which certifications have been reduced from three to one, results in a substantial reduction in the total effort required to comply with the requirements of this rule. Because small businesses generally have less complex organizational structures and less data to maintain and search, the burden associated with search and certification requirements for small business should be substantially less than the burden applicable to a large business.

EPA anticipates that any cost increases experienced by these entities may be chargeable to Government contracts under the provisions of FAR Part 31.

In addition to concerns about data and certification burden which have been addressed above, a comment was submitted expressing concern that responding to the questionnaire, which EPA included in a January 1990, memorandum regarding conflicts of interest, would add significantly to the contractor burden. As stated in Part B of the preamble to this rule, General Comments, this memorandum has been superseded, and the questionnaire is not required. Another commenter expressed concern that the burden associated with requests for future contracting had not been considered in the calculation of burden. In fact, the burden associated with requests for future contracting was considered in this analysis and is reflected in the calculations contained in the initial and final Information Collection Request.

4. *Federal rules which may duplicate, overlap, or conflict with the rule.* The EPA reviewed the FAR coverage on organizational conflicts of interest and rights in data, which this rule supplements.

The FAR requires Contracting Officers to identify and evaluate potential organizational conflicts of interest before contract award and to avoid, neutralize or mitigate significant potential conflicts. This rule fulfills and is consistent with these requirements. In addition, this rule will address limitations on a firm's other contracting efforts during contract performance, and in some cases after completion of the work assignment or other similar tasking document, or after performance of the EPA work contract. The FAR also recognizes that Federal agencies may restrict a contractor's right to distribute or use data first produced in performance of a contract when necessary in the furtherance of the agency mission objectives. The rule's requirement for contractor employees working under Superfund contracts to sign confidentiality agreements restricting release of contract data and other information generally conforms to these FAR requirements.

The EPA also reviewed FAR subpart 9.5 Organizational and Consultant Conflicts of Interest which deals with conflict of interest standards for advisory and assistance service contracts and marketing consultants to contractors. The EPA rule specifically addresses EPA contracts and subcontracts under the Superfund program. Although the FAR guidance and the EPA rule have the same general objectives of identifying, avoiding mitigating, and neutralizing conflicts of interest, the EPA provisions include reporting requirements to ensure that conflicts of interest are reviewed not only prior to contract award, but also during the period of contract performance and after contract performance to ensure enforcement actions are not jeopardized. It is only in this way that EPA can examine whether a contractor's work efforts, which may be initiated during the EPA contract performance period or in some cases thereafter, may present an unacceptable risk to the Agency. This rule does not duplicate, overlap, or conflict with other Federal rules.

5. *Alternatives to the rule.* EPA considered alternatives to the final rule, such as establishing different compliance or reporting requirements or simplifying the requirements for small entities. EPA also considered exempting small entities from all or part of the rule. EPA concluded that the stated objectives cannot be met under such alternatives. An undisclosed conflict of interest poses the same risk to EPA whether it is a conflict involving a large or small business contractor. EPA believes the final rule, along with other established internal controls within the Agency, will avoid actual or potential conflicts of interest that may jeopardize future actions by the Agency.

List of Subjects in 48 CFR Parts 1501, 1509, 1510, 1512, 1527 and 1552

General contract clauses, Contract delivery or performance, Contractor qualifications, Copyrights, Data, Government procurement, Patents, Purchase descriptions, Solicitation provisions, Specifications, Standards.

Dated: April 7, 1994.

Betty L. Bailey,

Director, Office of Acquisition Management.

For the reasons set out in the preamble, Chapter 15 of Title 48 Code of Federal Regulations is amended as set forth below:

1. The authority citation for parts 1501, 1509, 1510, 1512, 1527, and 1552 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

(a) Section 1501.370 is revised to read as follows:

§ 1501.370 OMB control numbers.

The information collection activities contained in the EPAAR sections listed below have been approved by the Office of Management and Budget (OMB) and have been issued OMB numbers in accordance with section 3504(h) of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, *et seq.*

48 CFR citation	OMB control No.
Specification, Standards and other Purchase Descriptions	
1510.011–70 through 1510.011–74	2030–0005
1510.011–80 through 1510.011–81	2030–0023
Contract delivery or performance 1512.104	2030–0023
Small Purchase and Other Simplified Purchase Procedures	
1513.505 through 1513.570	2030–0007
Solicitation Provisions and Contract Clauses	
1552.209–71	2030–0023
1552.209–73 through 1552.209–74	2030–0023
1552.210–71 through 1552.210–73	2030–0005
1552.210–80	2030–0023
1552.212–71	2030–0023
1552.215–72 through 1552.215–76	2030–0006
1552.227–76	2030–0023

PART 1509—CONTRACTOR QUALIFICATIONS

1509.506 [Redesignated as 1509.505–70]
1509.507 [Redesignated as 1509.506]
1509.508 [Redesignated as 1509.507–1]
1509.509 [Redesignated as 1509.508]

2. Subpart 1509.5 is amended by: Redesignating section 1509.506 as 1509.505–70; redesignating section 1509.507 as 1509.506 and amending paragraph (b) by placing a period after "Contracting Officer's decision" and removing the remainder of the paragraph; redesignating section 1509.508 as 1509.507–1, revising the section heading to read "Solicitation provisions" and removing paragraph (c); revising "FAR 9.508–1" in newly designated 1509.507–1(a)(1) to read "(FAR) 48 CFR 9.507–1"; revising "1509.508(a)" in newly designated 1509.507–1(b) to read "1509.507–1(a)(1)"; and redesignating section 1509.509 as 1509.508.

3. Section 1509.507–2 is added to read as follows:

1509.507–2 Contract clause.

(a) The Contracting Officer shall include the clause at 1552.209–71 in all contracts in excess of the small purchase limitation and, as appropriate, in small purchases. Contracts for other than Superfund work shall include Alternate I in this clause in lieu of paragraph (e).

(b) The Contracting Officer shall include the clause at 1552.209–73 in all solicitations and contracts for Superfund work in excess of the small purchase limitation and, as appropriate, in small purchases for Superfund work.

(c) The Contracting Officer shall include the clause at 1552.209–74 or its alternates in the following solicitations and contracts for Superfund work in excess of the small purchase limitation and, as appropriate, in small purchases for Superfund work. The Contracting Officer shall include the clause at 1552.209–74 in all Alternative Remedial Contracting Strategy (ARCS) solicitations and contracts, except Site Specific solicitations and contracts. Alternate I shall be used in all Time Critical Rapid Response (TCRR) solicitations and contracts, except site specific solicitations and contracts. The term "TCRR" in the Limitation of Future Contracting clauses includes not only TCRR solicitations and contracts but Emergency Response Cleanup Services (ERCS) and other emergency type solicitations and contracts. TCRR pilot scale studies are included in the term "treatability studies". Alternate II shall be used in all Technical Assistance Team (TAT) solicitations and contracts. Alternate III shall be used in all Environmental Services Assistance Team (ESAT) solicitations and contracts. Alternate IV shall be used in all Technical Enforcement Support (TES) solicitations and contracts. Alternate V shall be used in all Superfund Headquarters Support solicitations and contracts. The Contracting Officer is authorized to modify paragraph (c) of Alternate V to reflect any unique limitations applicable to the program requirements. Alternate VI shall be used in all Site Specific solicitations and contracts.

(d) Clauses for incorporation into contracts existing as of May 19, 1994 shall be negotiated by the EPA Contracting Officer, on a case-by-case basis, and shall be substantially similar to those prescribed in this section.

PART 1510—SPECIFICATIONS, STANDARDS, AND OTHER DESCRIPTIONS

4. Part 1510 is amended by adding section 1510.011–80 to read as follows:

1510.011–80 Annual Certification.

The Contracting Officer shall insert the clause at 1552.210–80 in Superfund solicitations and contracts in excess of the small purchase limitation, where the solicitation or contract does not include EPAAR 1552.212–71, Work Assignments, Alternate I, or a similar clause requiring conflict of interest certifications during contract performance.

This clause requires an annual conflict of interest certification from contractors when the contract does not require the submission of other conflict of interest certifications during contract performance. Contracts requiring annual certifications include: Site Specific contracts and the Contract Laboratory Program (CLP) and the Sample Management Office (SMO) contracts.

The annual certification requires a contractor to certify that all organizational conflicts of interest have been reported, and that its personnel performing work under EPA contracts or relating to EPA contracts have been informed of their obligation to report personal and organizational conflicts of interest to the Contractor. The annual certification shall cover the one-year period from the date of contract award for the initial certification, and a one-year period since the previous certification for subsequent certifications. The certification must be received by the Contracting Officer no later than 45 days after the close of the certification period covered.

PART 1512—CONTRACT DELIVERY OR PERFORMANCE

5. Section 1512.104 is amended by adding three sentences at the end of paragraph (b) to read as follows:

1512.104 Contract clauses.

* * * * *

(b) * * * For Superfund contracts, except for contracts which require annual conflict of interest certifications (e.g., Site Specific contracts and the Contract Laboratory Program (CLP) and Sample Management Office (SMO) contracts), the Contracting Officer shall use the clause with either Alternate I or Alternate II. Alternate I shall be used for contractors who have at least 3 years of records that may be searched for certification purposes. Alternate II shall be used for contractors who do not have at least three years of records that may be searched.

PART 1527—PATENTS, DATA, AND COPYRIGHTS

6. Part 1527 is amended by adding section 1527.409, to read as follows:

1527.409 Solicitation provisions and contract clauses.

The Contracting Officer shall insert the clause in 1552.227–76 in all Superfund solicitations and contracts in excess of the small purchase limitation and, as appropriate, in small purchases. The clause may be used in other contracts if considered necessary by the Contracting Officer.

PART 1552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

7. Sections 1552.209–70 and 1552.209–72 are amended by revising the reference "1509.508(b)" in the introductory text to read "1509.507–1(b)".

8. Section 1552.209–71 is amended by revising the reference "1509.508(c)" in the introductory text to read "1509.507–2"; revising the clause heading; removing paragraph (d) of the clause; redesignating paragraph (c) of the clause as paragraph (d); in newly redesignated paragraph (d) inserting the word "it" after the word "disclose"; revising paragraph (b) of the clause; and adding new paragraphs (c) and (e) and Alternate I to the clause to read as follows:

1552.209–71 Organizational conflicts of interest.

* * * * *

Organizational Conflicts of Interest (May 1994)

* * * * *

(b) Prior to commencement of any work, the Contractor agrees to notify the Contracting Officer immediately that, to the best of its knowledge and belief, no actual or potential conflict of interest exists or to identify to the Contracting Officer any actual or potential conflict of interest the firm may have. In emergency situations, however, work may begin but notification shall be made within five (5) working days.

(c) The Contractor agrees that if an actual or potential organizational conflict of interest is identified during performance, the Contractor will immediately make a full disclosure in writing to the Contracting Officer. This disclosure shall include a description of actions which the Contractor has taken or proposes to take, after consultation with the Contracting Officer, to avoid, mitigate, or neutralize the actual or potential conflict of interest. The Contractor shall continue performance until notified by the Contracting Officer of any contrary action to be taken.

* * * * *

(e) The Contractor agrees to insert in each subcontract or consultant agreement placed hereunder, except for subcontracts or consultant agreements for well drilling, fence erecting, plumbing, utility hookups, security guard services, or electrical services, provisions which shall conform substantially to the language of this clause, including this paragraph (e), unless otherwise authorized by the Contracting Officer.

(End of clause)

Alternate I to Paragraph (e)

(e) The Contractor agrees to insert in each subcontract or consultant agreement placed hereunder provisions which shall conform substantially to the language of this clause, including this paragraph (e), unless otherwise authorized by the Contracting Officer.

9. Section 1552.209–73 is added to read as follows:

1552.209–73 Notification of conflicts of interest regarding personnel.

As prescribed in 1509.507–2(b) insert the following clause:

Notification of Conflicts of Interest Regarding Personnel (May 1994)

(a) In addition to the requirements of the contract clause entitled "Organizational Conflicts of Interest," the following provisions with regard to employee personnel performing under this contract shall apply until the earlier of the following two dates: the termination date of the affected employee(s) or the expiration date of the contract.

(b) The Contractor agrees to notify immediately the EPA Project Officer and the Contracting Officer of (1) any actual or potential personal conflict of interest with regard to any of its employees working on or having access to information regarding this contract, or (2) any such conflicts concerning subcontractor employees or consultants working on or having access to information regarding this contract, when such conflicts have been reported to the Contractor. A personal conflict of interest is defined as a relationship of an employee, subcontractor employee, or consultant with an entity that may impair the objectivity of the employee, subcontractor employee, or consultant in performing the contract work.

(c) The Contractor agrees to notify each Project Officer and Contracting Officer prior to incurring costs for that employee's work when an employee may have a personal conflict of interest. In the event that the personal conflict of interest does not become known until after performance on the contract begins, the Contractor shall immediately notify the Contracting Officer of the personal conflict of interest. The Contractor shall continue performance of this contract until notified by the Contracting Officer of the appropriate action to be taken.

(d) The Contractor agrees to insert in any subcontract or consultant agreement placed hereunder, except for subcontracts or consultant agreements for well drilling, fence erecting, plumbing, utility hookups, security guard services, or electrical services, provisions which shall conform substantially to the language of this clause, including this paragraph (d), unless otherwise authorized by the Contracting Officer.

(End of clause)

10. Section 1552.209–74 is added to read as follows:

1552.209–74 Limitation of future contracting.

As prescribed in 1509.507–2(c), insert the following clause or alternate:

Limitation of Future Contracting (ARCS) (May 1994)

(a) The parties to this contract agree that the Contractor will be restricted in its future contracting in the manner described below. Except as specifically provided in this clause, the Contractor shall be free to compete for contracts on an equal basis with other companies.

(b) The Contractor will be ineligible to enter into a contract for remedial action projects for which the Contractor has developed the statement of work or the solicitation package.

(c) The following applies when ARCS work is performed under this contract and when both ARCS work and Field Investigative Team (FIT) work are performed on the same site under this contract: Unless prior written approval is obtained from the cognizant EPA Contracting Officer, the Contractor, during the life of the work assignment and for a period of five (5) years after the completion of the work assignment, agrees not to enter into a contract with or to represent any party, other than EPA, with respect to: (1) any work relating to CERCLA activities which pertain to a site where the Contractor previously performed work for EPA under this contract; or (2) any work that may jeopardize CERCLA enforcement actions which pertain to a site where the Contractor previously performed work for the EPA under this contract.

(d) The following applies to FIT work at sites under this contract where only FIT work is performed, except for those sites where EPA has made a determination of "no further remedial action planned" (NFRAP): Unless prior written approval is obtained from the cognizant EPA Contracting Officer, the Contractor, during the life of the work assignment and for a period of three (3) years after the completion of the work assignment, agrees not to enter into a contract with or to represent any party, other than EPA, with respect to: (1) Any work relating to CERCLA activities which pertain to a site where the Contractor previously performed work for EPA under this contract; or (2) any work that may jeopardize CERCLA enforcement actions which pertain to a site where the Contractor previously performed work for the EPA under this contract.

(e) The Contractor agrees in advance that if any bids/proposals are submitted for any work that would require written approval of the Contracting Officer prior to entering into a contract subject to the restrictions of this clause, then the bids/proposals are submitted at the Contractor's own risk. Therefore, no claim shall be made against the Government to recover bid/proposal costs as a direct cost whether the request for authorization to enter into the contract is denied or approved.

(f) To the extent that the work under this contract requires access to proprietary or confidential business or financial data of

other companies, and as long as such data remains proprietary or confidential, the Contractor shall protect such data from unauthorized use and disclosure.

(g) The Contractor agrees to insert in each subcontract or consultant agreement placed hereunder, except for subcontracts or consultant agreements for nondiscretionary technical or engineering services, including treatability studies, well drilling, fence erecting, plumbing, utility hookups, security guard services, or electrical services, provisions which shall conform substantially to the language of this clause, including this paragraph (g) unless otherwise authorized by the Contracting Officer. The Contractor may request in writing that the Contracting Officer exempt from this clause a particular subcontract or consultant agreement for nondiscretionary technical or engineering services not specifically listed above, including laboratory analysis. The Contracting Officer will review and evaluate each request on a case-by-case basis before approving or disapproving the request.

(h) If the Contractor seeks an expedited decision regarding its initial future contracting request, the Contractor may submit its request to both the Contracting Officer and the next administrative level within the Contracting Officer's organization.

(i) A review process available to the Contractor when an adverse determination is received shall consist of a request for reconsideration to the Contracting Officer or a request for review submitted to the next administrative level within the Contracting Officer's organization. An adverse determination resulting from a request for reconsideration by the Contracting Officer will not preclude the contractor from requesting a review by the next administrative level. Either a request for review or a request for reconsideration must be submitted to the appropriate level within 30 calendar days after receipt of the initial adverse determination.

(End of clause)

Limitation of Future Contracting Alternate I (TCRR) (May 1994)

(a) The parties to this contract agree that the Contractor will be restricted in its future contracting in the manner described below. Except as specifically provided in this clause, the Contractor shall be free to compete for contracts on an equal basis with other companies.

(b) If the Contractor, under the terms of this contract, or through the performance of work pursuant to this contract, is required to develop specifications or statements of work and such specifications or statements of work are incorporated into an EPA solicitation, the Contractor shall be ineligible to perform the work described in that solicitation as a prime Contractor or subcontractor under an ensuing EPA contract.

(c) Unless prior written approval is obtained from the cognizant EPA Contracting Officer, the Contractor, during the life of the delivery order or tasking document and for a period of five (5) years after the completion of the delivery order or tasking document, agrees not to enter into a contract with or to represent any party, other than EPA, with respect to: (1) any work relating to CERCLA activities which pertain to a site where the Contractor previously performed work for EPA under this contract; or (2) any work that may jeopardize CERCLA enforcement actions which pertain to a site where the Contractor previously performed work for the EPA under this contract.

(d) During the life of this contract, including any options, the Contractor agrees that unless otherwise authorized by the Contracting Officer:

(1) It will not provide any Technical Assistance Team (TAT) type activities (e.g., TAT contracts) to EPA within the Contractor's Time Critical Rapid Response (TCRR) assigned geographical area(s), either as a prime contractor, subcontractor, or consultant.

(2) It will not provide any Technical Assistance Team (TAT) type activities (e.g., TAT contracts) to EPA as a prime contractor, subcontractor or consultant at a site where it has performed or plans to perform TCRR work.

(3) It will be ineligible for award of TAT type activities contracts for sites within its respective TCRR assigned geographical area(s) which result from a CERCLA administrative order, a CERCLA or RCRA consent decree or a court order.

(e) The Contractor agrees in advance that if any bids/proposals are submitted for any work that would require written approval of the Contracting Officer prior to entering into a contract subject to the restrictions of this clause, then the bids/proposals are submitted at the Contractor's own risk. Therefore, no claim shall be made against the Government to recover bid/proposal costs as a direct cost whether the request for authorization to enter into the contract is denied or approved.

(f) To the extent that the work under this contract requires access to proprietary or confidential business or financial data of other companies, and as long as such data remains proprietary or confidential, the Contractor shall protect such data from unauthorized use and disclosure.

(g) The Contractor agrees to insert in each subcontract or consultant agreement placed hereunder, except for subcontracts or consultant agreements for nondiscretionary technical or engineering services, including treatability studies, well drilling, fence erecting, plumbing, utility hookups, security guard services, or electrical services, provisions which shall conform substantially to the language of this clause, including this paragraph (g) unless otherwise authorized by the Contracting Officer. The Contractor may request in writing that the Contracting Officer exempt from this clause a particular subcontract or consultant agreement for nondiscretionary technical or engineering services not specifically listed above, including laboratory analysis. The Contracting Officer will review and evaluate each request on a case-by-case basis before approving or disapproving the request.

(h) If the Contractor seeks an expedited decision regarding its initial future contracting request, the Contractor may submit its request to both the Contracting Officer and the next administrative level within the Contracting Officer's organization.

(i) A review process available to the Contractor when an adverse determination is received shall consist of a request for reconsideration to the Contracting Officer or a request for review submitted to the next administrative level within the Contracting Officer's organization. An adverse determination resulting from a request for reconsideration by the Contracting Officer will not preclude the Contractor from requesting a review by the next administrative level. Either a request for review or a request for reconsideration must be submitted to the appropriate level within 30 calendar days after receipt of the initial adverse determination.

(End of clause)

Limitation of Future Contracting, Alternate II (TAT) (May 1994)

(a) The parties to this contract agree that the Contractor will be restricted in its future contracting in the manner described below. Except as specifically provided in this clause, the Contractor shall be free to compete for contracts on an equal basis with other companies.

(b) If the Contractor, under the terms of this contract, or through the performance of work pursuant to this contract, is required to develop specifications or statements of work and such specifications or statements of work are incorporated into an EPA solicitation, the Contractor shall be ineligible to perform the work described in that solicitation as a prime Contractor or subcontractor under an ensuing EPA contract.

(c) Unless prior written approval is obtained from the cognizant EPA Contracting Officer, the Contractor, during the life of the technical direction document and for a period of five (5) years after the completion of the technical direction document, agrees not to enter into a contract with or to represent any party, other than EPA, with respect to: (1) Any work relating to CERCLA activities which pertain to a site where the Contractor previously performed work for EPA under this contract; or (2) any work that may jeopardize CERCLA enforcement actions which pertain to a site where the Contractor previously performed work for the EPA under this contract.

(d) During the life of this contract, including any options, the Contractor agrees that unless otherwise authorized by the Contracting Officer:

(1) It will not provide to EPA cleanup services (e.g., Time Critical Rapid Response (TCRR) contracts) within the Contractor's Technical Assistance Team (TAT) assigned geographical area(s), either as a prime Contractor, subcontractor, or consultant.

(2) Unless an individual design for the site has been prepared by a third party, it will not provide to EPA as a prime contractor, subcontractor or consultant any remedial construction services at a site where it has performed or plans to perform TAT work. This clause will not preclude TAT contractors from performing construction management services under other EPA contracts.

(3) It will be ineligible for award of TCRR type activities contracts for sites within its respective TAT assigned geographical area(s)

which result from a CERCLA administrative order, a CERCLA or RCRA consent decree or a court order.

(e) The Contractor agrees in advance that if any bids/proposals are submitted for any work that would require written approval of the Contracting Officer prior to entering into a contract subject to the restrictions of this clause, then the bids/proposals are submitted at the Contractor's own risk. Therefore, no claim shall be made against the Government to recover bid/proposal costs as a direct cost whether the request for authorization to enter into the contract is denied or approved.

(f) To the extent that the work under this contract requires access to proprietary or confidential business or financial data of other companies, and as long as such data remains proprietary or confidential, the Contractor shall protect such data from unauthorized use and disclosure.

(g) The Contractor agrees to insert in each subcontract or consultant agreement placed hereunder, except for subcontracts or consultant agreements for nondiscretionary technical or engineering services, including treatability studies, well drilling, fence erecting, plumbing, utility hookups, security guard services, or electrical services, provisions which shall conform substantially to the language of this clause, including this paragraph (g) unless otherwise authorized by the Contracting Officer. The Contractor may request in writing that the Contracting Officer exempt from this clause a particular subcontract or consultant agreement for nondiscretionary technical or engineering services not specifically listed above, including laboratory analysis. The Contracting Officer will review and evaluate each request on a case-by-case basis before approving or disapproving the request.

(h) If the Contractor seeks an expedited decision regarding its initial future contracting request, the Contractor may submit its request to both the Contracting Officer and the next administrative level within the Contracting Officer's organization.

(i) A review process available to the Contractor when an adverse determination is received shall consist of a request for reconsideration to the Contracting Officer or a request for review submitted to the next administrative level within the Contracting Officer's organization. An adverse determination resulting from a request for reconsideration by the Contracting Officer will not preclude the Contractor from requesting a review by the next administrative level. Either a request for review or a request for reconsideration must be submitted to the appropriate level within 30 calendar days after receipt of the initial adverse determination.

(End of clause)

Limitation of Future Contracting; Alternate III (ESAT) (May 1994)

(a) The parties to this contract agree that the Contractor will be restricted in its future contracting in the manner described below. Except as specifically provided in this clause, the Contractor shall be free to compete for contracts on an equal basis with other companies.

(b) If the Contractor, under the terms of this contract, or through the performance of work pursuant to this contract, is required to develop specifications or statements of work and such specifications or statements of work are incorporated into an EPA solicitation, the Contractor shall be ineligible to perform the work described in that solicitation as a prime Contractor or subcontractor under an ensuing EPA contract.

(c) To the extent that the work under this contract requires access to proprietary or confidential business or financial data of other companies, and as long as such data remains proprietary or confidential, the Contractor shall protect such data from unauthorized use and disclosure.

(d) The Contractor agrees to insert in each subcontract or consultant agreement placed hereunder, except for subcontracts or consultant agreements for nondiscretionary technical or engineering services, including treatability studies, well drilling, fence erecting, plumbing, utility hookups, security guard services, or electrical services, provisions which shall conform substantially to the language of this clause, including this paragraph (d) unless otherwise authorized by the Contracting Officer. The Contractor may request in writing that the Contracting Officer exempt from this clause a particular subcontract or consultant agreement for nondiscretionary technical or engineering services not specifically listed above, including laboratory analysis. The Contracting Officer will review and evaluate each request on a case-by-case basis before approving or disapproving the request.

(e) If the Contractor seeks an expedited decision regarding its initial future contracting request, the contractor may submit its request to both the Contracting Officer and the next administrative level within the Contracting Officer's organization.

(f) A review process available to the Contractor when an adverse determination is received shall consist of a request for reconsideration to the Contracting Officer or a request for review submitted to the next administrative level within the Contracting Officer's organization. An adverse determination resulting from a request for reconsideration by the Contracting Officer will not preclude the Contractor from requesting a review by the next administrative level. Either a request for review or a request for reconsideration must be submitted to the appropriate level within 30 calendar days after receipt of the initial adverse determination.

(End of clause)

Limitation of Future Contracting, Alternate IV (TES) (May 1994)

(a) The parties to this contract agree that the Contractor will be restricted in its future contracting in the manner described below. Except as specifically provided in this clause, the Contractor shall be free to compete for contracts on an equal basis with other companies.

(b) During the performance period of this contract, the Contractor will be ineligible to enter into any contract for remedial planning and/or implementation projects for sites within the assigned geographical area(s) covered by this contract without the prior written approval of the EPA Contracting Officer.

(c) If the Contractor, under the terms of this contract, or through the performance of work pursuant to this contract, is required to develop specifications or statements of work and such specifications or statements of work are incorporated into an EPA solicitation, the Contractor shall be ineligible to perform the work described in that solicitation as a prime Contractor or subcontractor under an ensuing EPA contract.

(d) Unless prior written approval is obtained from the cognizant EPA Contracting Officer, the Contractor, during the life of the work assignment and for a period of seven (7) years after the completion of the work assignment, agrees not to enter into a contract with or to represent any party, other than EPA, with respect to: (1) Any work relating to CERCLA activities which pertain to a site where the Contractor previously performed work for EPA under this contract; or (2) any work that may jeopardize CERCLA enforcement actions which pertain to a site where the Contractor previously performed work for the EPA under this contract.

(e) The Contractor agrees in advance that if any bids/proposals are submitted for any work that would require written approval of the Contracting Officer prior to entering into a contract subject to the restrictions of this clause, then the bids/proposals are submitted at the Contractor's own risk. Therefore, no claim shall be made against the Government to recover bid/proposal costs as a direct cost whether the request for authorization to enter into the contract is denied or approved.

(f) To the extent that the work under this contract requires access to proprietary or confidential business or financial data of other companies, and as long as such data remains proprietary or confidential, the Contractor shall protect such data from unauthorized use and disclosure.

(g) The Contractor agrees to insert in each subcontract or consultant agreement placed hereunder, except for subcontracts or consultant agreements for nondiscretionary technical or engineering services, including treatability studies, well drilling, fence erecting, plumbing, utility hookups, security guard services, or electrical services, provisions which shall conform substantially to the language of this clause, including this paragraph (g) unless otherwise authorized by the Contracting Officer. The Contractor may request in writing that the Contracting Officer exempt from this clause a particular subcontract or consultant agreement for nondiscretionary technical or engineering services not specifically listed above, including laboratory analysis. The Contracting Officer will review and evaluate each request on a case-by-case basis before approving or disapproving the request.

(h) If the Contractor seeks an expedited decision regarding its initial future contracting request, the Contractor may submit its request to both the Contracting Officer and the next administrative level within the Contracting Officer's organization.

(i) A review process available to the Contractor when an adverse determination is received shall consist of a request for reconsideration to the Contracting Officer or a request for review submitted to the next administrative level within the Contracting

Officer's organization. An adverse determination resulting from a request for reconsideration by the Contracting Officer will not preclude the Contractor from requesting a review by the next administrative level. Either a request for review or a request for reconsideration must be submitted to the appropriate level within 30 calendar days after receipt of the initial adverse determination.

(End of clause)

Limitation of Future Contracting, Alternate V (Headquarters Support) (May 1994)

(a) The parties to this contract agree that the Contractor will be restricted in its future contracting in the manner described below. Except as specifically provided in this clause, the Contractor shall be free to compete for contracts on an equal basis with other companies.

(b) If the Contractor, under the terms of this contract, or through the performance of work pursuant to this contract, is required to develop specifications or statements of work and such specifications or statements of work are incorporated into an EPA solicitation, the Contractor shall be ineligible to perform the work described in that solicitation as a prime Contractor or subcontractor under an ensuing EPA contract.

(c) The Contractor, during the life of this contract, will be ineligible to enter into a contract with EPA to perform response action work (e.g., Alternative Remedial Contracting Strategy (ARCS), Time Critical Rapid Response (TCRR), Technical Assistance Team (TAT), and Technical Enforcement Support (TES) contracts), unless otherwise authorized by the Contracting Officer.

(d) The Contractor agrees in advance that if any bids/proposals are submitted for any work that would require written approval of the Contracting Officer prior to entering into a contract subject to the restrictions of this clause, then the bids/proposals are submitted at the Contractor's own risk. Therefore, no claim shall be made against the Government to recover bid/proposal costs as a direct cost whether the request for authorization to enter into the contract is denied or approved.

(e) To the extent that the work under this contract requires access to proprietary or confidential business or financial data of other companies, and as long as such data remains proprietary or confidential, the Contractor shall protect such data from unauthorized use and disclosure.

(f) The Contractor agrees to insert in each subcontract or consultant agreement placed hereunder, except for subcontracts or consultant agreements for nondiscretionary technical or engineering services, including treatability studies, well drilling, fence erecting, plumbing, utility hookups, security guard services, or electrical services, provisions which shall conform substantially to the language of this clause, including this paragraph (f) unless otherwise authorized by the Contracting Officer. The Contractor may request in writing that the Contracting Officer exempt from this clause a particular subcontract or consultant agreement for nondiscretionary technical or engineering services not specifically listed above, including laboratory analysis. The Contracting Officer will review and evaluate each request on a case-by-case basis before approving or disapproving the request.

(g) If the Contractor seeks an expedited decision regarding its initial future contracting request, the Contractor may submit its request to both the Contracting Officer and the next administrative level within the Contracting Officer's organization.

(h) A review process available to the Contractor when an adverse determination is received shall consist of a request for reconsideration to the Contracting Officer or a request for review submitted to the next administrative level within the Contracting Officer's organization. An adverse determination resulting from a request for reconsideration by the Contracting Officer will not preclude the Contractor from requesting a review by the next administrative level. Either a request for review or a request for reconsideration must be submitted to the appropriate level within 30 calendar days after receipt of the initial adverse determination.

(End of clause)

Limitation of Future Contracting; Alternate VI (Site Specific) (May 1994)

The parties to this contract agree that the Contractor will be restricted in its future contracting in the manner described below. Except as specifically provided in this clause, the Contractor shall be free to compete for contracts on an equal basis with other companies.

(b) If the Contractor, under the terms of this contract, or through the performance of work pursuant to this contract, is required to develop specifications or statements of work and such specifications or statements of work are incorporated into an EPA solicitation, the Contractor shall be ineligible to perform the work described in that solicitation as a prime contractor or subcontractor under an ensuing EPA contract.

(c) Unless prior written approval is obtained from the cognizant EPA Contracting Officer, the Contractor, during the life of the contract and for a period of five (5) years after the expiration of the contract agrees not to enter into a contract with or to represent any party, other than EPA, with respect to: (1) any work relating to CERCLA activities which pertain to the site where the Contractor previously performed work for EPA under this contract; or (2) any work that may jeopardize CERCLA enforcement actions which pertain to the site where the Contractor previously performed work for the EPA under this contract.

(d) During the life of this contract, including any options, the Contractor agrees that unless otherwise authorized by the Contracting Officer:

(1) It will not provide any Technical Assistance Team (TAT) type activities (e.g., TAT contracts) to EPA on the site either as a prime contractor, subcontractor, or consultant.

(2) It will be ineligible for award of contracts pertaining to this site which result from a CERCLA administrative order, a CERCLA or RCRA consent decree or a court order.

(e) The Contractor agrees in advance that if any bids/proposals are submitted for any work that would require written approval of the Contracting Officer prior to entering into a contract subject to the restrictions of this clause, then the bids/proposals are submitted at the Contractor's own risk. Therefore, no claim shall be made against the Government to recover bid/proposal costs as a direct cost whether the request for authorization to enter into the contract is denied or approved.

(f) To the extent that the work under this contract requires access to proprietary or confidential business or financial data of other companies, and as long as such data remains proprietary or confidential, the Contractor shall protect such data from unauthorized use and disclosure.

(g) Contractors who are performing nondiscretionary technical or engineering services, including construction work, may request a waiver from or modification to this clause by submitting a written request to the Contracting Officer. The Contracting Officer shall make the determination regarding whether to waive or modify the clause on a case-by-case basis.

(h) The Contractor agrees to insert in each subcontract or consultant agreement placed hereunder, except for subcontracts or consultant agreements for nondiscretionary technical or engineering services, including treatability studies, well drilling, fence erecting, plumbing, utility hookups, security guard services, or electrical services, provisions which shall conform substantially to the language of this clause, including this paragraph (h) unless otherwise authorized by the Contracting Officer. The Contractor may request in writing that the Contracting Officer exempt from this clause a particular subcontract or consultant agreement for nondiscretionary technical or engineering services not specifically listed above, including laboratory analysis. The Contracting Officer will review and evaluate each request on a case-by-case basis before approving or disapproving the request.

(i) If the Contractor seeks an expedited decision regarding its initial future contracting request, the Contractor may submit its request to both the Contracting Officer and the next administrative level within the Contracting Officer's organization.

(j) A review process available to the Contractor when an adverse determination is received shall consist of a request for reconsideration to the Contracting Officer or a request for review submitted to the next administrative level within the Contracting Officer's organization. An adverse determination resulting from a request for reconsideration by the Contracting Officer will not preclude the Contractor from requesting a review by the next administrative level. Either a request for review or a request for reconsideration must be submitted to the appropriate level within 30 calendar days after receipt of the initial adverse determination.

(End of clause)

11. Section 1552.210–80 is added to read as follows:

§ 1552.210–80 Annual certification.

As prescribed in 1510.011–80, insert the following clause:

Annual Certification (May 1994)

The Contractor shall submit an annual conflict of interest certification to the Contracting Officer. In this certification, the Contractor shall certify annually that, to the best of the Contractor's knowledge and belief, all actual or potential organizational conflicts of interest have been reported to EPA. In addition, in this annual certification, the Contractor shall certify that it has informed its personnel who perform work under EPA contracts or relating to EPA contracts of their obligation to report personal and organizational conflicts of interest to the Contractor. Such certification must be signed by a senior executive of the company and submitted in accordance with instructions provided by the Contracting Officer. The initial certification shall cover the one-year period from the date of contract award, and all subsequent certifications shall cover successive annual periods thereafter, until expiration or termination of the contract. The certification must be received by the Contracting Officer no later than 45 days after the close of the certification period covered.

(End of clause)

12. Section 1552.212–71 is amended by adding Alternate I and II, to be used alternatively and not together, at the end of the section:

1552.212–71 Work assignments.

* * * * *

Alternate I. As prescribed in 1512.104(b), modify the existing clause by adding the following paragraph (f) to the basic clause:

(f) Within 20 days of receipt of the work assignment or similar tasking document, the Contractor shall provide a conflict of interest certification. Where work assignments or similar tasking documents are issued under this contract for work on or directly related to a site, the Contractor is only required to provide a conflict of interest certification for the first work assignment issued for that site. For all subsequent work on that site under this contract, the Contractor has a continuing obligation to search and report any actual or potential conflicts of interest, but no additional conflict of interest certifications are required.

Before submitting the conflict of interest certification, the contractor shall search its records accumulated, at a minimum, over the past three years immediately prior to the receipt of the work assignment or similar tasking document. In the COI certification, the Contractor must certify to the best of the Contractor's knowledge and belief, that all actual or potential organizational conflicts of interest have been reported to the Contracting Officer or that to the best of the Contractor's knowledge and belief, no actual or potential organizational conflicts of interest exist. In addition, the Contractor must certify that its personnel who perform work under this work assignment or relating to this work assignment have been informed of their obligation to report personal and organizational conflicts of interest to the Contractor. The certification shall also include a statement that the Contractor recognizes its continuing obligation to identify and report any actual or potential conflicts of interest arising during performance of this work assignment or other work related to this site.

Alternate II. As prescribed in 1512.104(b), modify the existing clause by adding the following paragraph (f) to the basic clause:

(f) Within 20 days of receipt of the work assignment or similar tasking document, the Contractor shall provide a conflict of interest certification. Where work assignments or similar tasking documents are issued under this contract for work on or directly related to a site, the Contractor is only required to provide a conflict of interest certification for the first work assignment issued for that site. For all subsequent work on that site under this contract, the Contractor has a continuing obligation to search and report any actual or potential conflicts of interest, but no additional conflict of interest certifications are required.

Before submitting the conflict of interest certification, the contractor shall initially search through all of its available records to identify any actual or potential conflicts of interest. During the first three years of this contract, the contractor shall search through all records created since the beginning of the contract plus the records of the contractor prior to the award of the contract until a minimum of three years of records are accumulated. Once three years of records have accumulated, prior to certifying, the contractor shall search its records accumulated, at a minimum, over the past three years immediately prior to the receipt of the work assignment or similar tasking document. In the certification, the Contractor must certify to the best of the Contractor's knowledge and belief, that all actual or potential organizational conflicts of interest have been reported to the Contracting Officer or that to the best of the Contractor's knowledge and belief, no actual or potential organizational conflicts of interest exist. In addition, the Contractor must certify that its personnel who perform work under this work assignment or relating to this work assignment have been informed of their obligation to report personal and organizational conflicts of interest to the Contractor. The certification shall also include a statement that the Contractor recognizes its continuing obligation to identify and report any actual or potential conflicts of interest arising during performance of this work assignment or other work related to this site.

(End of clause)

13. Section 1552.227–76 is added to read as follows:

1552.227–76 Project employee confidentiality agreement.

As prescribed in 1527.409, insert the following clause:

Project Employee Confidentiality Agreement (May 1994)

(a) The Contractor recognizes that Contractor employees in performing this contract may have access to data, either provided by the Government or first generated during contract performance, of a sensitive nature which should not be released to the public without Environmental Protection Agency (EPA) approval. Therefore, the Contractor agrees to obtain confidentiality agreements from all of its employees working on requirements under this contract.

(b) Such agreements shall contain provisions which stipulate that each employee agrees that the employee will not disclose, either in whole or in part, to any entity external to EPA, the Department of Justice, or the Contractor, any information or data (as defined in FAR Section 27.401) provided by the Government or first generated by the Contractor under this contract, any site-specific cost information, or any enforcement strategy without first obtaining the written permission of the EPA Contracting Officer. If a contractor, through an employee or otherwise, is subpoenaed to testify or produce documents, which could result in such disclosure, the Contractor must provide immediate advance notification to the EPA so that the EPA can authorize such disclosure or have the opportunity to take action to prevent such disclosure. Such agreements shall be effective for the life of the contract and for a period of five (5) years after completion of the contract.

(c) The EPA may terminate this contract for convenience, in whole or in part, if it deems such termination necessary to prevent the unauthorized disclosure of information to outside entities. If such a disclosure occurs without the written permission of the EPA Contracting Officer, the Government may terminate the contract, for default or convenience, or pursue other remedies as may be permitted by law or this contract.

(d) The Contractor further agrees to insert in any subcontract or consultant agreement placed hereunder, except for subcontracts or consultant agreements for well drilling, fence erecting, plumbing, utility hookups, security guard services, or electrical services, provisions which shall conform substantially to the language of this clause, including this paragraph, unless otherwise authorized by the Contracting Officer.

(End of clause)

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April 19, 1994

Part III

Department of Housing and Urban Development

Office of the Secretary

24 CFR Part 92
HOME Investment Partnerships Program; Final Rule and Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 92

[Docket No. R–94–1648; FR–3411–I–03]

RIN 2501–AB50

HOME Investment Partnerships Program

AGENCY: Office of the Secretary, HUD.

ACTION: Interim rule.

SUMMARY: This interim rule amends the existing interim rule for the HOME Investment Partnerships Program by implementing amendments enacted by the Housing and Community Development Act of 1992 and by making a number of clarifying changes.

DATES: Effective Date: May 19, 1994 through June 30, 1995.

Comments due date: Comments on this interim rule must be submitted on or before June 20, 1994.

ADDRESSES: Interested persons are invited to submit comments regarding this interim rule to the Rules Docket Clerk, Office of General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address. FAXED comments will not be accepted.

FOR FURTHER INFORMATION CONTACT: Mary Kolesar, Director, Program Policy Division, Office of Affordable Housing Programs, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 708–2470, TDD (202) 708–2565. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act Statement

The information collection requirements for the HOME Investment Partnerships Program have been approved by the Office of Management and Budget, under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520), and assigned OMB control number 2501–0013. This interim rule does not contain additional information collection requirements.

II. Background

The HOME Investment Partnerships Program (HOME) was enacted under title II (42 U.S.C. 12701–12839) of the Cranston-Gonzalez National Affordable Housing Act (NAHA) (Pub. L. 101–625, approved November 28, 1990). On March 19, 1991, the Department published a proposed rule (56 FR 11592) to implement the HOME Program. The Department received 119 public comments in response to the proposed rule. After reviewing and considering these comments, HUD published an interim rule on December 16, 1991 (56 FR 65313), inviting additional comments on the program.

The Department received 118 public comments on the interim rule. In partial response to these comments and HUD's experience in implementing the program, an interim rule to make necessary changes on an expedited basis to the December 16, 1991 interim rule was developed. In addition, the Housing and Community Development Act of 1992 (HCDA 1992) (Pub. L. 102–550, approved October 28, 1992) included a substantial number of amendments to the HOME program. Some of the HCDA 1992 amendments that were determined to be immediately effective were included in the "necessary changes" interim rule, which was published on December 22, 1992 (57 FR 60960). The remaining HCDA 1992 amendments determined to be immediately effective were published in an interim rule on June 23, 1993 (58 FR 34130).

Other HCDA 1992 changes were determined to require the publication of a proposed rule with an opportunity for public notice and comment before they could be implemented. A proposed rule for this purpose was published on April 29, 1993 (58 FR 26048). The Department received 21 comments in response to the proposed rule. Twelve were from state agencies; four were from local agencies; and five comments were from associations. This rule implements the April 29, 1993 proposed rule as an interim rule. This rule is being published as an interim rule and not as a final rule because the HOME program regulation at 24 CFR part 92 has not yet been issued as a final rule.

In addition to implementing the April 29 proposed rule, this interim rule addresses two additional areas of necessary amendments to the HOME regulation. First, a number of clarifying revisions are made to the HOME regulation to provide additional guidance for program participants, as explained below in the discussion of changes made to individual sections. Second, Departmental staff reviewed the HOME rule in relationship to the Community Development Block Grant (CDBG) Program, and developed a number of recommendations for greater compatibility between the HOME and CDBG regulations which are included in this interim rule.

The following discussion, arranged according to the sequence of the HOME rule sections being considered, summarizes and responds to the comments received, and describes the changes made to the HOME Program regulation in this interim rule. Unless otherwise indicated in this preamble, the portions of this rule that were a part of the proposed rule remain the same.

In § 92.2, the definition of *commitment* is revised. The Department believes greater flexibility in the definition of commitment is required to give participating jurisdictions additional time to use their HOME allocations. In addition to commitments to specific projects which are recognized as legally binding agreements between PJs and project owners, the Department is expanding the definition of commitment. The expanded definition would count as commitments legally binding agreements with State recipients, subrecipients, contractors or reservation of funds by Community Housing Development Organizations (CHDOs).

Initially, the Department believed that additional flexibility was warranted for FY1992 funds because of the slow start-up of the program based on initial statutory complexity. With both significant statutory amendments of the Housing and Community Development Act of 1992 and regulatory simplification by the Department, the ability of States and local governments to operate the HOME Program has now been increased. Nonetheless, the Department recognizes that to build upon the momentum of these changes, an expansion of the definition will provide regulatory relief to allow funds to be committed to both state recipients, subrecipients and CHDOs in a more orderly and equitable fashion. States can work with small cities and recently formed nonprofits to build capacity without fear of losing funds in the short term. Local participating jurisdictions may also take on more difficult rental projects with nonprofits which serve very-low income families or special populations, which often require greater development time.

The Department will provide additional guidance on how these commitments will be documented for purposes of meeting the commitment deadlines. While the Department is providing greater flexibility on commitments, it will continue to collect information on commitments to specific projects and will maintain its emphasis on this aspect of the program both in reporting and monitoring of

participating jurisdictions. All cash and management procedures will remain in effect with regard to reporting and disbursement of HOME funds.

The definition of *commit to a specific local project,* included within the definition of *commitment,* is revised by changing the start construction period for publicly owned projects from six months to twelve months. This change will make the start construction period for publicly owned projects consistent with the start construction period for privately owned projects.

The definition of *community housing development organization* in § 92.2 is revised to specify that this term means a private nonprofit organization that has a tax-exempt ruling from the Internal Revenue Service under section 501(c)(3) or (4) of the Internal Revenue Code of 1986. The definition did not previously include the reference to paragraph (3) or (4) of section 501.

The definition of *housing* in § 92.2 is revised to include elder cottage housing opportunity (ECHO) units.

One comment recommended that the "footprint" foundation requirements present in the definition of *reconstruction* should be eased to give participating jurisdictions (PJs) the decision-making ability to waive the requirement if the situation warrants. The Department agrees that additional flexibility may be needed, for example, to permit PJs to meet current zoning requirements that would affect the reconstruction site. The definition of *reconstruction* at § 92.2 is modified to permit a unit to be reconstructed anywhere on the existing lot. However, all other Federal requirements of subpart H would still be applicable to the project.

A new § 92.4 is added to implement a Department-wide policy that provides for the expiration of interim rules within a set period of time if they are not issued in final form before the end of the period. The expiration period may be extended by notice published in the **Federal Register.** The expiration date for the HOME interim rule is June 30, 1995.

While reconstruction is considered a rehabilitation activity for the general purposes of the HOME Program, this would not always be the case for complying with the environmental review requirements at § 92.352. If a HOME-assisted project is reconstructed upon the same foundation or footprint as the original structure, it may be treated as a rehabilitation project for the purposes of complying with part 50 and part 58. However, the reconstruction of a structure on another portion of the lot must be treated as new construction for purposes of part 50 and part 58.

The treatment of administrative costs as eligible HOME costs is clarified in this rule. The definition of administrative costs is removed from § 92.2 and incorporated into § 92.207, a section previously held in reserve, where administrative and planning costs are listed as eligible costs. The reference to project delivery costs that were a part of the definition of administrative costs is deleted and a more specific and useful reference is made to staff and overhead costs directly related to a project. In addition, participating jurisdictions are given the option of charging such staff and overhead costs as a "related soft cost" of a project, under a new § 92.206(c)(6), or as an administrative cost under § 92.207. If charged as an administrative cost, these costs are included in the ten percent cap applicable to administrative and planning costs. If charged to specific projects as related soft costs, these costs must be prorated among HOME-assisted units, and are subject to the maximum per unit subsidy limits and matching requirements.

A typographical error in the definition of *single room occupancy* in § 92.2 is corrected by replacing, in the third sentence of the definition, the word "residual" with "residential."

Section 92.50(f) is redesignated as § 92.50(d)(5), and its applicability is limited to paragraph 92.50(d) to conform to the intent expressed in Amendment No. 15 on page 14 of H.Rept. 103–273, the Conference Report for the Department's 1994 Fiscal Year appropriations with regard to minimum thresholds.

The reference to "housing strategy" is deleted from the title of § 92.61, since insular areas are no longer required to have one.

A correction to § 92.64(a)(1) (dealing with the applicability of HOME program requirements to insular areas) is made to delete references to §§ 92.208 through 92.210, which have been revised since first being cited in this section, and to the prohibition against using HOME funds to defray administrative costs.

Section 92.150(b)(2) is revised to include the new eligible activities—administrative expenses, and community housing development organization (CHDO) operating expenses—as required in the program description that participating jurisdictions must submit.

A conforming change is made to § 92.204(a)(1) to remove the reference to §§ 92.208 through 92.210, which is no longer relevant because of amendments made to these sections.

In § 92.205(a)(1), the reference to specific eligible costs at the end of the paragraph is revised to include §§ 92.206 through 92.209, in accordance with the reorganization of sections dealing with eligible costs, as described in the following preamble paragraph.

The listing of eligible costs is reorganized in this rule. Rather than listing all eligible costs at § 92.206, eligible costs are listed, starting at § 92.206 and continuing through previously reserved §§ 92.207, 92.208, and 92.209, by the type of cost. Thus, § 92.206 now covers only eligible project costs; § 92.207 covers eligible administrative and planning costs; § 92.208 deals with eligible CHDO operating expense costs; and § 92.209 covers eligible costs related to tenant-based rental assistance. Within these sections, clarifying changes are made as explained below. In addition, conforming changes throughout part 92 to reflect the new section numbers of eligible costs are made by this rule.

Section 92.206(a)(2) is amended to permit the refinancing of secured, existing debt on a single family, owner-occupied unit when *lending* program funds to rehabilitate the unit, if overall housing costs of the borrower will be reduced and made more affordable. This means a PJ can make one loan to the homeowner to repay existing private debt and provide the rehabilitation loan. HOME funds cannot be used to pay the transaction costs of privately refinancing the existing debt.

Section 92.206(a)(3) is revised to clarify the eligibility of demolition, utility connections and site improvements associated with new construction and rehabilitation. This section clarifies that off-site utility connections from the property line to the adjacent street are eligible. It also provides that site improvements may include on-site roads and water and sewer lines necessary to the development of the project. The project site is defined as the property, owned by the project owner, upon which the project is located.

Section 92.206(c)(5) is clarified by adding the modifier "project" before "operating expenses" to distinguish these costs from CHDO operating expenses, which are now covered under § 92.208.

As discussed above, a new § 92.206(c)(6) makes staff and overhead costs eligible as a "related soft cost" of a project.

A new § 92.206(c)(7) is added to make the payment of impact fees that are commonly charged for all projects within a jurisdiction, an eligible cost for new construction and rehabilitation,

and the prohibition against impact fees at § 92.214(a)(8) is deleted.

Section 92.206(g) is redesignated as § 92.208, and a technical correction is made in this section to change the reference concerning requirements and limitations on the receipt of operating expenses by community housing development organizations from § 92.301 (e) and (f) to § 92.300 (e) and (f). Capacity building costs under § 92.300(b) are also specifically listed as eligible HOME costs in § 92.208(b).

A request was received for clarification of § 92.211(a)(2), amended by the December 22,1992 interim rule to implement an HCDA 1992 amendment that replaces the use of the Section 8 waiting list as the selection criterion for families eligible to receive HOME-funded tenant-based rental assistance. This assistance is now provided in accordance with a participating jurisdiction's written tenant selection policies and criteria that are consistent with the purposes of providing housing to very low- and low-income families and are reasonably related to preference rules established under section 6(c)(4)(A) of the Housing Act of 1937 (42 U.S.C. 1437 *et. seq.*) Questions arise because of uncertainty concerning the meaning of "reasonably related to" the preference rules under section 6(c)(4)(A) of the Housing Act of 1937. These preference rules provide for local rental assistance programs in which at least 70% of the families assisted meet Federal preferences and 30% meet local preferences. For example, a Federal preference exists for homeless families. The HOME tenant-based rental assistance (TBRA) written selection policy may provide a preference to families that, although not presently homeless, are likely to be homeless in the near future. This may be the case for families in transitional housing, which is provided for only a set time period, or for families living temporarily with relatives or friends. Section 92.211(a)(2) is amended by adding a clarifying sentence to state that "reasonably related" means that the PJs may provide TBRA to families who currently meet a Federal preference or who because of circumstances would qualify in the near future for one of the three Federal preferences under section 6(c)(4)(A) of the Housing Act of 1937 without tenant-based rental assistance. These preferences are: (1) Families that occupy substandard housing (including families that are homeless or living in a shelter for homeless families); (2) families that are paying more than 50 percent of family income for rent; or (3) families that are involuntarily displaced.

Comments were received that objected to the requirements at § 92.211(f)(3) that limit a PJ's ability to establish TBRA payment standards based on local market conditions and a determination of rent reasonableness. The Department agrees that participating jurisdictions should be given greater discretion in the implementation of the HOME program, and § 92.211(f)(3) is amended accordingly.

In response to several questions concerning eligible acquisition costs, the list of prohibited activities at § 92.214 is revised to prohibit the use of HOME funds to acquire property owned by a participating jurisdiction, except for property acquired by the participating jurisdiction with HOME funds, or property acquired in anticipation of carrying out a HOME project. Such a transaction could not be considered a bona fide acquisition, since the participating jurisdiction owns the property and is providing assistance to buy the property. The element of an arm's length transaction is not present. This prohibition is added as paragraph (a)(8), which previously referred to impact fees.

In addition to the change (which appeared in the proposed rule) to § 92.218(a) to substitute "housing that qualifies as affordable housing under the HOME program" for "affordable housing assisted with HOME funds," § 92.218(c) is revised to give the new citations to the references to eligible costs. A new paragraph (e) is also added to § 92.218 to clarify that contributions that have been or will be counted towards satisfying a matching requirement of another Federal grant or award may not count toward satisfying the matching contribution requirement for the HOME program. This clarification is based on the language in the Department's common rule on uniform requirements for grants to State and local governments at 24 CFR 85.24(b)(3).

Eight comments opposed the policy outlined in the proposed rule that a PJ's contribution to a state or local tenant-based rental assistance program is not eligible as match. One comment pointed out some State constitutions prohibit the use of State funds for the development of private property. These States often have extensive TBRA programs to provide affordable housing. If TBRA is not allowable for match purposes, then these States would be limited in their ability to meet their match requirements.

The Department has been convinced by such arguments to permit local contributions to TBRA (but not related administrative costs) to be used for match. Section 92.219(b) is amended to permit match credit for TBRA which meets the provisions of §§ 92.210, 92.211 and 92.253(a) and (b). This parallels the approach taken for local contributions to affordable housing which is not HOME-assisted, but which must still conform to certain HOME requirements to be considered "affordable."

This interim rule also provides clarification, made in response to a number of comments that requested additional guidance, on what HOME requirements apply to projects in which state or local investment of funds are being counted as match. PJs must establish a procedure to monitor these HOME-eligible projects to ensure continued compliance with the requirements of 92.203 (income determinations), 92.210 (TBRA-security deposits), 92.211 (TBRA, except for 92.211(c), Term of rental assistance contract) 92.252 (rental) 92.253 (tenant protections) and 92.254 (ownership), but the units are not subject to the annual on-site inspections or recertification of income and rents as HOME projects are. HOME administrative funds may be used to monitor these projects for compliance with HOME requirements. No other HOME requirements apply, including the cross-cutting requirements of subpart H of part 92, to non-assisted projects counted as match. Investment in units other than affordable units does not count as match, and § 92.219(c) is amended to reflect this.

In general, contributions in HOME-eligible projects will be counted in the same manner as match contributions in HOME-assisted projects. A contribution will be counted only to the extent it is a permanent contribution and repayments are placed in the HOME local account. Once deposited in the HOME account the funds must be used for HOME-eligible projects; funds from repayments do not have to be matched but can not count as match. The contribution itself may be for any eligible forms of match except those in § 92.220(a) (2) and (4), which by statute must be made for affordable housing assisted with HOME funds.

Section 92.220(a)(1) is expanded to clarify that repayments of matching contributions in HOME-assisted projects, or in affordable housing projects that are not HOME-assisted in accordance with § 92.219(b), must be made to the local HOME account to earn match credit for the full loan amount. In both cases, HOME-assisted and non-HOME-assisted affordable housing projects, the contribution must be

contributed permanently to the project in order to qualify as match.

Section 92.220(a)(2) is revised and expanded to permit as an eligible form of match contribution all taxes, fees, and other charges that are imposed or charged on projects and waived by a State or local government. Before this change, only such charges waived by a participating jurisdiction were eligible.

Additional guidance on the match eligibility of contributions of land is provided in this rule. The general rule that the value of land not acquired with federal resources is a permissible form of matching contribution is still applicable. The reason for excluding land acquired with federal resources is that the authorizing statute for the HOME Program permits cash contributions only from non-federal resources as an eligible form of match. The ineligibility of federal resources cannot be circumvented by purchasing land with federal resources (for example, with CDBG funds) and then contributing the land to a HOME project in order to obtain match credit.

However, the question has arisen of whether or not the difference between the fair market value and the purchase price of land acquired with federal resources and donated to affordable housing would be an eligible form of match. The Department recognizes that this difference in value could qualify as an eligible contribution, but also recognizes that there are inherent difficulties in distinguishing between when such a transaction would merely be a "good buy" and when it would constitute a true contribution for match purposes. To provide guidance on this question so that match credit may be recognized for this form of contribution, § 92.220(a)(3) is revised to state that the acquisition cost in such a transaction must be demonstrably below the appraised value and must be acknowledged by the seller as a donation to affordable housing at the time of acquisition. Property that is acquired with federal assistance must be acquired specifically for HOME-assisted housing or for affordable housing that will be counted as match pursuant to § 92.219(b)(2). If these conditions are met, the full value of the difference in price may be claimed for match credit.

Two comments disagreed with the prohibition in § 92.220(a)(5)(iii) against permitting carryover of excess match related to bond proceeds to apply to subsequent years' 25 percent limitation. Upon reconsideration, the Department agrees that such a carryover is appropriate, and this interim rule permits it.

In § 92.221, the provision that defines when bond proceeds are recognized as match, which appeared as paragraph (b)(6) in the proposed rule, is added as paragraph (a)(7). This is because in the period between the publication of the proposed rule and this interim rule, an interim rule was published on June 23, 1993 (58 FR 34130) that revised the structure of § 92.221. In addition, a new paragraph (c) is added to § 92.221 to clarify which entity receives match credit for a contribution. The general rule is that the PJ that makes the match investments in HOME-assisted or HOME-eligible projects is the entity that receives the match credit. If a non-PJ makes a contribution for affordable housing to a PJ, the PJ receives the match credit. By way of additional clarification, the interim rule also declares that a State that makes a contribution to a local participating jurisdiction to be used for affordable housing, whether or not HOME-assisted, may take the match credit for itself or may permit the local participating jurisdiction to recognize the match credit.

Seven comments were received on the proposed revisions to § 92.222 on reduction of the matching contribution requirement. These comments were generally favorable, especially concerning the two year match reduction period provision at § 92.222(a)(4). A few comments suggested alternative criteria to use for local government participating jurisdictions, but these criteria are established by statute, and the interim rule merely repeats the statutory language. There were also suggestions to use other distress criteria, such as changes in non-agricultural employment or in State taxes collected, for State participating jurisdictions. However, for the reasons stated in the preamble to the proposed rule, this portion of the interim rule remains unchanged. The list of State participating jurisdictions that qualify for this match reduction is published as a Notice elsewhere in this issue of the **Federal Register**.

In response to a number of inquiries, this interim rule provides clarification of the adjustment of HOME rents. Section 92.252(a)(1) requires that in order to qualify as affordable housing, a project must bear rents not greater than the lesser of FMR or 30 percent of the adjusted income of a family whose gross income equals 65 percent of the median income for the area. Section 92.252(a)(2) requires further rent limitations on the 20 percent of units in each project which must be occupied by very low-income families. The adjustment of qualifying rents is addressed in § 92.252(d), which is amended to clarify that the rent ceilings for HOME projects do not fall below the HOME rent for the project in effect at the time of project commitment. This is permitted to ensure the continued financial viability of the project and for consistency with the low-income housing tax credit statute.

Section 92.252(a)(2) includes as a rent limitation for the qualification of projects with three or more rental units as affordable housing that not less than 20 percent of the units be occupied by very low-income families and bear rents not greater than 30 percent of the gross income of a family whose income equals 50 percent of the median income for the area. The Department has received indications that, depending upon the FMR or the differences in adjusted and gross income, the use of this formula, which is intended to produce a lower HOME rent than that computed under § 92.252(a)(1), results in a higher rent than under § 92.252(a)(1). To prevent very low-income families from potentially paying more rent than low-income families, a new § 92.252(a)(2)(iii) is added to specify that the lowest rent computed under either §§ 92.252(a) (1) or (2) is applicable to units occupied by very low-income families.

A correction is made in this interim rule concerning the foreclosure provisions of § 92.252(a)(5) to parallel the revision made in the June 23, 1993 interim rule to § 92.254(a)(4)(i)(B).

A number of clarifying amendments are being made to the homeownership affordability requirements of § 92.254(a). In response to comments criticizing the length of the affordability period imposed upon first-time homebuyers regardless of the amount of HOME assistance received, this interim rule amends § 92.254(a) to make it conform to the § 92.252(a)(5) table that provides differing affordability periods for rental units depending upon the amount of the HOME investment. The 20-year affordability period for newly constructed housing, regardless of the amount of HOME funds invested, has been eliminated for homeownership activities.

Two additional clarifying changes are made to § 92.254(a) in this rule. A sentence is added to § 92.254(a)(4)(ii)(C) to specify that the HOME investment subject to recapture is the HOME assistance that enabled the first-time homebuyer to buy the dwelling unit, including any HOME assistance that reduced the purchase price from fair market value to an affordable price, such as subsidizing construction financing costs or other development

costs. The second change to this section provides guidance with respect to two-to-four unit first-time homebuyer projects. New paragraph (a)(4)(ii)(D) states that when HOME funds are used in two-to-four unit first-time homebuyer projects, upon recapture of the HOME funds the affordability periods on the rental units may be terminated.

Technical corrections to change the references to 24 CFR 203.18(b) in §§ 92.254(a)(1)(i) and 92.254(b)(1)(i) to 24 CFR 203.18b are made by this rule.

Six comments were received regarding the "floating" units amendment to § 92.255, all of them favorable. As explained in the preamble to the proposed rule, the Department is amending the procedure for housing project owners to designate those units in a property that are HOME-assisted units. Formerly, specific units were designated as the HOME units, and that designation was fixed for the term of the affordability period. To provide more program flexibility, this interim rule adds new language to § 92.255 that permits the participating jurisdiction to use a system of "floating" units that may be changed over the affordability period, so long as the total number of units remains the same and the substituted units are at least comparable in terms of size, features, and number of bedrooms to the originally designated HOME-assisted units.

Additional guidance is provided in § 92.256 by clarifying that the requirement that residential living space must constitute at least 51 percent of the project space is significant only for purposes of counting the contribution in the non-residential portion of the property as match. The concern in making this change is that this section was being misinterpreted to mean that a project required at least 51 percent residential living space to permit the use of HOME funds.

The ECHO housing provisions of §§ 92.259 and 92.625 were addressed in two comments that were generally favorable. One of the comments pointed out differences in the two sections and recommended that they be made uniform. The two sections are, in fact, identical except for the differences necessary to accommodate the general HOME program and the program as modified for Indian tribes in subpart M of the rule.

In § 92.300(b), the language concerning the availability of a percentage of the minimum CHDO setaside for capacity building is amended from "may be expended" to "may be committed" to allow participating jurisdictions more flexibility in using HOME funds for this purpose. Corrections are made to change the references in §§ 92.300 (e) and (f) from operating expenses provided under § 92.206(g) to operating expenses provided under § 92.208, and to change the reference in § 92.300(f) from administrative funds under § 92.206(f) to administrative funds under § 92.207, to conform these citations to this rule's reorganization of eligible costs.

Section 92.354(a) is revised to clarify the applicability of the Davis-Bacon Act to the HOME Program. The revision makes clear that the Davis-Bacon wage provisions apply if HOME funds are used for *any* project costs (as defined at § 92.206), including construction or nonconstruction costs, of housing with 12 or more assisted units. Once applicable, these wage provisions apply to all laborers and mechanics employed in the development of the entire project, as defined in § 92.2, including portions other than the assisted units. The interim rule specifies that if HOME funds are only used to assist first-time homebuyers to acquire single-family housing and not for any other project costs, these wage provisions apply to the construction of housing containing 12 or more units when there is a written agreement with the owner or developer of the housing that the HOME funds will be used to assist first-time homebuyers to buy the housing.

A conforming change is made to § 92.502(b)(1) that is necessary because of the amendment made to the definition of commitment in § 92.2, discussed above.

This interim rule eases the requirements of § 92.504(e)(1) by permitting on-site review once within a two-year period for rental housing containing 25 HOME-assisted units or less.

Finally, in § 92.508, paragraph (a)(4)(v) is revised to make a conforming change, related to the reorganization of eligible costs, from a reference to § 92.206(g) to a reference to § 92.208.

III. Findings and Certifications

Environmental Review

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 of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk.

Regulatory Planning and Review

This interim rule has been reviewed and approved in accordance with Executive Order 12866, issued by the President on September 30, 1993 (58 FR 51735, October 4, 1993). Any changes to the interim rule resulting from this review are available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk.

Impact on Small Entities

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the undersigned hereby certifies that this interim rule does not have a significant economic impact on a substantial number of small entities, because jurisdictions that are statutorily eligible to receive formula allocations are relatively larger cities, counties or States.

Regulatory Agenda

This interim rule was listed as item number 1472 in the Department's Semiannual Agenda of Regulations published on October 25, 1993 (58 FR 56402, 56410) under Executive Order 12291 and the Regulatory Flexibility Act.

Federalism Impact

The General Counsel has determined, as the Designated Official for HUD under section 6(a) of Executive Order 12612, Federalism, that this interim rule does not have federalism implications concerning the division of local, State, and federal responsibilities. While the HOME Program interim rule amended by this interim rule was determined to be a rule with federalism implications and the Department submitted a Federalism Assessment concerning the interim rule to OMB, this amending rule only makes limited adjustments to the interim rule and does not significantly affect any of the factors considered in the Federalism Assessment for the interim rule.

Impact on the Family

The General Counsel, as the designated official under Executive Order 12606, The Family, has determined that this interim rule would not have significant impact on family formation, maintenance, and general well-being. Assistance provided under this interim rule can be expected to support family values, by helping families achieve security and independence; by enabling them to live in decent, safe, and sanitary housing; and by giving them the means to live independently in mainstream American society. This interim rule would not, however, affect the institution of the family, which is requisite to coverage by the Order. Even if this interim rule had

the necessary family impact, it would not be subject to further review under the Order, since the provision of assistance under this interim rule is required by statute, and is not subject to agency discretion.

The Catalog of Federal Domestic Assistance Number for the HOME Program is 14.239.

List of Subjects in 24 CFR Part 92

Administrative practice and procedure, Grant programs—housing and community development, Grant programs—Indians, Indians, Low and moderate income housing, Manufactured homes, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, the Department amends part 92 of title 24 of the Code of Federal Regulations as follows:

PART 92—HOME INVESTMENT PARTNERSHIPS PROGRAM

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

Authority: 42 U.S.C. 3535(d) and 12701–12839.

2. In § 92.2, the definition for *"Administrative costs"* is removed, and the definitions for *"Commit to a specific local project* or *commitment"*, paragraph (4) of *"Community housing development organization"*, *"Housing"*, *"Reconstruction"*, and *"Single room occupancy (SRO)"*, are revised to read as follows:

§ 92.2 Definitions.

* * * * *

Commitment means:

(1) The participating jurisdiction has entered into a legally binding agreement with a state recipient, a subrecipient, or a contractor to use a specific amount of HOME funds to produce affordable housing or provide tenant-based rental assistance or has entered into a written agreement reserving a specific amount of funds to a CHDO, or *commit to a specific local project*, as defined in paragraph (2) of this definition.

(2) *Commit to a specific local project*, which means:

(i) For a project which is privately owned when the commitment is made:

(A) If the project is for rehabilitation or new construction, a written legally binding agreement between the participating jurisdiction and the project owner under which the participating jurisdiction (or other entity receiving HOME funds directly from HUD, state recipient, or subrecipient) agrees to provide HOME assistance to the owner for an identifiable project as defined in this part that can reasonably be expected to start construction within twelve months of the agreement and in which the owner agrees to start construction within that period.

(B) If funds are used for tenant-based rental assistance, the participating jurisdiction (or other entity receiving HOME funds directly from HUD, state recipient, or subrecipient) has entered into a rental assistance contract with the owner or the tenant in accordance with the provisions of § 92.211.

(C) If the project is for acquisition, a written legally binding agreement, i.e., contract for sale, between the participating jurisdiction (or other entity receiving HOME funds directly from HUD, state recipient, or subrecipient) and the project owner under which the participating jurisdiction (or other entity receiving HOME funds directly from HUD, state recipient, or subrecipient) agrees to provide HOME assistance to the owner for purchase of the project that can reasonably be expected to be accomplished within six months of the agreement and in which the owner agrees to transfer title within that period.

(ii) For a project that is publicly owned when the commitment is made, the Project Set-Up Report submitted under the Cash and Management Information System which identifies a specific project that will start construction within twelve months of receipt of the Project Set-Up Report.

(iii) Under both paragraphs (2)(i) and (ii) of this definition, the date HUD enters into the Cash and Management Information System (§ 92.502) an acceptable Project Set-Up Report for a project is deemed to be the date of project commitment.

Community housing development organization means a private nonprofit organization that

* * * * *

(4) Has a tax exempt ruling from the Internal Revenue Service under section 501(c)(3) or (4) of the Internal Revenue Code of 1986;

* * * * *

Housing includes manufactured housing and manufactured housing lots. Housing also includes elder cottage housing opportunity (ECHO) units that are small, free-standing, barrier-free, energy-efficient, removable, and designed to be installed adjacent to existing single-family dwellings. Housing does not include emergency shelters.

* * * * *

Reconstruction means the rebuilding, on the same lot, of housing standing on a site at the time of project commitment. The number of housing units on the lot may not be decreased or increased as part of a reconstruction project, but the number of rooms per unit may be increased or decreased. The reconstructed housing must be substantially similar (i.e., single- or multi-family housing) to the original housing. Reconstruction also includes replacing an existing substandard unit of manufactured housing with a new or standard unit of manufactured housing. Reconstruction is rehabilitation for purposes of this part.

* * * * *

Single room occupancy (SRO) housing means housing consisting of single room dwelling units that is the primary residence of its occupant or occupants. The unit must contain either food preparation or sanitary facilities (and may contain both) if the project consists of new construction, conversion of non-residential space, or reconstruction. For acquisition or rehabilitation of an existing residential structure, neither food preparation or sanitary facilities is required to be in the unit. If the units do not contain sanitary facilities, the building must contain sanitary facilities that are shared by tenants. SRO does not include facilities for students.

* * * * *

3. Section 92.4 is added to read as follows:

§ 92.4 Expiration of interim rule.

This part shall expire and shall not be in effect after June 30, 1995, unless it is published as a final rule or the Department publishes a notice in the **Federal Register** to extend the effective date.

4. In § 92.50, paragraph (f) is redesignated as paragraph (d)(5) and revised to read as follows:

§ 92.50 Formula allocation.

* * * * *

(d) * * *

(5) For the purpose of determining the formula allocation in fiscal years in which Congress appropriates less than $1.5 billion of HOME funds, $335,000 is substituted for $500,000 each time it appears in this paragraph (d), and $167,500 is substituted for $250,000 each time it appears in this paragraph (d).

* * * * *

5. In § 92.61, the section heading is revised to read,

§ 92.61 Program description.

6. In § 92.64, paragraph (a)(1) is revised to read as follows:

§ 92.64 Applicability of requirements to insular areas.

(a) * * *

(1) Subpart E (Program Requirements): Administrative costs, as described in § 92.207, are eligible costs for insular areas in an amount not to exceed 15 percent of the HOME funds provided to the insular area. The matching contribution requirements in this part do not apply.

* * * * *

7. In § 92.150, paragraph (b)(2) is revised to read as follows:

§ 92.150 Submission of program description and certifications.

* * * * *

(b) * * *

(2) For a local participating jurisdiction, the estimated use of HOME funds and of matching contributions (consistent with its approved housing strategy) for each of the following categories of eligible activities: New construction, substantial rehabilitation, other rehabilitation, acquisition (not involving new construction or rehabilitation), tenant-based rental assistance, administrative expenses, and community housing development organization (CHDO) operating expenses, and an estimate of whether units assisted will be rental or owner-occupied;

* * * * *

8. In § 92.204, paragraph (a)(1) is revised to read as follows:

§ 92.204 Applicability of requirements to entities that receive a reallocation of HOME funds, other than participating jurisdictions.

(a) * * *

(1) Subpart E (Program Requirements) of this part: The matching contribution requirements in § 92.218 through § 92.221 do not apply.

* * * * *

9. In § 92.205, paragraph (a)(1) is revised to read as follows:

§ 92.205 Eligible activities: General.

(a) * * *

(1) HOME funds may be used by a participating jurisdiction to provide incentives to develop and support affordable rental housing and homeownership affordability through the acquisition (including assistance to first-time homebuyers), new construction, reconstruction, or moderate or substantial rehabilitation of non-luxury housing with suitable amenities, including real property acquisition, site improvement, conversion, demolition, and other expenses, including financing costs, relocation expenses of any displaced persons, families, businesses, or organizations, to provide tenant-based rental assistance, including security deposits; to provide payment of reasonable administrative and planning costs; and to provide for the payment of operating expenses of community housing development organizations. The housing must be permanent or transitional housing, and includes permanent housing for disabled homeless persons, and single-room occupancy housing. The specific eligible costs for these activities are set forth in §§ 92.206 through 92.209.

* * * * *

10. In § 92.206, the section heading, paragraphs (a)(2), (a)(3), paragraph (b), the introductory text of paragraph (c), and paragraphs (c)(5), (d) and (e) are revised; paragraphs (c)(6) and (c)(7) are added; and paragraphs (f) and (g) are removed, to read as follows:

§ 92.206 Eligible project costs.

(a) * * *

(2) For rehabilitation, costs:

(i) To meet the applicable rehabilitation standards of the participating jurisdiction or correct substandard conditions to, minimally, the housing quality standards at § 882.109 of this title;

(ii) To make essential improvements, including energy-related repairs or improvements, improvements necessary to permit use by handicapped persons, and the abatement of lead-based paint hazards, as required by § 92.355, and to repair or replace major housing systems in danger of failure; and

(iii) To refinance existing debt secured by a single-family owner-occupied unit when loaning HOME funds to rehabilitate the unit, if the overall housing costs of the borrower will be reduced and made more affordable.

(3) For both new construction and rehabilitation, costs:

(i) To demolish existing structures;

(ii) To make utility connections including off-site connections from the property line to the adjacent street; and

(iii) To make improvements to the project site that are in keeping with improvements of surrounding, standard projects. Site improvements may include on-site roads and sewer and water lines necessary to the development of the project. The project site is the property, owned by the project owner, upon which the project is located.

(b) *Acquisition costs.* Costs of acquiring improved or unimproved real property, including acquisition by first-time homebuyers.

(c) *Related soft costs.* Other reasonable and necessary costs incurred by the owner or participating jurisdiction and associated with the financing, or development (or both) of new construction, rehabilitation or acquisition of housing assisted with HOME funds. These costs include, but are not limited to:

* * * * *

(5) For new construction or substantial rehabilitation, the cost of funding an initial operating deficit reserve, which is a reserve to meet any shortfall in project income during the period of project rent-up (not to exceed 18 months) and which may only be used to pay project operating expenses, reserve for replacement payments, and debt service. Any HOME funds placed in an operating deficit reserve that remain unexpended when the reserve terminates must be returned to the participating jurisdiction's local HOME Investment Trust Fund account.

(6) Staff and overhead costs directly related to carrying out the project, such as work specifications preparation, loan processing inspections, and other services related to assisting potential owners, tenants, and homebuyers, e.g., housing counseling, may be charged to project costs only if the project is funded and the individual becomes the owner or tenant of the HOME-assisted project. For multi-unit projects, such costs must be allocated among HOME-assisted units in a reasonable manner and documented.

(7) For both new construction and rehabilitation, costs for the payment of impact fees that are charged for all projects within a jurisdiction.

(d) Community housing development organization (CHDO) project specific assistance under § 92.301.

(e) *Relocation costs.* The cost of relocation payments and other relocation assistance to persons displaced by the project are eligible costs.

(1) Relocation payments include replacement housing payments, payments for moving expenses, and payments for reasonable out-of-pocket costs incurred in the temporary relocation of persons.

(2) Other relocation assistance means staff and overhead costs directly related to providing advisory and other relocation services to persons displaced by the project, including timely written notices to occupants, referrals to comparable and suitable replacement property, property inspections, counseling, and other assistance necessary to minimize hardship.

11. Section 92.207 is added to read as follows:

§ 92.207 Eligible administrative and planning costs.

A participating jurisdiction may expend, for payment of reasonable administrative and planning costs of the HOME program, an amount of HOME funds that is not more than ten percent of the fiscal year HOME basic formula allocation plus any funds received in accordance with § 92.102(b) to meet or exceed participation threshold requirements that fiscal year. A State that transfers any HOME funds in accordance with § 92.102(b) must exclude these funds in calculating the amount it may expend for administrative and planning costs. A participating jurisdiction may also use up to ten percent of any return of the HOME investment, as defined in § 92.503, calculated at the time of deposit in its local HOME account, for administrative and planning costs. Reasonable administrative and planning costs includes:

(a) *General management, oversight and coordination.* Reasonable costs of overall program management, coordination, monitoring, and evaluation. Such costs include, but are not limited to, necessary expenditures for the following:

(1) Salaries, wages, and related costs of the participating jurisdiction's staff. In charging costs to this category the participating jurisdiction may either include the entire salary, wages, and related costs allocable to the program of each person whose primary responsibilities with regard to the program involves program administration assignments, or the prorated share of the salary, wages, and related costs of each person whose job includes any program administration assignments. The participating jurisdiction may use only one of these methods. Program administration includes the following types of assignments:

(i) Developing systems and schedules for ensuring compliance with program requirements;

(ii) Developing interagency agreements and agreements with entities receiving HOME funds;

(iii) Monitoring HOME-assisted housing for progress and compliance with program requirements;

(iv) Developing agreements and monitoring housing not assisted with HOME funds that the participating jurisdiction designates as a matching contribution in accordance with § 92.219(b) for compliance with applicable program requirements;

(v) Preparing reports and other documents related to the program for submission to HUD;

(vi) Coordinating the resolution of audit and monitoring findings;

(vii) Evaluating program results against stated objectives; and

(viii) Managing or supervising persons whose primary responsibilities with regard to the program include such assignments as those described in paragraph (a)(1) (i) through (vii) of this section;

(2) Travel costs incurred for official business in carrying out the program;

(3) Administrative services performed under third party contracts or agreements, including such services as general legal services, accounting services, and audit services; and

(4) Other costs for goods and services required for administration of the program, including such goods and services as rental or purchase of equipment, insurance, utilities, office supplies, and rental and maintenance (but not purchase) of office space.

(5) Costs of administering tenant-based rental assistance programs.

(b) *Staff and overhead.* Staff and overhead costs directly related to carrying out the project, such as work specifications preparation, loan processing inspections, and other services related to assisting potential owners, tenants, and homebuyers (e.g., housing counseling). Staff and overhead costs directly related to providing advisory and other relocation services to persons displaced by the project, including timely written notices to occupants, referrals to comparable and suitable replacement property, property inspections, counseling, and other assistance necessary to minimize hardship. These costs may be charged as administrative costs or as project costs under § 92.206 (c)(6) and (e)(2), at the discretion of the participating jurisdiction.

(c) *Public information.* The provision of information and other resources to residents and citizen organizations participating in the planning, implementation, or assessment of projects being assisted with HOME funds.

(d) *Fair housing.* Activities that affirmatively further fair housing.

(e) *Indirect Costs.* Indirect costs may be charged to the HOME program under a cost allocation plan prepared in accordance with OMB Circulars A–87 or A–122 as applicable.

(f) *Submission of the housing strategy.* Preparation of the housing strategy required under 24 CFR part 91. Preparation includes the costs of public hearings, consultations, and publication.

12. Section 92.208 is added to read as follows:

§ 92.208 Eligible CHDO operating expense and capacity building costs.

(a) Up to 5 percent of a participating jurisdiction's fiscal year HOME allocation may be used for the operating expenses of community housing development organizations (CHDOs). These funds may not be used to pay operating costs incurred by a CHDO acting as a subrecipient or contractor under the HOME Program. The requirements and limitations on the receipt of these funds by CHDOs are set forth in § 92.300 (e) and (f).

(b) HOME funds may be used for capacity building costs under § 92.300(b).

13. Section 92.209 is added to read as follows:

§ 92.209 Eligible costs related to tenant-based rental assistance.

Eligible costs are the rental assistance and security deposit payments made to provide tenant-based rental assistance for a family. Administration of tenant-based rental assistance is eligible only under general management oversight and coordination at § 92.207(a).

14. In § 92.211, paragraphs (a)(2) and (f)(3) are revised, and paragraph (a)(3) is added, to read as follows:

§ 92.211 Tenant-based rental assistance.

(a) * * *

(2) The participating jurisdiction selects families in accordance with written tenant selection policies and criteria that are consistent with the purposes of providing housing to very low- and low-income families and are reasonably related to preference rules established under section 6(c)(4)(A) of the Housing Act of 1937 (42 U.S.C. 1437 *et. seq.*). Selection policies and criteria meet the "reasonably related" requirement if at least 70% of the families assisted qualify, or would qualify in the near future without the tenant-based rental assistance, for one of the three Federal preferences under section 6(c)(4)(A) of the Housing Act of 1937. These are families that occupy substandard housing (including families that are homeless or living in a shelter for homeless families); families that are paying more than 50 percent of (gross) family income for rent; or families that are involuntarily displaced. The participating jurisdiction may select low-income families currently residing in units that are designated for rehabilitation or acquisition under the participating jurisdiction's HOME program without requiring that the family meet the written tenant selection policies and criteria. Families so selected may use the tenant-based assistance in the rehabilitated or

acquired unit or in other qualified housing.

(3) A participating jurisdiction may require the family to use the tenant-based assistance within the participating jurisdiction's boundaries or may permit the family to use the assistance outside its boundaries.

* * * * *

(f) * * *

(3) The participating jurisdiction's rent standard for a unit size must based on:

(i) Local market conditions; or

(ii) May not be less, for each unit size, than 80 percent of the published Section 8 Existing Housing fair market rent (in effect when the payment standard amount is adopted) nor more than the fair market rent or HUD-approved community-wide exception rent (in effect when the participating jurisdiction adopts its rent standard amount). (Community-wide exception rents are maximum gross rents approved by HUD for the Rental Certificate Program under 882.106(a)(3) of this title for a designated municipality, county, or similar locality, which apply to the whole PHA jurisdiction.) A participating jurisdiction may approve on a unit-by-unit basis a subsidy based on a rent standard that exceeds the applicable fair market rent by up to 10 percent for 20 percent of units assisted.

* * * * *

15. In § 92.214, paragraph (a)(8) is revised to read as follows:

§ 92.214 Prohibited activities.

(a) * * *

(8) Pay for the acquisition of property owned by the participating jurisdiction, except for property acquired by the participating jurisdiction with HOME funds, or property acquired in anticipation of carrying out a HOME project.

* * * * *

16. In § 92.218, paragraphs (a) introductory text and (c) are revised, and a new paragraph (e) is added, to read as follows:

§ 92.218 Amount of matching contribution.

(a) Each participating jurisdiction must make contributions to housing that qualifies as affordable housing under the HOME program, throughout a fiscal year. The contributions must total not less than:

* * * * *

(c) HOME funds used for administrative and planning costs (pursuant to § 92.207), CHDO operating expenses (pursuant to § 92.208) and capacity building (pursuant to § 92.300(b)) of community housing development organizations are not required to be matched.

* * * * *

(e) Contributions that have been or will be counted towards satisfying a matching requirement of another Federal grant or award may not count toward satisfying the matching contribution requirement for the HOME program.

17. Section 92.219 would be revised to read as follows:

§ 92.219 Recognition of matching contribution.

(a) *Match contribution to HOME-assisted housing.* A contribution is recognized as a matching contribution if:

(1) It is made with respect to a tenant who is assisted with HOME funds; or

(2) It is made with respect to HOME-assisted housing; or

(3) It is made with respect to any portion of a project (including a mixed-use project under § 92.256) not less than 50 percent of the dwelling units of which are HOME-assisted.

(b) *Match contribution to affordable housing that is not HOME-assisted.* The following requirements apply for recognition of matching contributions made to affordable housing that is not HOME-assisted:

(1) *For tenant-based rental assistance (TBRA) that is not HOME-assisted:* (i) The contribution must be made with respect to a tenant who is assisted with tenant-based rental assistance that meets the requirements of §§ 92.203 (income determinations), 92.210 (security deposits), 92.211 (TBRA, except for 92.211(c), term of rental assistance contract), and 92.253(a) and (b) (tenant protections); and

(ii) The participating jurisdiction must demonstrate in writing that such assistance meets the provisions of §§ 92.203, 92.210, 92.211, and 92.253(a) and (b).

(2) *For affordable housing projects that are not HOME-assisted:* (i) The contribution must be made with respect to housing that qualifies as affordable housing under § 92.252 or § 92.254.

(ii) The participating jurisdiction or its instrumentality must execute, with the owner of the housing (or, if the participating jurisdiction is the owner, with the manager or developer), a written agreement that imposes and enumerates all of the affordability requirements from § 92.252 and § 92.253(a) and (b) (tenant protections), or § 92.254, whichever are applicable, the property standards requirements of § 92.251, and income determinations made in accordance with § 92.203. This written agreement must be executed before any match contributions may be made.

(iii) A participating jurisdiction must establish a procedure to monitor these HOME match-eligible projects to ensure continued compliance with the requirements of §§ 92.203 (income determinations), 92.252(rental), 92.253(a) and (b) (tenant protections) and 92.254 (ownership). No other HOME requirements apply.

(iv) The match contribution may be in any eligible form of match except those in §§ 92.220(a)(2) and (4).

(v) Match contributions to mixed-use or mixed-income projects that contain affordable housing units will be recognized only if the contribution is made to the project's affordable housing units.

(c) In addition to the requirements of paragraphs (a) and (b) of this section, a cash contribution is recognized as a matching contribution only if it is used for costs eligible under §§ 92.206 or 92.209, or for the following costs (which are not eligible costs for HOME funds): The cost of removing and relocating an ECHO housing unit to accommodate an eligible tenant, a project reserve account for replacements, a project reserve account for unanticipated increases in operating costs, operating subsidies, or costs relating to the portion of a mixed-income or mixed-use HOME-assisted project not related to the affordable housing units.

18. In § 92.220, paragraphs (a)(1) introductory text, (a)(2), (a)(3) and (a)(5) are revised to read as follows:

§ 92.220 Form of matching contribution.

(a) * * *

(1) *Cash contributions from nonfederal sources.* Except for contributions made to affordable housing that is not assisted with HOME funds and bond proceeds to which the provisions of § 92.220(a)(5) are applicable, to be a cash contribution, funds must be contributed permanently to the HOME program, regardless of the form of investment the jurisdiction provides to a project. Therefore all repayment, interest, or other return on investment of the contribution must be deposited in the local account of the participating jurisdiction's HOME Investment Trust Fund to be used for eligible HOME activities in accordance with the requirements of this part. A cash contribution to affordable housing that is not assisted with HOME funds must be contributed permanently to the project. Repayments of matching contributions in affordable housing projects, as defined in § 92.219(b), that are not HOME-assisted, must be made to the local account of the participating

jurisdiction's HOME Investment Trust Fund to get match credit for the full loan amount.

* * * * *

(2) The value, based on customary and reasonable means for establishing value, of State or local taxes, fees, or other charges that are normally and customarily imposed or charged by a State or local government on all transactions or projects in the conduct of State or local government operations but are waived, foregone, or deferred (including State low-income housing tax credits) in a manner that achieves affordability of housing assisted with HOME funds. Fees or charges that are associated with the HOME Program only (rather than normally and customarily imposed or charged on all transactions or projects) are not eligible forms of matching contributions. The amount of any real estate taxes may be based on post-improvement property value, using customary and reasonable means of establishing value. For taxes, fees, or charges that are given for future years, the value is the present discounted cash value, based on a rate equal to the rate for the Treasury security with a maturity closest to the number of years for which the taxes, fees, or charges are waived, foregone, or deferred.

(3) The value, before the HOME assistance is provided and minus any debt burden, lien, or other encumbrance, of donated land or other real property.

(i) Property not acquired with federal resources is a contribution in the amount of 100% of the value.

(ii) Property that is acquired with federal assistance must be acquired specifically for HOME-assisted housing or for affordable housing that will be counted as match pursuant to § 92.219(b)(2). Such property is a contribution in the amount of the difference between the acquisition cost and the appraised value at the time of acquisition with the federal assistance, provided that the property is acquired by the HOME project owner (or owner of the affordable housing that will be counted as match) with the federal assistance. It also may be given to the HOME project owner (or owner of the affordable housing that will be counted as match) by the entity acquiring the property with federal assistance or sold to the HOME project owner (or owner of the affordable housing that will be counted as match) at a price equal to or less than the amount of the federal assistance used to acquire the property. The acquisition cost paid with the federal assistance must be demonstrably below the appraised value and must be acknowledged by the seller as a donation to affordable housing at the time of the acquisition with the federal assistance.

(iii) Property must be appraised in conformance with established and generally recognized appraisal practice and procedures in common use by professional appraisers. Opinions of value must be based on the best available data properly analyzed and interpreted. The appraisal of land and structures must be performed by an independent, certified appraiser.

* * * * *

(5) Proceeds from multi-family affordable housing and single-family project bond financing validly issued by a State or local government, or an agency, instrumentality, or political subdivision of a State, as follows:

(i) Fifty percent of the loan amount made from bond proceeds to a multi-family affordable housing project owner may qualify as match.

(ii) Twenty-five percent of the loan amount from bond proceeds made to a single-family affordable housing project owner may qualify as match.

(iii) Loans made from bond proceeds may not constitute more than 25 percent of a participating jurisdiction's total annual match contribution. Loans made from bond proceeds in excess of 25 percent of a participating jurisdiction's total annual match contribution may be carried over to subsequent fiscal years as excess match, but may not constitute more than 25 percent of a participating jurisdiction's total annual match contribution in any one year.

* * * * *

19. In § 92.221, paragraphs (a)(7) and (c) are added to read as follows:

§ 92.221 Match credit.

(a) * * *

(7) A loan made from bond proceeds under § 92.220(a)(5) is credited at the time of the loan closing.

* * * * *

(c) The participating jurisdiction that makes the match contributions to HOME-assisted or HOME match eligible projects (match pursuant to § 92.219(b) for contributions to affordable housing, including tenant-based rental assistance, that is not assisted with HOME funds) is the participating jurisdiction that receives the match credit. A State that provides funding to a local participating jurisdiction to be used for a contribution to affordable housing, whether or not HOME-assisted, may take the match credit for itself or may permit the local participating jurisdiction to receive the match credit.

20. In § 92.222, paragraph (a)(2) is added to read as follows:

§ 92.222 Reduction of matching contribution requirement.

(a) * * *

(2) *Distress criteria for participating jurisdictions that are States.* As determined and published annually by HUD, if a State satisfies at least 2 of the 3 distress factors in paragraphs (a)(2)(i) through (iii) of this section, it is in severe fiscal distress and its match requirement will be reduced 100% for the period specified in paragraph (a)(3) of this section. If a State satisfies any 1 of the 3 distress factors in paragraphs (a)(2)(i) through (iii) of this section, it is in fiscal distress and its match requirement will be reduced by 50 percent, for the period specified in paragraph (a)(4) of this section.

(i) *Poverty rate.* The average poverty rate in the State was equal to or greater than 125 percent of the average national poverty rate during the calendar year for which the most recent data are available, as determined according to information of the Bureau of the Census.

(ii) *Per capita income.* The average per capita income in the State was less than 75 percent of the average national per capita income, during the calendar year for which the most recent data are available, as determined according to information of the Bureau of the Census.

(iii) *Personal income growth.* The average personal income growth rate in the State over the most recent four quarters for which the data are available was less than 75 percent of the average national personal income growth rate during that period, as determined according to information of the Bureau of Economic Analysis.

* * * * *

21. In § 92.252, a new paragraph (a)(2)(iii) is added, and paragraph (a)(5) text (the table remains unchanged) and paragraph (d) are revised, to read as follows:

§ 92.252 Qualification as affordable housing and income targeting: Rental housing.

(a) * * *

(2) * * *

(iii) The rent applicable to a unit under paragraph (a)(2) of this section shall be the lowest rent computed under paragraphs (a)(1) and (a)(2) of this section.

* * * * *

(5) Will remain affordable without regard to the term of any mortgage or the transfer of ownership, pursuant to deed restrictions, covenants running with the land, or other mechanisms approved by HUD, for not less than the appropriate period, beginning after project completion, as specified in the following table, except that the

affordability restrictions may terminate upon foreclosure or transfer in lieu of foreclosure. The participating jurisdiction may use purchase options, rights of first refusal or other preemptive rights to purchase the housing before foreclosure or deed in lieu of foreclosure to preserve affordability. The affordability restrictions shall be revived according to the original terms if, during the original affordability period, the owner of record before the foreclosure, or deed in lieu of foreclosure, or any entity that includes the former owner or those with whom the former owner has or had family or business ties, obtains an ownership interest in the project or property. * * *

* * * * *

(d) *Adjustment of qualifying rent.* (1) Changes in fair market rents and in median income over time should be sufficient to maintain the financial viability of a project within the qualifying rent standards in paragraphs (a) (1) and (2) of this section. Regardless of changes in fair market rents and in median income over time, the qualifying rents are not required to be lower than the HOME rent for the project in effect at the time of project commitment.

(2) HUD may adjust the qualifying rents established for a project under paragraphs (a) (1) and (2) of this section, only if HUD finds that an adjustment is necessary to support the continued financial viability of the project and only by an amount that HUD determines is necessary to maintain continued financial viability of the project. HUD expects that this authority will be used sparingly.

22. In § 92.254, paragraphs (a)(1)(i), (a)(4) introductory text, (a)(4)(ii)(C) and (b)(1) are revised, and paragraph (a)(4)(ii)(D) is added to read as follows:

§ 92.254 Qualification as affordable housing: homeownership.

(a) * * *

(1)(i) Has an initial purchase price that does not exceed 95% of the median purchase price for the type of single-family housing (1- to 4-family residence, condominium unit, cooperative unit, combination manufactured home and lot, or manufactured home lot) for the jurisdiction as determined by HUD, and which may be appealed in accordance with 24 CFR 203.18b; and

* * * * *

(4) Is subject—for minimum periods of: 5 years where the per unit amount of HOME funds provided is less than $15,000; 10 years where the per unit amount of HOME funds provided is $15,000 to $40,000; and 15 years where the per unit amount of HOME funds provided is greater than $40,000—to resale restrictions or recapture provisions that are established by the participating jurisdiction and determined by HUD to be appropriate to either:

* * * * *

(ii) * * *

(C) The HOME investment that is subject to recapture is the HOME assistance that enabled the first-time homebuyer to buy the dwelling unit. This includes any HOME assistance, whether a direct subsidy to the homebuyer or a construction or development subsidy, that reduced the purchase price from fair market value to an affordable price. The recaptured funds must be used to assist other first-time homebuyers. If no HOME funds will be subject to recapture, the provisions at § 92.254(a)(4)(i) apply.

(D) Upon recapture of the HOME funds used in a single-family, first-time homebuyer project with two to four units, the affordability period on the rental units may be terminated at the discretion of the participating jurisdiction.

(b) *Rehabilitation not involving purchase.* Housing that is currently owned by a family qualifies as affordable housing only if—

(1) The value of the property, after rehabilitation, does not exceed 95% of the median purchase price for the type of single-family housing (1- to 4-family residence, condominium unit, combination manufactured home and lot, or manufactured home lot) for the jurisdiction as determined by HUD, and which may be appealed in accordance with 24 CFR 203.18b; and

* * * * *

23. Section 92.255 would be revised to read as follows:

§ 92.255 Mixed-income project.

(a) Housing that accounts for less than 100 percent of the dwelling units in a project qualifies as affordable housing if the housing meets the criteria of § 92.252 or § 92.254. Each building in the project must contain housing that meets the requirements of § 92.252 or § 92.254. See § 92.219 for matching contribution requirements concerning mixed-income projects.

(b) For purposes of meeting affordable housing requirements for a project, the dwelling units counted as affordable housing may be changed over the affordability period, so long as the total number of affordable housing units remains the same, and the substituted units are, at a minimum, comparable in terms of size, features, and number of bedrooms to the originally designated affordable housing units.

(Approved by the Office of Management and Budget under OMB control number 2501–0013)

24. Section 92.256 would be revised to read as follows:

§ 92.256 Mixed-use project.

Housing in a project that is designed in part for uses other than residential use qualifies as affordable housing if such housing meets the criteria of § 92.252 or § 92.254. A project that contains, in addition to dwelling units, laundry and community facilities for the exclusive use of the project residents and their guests, does not constitute a project that is designed in part for uses other than residential use. Residential living space must constitute at least 51 percent of the project space for contributions to the non-residential portion of the property to count as match.

25. In subpart F, a new § 92.259 would be added to read as follows:

§ 92.259 Elder cottage housing opportunity (ECHO) units.

(a) *General.* HOME funds may be used for the initial purchase and initial placement costs of elder cottage housing opportunity (ECHO) units that meet the requirements of this section, and that are small, free-standing, barrier-free, energy-efficient, removable, and designed to be installed adjacent to existing single-family dwellings.

(b) *Eligible owners.* The owner of a HOME-assisted ECHO unit may be:

(1) The owner of the single-family host property on which the ECHO unit will be located;

(2) A participating jurisdiction; or

(3) A non-profit organization.

(c) *Eligible tenants.* During the affordability period, the tenant of a HOME-assisted ECHO unit must be an elderly, handicapped or disabled family as defined in part 812 of this title, and must also be a low income family.

(d) *Applicable requirements.* The requirements of § 92.252 of this part apply to HOME-assisted ECHO units, except as specified in this section, including the following requirements:

(1) Only one ECHO unit may be provided per host property.

(2) The ECHO unit owner may choose whether or not to charge the tenant of the ECHO unit for rent, but if a rent is charged, it must meet the requirements of § 92.252.

(3) The ECHO housing must remain affordable for the period specified in § 92.252(a)(5). If within the affordability period the original occupant no longer occupies the unit, the ECHO unit owner must:

(i) Rent the unit to another eligible occupant on site;

(ii) Move the ECHO unit to another site for occupancy by an eligible occupant; or

(iii) If the owner of the ECHO unit is the host property owner, in accordance with the requirements of § 92.254(a)(4)(ii), the participating jurisdiction must recapture the HOME investment to be used for additional HOME activities.

(4) The participating jurisdiction has the responsibility to enforce the project requirements applicable to ECHO units.

26. In § 92.300, paragraphs (b), (e) and (f) are revised to read as follows:

§ 92.300 Set-aside for community housing development organizations (CHDOs).

* * * * *

(b) Each participating jurisdiction must make reasonable efforts to identify community housing development organizations that are capable, or can reasonably be expected to become capable, of carrying out elements of the jurisdiction's approved housing strategy and to encourage such community housing development organizations to do so. If during the first 24 months of its participation in the HOME Program a participating jurisdiction cannot identify a sufficient number of capable CHDOs, up to 20 percent of the minimum CHDO setaside of 15 percent specified in paragraph (a) of this section (but not more than $150,000 during the 24 month period) may be committed to develop the capacity of CHDOs in the jurisdiction.

* * * * *

(e) If funds for operating expenses are provided under § 92.208 to a community housing development organization that is not also receiving funds under paragraph (a) of this section for housing to be developed, sponsored or owned by the community housing development organization, the participating jurisdiction must enter into a written agreement with the community housing development organization that provides that the community housing development organization is expected to receive funds under paragraph (a) of this section within 24 months of receiving the funds for operating expenses, and specifies the terms and conditions upon which this expectation is based.

(f) *Limitation.* A community housing development organization may not receive HOME funding for any fiscal year in an amount that provides more than 50 percent or $50,000, whichever is greater, of the community housing development organization's total operating expenses in that fiscal year. This includes organization support and housing education provided under § 92.302 (c)(1), (c)(2), and (c)(6), as well as funds for operating expenses provided under § 92.208 and administrative funds provided under § 92.207 (if the community housing development organization is a subrecipient or contractor of the participating jurisdiction).

27. In § 92.354, paragraph (a) is revised to read as follows:

§ 92.354 Labor.

(a) *General.* (1) Every contract for the construction (rehabilitation or new construction) of housing that includes 12 or more units assisted with HOME funds must contain a provision requiring the payment of not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a–276a–5), to all laborers and mechanics employed in the development of any part of the housing. Such contracts must also be subject to the overtime provisions, as applicable, of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–332).

(2) The contract for construction must contain these wage provisions if HOME funds are used for any project costs (as defined in § 92.206), including construction or nonconstruction costs, of housing with 12 or more HOME-assisted units. Where 12 or more units in a project are assisted under this part, the wage provisions must be contained in the construction contract so as to apply to all laborers and mechanics employed in the development of the entire project, as defined in § 92.2, including portions other than the assisted units. If HOME funds are only used to assist first-time homebuyers to acquire single-family housing and not for any other project costs, the wage provisions apply to the construction of housing containing 12 or more units when there is a written agreement with the owner or developer of the housing that the HOME funds will be used to assist first-time homebuyers to buy the housing.

(3) Participating jurisdictions, contractors, subcontractors, and other participants must comply with regulations issued under these Acts and with other federal laws and regulations pertaining to labor standards and HUD Handbook 1344.1 (Federal Labor Standards Compliance in Housing and Community Development Programs), as applicable. Participating jurisdictions must require certification as to compliance with the provisions of this section before making any payment under such contract.

* * * * *

28. In § 92.502, paragraph (b)(1) is revised to read as follows:

§ 92.502 Cash and Management Information System; disbursement of HOME funds.

* * * * *

(b) * * *

(1) After the participating jurisdiction executes the HOME Investment Partnership Agreement, complies with the environmental requirements under part 58 of this title for release of funds, and submits the appropriate banking and security documents, the participating jurisdiction may identify (set up) specific investments in the C/MI System. Investments that require the set-up of projects in the C/MI System are the acquisition, new construction, or moderate or substantial rehabilitation of real property, and investments of HOME funds to provide tenant-based rental assistance. Within 12 calendar days of project set-up, the participating jurisdiction is required to submit a Project Set-Up Report to HUD for each project set up in the C/MI System. Until an acceptable Project Set-Up Report is received and entered in the C/MI System, HOME funds for the project are not considered committed to a specific project (as defined in § 92.2).

* * * * *

29. In § 92.504, paragraph (e)(1) is revised to read as follows:

§ 92.504 Participating jurisdiction responsibilities; written agreements; monitoring.

* * * * *

(e) * * *

(1) Not less than annually, the participating jurisdiction must review the activities of owners of rental housing assisted with HOME funds to assess compliance with the requirements of this part, as forth in the written agreement under paragraphs (b) and (c) of this section. For multi-family housing, each review must include on-site inspection to determine compliance with housing codes and the requirements of this part. For rental projects containing 25 HOME-assisted units or less, an on-site review must be made once within each two year period. The results of each review must be included in the participating jurisdiction's performance report required by part 91 of this title and must be made available to the public.

* * * * *

30. In § 92.508, paragraph (a)(4)(v) is revised to read as follows:

§ 92.508 Recordkeeping.

(a) * * *

(4) * * *

(v) Records of the written agreement the participating jurisdiction must enter into under § 92.300(e) with the community housing development organization if funds for operating expenses are provided under § 92.208 to the community housing development organization that is not also receiving funds under § 92.300(a).

* * * * *

31. In subpart M, under the undesignated center heading "Project Requirements," a new § 92.625 is added to read as follows:

§ 92.625 Elder cottage housing opportunity (ECHO) units.

(a) *General.* HOME funds may be used for the initial purchase and initial placement costs of elder cottage housing opportunity (ECHO) units that meet the requirements of this section, and that are small, free-standing, barrier-free, energy-efficient, removable, and designed to be installed adjacent to existing single-family dwellings.

(b) *Eligible owners.* The owner of a HOME-assisted ECHO unit may be:

(1) The owner of the single-family host property on which the ECHO unit will be located;

(2) An Indian tribe; or

(3) A non-profit organization.

(c) *Eligible tenants.* During the affordability period, the tenant of a HOME-assisted ECHO unit must be an elderly, handicapped or disabled family as defined in § 905.102 of this title, and must also be a low income family.

(d) *Applicable requirements.* The requirements of § 92.614 apply to HOME-assisted ECHO units, except as specified in this section, including the following requirements:

(1) Only one ECHO unit may be provided per host property.

(2) The ECHO unit owner may choose whether or not to charge the tenant of the ECHO unit for rent, but if a rent is charged, it must meet the requirements of § 92.614.

(3) The ECHO housing must remain affordable for the period specified in § 92.614(a)(5). If within the affordability period the original occupant no longer occupies the unit, the ECHO unit owner must:

(i) Rent the unit to another eligible occupant on site;

(ii) Move the ECHO unit to another site for occupancy by an eligible occupant; or

(iii) If the owner of the ECHO unit is the host property owner, in accordance with the requirements of § 92.615(a)(4)(ii), the participating jurisdiction must recapture the HOME investment to be used for additional HOME activities.

(4) The Indian tribe has the responsibility to enforce the project requirements applicable to ECHO units.

Dated: April 6, 1994.

Henry G. Cisneros,

Secretary.

[FR Doc. 94–9227 Filed 4–18–94; 8:45 am]

BILLING CODE 4210–32–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–94–3705; FR–3561–N–02]

States That Receive a Match Reduction Under the HOME Investment Partnerships Program Because of Fiscal Distress or Severe Fiscal Distress

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of match reduction under the HOME program.

SUMMARY: Starting with Fiscal Year 1993 funds, participating jurisdictions must provide a 25 percent matching contribution for HOME funds drawn from the participating jurisdiction's Treasury accounts for rental assistance, housing rehabilitation and acquisition of standard housing, and a 30 percent matching contribution for HOME funds drawn for new construction, unless the participating jurisdiction has received a reduction in the match requirement. This notice provides information on the level of fiscal distress for each State and indicates those States that receive a reduction in the match requirement for Fiscal Year 1994 because they are in fiscal distress or severe fiscal distress.

DATES: The match reductions published in this notice are applicable for FY 1994.

FOR FURTHER INFORMATION CONTACT: Mary Kolesar, Director, Program Policy Division, Office of Affordable Housing Programs, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 708–2470, TDD (202) 708–2565. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Match Reduction for States

A HOME interim rule is published elsewhere in today's **Federal Register**. Section 92.222(a) of this interim rule sets out the criteria for determining fiscal distress and severe fiscal distress for participating jurisdictions that are States. This notice is published to announce the States that receive a match reduction for Fiscal Year 1994 under these distress criteria.

This notice lists all States (as well as Puerto Rico and the District of Columbia which are, by statute, defined as States for the HOME Program), the average per capita income (PCI) for each, how the State's PCI relates to the national average PCI (which was $14,277 for 1989, the latest data available), the percent of each State's families in poverty and how that relates to the national average (which was 10.58 percent in 1990), the average personal income growth rate in the State over the most recent four quarters, and how that relates to the national personal income growth rate during that period (which was 5.4 percent from the end of the third quarter of 1992 to the end of the third quarter of 1993).

Thus, to qualify under the PCI criterion, the PCI for the State must be less than $10,708. To qualify under the poverty criterion, the State's percent of families in poverty must be 13.23 percent or higher, and to qualify under the personal income growth rate, the State's rate must be 4.0 percent or less.

As the interim rule indicates, States that satisfy one of the criteria are considered in fiscal distress and receive a 50 percent match reduction for the term specified at 24 CFR 92.222(a)(4). States that satisfy at least two of the three distress criteria are considered in severe fiscal distress and receive a 100 percent match reduction for the period specified at 24 CFR 92.222(a)(3). The list of States follows as appendix A to this notice.

Dated: April 8, 1994.

Andrew Cuomo,

Assistant Secretary for Community Planning and Development.

BILLING CODE 4210–29–P

APPENDIX A

Name	PCI 1989	PCI Ratio	Pov Rate	Pov Rate Ratio	Persnl Income Growth	Persnl Income Ratio	Percent Match Reduction
Alabama	11,486	80.5	14.3	134.7	5.6	103.7	50
Alaska	17,610	123.3	6.8	64.5	6.4	118.5	
Arizona	13,461	94.3	11.5	108.2	7.5	138.9	
Arkansas	10,520	73.7	14.8	139.7	4.9	90.7	100
California	16,409	114.9	9.3	87.8	3.3	61.1	50
Colorado	14,821	103.8	8.6	80.8	7.4	137.0	
Connecticut	20,189	141.4	5.0	47.6	3.4	63.0	50
Delaware	15,854	111.0	6.1	57.9	6.1	113.0	
District of Columbia	18,881	132.2	13.3	125.8	4.5	83.3	50
Florida	14,698	102.9	9.0	85.4	12.6	233.3	
Georgia	13,631	95.5	11.5	108.2	7.3	135.2	
Hawaii	15,770	110.5	6.0	57.0	13.4	248.1	
Idaho	11,457	80.2	9.7	91.7	6.1	113.0	
Illinois	15,201	106.5	9.0	84.9	4.4	81.5	
Indiana	13,149	92.1	7.9	75.0	6.1	113.0	
Iowa	12,422	87.0	8.4	79.5	0.5	9.3	50
Kansas	13,300	93.2	8.3	78.7	3.4	63.0	50
Kentucky	11,153	78.1	16.0	150.9	5.8	107.4	50
Louisiana	10,635	74.5	19.4	183.4	7.4	137.0	100
Maine	12,957	90.8	8.0	75.1	4.1	75.9	
Maryland	17,730	124.2	6.0	56.6	5.1	94.4	
Massachusetts	17,224	120.6	6.7	63.7	5.0	92.6	
Michigan	14,154	99.1	10.2	96.8	5.6	103.7	
Minnesota	14,389	100.8	7.3	68.8	3.2	59.3	50
Mississippi	9,648	67.6	20.2	190.6	6.7	124.1	100
Missouri	12,989	91.0	10.1	95.7	2.8	51.9	50
Montana	11,213	78.5	12.0	113.7	6.7	124.1	
Nebraska	12,452	87.2	8.0	75.7	3.9	72.2	50
Nevada	15,214	106.6	7.3	68.6	9.1	168.5	
New Hampshire	15,959	111.8	4.4	41.2	5.1	94.4	
New Jersey	18,714	131.1	5.6	52.8	5.2	96.3	
New Mexico	11,246	78.8	16.5	155.7	7.9	146.3	50
New York	16,501	115.6	10.0	94.9	4.1	75.9	
North Carolina	12,885	90.3	9.9	93.2	5.8	107.4	
North Dakota	11,051	77.4	10.9	103.4	0.8	14.8	50
Ohio	13,461	94.3	9.7	92.1	4.8	88.9	
Oklahoma	11,893	83.3	13.0	123.3	5.0	92.6	
Oregon	13,418	94.0	8.7	82.5	6.0	111.1	
Pennsylvania	14,068	98.5	8.2	77.1	4.5	83.3	
Rhode Island	14,981	104.9	6.9	64.7	3.4	63.0	50
South Carolina	11,897	83.3	11.9	112.3	5.7	105.6	
South Dakota	10,661	74.7	11.6	109.6	4.0	74.1	100
Tennessee	12,255	85.8	12.4	117.2	6.8	125.9	
Texas	12,904	90.4	14.1	133.2	6.5	120.4	50
Utah	11,029	77.3	8.6	81.1	7.9	146.3	
Vermont	13,527	94.7	6.9	65.5	3.7	68.5	50
Virginia	15,713	110.1	7.7	73.0	5.7	105.6	
Washington	14,923	104.5	7.9	74.2	5.5	101.9	
West Virginia	10,520	73.7	16.0	151.2	5.1	94.4	100
Wisconsin	13,276	93.0	7.6	71.7	4.9	90.7	
Wyoming	12,311	86.2	9.3	88.1	6.2	114.8	
Puerto Rico	4,177	29.3	55.3	522.5	0.0	0.0	100

[FR Doc. 94–9228 Filed 4–18–94; 8:45 am]
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federal register

Tuesday
April 19, 1994

Part IV

Department of Housing and Urban Development

Office of the Assistant Secretary for Public and Indian Housing

Comprehensive Improvement Assistance Program; Notice of Funding Availability

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N–94–3739; FR–3640–N–01]

Notice of Funding Availability (NOFA) for Comprehensive Improvement Assistance Program (CIAP)

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of funding availability for Fiscal Year (FY) 1994.

SUMMARY: This Notice informs HAs that own or operate fewer than 250 units and, therefore, are eligible to apply and compete for CIAP funds, of the availability of FY 1994 CIAP funding. HAs with 250 or more units are entitled to receive a formula grant under the Comprehensive Grant Program (CGP) and are not eligible to apply for CIAP funds.

DATES: Application is due on or before 3 p.m. local time on June 18, 1994, at the HUD Field Office with jurisdiction over the Public Housing Agency or Indian Housing Authority (herein referred to as HA), Attention: Director, Public or Indian Housing Division.

FOR FURTHER INFORMATION, CONTACT: Janice D. Rattley, Director, Office of Construction, Rehabilitation and Maintenance, Department of Housing and Urban Development, 451 Seventh Street, SW., room 4138, Washington, DC 20410. Telephone (202) 708–1800. (This is not a toll free number).

IHAs may contact Dominic A. Nessi, Director, Office of Native American Programs, Department of Housing and Urban Development, 451 Seventh Street, SW., room 4140, Washington, DC 20410. Telephone (202) 708–1015. (This is not a toll free number).

Hearing or speech impaired individuals may call HUD's TDD number (202) 708–0850. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

I. Purpose and Substantive Description

(a) Authority

Sec. 14, United States Housing Act of 1937 (42 U.S.C. 14371); sec. 7(d) Department of Housing and Urban Development Act (42 U.S.C. 3535(d)). An interim rule revising the CIAP regulation, 24 CFR part 968, subparts A and B, for PHAs and 24 CFR part 905, subpart I, for IHAs, and streamlining the program was published on March 15, 1993. A final rule will be published shortly.

(b) Major Changes

In FY 1993, the CIAP was streamlined to make it easier for smaller HAs to participate in the program and to give smaller HAs the same flexibility as CGP agencies. The CIAP Application was simplified, the processing groups were reduced to two (Group 1 and Group 2), and the modernization types were reduced to two (Emergency and Other). Under the modernization type of "Other", the HA may apply for, and HUD may fund, a variety of needs, ranging from a single physical or management work item to complete rehabilitation.

(c) Program Highlights

(1) Departmental Priority

Improving Public and Indian Housing is one of the Department's major priorities. Accordingly, a review is being made of the entire Public and Indian Housing Program. Specifically, the Department is very concerned about several aspects of the Modernization Program.

(i) *Design.* When identifying physical improvement needs to meet the modernization standards, HAs are encouraged to consider design which supports the integration of public housing into the broader community. Although high priority needs, such as those related to health and safety, vacant/substandard units, structural or system integrity, and compliance with statutory, regulatory or court-ordered deadlines, will receive funding priority, HAs should plan their modernization in a way which promotes good design, but maintains the modest nature of public housing. The HA should pay particular attention to design and be receptive to creative, but cost-effective approaches suggested by architects, residents, HA staff, and other local entities. Such approaches can complement the planning for basic rehabilitation needs. It should be noted that there will be no increase in operating subsidy due to items added (for example, additional landscaping) to promote the blend of public housing into the surrounding neighborhood.

(ii) *Expediting the program.* HAs are reminded that they are expected to obligate all funds within two years and to expend all funds within three years of program approval (Annual Contributions Contract (ACC) Amendment execution) unless a longer project implementation schedule is approved by the Field Office. If the HA does not obligate approved funds in a timely manner, the Department will recapture the funds unless there are clear, valid reasons for not meeting the obligation deadline; i.e., delays which are outside of the HA's control.

(iii) *Resident involvement and economic uplift.* HAs are encouraged to explore and implement through all feasible means the involvement of residents in all aspects of the CIAP, from planning through implementation. In addition, HAs are encouraged to seek ways to employ residents in all aspects of the CIAP's operation and/or to develop means to promote contracting opportunities for resident-owned businesses. PHAs should use Section 3 provisions to the maximum feasible extent.

(iv) *Elimination of vacant units.* Although the Department has a vacancy reduction effort specifically aimed at reducing vacancies, HAs are encouraged to apply for CIAP funds to address eligible vacancy problems (i.e., those which do not involve routine maintenance) to the extent such problems have not been funded through other sources.

(2) Relationship to Technical Review Factors

The Departmental goal of improving Public and Indian Housing is reflected in the technical review factors, set forth in section IV(c)(5), on which the Field Office scores each HA's CIAP Application. Based on the HA's total score, the Field Office then ranks each HA to determine selection for Joint Review. The technical review factors include the following Departmental initiatives to improve Public and Indian Housing:

(i) Restoration of vacant units to occupancy;

(ii) Resident capacity-building, including opportunities for resident management;

(iii) Economic development, job training and employment opportunities for residents;

(iv) Drug elimination initiatives; and

(v) Partnership with local government.

II. Allocation Amounts

(a) Total Available

The FY 1994 HUD Appropriations Act Public Law 103–124, enacted October 28, 1993, made available $3,230,000,000 of budget authority for the Modernization Program in the Annual Contributions Account. An emergency Supplemental Appropriations Act Public Law 103–211 made available an additional $25,000,000 for modernization of existing public housing projects damaged in the January 1994 earthquake in Southern California. In addition, there is a reduction of

$1,170, which is the Modernization Program's share of the Department's estimated 1993 carry-over of the Annual Contributions Account. The following chart shows the total amount of funds available in FY 1994, which are the appropriations, plus the carry-overs from FY 1993, minus the reduction and set-asides:

FY 1994 Appropriation	$3,230,000,000
FY 1994 Emergency Supplemental Appropriation	25,000,000
Plus Carry-over from FY 1993	247,057,902
Minus Annual Contributions Account Reduction	(1,170)
FY 1994 Adjusted Total Appropriation	$3,502,056,732
Minus FY 1994 Set-Asides:	
Vacancy Reduction Program *	201,736,318
Choice in Management (Being reevaluated) *	100,000,000
CGP Emergency and Natural Disaster Reserve	[a] 75,000,000
Section 6J Activities *	41,317,270
Earthquake Emergency Supplemental	25,000,000
Resident Management Technical Assistance *	25,000,000
Inspection and Technical Assistance *	[b] 19,101,573
LBP Risk Assessment *	11,956,923
CGP Allocation from CGP Carry-Over	6,063,827
LBP Indemnification	971,983
CIAP Allocation from CIAP Carry-Over	16,299
Total Set-Asides	$506,164,193
Adjusted Total Appropriation for FY 1994 Minus Set-Asides	$2,995,892,539

* Set-asides to be implemented through separate NOFAs or Requests for Proposals.

[a] If the demand for LBP Risk Assessment funds is greater than the set-aside of $11,956,923, the Department may use a portion of the $75,000,000 reserve for this purpose where emergencies are involved. Emergencies would be limited to units housing children under seven years old with elevated blood lead levels (EBLs) and HA-owned day care facilities used by children under seven years old with EBLs. Use of reserve funds for LBP Risk Assessment emergencies at CIAP agencies would require a waiver of 24 CFR 968.103(b) or 24 CFR 905.601(b).

[b] Of this amount, $6,969,024 was obligated by the Department in October 1993, leaving a balance of $12,132,548.

(b) Explanation of Carry-Overs

The $247,057,902 in carry-overs from FY 1993 are:

(1) $98,376,318 from the set-aside for the Vacancy Reduction Program;

(2) $57,093,709 from the national reserve for emergencies and natural and other disasters under the CGP;

(3) $50,000,000 from the set-aside for Choice-in-Management;

(4) $15,477,270 from the set-aside for implementing Section 6J activities, which pertain to the Public Housing Management Assessment Program, of Section 113 of the Housing and Community Development Act of 1992. Section 6J activities include independent assessments of Troubled and Mod Troubled PHAs, technical assistance for Troubled and Mod Troubled PHAs, and provision for alternative management;

(5) $11,956,923 from the Lead-Based Paint (LBP) risk assessment set-aside, established in FY 1992;

(6) $7,101,573 from the set-aside for inspection of modernization work and technical assistance for Troubled PHAs and for IHAs;

(7) $6,063,827 from the CGP allocation due to seven HAs not applying and one HA not being approved;

(8) $971,983 from the set-aside for the indemnification of three PHAs (Albany, New York; Cambridge, Massachusetts; and Omaha, Nebraska) that are participating in the LBP Abatement Demonstration. The FY 1991 Appropriations Act extended the availability of these funds appropriated in FY 1990 from October 1, 1991 to October 1, 1998; and

(9) $16,299 from the CIAP allocation.

(c) Allocation Between CGP and CIAP

The $2,995,892,539 balance is allocated as follows:

CGP Allocation	[a] $2,679,029,034
CIAP Allocation	[b] 316,863,505

[a] Does not include $6,063,827 in CGP funds carried over from FY 1993 which will be added to the CGP allocation.

[b] Does not include $16,299 in CIAP funds carried over from FY 1993 which will be added to the CIAP allocation.

(1) The $2,995,892,539 balance is allocated between CIAP and CGP agencies based on the relative shares of backlog needs (weighted at 50%) and accrual needs (weighted at 50%), as determined by the field inspections conducted for the HUD-funded ABT study of modernization needs. This allocation results in CIAP agencies receiving 10.58% or $316,863,505 (plus the $16,299 carryover for a total of $316,879,804) and CGP agencies receiving 89.42% or $2,679,029,034 (plus the $6,063,827 carryover for a total of $2,685,092,861) of the funds available.

(i) *Backlog needs* are needed repairs and replacements of existing physical systems, items that must be added to meet the HUD modernization and energy conservation standards and State or local/tribal codes, and items that are necessary for the long-term viability of a specific housing development.

(ii) *Accrual needs* are needs that arise over time and include needed repairs and replacements of existing physical systems and items that must be added to meet the HUD modernization and energy conservation standards and State or local/tribal codes.

(2) The $316,879,804 available to CIAP agencies (which includes the $16,299 carryover) is allocated between Public Housing at 92.1249% or $291,925,067, and Indian Housing at 7.8751% or $24,954,737. This allocation also is based on the relative shares of backlog needs (weighted at 50%) and accrual needs (weighted at 50%).

(d) Subassignment of Funds to Non-Indian Field Offices

Headquarters has determined the distribution of Public Housing CIAP funds for each HUD Region based on the relative shares of backlog and accrual needs for CIAP agencies. In assigning funds to each Region, Headquarters will designate an amount to be subassigned to each non-Indian Field Office, based on each Office's FY 1993 subassignment and adjusted as necessary. The FY 1993 subassignments reflected both relative shares of modernization needs within the Region and PHA capability to administer the modernization.

(1) The Field Office Public Housing Division Director shall have authority to make Joint Review selections and CIAP funding decisions.

(2) If additional funds for Public Housing CIAP become available, as set forth in paragraph (c)(1) of this section,

Headquarters will allocate the funds to one or more Field Offices based on their relative shares of modernization need, approvable applications, and PHA capability to carry out the modernization.

(3) If a Field Office does not receive sufficient fundable applications to use its allocation, Headquarters will reallocate the remaining funds to one or more Field Offices based on approvable applications and PHA capability to carry out the modernization.

Of the $291,925,067 available for Public Housing, 1% or $2,919,251 has been set aside to carry out goals related to pending civil rights litigation (e.g., Young v. Cisneros), which is subject to judicial oversight. The following table shows the distribution of CIAP funds for PHAs, excluding IHAs, assigned by Headquarters to each Region for subassignment to the Field Offices as percentages of the $289,005,816 balance available for Public Housing:

Region	Percent of public housing funds
I. New England	6.4094
II. New York/New Jersey	6.8667
III. Midatlantic	4.0141
IV. Southeast	25.1639
V. Midwest	17.6794
VI. Southwest	20.3983
VII. Great Plains	8.6821
VIII. Rocky Mountain	3.8029
IX. Pacific/Hawaii	4.1646
X. Northwest/Alaska	2.8186
Total	100.0000

(e) Subassignment of Funds to Offices of Native American Programs (ONAP)

In assigning funds to the appropriate Region, Headquarters will designate an amount to be subassigned to each ONAP, covering Indian Housing and any Public Housing owned and operated by IHAs.

(1) The ONAP Administrator shall have authority to make Joint Review selections and CIAP funding decisions.

(2) If additional funds for Indian Housing CIAP become available, as set forth in paragraph (c)(1) of this section, Headquarters will allocate the funds to one or more ONAPs based on their relative shares of modernization need, approvable applications, and IHA capability to carry out the modernization.

(3) If an ONAP does not receive sufficient fundable applications to use its allocation, Headquarters will reallocate the remaining funds to one or more ONAPs based on approvable applications and IHA capability to carry out the modernization.

The following table shows the distribution of CIAP funds for IHAs, assigned by Headquarters to each appropriate Region for subassignment to the ONAPs as percentages of the total $24,954,737 available for Indian Housing:

ONAP	Percent of indian housing funds
Chicago (Midwest Region)	19.2962
Oklahoma (Southwest Region)	18.9139
Denver (Rocky Mountain Region)	9.0980
Phoenix (Pacific/Hawaii Region)	29.5490
Seattle (Northwest Region)	19.5380
Anchorage (Northwest Region)	3.6049
Total	100.0000

III. Application Preparation and Submission by HA

(a) Planning

In preparing its CIAP Application, the HA is encouraged to assess all its physical and management improvement needs. Physical improvement needs should be reviewed against the modernization standards, as set forth in HUD Handbook 7485.2, as revised, and any cost-effective energy conservation measures, identified in updated energy audits. The modernization standards include development specific work to ensure the long-term viability of the developments, such as amenities and design changes to promote the integration of low-income housing into the broader community. See section I(c)(1)(i). In addition, the HA is strongly encouraged to contact the Field Office to discuss its modernization needs and obtain information. The term "Field Office" includes the ONAP.

(b) Resident Involvement/Local Official Consultation Requirements

(1) Residents/Homebuyers

The CIAP regulations at §§ 968.220 or 905.624 require the HA to establish a Partnership Process for rental developments which ensures full resident participation in the planning, implementation and monitoring of the modernization program, as follows:

(i) Before submission of the CIAP Application, consultation with residents, resident organization, and resident management corporation (herein referred to as residents) of the development(s) being proposed for modernization and request for resident recommendations;

(ii) Reasonable opportunity for residents to present their views on the proposed modernization and alternatives to it, and full and serious consideration of resident recommendations;

(iii) Written response to residents, indicating acceptance or rejection of resident recommendations, consistent with HUD requirements and the HA's own determination of efficiency, economy and need, with a copy to the Field Office at Joint Review;

(iv) After HUD funding decisions, notification to residents of the approval or disapproval and, where requested, provision to residents of a copy of the HUD-approved CIAP budget; and

(v) During implementation, periodic notification to residents of work status and progress and maximum feasible employment of residents in the modernization effort.

(2) Local Officials

Before submission of the CIAP Application, consultation with appropriate local officials regarding how the proposed modernization may be coordinated with any local plans for neighborhood revitalization, economic development, drug elimination and expenditure of local funds, such as Community Development Block Grant funds.

(c) Contents of CIAP Application

Within the established time frame, the HA shall submit the CIAP Application to the Field Office, with a copy to appropriate local/tribal officials. The HA may obtain the necessary forms from the Field Office. The CIAP Application is comprised of the following documents:

(1) *Form HUD–52822, CIAP Application*, in an original and two copies, which includes:

(i) A general description of HA development(s), in priority order, (including the current physical condition, for each development for which the HA is requesting funds, or for all the HA's developments) and physical and management improvement needs (to meet the Secretary's standards in § 968.115 or § 905.603), general description of major work categories (*e.g.*, kitchens, bathrooms) required to correct identified deficiencies and estimated costs, including a statement concerning consultation with local officials and residents and long-term viability of the development(s). For example:

Development 1–1: 50 units of low-rent; 25 years old; physical needs are: new roofs, LBP testing, storm windows and doors, and electrical upgrading at estimated cost of $150,000.

Development 1–2: 40 units of low-rent; 20 years old; physical needs are:

physical accessibility of 2 units, kitchen floors, shower/bathtub surrounds, fencing, and exterior lighting at estimated cost of $90,000.

Development 1–3: 35 units of Turnkey III; 15 years old; physical needs are: physical accessibility of 3 units and roof insulation at estimated cost of $50,000.

Development 1–4: 20 units of low-rent; 5 years old; no physical needs; no funding requested.

(ii) An estimate of the replacement cost of equipment systems or structural elements which would normally be replaced over the remaining period of the annual contributions contract or during the 30-year period beginning on the date of submission of the application.

(iii) Where funding is being requested for management improvements, an identification of the deficiency, a general description of the work required for correction, and estimated cost. Examples of management improvements include, but are not limited to the following areas:

(A) The management, financial, and accounting control systems of the HA;

(B) The adequacy and qualifications of personnel employed by the HA in the management and operation of its developments by category of employment; and

(C) The adequacy and efficacy of resident programs and services, resident and development security, resident selection and eviction, occupancy and vacant unit turnaround, rent collection, routine and preventive maintenance, equal opportunity, and other HA policies and procedures.

(2) *Form HUD–50071, Certification for Contracts, Grants, Loans and Cooperative Agreements*, in an original only, required of HAs established under State law, applying for grants exceeding $100,000.

(3) *SF–LLL, Disclosure of Lobbying Activities*, in an original only, required of HAs established under State law, only where any funds, other than federally appropriated funds, will be or have been used to influence Federal workers, Members of Congress and their staff regarding specific grants or contracts.

(4) *Form HUD–2880, Applicant/Recipient Update/Disclosure Report*, in an original only, required of HAs established under State law which have requested or received an aggregate amount of Federal assistance in excess of $200,000 during the current FY.

(5) *At the option of the HA*, a narrative statement addressing any or all of the technical review factors in section IV(c)(5).

(6) *At the option of the HA*, photographs or video cassettes showing the physical condition of the developments.

(d) CIAP Application Deadline

The CIAP Application must be physically received by the local HUD Field Office by 3 p.m. local time on June 20, 1994. Faxed copies will *not* be considered official applications. The application deadline for this NOFA is firm as to date and hour. In the interest of fairness to all competing applicants, the Department will not consider any application that is received after the application deadline. All applicants should take this into account and submit application materials as early as possible to avoid any risk brought about by unanticipated delays or delivery-related problems. This application deadline does not apply to applications for emergency funding, which may be submitted at any time when funds are available.

IV. Application Processing by Field Office

(a) Completeness Review (Corrections to Deficient Applications)

To be eligible for processing, the CIAP Application must be received by the Field Office within the time period specified in this NOFA and must be complete. In order to determine whether an application is complete, responsive to the NOFA and acceptable for technical processing, the Field Office shall perform a completeness review, using the following criteria:

(1) The application was received by HUD at the appropriate address by the date and time specified in the NOFA and was complete and responsive (excluding exhibits which are certifications); or

(2) If an application is determined to be incomplete or to have missing certifications, the HA shall be advised in writing of any deficiencies or any inconsistencies. The missing information is to be submitted within a specified period of time from the date of HUD's written notification. This is not additional time to substantially revise the application. Deficiencies which may be corrected at this time are inadvertently omitted documents or clarifications of previously submitted material and other changes which are not of such a nature as to improve the competitive position of the application. The HA must acceptably correct deficiencies (including furnishing missing certifications) within 21 calendar days of notification from the Field Office.

(i) If Form HUD–52822, CIAP Application, is missing, the HA's application will be considered substantially incomplete and, therefore, ineligible for further processing.

(ii) If Form HUD–50071, Certification for Contracts, Grants, Loans, and Cooperative Agreements, SF–LLL, Disclosure of Lobbying Activities, or Form HUD–2880, Applicant/Recipient Update/Disclosure Form, is required, but missing or there is a technical mistake, such as no signature on a submitted form, the HA will be given an opportunity to correct the deficiency.

(b) Eligibility Review

HAs with fewer than 250 units are eligible to participate in the CIAP. After the HA's CIAP Application is determined to be complete and accepted for review, the Field Office eligibility review shall determine if the application meets the basic eligibility requirements and, therefore, is eligible for processing.

(1) Eligibility for Processing

To be eligible for processing:

(i) *Development eligibility.* The development is either a public housing development, including a conveyed Lanham Act or Public Works Administration development, or a Section 23 Leased Housing Bond-Financed project (BFP).

(ii) *Date of full availability (DOFA).* Each eligible development for which work is proposed has reached DOFA at the time of CIAP Application submission.

(2) Eligibility for Processing on Reduced Scope

Where certain conditions exist, the HA will be eligible for processing on a reduced scope as follows:

(i) *Funds owed the department.* Where the HA owes funds to the Department as a result of excess development, modernization or operating funds previously provided and the HA has not repaid the funds, or has not entered into a repayment agreement, or is not meeting its obligations under a repayment agreement, the HA is eligible for processing only for Emergency Modernization.

(ii) *FHEO Compliance.* Where the HA has not complied with Fair Housing and Equal Opportunity (FHEO) requirements as evidenced by an action, finding or determination as described below, unless the HA is implementing a voluntary compliance agreement or settlement agreement designed to correct the area(s) of noncompliance, the HA is eligible for processing only for

Emergency Modernization or physical work needed to remedy civil rights deficiencies.

(A) A pending proceeding against the HA based upon a Charge of Discrimination issued under the Fair Housing Act. A Charge of Discrimination is a charge under section 810(g)(2) of the Fair Housing Act, issued by the Department's General Counsel or legally authorized designee;

(B) A pending civil rights suit against the HA, referred by the Department's General Counsel and instituted by the Department of Justice;

(C) Outstanding HUD findings of HA noncompliance with civil rights statutes and executive orders under § 968.110(a) or § 905.115, or implementing regulations, as a result of formal administrative proceedings, unless the HA is implementing a HUD-approved resident selection and assignment plan or compliance agreement designed to correct the area(s) of noncompliance;

(D) A deferral of the processing of applications from the HA imposed 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) and procedures (HUD Handbook 8040.1), or under Section 504 of the Rehabilitation Act of 1973 and HUD implementing regulations (24 CFR 8.57); or

(E) An adjudication of a violation under any of the authorities under § 968.110(a) or § 905.115 in a civil action filed against the HA by a private individual, unless the HA is implementing a HUD-approved resident selection and assignment plan or compliance agreement designed to correct the area(s) of noncompliance.

(iii) *Section 504 Compliance.* Where the Section 504 needs assessment identified a need for accessible units, the HA was required to make structural changes to meet that need by July 11, 1992. Where the HA has not completed all required structural changes or obtained an extension from HUD, the HA is eligible for processing only for Emergency Modernization or physical work needed to complete the structural changes. Refer to PIH Notice 92–65 (PHA), dated December 14, 1992.

(iv) *LBP Testing Compliance.* Where the HA will not comply with the statutory requirement to complete LBP testing on all pre-1978 family units by December 6, 1994, the HA is eligible for processing only for Emergency Modernization or work needed to complete LBP testing.

(c) *Selection Criteria and Ranking Factors.* After all CIAP Applications are reviewed for eligibility, the Field Office shall categorize the eligible HAs and their developments into two processing groups, as defined in subparagraph (1) of this paragraph: Group 1 for Emergency Modernization; and Group 2 for Other Modernization. HA developments may be included in both groups and the same development may be in each group. However, the HA is only required to submit one CIAP Application, which the Field Office will process under either Group 1 or Group 2.

(1) Grouping Modernization Types

(i) *Group 1, emergency modernization.* Developments having physical conditions of an emergency nature, posing an immediate threat to the health or safety of residents or related to fire safety, and which must be corrected within one year of CIAP funding approval. Funding is limited to physical work items and may not be used for management improvements. Emergency Modernization includes all LBP testing and abatement of units housing children under seven years old with elevated blood lead levels (EBLs) and all LBP testing and abatement of HA-owned day care facilities used by children under seven years old with EBLs. Group 1 developments are not subject to the technical review rating and ranking in subparagraphs (5) and (6) of this paragraph or the long-term viability and reasonable cost determination in section V(e).

(ii) *Group 2, other modernization.* Developments not having physical conditions of an emergency nature and located in HAs which have demonstrated a capability of carrying out the proposed modernization activities. Other Modernization includes: one or more physical work items, where the Field Office determines that the physical improvements are necessary and sufficient to extend the useful life of the development; and/or one or more development specific or HA-wide management work items (including planning costs); and/or testing, professional risk assessments, interim containment, and abatement of LBP. Therefore, eligibility of work under Other Modernization ranges from a single work item to the complete rehabilitation of a development. Refer to section I(c)(1)(i) regarding modest amenities and improved design. Group 2 developments are subject to the technical review rating and ranking in subparagraphs (5) and (6) of this paragraph and the long-term viability and reasonable cost determination in section V(e).

(2) Assessment of HA's Management Capability

As part of its technical review of the CIAP Application, the Field Office shall evaluate the HA's management capability. Particular attention shall be given to the adequacy of the HA's maintenance in determining the HA's management capability. This assessment shall be based on the compliance aspects of on-site monitoring, such as audits, reviews or surveys which are currently available within the Field Office, *and* on the performance review under the Public Housing Management Assessment Program (PHMAP) for PHAs or the Administrative Capability Assessment for IHAs, and other information sources, as follows:

(i) *Public housing.* A PHA has management capability if it is (A) not designated as Troubled under Part 901, PHMAP, or (B) designated as Troubled, but has a reasonable prospect of acquiring management capability which may include through CIAP-funded management improvements. A Troubled PHA may be considered for funding of non-emergency physical improvements where it is making reasonable progress toward meeting the performance targets established in its memorandum of agreement under § 901.140.

(ii) *Indian housing.* An IHA has management capability if it is (A) not designated as High Risk under § 905.135 or (B) designated as High Risk, but has a reasonable prospect of acquiring management capability which may include through CIAP funded management improvements. A High Risk IHA may be considered for funding of non-emergency physical improvements where it is making reasonable progress toward meeting the goals established in its management improvement plan under § 905.135.

(3) Assessment of HA's Modernization Capability

As part of its technical review of the CIAP Application, the Field Office shall evaluate the HA's modernization capability, including the progress of previously approved modernization and the status of any outstanding findings from CIAP monitoring visits, as follows:

(i) *Public housing.* A PHA has modernization capability if it is (A) not designated as Modernization Troubled under Part 901, PHMAP, or (B) designated as Modernization Troubled, but has a reasonable prospect of acquiring modernization capability which may include through CIAP-funded management improvements and administrative support, such as hiring staff or contracting for assistance. A

Modernization Troubled PHA may be considered for funding of non-emergency physical improvements where it is making reasonable progress toward meeting the performance targets established in its memorandum of agreement under § 901.140. Where a PHA does not have a funded modernization program in progress, the Field Office shall determine whether the PHA has a reasonable prospect of acquiring modernization capability through hiring staff or contracting for assistance.

(ii) *Indian housing.* An IHA has modernization capability if it is capable of effectively carrying out the proposed modernization improvements. Where an IHA does not have a funded modernization program in progress, the ONAP shall determine whether the IHA has a reasonable prospect of acquiring modernization capability through hiring staff or contracting for assistance.

(4) Technical processing

After the Field Office has categorized the eligible HAs and their developments into Group 1 and Group 2, the Field Office shall rate all Group 2 HAs on each of the technical review factors in subparagraph (5) of this paragraph. With the exception of the technical review factor of "extent and urgency of need", a Group 2 HA is rated on its overall HA application and not on each development. For the technical review factor of "extent and urgency of need," each development for which funding is requested by a Group 2 HA is scored; the development with the highest priority needs is scored the highest number of points, which is then used for the overall HA score on that factor. *High priority needs* are non-emergency needs, but related to: Health or safety; vacant, substandard units; structural or system integrity; or compliance with statutory, regulatory or court-ordered deadlines.

(5) Technical Review Factors

The technical review factors for assistance are:

Technical review factors	Maximum points
Extent and urgency of need, including need to comply with statutory, regulatory or court-ordered deadlines	40
Extent of vacancies	10
HA's modernization capability	15
HA's management capability	15
Degree of resident involvement in HA operations	5
Degree of HA activity in resident initiatives, including resident management, economic development, and drug elimination efforts	5
Degree of resident employment	5
Local government support for proposed modernization	5
Total Maximum Score	100

(6) Rating and Ranking

After rating all Group 2 HAs on each of the technical review factors set forth in subparagraph (5) of this paragraph, the Field Office shall rank each Group 2 HA based on its total score, list Group 2 HAs in descending order and identify other Group 2 HAs with lower ranking applications, but with high priority needs.

(d) Joint Review

The purpose of the Joint Review is for the Field Office to discuss with the HA the proposed modernization program, as set forth in the CIAP Application, and determine the size of the grant, if any, to be awarded.

(1) The Field Office shall select HAs, including all Group 1 HAs, for Joint Review so that the total dollar value of all proposed modernization recommended for funding exceeds the subassignment amount by at least 15%. This will preserve the Field Office's ability to adjust cost estimates and work items as a result of Joint Review.

(2) The Field Office shall notify in writing each HA whose application has been selected for further processing as to whether the Joint Review will be conducted on-site or off-site (e.g., by telephone or in-office meeting). An HA will not be selected for Joint Review if other funding is available (refer to section V(g)). The Field Office shall notify in writing each HA not selected for Joint Review and provide the reasons for non-selection.

(3) Where the HA has not included some of its developments in the CIAP Application, the Field Office may not, as a result of Joint Review, consider funding any non-emergency work at excluded developments or subsequently approve use of leftover funds at excluded developments. Therefore, to provide maximum flexibility, the HA may wish to include all of its developments in the CIAP Application, even though there are no current needs.

(4) The HA shall prepare for the Joint Review by preparing a draft CIAP budget, and reviewing the other items to be covered during the Joint Review, such as the need for professional services, method of accomplishment of physical work (contract or force account labor), HA compliance with various Federal statutes and regulations, etc. If conducted on-site, the Joint Review may include an inspection of the proposed physical work.

(e) HUD Awards

After all Joint Reviews are completed, the Field Office shall adjust the HAs, developments, and work items to be funded and the amounts to be awarded, on the basis of information obtained from Joint Reviews, environmental reviews, and FHEO review. Such adjustments are necessary where Joint Review determines that actual Group 1 emergencies and Group 2 high priority needs, HA priorities, or cost estimates vary from the HA's application. Such adjustments may preclude the Field Office from funding all of the higher ranked HA applications. However, where the information obtained from Joint Reviews, environmental reviews, and FHEO review does not substantially alter the information used to establish the rankings before Joint Review, the Field Office shall make funding decisions in accordance with its rankings. The Field Office shall then announce the HAs selected for CIAP grants, subject to their submission of an approvable CIAP budget and other required documents.

(f) HA Submission of Additional Documents

After Field Office funding decisions, the Field Office shall provide written notification to the HA of funding approval, subject to HA submission of the following documents within the time frame prescribed by the Field Office:

(1) *Form HUD–52825, CIAP Budget/Progress Report*, which includes the implementation schedule(s), in an original and two copies.

(2) *Form HUD–50070, Certification for a Drug-Free Workplace*, in an original only.

(3) *Form HUD–52820, HA Board Resolution Approving CIAP Budget*, in an original only.

(4) *For each Turnkey III development approved* for modernization, the number of units to be included in the modernization program and, where applicable, the estimated cost attributed to each home, in an original only.

(5) *On a voluntary basis, an estimate of goals* under Section 3 of the HUD Act of 1968 for the FY 1994 CIAP funds.

(g) ACC Amendment

After HUD approval of the CIAP budget, HUD and the HA shall enter into an ACC amendment in order for the HA to requisition modernization funds. The ACC amendment shall require low-income use of the housing for not less than 20 years from the date of the ACC amendment (subject to sale of homeownership units in accordance with the terms of the ACC). HUD has the authority to condition an ACC amendment (e.g., to require an HA to hire a modernization coordinator or contract administrator to administer its modernization program).

(h) Declaration of Trust

Where requested by the Field Office, the HA shall execute and file for record a Declaration of Trust as provided under the ACC to protect the rights and interests of HUD throughout the 20-year period during which the HA is obligated to operate its developments in accordance with the ACC, the Act, and HUD regulations and requirements. HUD has determined that its interest in Mutual Help Program units is sufficiently protected without the further requirement of a Declaration of Trust; therefore, a Declaration of Trust is not required for Mutual Help units.

(i) "Fast Tracking" Applications

Emergency applications do not have to be processed within the normal processing time allowed for other applications. Where an immediate hazard must be addressed, HA applications may be submitted and processed at any time during the year when funds are available. The Field Office shall "fast track" the processing of these emergency applications so that fund reservation may occur as soon as possible.

V. Other Program Items

(a) Turnkey III Developments

(1) General

Eligible physical improvement costs for existing Turnkey III developments are limited to work items under Emergency Modernization or Other Modernization which are not the responsibility of the homebuyer families *and* which are related to health and safety, correction of development deficiencies, physical accessibility, energy audits and cost-effective energy conservation measures, or LBP testing, interim containment, professional risk assessment and abatement. In addition, eligible costs include management improvements under the modernization type of Other Modernization. Work on any units which have been paid off, even though not conveyed by the time the CIAP Application is submitted, is ineligible. The cost of non-emergency health and safety work items shall increase the purchase price and amortization period for homebuyer families; other eligible costs shall not increase the purchase price and amortization period.

(2) Ineligible Costs

Nonroutine maintenance or replacements, dwelling additions, and items that are the responsibility of the homebuyer families are ineligible costs.

(3) Exception for Vacant or Non-Homebuyer-occupied Turnkey III Units

(i) Notwithstanding the requirements of subparagraph (1) of this paragraph, an HA may carry out Other Modernization in a Turnkey III development, whenever a Turnkey III unit becomes vacant or is occupied by a non-homebuyer family. An HA that intends to use funds under this paragraph must identify in its CIAP Application, the estimated number of units proposed for Other Modernization and subsequent sale. In addition, an HA must certify that: the proposed modernization under this paragraph would result in bringing the identified units into full compliance with the homeownership objectives under the Turnkey III Program; and the HA has homebuyers who both are eligible for homeownership, in accordance with the regulatory requirements, and have demonstrated their intent to be placed into each of the Turnkey III units proposed for Other Modernization.

(ii) Before an HA may be approved for Other Modernization of a unit under this paragraph, it must first deplete any Earned Home Payments Account (EHPA) or Non-Routine Maintenance Reserve (NRMR) pertaining to the unit, and request the maximum operating subsidy. Any increase in the value of a unit caused by its Other Modernization under this paragraph shall be reflected solely by its subsequent appraised value, and not by an automatic increase in its purchase price.

(b) Mutual Help Developments

Mutual Help developments are eligible for the same physical and management improvement costs as are rental developments. Work on any Mutual Help units which have been paid off, even though not conveyed, by the time the CIAP Application is submitted is ineligible.

(c) Professional Risk Assessment for LBP

An additional $11,956,923 set-aside will be made available for Professional Risk Assessments under a separate NOFA and Processing Notice. HAs with pre-1980 family developments are strongly encouraged to apply for these funds to conduct professional risk assessments.

(d) In-Place Management (Interim Containment of LBP)

Where the results of the professional risk assessment recommend that the HA undertake in-place management measures, the HA is strongly encouraged to apply for CIAP funds to carry out such measures. However, if the HA is not successful in obtaining CIAP funds for in-place management measures, the HA may request a budget revision of previously approved, but unobligated CIAP funds to accomplish such measures. Where the HA had a CIAP budget revision approved for this purpose in FY 1993, the HA may request FY 1994 CIAP funds to complete the items which were eliminated as a result of the budget revision.

(e) Long-Term Viability and Reasonable Cost

On Form HUD–52822, CIAP Application, the HA shall indicate whether the developments proposed for modernization have long-term viability, including prospects for full occupancy. During Joint Review, the Field Office shall determine whether the estimated costs are reasonable for the proposed work items and, if not, adjust the costs. The Field Office shall review estimated costs against national indices, adjusted to reflect local conditions, such as R.S. Means Index, the Dodge Report or Marshall and Swift, as well as using actual, local experience. The Field Office is no longer required to compare estimated modernization costs against computed Total Development Cost (TDC) limits. Where the HA or Field

Office believes that a particular development may not have long-term viability, the Field Office shall make a final viability determination, using the following criteria:

(1) Any special or unusual conditions have been adequately explained, all work has been justified as necessary to meet the modernization and energy conservation standards, including development specific work necessary to blend the development in with the design and architecture of the neighborhood; and

(2) Reasonable cost estimates have been provided, and every effort has been made to reduce costs; and

(3) Rehabilitation of the existing development is more cost-effective in the long-term than construction or acquisition of replacement housing; or

(4) There are no practical alternatives for replacement housing.

(f) Use of Dwelling Units for Economic Self-Sufficiency Services and/or Drug Elimination Activities

On August 24, 1990, the Department issued HUD Notice PIH 90–39 (PHA), concerning the eligibility for funding under the Performance Funding System of dwelling units used to promote economic self-sufficiency services for residents and anti-drug programs. CIAP funds may be used to convert units for these purposes. Also refer to the Family Self-Sufficiency Program Guidelines (56 FR 49592, September 30, 1991).

(g) Availability of Funding

(1) Where available, authorized residual receipts or debt forgiveness replacement reserve funds shall be used in lieu of CIAP funds. Residual receipts may be retained for only two years.

(2) The HA shall not receive duplicate funding for the same work item or activity under any circumstance and shall establish controls to assure that an activity, program, or project that is funded under any other HUD program, shall not be funded by CIAP.

(3) A building which is assisted with Major Reconstruction of Obsolete Projects (MROP) funding after FY 1988 which has not yet reached Date of Full Availability (DOFA) is not eligible for CIAP funding. A building which was assisted with MROP funding during FYs 1986–1988 which has not yet expended all MROP funds is not eligible for CIAP funding.

VI. Application Deadline Date and Summary of FY 1994 CIAP Processing Steps

See section III(d) for the deadline date for submission of the FY 1994 CIAP application. Dates for other processing steps will be established by each Field Office to reflect local workload issues. The Field Office shall notify HAs of its processing schedule before the application deadline date.

Summary of Processing Steps

1. HA submits CIAP Application.
2. Field Office conducts completeness review and requests corrections to deficient applications.
3. HA submits corrections to deficient applications within 21 calendar days of notification from Field Office.
4. Field Office conducts eligibility review and technical review (rating and ranking) and makes Joint Review selections.
5. Field Office completes Joint Reviews, environmental reviews and FHEO review.
6. Field Office makes funding decisions and forwards Congressional notifications to Headquarters.
7. Congressional notification is completed and Field Office notifies HA of funding decisions.
8. HA submits additional documents as required in section IV(f).
9. Field Office completes fund reservations and forwards ACC amendment to HA for signature and return.
10. Field Office executes ACC amendment and HA begins implementation.

VII. Other Matters

(a) Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50 implementing section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the Office of the Rules Docket Clerk, 451 Seventh Street SW., room 10276, Washington, DC 20410.

(b) Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies and procedures contained in this NOFA will not have substantial direct effects on States or their political subdivisions, or the relationship between the federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the NOFA is not subject to review under the Order.

(c) Impact on the Family

The General Counsel, as the Designated Official for Executive Order 12606, The Family, has determined that this NOFA will likely have a beneficial impact on family formation, maintenance and general well-being. Accordingly, since the impact on the family is beneficial, no further review is considered necessary.

(d) Accountability in the Provision of HUD Assistance

The Department has promulgated a final rule to implement section 102 of the Department of Housing and Urban Development Reform Act of 1989 (HUD Reform Act). The final rule 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 the Department. On January 16, 1992, the Department published at 57 FR 1942, 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 documentation, public access, and disclosure requirements of section 102 are applicable to assistance awarded under this NOFA as follows:

(1) Documentation and Public Access

The Department will ensure that 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 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 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these requirements.)

(2) HUD Responsibilities—Disclosures

The Department will make available to the public for five years all applicant disclosure reports (Form HUD–2880) submitted in connection with this NOFA. Update reports (also Form HUD–

2880) will be made available along with the applicant disclosure reports, but in no case for a period less than three years. All reports, both applicant disclosures and updates, 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. (See 24 CFR part 12, subpart C, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these disclosure requirements.)

(e) Prohibition Against Advance Information on Funding Decisions

HUD's regulation implementing section 103 of the HUD Reform Act, codified as 24 CFR part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants. Also refer to a final rule amending part 4 published in the **Federal Register** on November 19, 1993 (58 FR 61016), regarding the regulation of certain conduct by HUD employees and by applicants for HUD assistance during the selection process for the award of financial assistance by HUD.

HUD employees involved in the review of applications and in the making of funding decisions are limited 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 under 24 CFR Part 4.

Applicants who have questions should contact the HUD Office of Ethics at (202) 708–3815 (voice), (202) 708–1112 (TDD). These are not toll-free numbers. The Office of Ethics can provide information of a general nature to HUD employees, as well. However, a HUD employee who has specific program questions, such as whether particular subject matter can be discussed with persons outside the Department, should contact his or her Field Office Counsel or Headquarters Counsel for the program to which the question pertains.

(f) Prohibition Against Lobbying of HUD Personnel

Section 112 of the HUD Reform Act added a new section 13 of the Department of Housing and Urban Development Act (42 U.S.C. 3531 *et seq.*) . Section 13 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 regulations implementing section 13 are 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 regulation, particularly the examples contained in appendix A of the rule.

A final rule published in the **Federal Register** on September 7, 1993, amended the definition of "person" to exclude from coverage a State or local government, or the officer or employee of a State or local government or housing finance agency thereof who is engaged in the official business of the State or local government.

Any questions regarding the rule should be directed to the Office of Ethics, room 2158, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–3000. Telephone: (202) 708–3815 (voice); (202) 708–1112 (TDD). These are not toll-free numbers. Forms necessary for compliance with the rule may be obtained from the local HUD Office.

(g) Prohibition Against Lobbying Activities

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) and the HUD 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 must certify that no federal funds have been or will be spent on lobbying activities in connection with the assistance.

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.

If the amount applied for is greater than $100,000, the certification is required at the time application for funds is made that federally appropriated funds are not being or have been used in violation of the Byrd Amendment. If the amount applied for is greater than $100,000 and the HA has made or has agreed to make any payment using nonappropriated funds for lobbying activity, as described in 24 CFR Part 87 (Byrd Amendment), the submission also must include the SF–LLL, Disclosure of Lobbying Activities. The HA determines if the submission of the SF–LLL is applicable.

(h) 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 1989 (44 U.S.C. 3501–3520) and have been assigned OMB control number 2577–0044.

VIII. Catalog of Federal Domestic Assistance Program

The Catalog of Federal Domestic Assistance Program number is 14.852.

Dated: April 5, 1994.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 94–9321 Filed 4–18–94; 8:45 am]

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federal register

Tuesday
April 19, 1994

Part V

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Species; Saltwater and Nile Crocodiles; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AC30

Endangered and Threatened Wildlife and Plants; Proposed Reclassification of Saltwater Crocodile Population in Australia From Endangered to Threatened and Listing of Saltwater Crocodile Population in Papua New Guinea as Threatened by Reason of Similarity of Appearance; Special Rule for the Saltwater and Nile Crocodiles

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service (Service) proposes reclassifying the saltwater crocodile (*Crocodylus porosus*) in Australia from endangered to threatened, and the Papua New Guinea population as threatened by reason of similarity of appearance under the provisions of the U.S. Endangered Species Act (ESA) of 1973. The saltwater crocodile has been listed as endangered throughout its range since 1979, except the Papua New Guinea population, which has never been listed. A special rule is also proposed that would allow for the importation of certain specimens of saltwater crocodiles from Australia and Papua New Guinea into the United States in the course of a commercial activity provided that such import is consistent with the requirements of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and certain other provisions. This proposal also reproposes the special rule for the Nile crocodile (*Crocodylus niloticus*) and will be consistent with the proposed special rule for the saltwater crocodile. When the Service previously proposed reclassifying the Nile crocodile from endangered to threatened status, the comments received on the proposed special rule that accompanied that proposed reclassification led the Service to repropose the special rule.

DATES: Comments from all interested parties must be received by July 18, 1994. Public hearing requests must be received by June 3, 1994.

ADDRESSES: Comments, information, and questions should be submitted to the Chief, Office of Scientific Authority; Mail Stop: Room 725, Arlington Square; 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, or by phone at (703) 358–1708.

SUPPLEMENTARY INFORMATION:

Background

This proposal is organized by first presenting a full discussion of the saltwater crocodile, then a brief listing history on the Nile crocodile reclassification, followed by a review of available conservation measures including a description of and effects of the proposed special rule for both the saltwater and the Nile crocodiles.

I. The Saltwater Crocodile

A. Status and Listing History

The saltwater or estuarine crocodile (*Crocodylus porosus*) ranges from southwest India and along its eastern coast, throughout Southeast Asia and through the Pacific Islands as far east as Fiji and south to the northern coast of Australia. The majority of populations have been reported from the following countries:

Australia, Bangladesh, Burma, Cambodia, India, Indonesia, Malaysia, Papua New Guinea, Sri Lanka, Thailand, the Philippines, and Vietnam. It is the largest crocodilian species, reaching lengths well over 20 feet (6.1 meters). The species inhabits estuaries, mangrove swamps, and tidal reaches of rivers (The World Conservation Union (IUCN) 1975).

At the 1979 meeting of the Parties to CITES, the saltwater crocodile was transferred from Appendix II to Appendix I, except for the population in Papua New Guinea which was retained on Appendix II. On December 16, 1979 (44 FR 75074), the Service listed all saltwater crocodile populations outside of Papua New Guinea as endangered. Both of these actions were taken because the species had suffered serious losses of habitat throughout most of its range and it had been subject to extensive poaching for its hide. At their 1985 meeting, the CITES Parties voted to transfer the Australian population from Appendix I to Appendix II of CITES pursuant to resolution Conf. 3.15 (ranching) and to transfer the Indonesian population from Appendix I to Appendix II pursuant to resolution Conf. 5.21, making Indonesia subject to export quotas approved by the Parties. Under current Australian law, the effect of this action was to allow trade in captive-bred specimens and specimens taken from approved crocodile farm operations based on controlled collecting of eggs or hatchlings or nuisance animals from the wild.

In June 1990, the Service received a petition from the Australian National Parks and Wildlife Service (ANPWS) requesting the reclassification of the captive (i.e., captive-bred and ranched) populations of saltwater crocodile in Australia from endangered to threatened. The petition contained information on the management of wild and captive populations, population surveys, and legal status. The Service had previously reviewed almost the same information, which was considered substantial, and the Service was in the process of preparing a proposed rule based on the earlier information when the petition was received. On September 27, 1990, the Service, acting on this assessment but without issuing a formal finding, published a proposed rule (55 FR 39489) to reclassify the Australian population of the saltwater crocodile to threatened status. The proposed rule included a special rule which allowed for the commercial import of parts and products of ranched saltwater crocodiles from Australia directly into the United States, or through a third party if that receiving country was a CITES member that filed annual CITES trade reports and any re-exporting country was also a CITES member. In the absence of a required universal tagging system for crocodilian skins, however, trade controls were considered insufficient to justify uncontrolled trade through third parties.

Publication of the final rule was delayed beyond the 12 months normally allowed because of concerns about allowing trade in products of one crocodilian species without adequate control of trade in other crocodilians and pending acceptance of universal tagging procedures for crocodilian skins in international trade. Resolution Conf. 8.14 adopted at the 1992 Meeting of the Conference of the Parties in Kyoto, Japan, established a new marking system that will provide for strict regulation of trade in all crocodilian skins. The new marking program should be in place as of January 1995.

B. Summary of Comments on the Earlier Proposed Rule on the Saltwater Crocodile

In the **Federal Register** of September 27, 1990, (55 FR 39489) the Service announced that available information

indicated that both wild and captive populations of saltwater crocodiles in Australia should be reclassified from endangered to threatened, and issued a proposed rule to that effect. In that proposal, all interested parties were requested to submit comments and information that might contribute to the development of a final rule.

Nine comments were received: two from ANPWS; one from the Australian Commonwealth Scientific Industrial Research Organization (CSIRO), Division of Wildlife and Ecology; three from the trade industry; and one each from the IUCN Crocodile Specialist Group for Eastern Asia, the World Wide Fund for Nature-Australia, and TRAFFIC-USA. All supported the proposed reclassification, but some had objections to the proposed special rule.

The ANPWS fully supported the reclassification of the Australian population of *Crocodylus porosus*. Dr. Graeme Caughley, Chief Research Scientist of CSIRO, stated that he saw no reason that ESA and CITES should necessarily coincide, but in the case of the Australian saltwater crocodile, he favored the controls on trade that were established under CITES.

Dr. Grahame Webb, Vice Chairman for Eastern Asia—Crocodile Specialist Group, supported the proposed changes. He reported that crocodile populations within Australia are particularly well-managed and that all skins exported are tagged and clearly identified as having come from Australia. Several crocodile farmers and traders (Crocodile Farmers Association of Australia, G. Webb Pty. Ltd., and Mainland Holding Pty. Ltd.) all supported the reclassification of the saltwater crocodile in Australia to threatened status. They stated that the detailed survey work confirming the expansion of populations and monitoring of habitat justifies this action. The recovery of the population in Australia since protection and the present management of and research on the species was said to warrant the proposed change in regulation by the Service.

World Wide Fund for Nature (WWF-Australia) wrote that it had no objections to the reclassification of *Crocodylus porosus* populations in Australia from endangered to threatened, bringing the designation in line with the current CITES listing. This was only supported, however, in full recognition of the conservation status (vulnerable) recently assigned to the species by the IUCN (IUCN 1990). TRAFFIC USA furnished helpful comments on the special rule and the reporting requirements as called for under Article VIII of CITES.

C. Explanation of Proposed Rule for the Saltwater Crocodile

This proposed rule, if made final, would revise § 17.11(h) to reclassify the Australian population of the saltwater crocodile from endangered to threatened. Since it is difficult to distinguish between the skins and products derived from different saltwater crocodile populations, the Service also proposes to revise § 17.11(h) to list the saltwater crocodile population of Papua New Guinea as threatened by similarity of appearance.

The Australian and Papua New Guinea populations are defined by distinct geo-political boundaries that delineate an area representing a significant portion of the range of the species. In addition, both populations are biologically significant in maintaining variability of the species and in preventing the further decline of the species.

Consistent with the requirements of sections 3(3) and 4(d) of the ESA, this proposed rule also would amend § 17.42 by adding a new paragraph to allow for the commercial importation of certain specimens from Australia and Papua New Guinea into the United States without a threatened species permit but pursuant to CITES trade controls and marking requirements and certain other specified criteria (provisions of the proposed special rule are described later in this notice). Under CITES, Australia may export saltwater crocodile skins, meat, or products only if the specimen is captively bred in a breeding system that is generally maintained without augmentation from the wild, or the specimen is derived from a crocodile farm operation following CITES ranching provisions and under an approved management program.

D. Summary of Factors Affecting the Australian Population of Saltwater Crocodile

Section 4(a)(1) of the ESA (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the ESA (50 CFR part 424) set forth five factors to be used in determining whether to add, reclassify, or remove a species from the list of endangered and threatened species. These factors and their applicability to populations of the saltwater crocodile in Australia are as follows:

1. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The saltwater crocodile occupies a variety of tidal and non-tidal habitats across northern Australia from Maryborough on the Queensland east coast to Broome on the Western Australian west coast. The Northern Territory has more extensive areas of prime saltwater crocodile habitat than either Queensland or Western Australia (report from the Australian National Parks and Wildlife Service (ANPWS) 1990, titled, "Evidence in Support of a Petition by Australia to the U.S. Fish and Wildlife Service to Remove Captive Populations of the Saltwater Crocodile, *Crocodylus porosus*, in Australia from the Endangered Species List under the U.S. Endangered Species Act 1973"—copy on file with the Office of Scientific Authority). Exploitation of crocodiles in Australia began on a large scale in the late 1940's and extended into the early 1970's. During this time, populations in the rivers along the north coast were nearly extirpated with only small scattered populations remaining (King *et al.* 1979). Export of saltwater crocodiles and their parts from Australia was prohibited in 1972. Today, the habitats are largely intact across the whole of northern Australia, and the species occupies the whole of its known historical range within the country. The species is protected in the three states where it occurs (the Northern Territory, Queensland, and Western Australia). Management programs allowing limited utilization of wild stocks for crocodile farm operations have been implemented by the states in light of the crocodile's increasing population size.

According to the ANPWS (ANPWS 1990, op. cit.), the Northern Territory population of saltwater crocodiles has undergone significant recovery since protection from hunting in 1972. Analysis of all available monitoring results from 1975 to 1987 shows that the density of wild saltwater crocodiles in tidal rivers has tripled since surveying began. In 1984, Webb *et al.* (1989) estimated the total Northern Territory population of the saltwater crocodile to be at least 40,000 individuals. Between 1984 and 1987, monitoring results indicated that the tidal population increased by 16.5 percent. Assuming that this rate of increase can be applied to the population as a whole, the minimum estimate for 1989 would be 46,000 crocodiles in the Northern Territory.

Extensive helicopter surveys across the entire range of habitat types present in Cape York Peninsula, Queensland, resulted in the sighting of some 2,400 animals. Actual population numbers are likely to be considerably higher. It is not possible to derive an estimate of absolute numbers for Queensland, but sampling of potentially suitable habitats yielded an average density index of 0.77 crocodile/km of waterway. Surveys in

1977–78 resulted in a population estimate of about 2,000 crocodiles beyond the hatchling stage for Western Australia. The population was estimated at 2,500 crocodiles beyond the hatchling stage when it was resurveyed in 1986.

2. *Over-utilization for commercial, recreational, scientific, or educational purposes.* Population estimates of saltwater crocodiles in Australia were not made prior to 1970. Over-exploitation for the skin trade and persecution as undesirable wildlife began in the late 1940's and did not subside until hunting was banned in 1972. The export of saltwater crocodiles and their parts from Australia was prohibited in 1972 by an amendment of the customs regulations. By that time, many accessible populations had become seriously threatened with extirpation. With the enactment of state and territorial protection laws [Wildlife Conservation and Control Ordinance (1962)—Northern Territories; the Fauna Conservation Act (1974)—Queensland; and the Wildlife Conservation Act (1950)—Western Australia], the populations showed an immediate response and have tripled in numbers since surveying began in the late 1970's (ANPWS 1990, op. cit)

At the 1985 meeting of the Conference of the Parties to CITES, the Australian saltwater crocodile population was transferred from Appendix I to Appendix II, pursuant to resolution Conf. 3.15 on ranching. This provides for trade in saltwater crocodiles bred in captivity or raised on farms under approved management plans. The transfer was recommended by the Australian Council of Nature Conservation Ministers and IUCN Crocodile Specialist Group. The Australian CITES proposal to transfer the Australian population of saltwater crocodile to Appendix II to allow trade under the ranching provision was based on a series of experimental egg harvests and quantification of the impacts of those harvests. No discernible impact of this egg harvest has been detected on the number of crocodiles in subsequent age classes. Australia allows a regulated annual harvest of crocodile eggs for farm operations under approved management plans. The effects of the egg harvests are quantified and assessed through monitoring programs in the harvested areas. Approval to harvest eggs incorporates a commitment that if any decline in the wild population were to occur, a larger number of 1-year old crocodiles would be returned to the wild than would have survived had no eggs or hatchlings been removed from the wild. At the present time, only the Northern Territory and Western Australia have approved management plans under which the harvest of eggs is allowed for ranching operations.

According to information provided by the Australian National Parks and Wildlife Service (ANPWS 1990, op. cit.), the capture and relocation of nuisance crocodiles can only be authorized by State government personnel.

In the Northern Territories, nuisance animals are caught alive and relocated to farms whenever practical. In other cases, they are destroyed by Northern Territory Conservation Commission personnel. In Western Australia, problem crocodiles are captured and removed, or where the level of risk to humans is unacceptable, permission to kill the crocodile may be given. In both States, those problem animals relocated to farms are individually marked and, if not required for captive breeding, are available for harvest after they have been maintained in captivity for a minimum of 30 days. In Queensland, crocodiles may be removed to provide breeding stock for closed-cycle farms. Nuisance animals may be removed to provide breeding stock or destroyed where other options are not available.

Traditional harvest of crocodiles and crocodile eggs for food by Aborigines of the Northern Territory is allowed. However, the low level of traditional harvests is not considered a threat to the populations. Traditional use does not include commercial trade.

Ranched and captive-bred crocodile parts and products are exported from three establishments under an approved management program in the Northern Territory. A management program that would allow ranching operations in Western Australia is under development. One farm in Queensland exports products derived solely from captive-bred crocodiles.

3. *Disease or predation.* None known at this time.

4. *The inadequacy of existing regulatory mechanisms.* The saltwater crocodile is recognized as a valuable resource in Australia, where laws and regulations are in place to prevent over-exploitation of these animals. Since the ban on hunting in 1972, saltwater crocodile populations have substantially increased in numbers. State wildlife laws govern the take, possession, and trade in saltwater crocodiles. Also, the Commonwealth Wildlife Protection (Regulation of Exports and Imports) Act of 1982, administered by the ANPWS, helps to protect wildlife that might otherwise be threatened by unregulated export. Under this Act, export of saltwater crocodiles, their parts and products requires an export permit. Permits may be issued only for scientific purposes, or for specimens derived from captive-bred animals, or animals taken under an approved management program. Maximum penalties for violations of the Act are a AUS$100,000 fine and/or 5 years imprisonment for individuals, and AUS$200,000 for corporations. The substantial increase in maximum penalties for attempting to illegally export saltwater crocodile skins from Australia (from $1,000 up to $200,000) is considered to be an effective deterrent. In addition to legislation and policies regulating take within Australia, export of saltwater crocodiles is regulated by CITES, to which Australia is a party.

Regulation of take has been a factor in the continued improvement of Australia's saltwater crocodile populations in the wild. This significant improvement has prompted the Service to propose reclassification of the saltwater crocodile in Australia from endangered to threatened.

5. *Other natural or manmade factors affecting its continued existence.* A comprehensive system of nature conservation reserves has been developed, so that approximately 40 million hectares of all habitats throughout Australia, or 5.5 percent of the total land surface, is reserved under different categories. Parks, reserves, and sanctuaries in Northern Australia provide a mosaic of areas in which crocodiles and their habitats are protected. Significant areas of crocodile habitat are contained in at least six parks or nature reserves. In addition, nearly 37 million hectares are protected under various state and national marine and estuarine protected area categories. The Cobourg Peninsula Marine National Park was declared in 1983 to protect, among other species, the saltwater crocodile.

The Service has carefully assessed the best biological and commercial information with respect to past, present, and future threats faced by the species in issuing this proposed rule. Criteria for reclassification of a threatened or endangered species (50 CFR 424.11 (c) and (d)) are the same as for listing a species as endangered or threatened. The proposed action is to reclassify Australia's saltwater crocodile populations from endangered to threatened, based on continuing recovery of the species. A special rule amending 50 CFR 17.42 to allow for the importation of specimens into the United States without a threatened species permit is also proposed. This proposed rule is based on substantial evidence that Australia's populations of the saltwater crocodile have made a

remarkable recovery and are no longer in imminent danger of extinction.

Surveys conducted in the late 1980's indicated populations of at least 50,000. Populations are estimated to have increased three-fold between 1975 and 1987. The species is protected in the three jurisdictions in which it occurs and there are closely regulated crocodile farm operations. In light of increasing populations, Australia's strict regulation of harvest, and the requirement of a management program prior to approval of crocodile farm operations, several threats to the existence of the saltwater crocodile in Australia have been ameliorated. Therefore, the Service believes that reclassification to threatened best fits the current status of saltwater crocodile populations in Australia.

Other populations throughout the species' range are still in danger of extinction, to varying degrees, by taking. Penalties for illegal exports and enforcement activities will help ensure that illegal skins or products do not enter into commercial trade. Because crocodiles of the Australian population cannot be distinguished from saltwater crocodiles of other populations and from other endangered crocodilians once made into manufactured products, the Service is proposing a special rule to strengthen the implementation of the CITES skin-tagging program (see description presented later in this notice).

The proposed reclassification to a threatened status and adoption of a special rule allowing commercial trade under certain conditions would not end trade controls for the species. The species remains on Appendix II of CITES with export permits required, and the special rule would require adherence to the CITES marking scheme for crocodilian skins, among other things discussed later in this document when provisions of the special rule are described. Trade in legally harvested saltwater crocodile skins, meat, and products, when controlled as specified in the special rule, will provide an incentive for conserving the species without posing significant risks to wild populations.

E. Summary of Criteria To List the Papua New Guinea Populations as Threatened by Similarity of Appearance

The Papua New Guinea population of the saltwater crocodile is not listed at present under the ESA. In determining whether to treat a species as endangered or threatened due to similarity of appearance, the Director must consider the criteria in section 4(e) of the ESA. Section 4(e) of the ESA (16 U.S.C. 1534(e)) and 50 CFR 17.50(b) set forth three criteria in determining whether to list a species for reasons of similarity of appearance. These factors and their applicability to populations of the saltwater crocodile in Papua New Guinea are as follows:

1. *The degree of difficulty enforcement personnel would have in distinguishing the species, at the point in question, from an endangered or threatened species (including those cases where the criteria for recognition of a species are based on geographical boundaries).* The different populations of saltwater crocodile are morphologically indistinguishable. It is impossible to distinguish the different geographical populations as live animals, skins or finished products. Thus, Papua New Guinea saltwater crocodiles, their parts and products cannot be distinguished as to origin by law enforcement personnel.

2. *The additional threat posed to the endangered or threatened species by loss of control occasioned by similarity of appearance.* The primary threat to other saltwater crocodile populations is the difficulty of identifying skins and products by geographic region as discussed above.

3. *The probability that so designating a similar species will substantially facilitate enforcement and further the purposes and policy of the ESA.* The populations of saltwater crocodiles in Australia, Indonesia, and Papua New Guinea are listed on CITES Appendix II and are traded in international commerce. The Indonesian population, although listed as endangered by the United States, is traded among other CITES parties subject to a CITES export quota. International protection has not resulted in complete cessation of illegal trade in other populations. Only specimens and parts and products from Papua New Guinea (and under this proposal, from Australia) may be imported into the United States. Designation of the Papua New Guinea population as threatened by similarity of appearance will help the United States to control illegal trade of other protected saltwater crocodile populations. Due to the difficulty in distinguishing crocodiles from the Papua New Guinea population from other populations of saltwater crocodiles and from other endangered crocodilians once made into manufactured products, the Service is proposing rules to strengthen the implementation of the new CITES skin tagging program (see description presented later in this notice).

Special Rule for Nile and Saltwater Crocodiles

A. Nile Crocodile Listing History

Historically, the Nile crocodile (*Crocodylus niloticus*) was widespread throughout Africa and Middle East as far north as Syria. Presently, it is confined chiefly to the upstream regions of the Nile River, tropical and southern Africa, and Madagascar. The Nile crocodile was listed as endangered in 1970 (35 FR 8495) and on Appendix I of the CITES in 1975 (when CITES came into force) because of the widespread decline of the species. Since that time, a number of African countries have recognized the value of the Nile crocodile for its ecological role and as a source of sustainable economic benefit under proper management, especially through ranching for a controlled harvest of skins.

Of the countries that have started ranching operations, Zimbabwe appears to have the best information on wild crocodile populations. Improvements in the status of Nile crocodile populations and their management have prompted the CITES Parties to transfer 11 national populations to Appendix II, allowing commercial trade either under provisions of the ranching resolutions Conf. 3.15 and 8.22 or subject to export quotas established by agreement of the Parties as per resolutions Conf. 5.21, 6.17, and 7.14. Populations in Botswana, Ethiopia, Kenya, Malawi, Mozambique, Tanzania, Zambia, and Zimbabwe have been transferred to Appendix II based on ranching provisions, while populations in Madagascar, South Africa, and Uganda are permitted under CITES approved export quotas. However, commercial trade is not allowed from the remaining Nile crocodile range countries.

In the August 3, 1992, **Federal Register** (57 FR 34095), the Service proposed reclassifying the Nile crocodile from endangered to threatened status with a special rule allowing for commercial importation of skins and finished products thereof. Two organizations, the IUCN Crocodile Specialist Group, and SAVE African Endangered Wildlife Foundation supported the reclassification of the Nile crocodile from endangered to threatened. The ANPWS, the Crocodile Farmers Association of Zimbabwe (CFAZ) and TRAFFIC USA also supported the reclassification but expressed concern about a provision of the proposed special rule. Therefore, the Service proceeded to downlist the Nile crocodile to threatened status on September 23, 1993, (58 FR 49870) but without any change in the special rule,

which presently applies only to Zimbabwe.

B. Comments Received on Proposed Special Rule With Nile Crocodile Proposal

ANPWS, CFAZ, and TRAFFIC USA especially objected to the proposed paragraph (c)(1)(ii)(C) of § 17.42 that would require crocodile skin products to either be tagged or to be accompanied by CITES documents containing the same information as is on the tags for the crocodiles from which the manufactured products were obtained. ANPWS stated that the control of skins removes the need to require every manufactured product to be marked, and also indicated that since Australian skins used in product production in Australia are not tagged it would not be possible to record the tag numbers of these products on the CITES permits. CFAZ raised the same concerns as ANPWS. It also expressed the concern that the requirements of this paragraph were unenforceable and urged that it be deleted. TRAFFIC USA also supported the reclassification but expressed the belief that proposed paragraph (c)(1)(ii)(C) is impractical and unenforceable. It noted that "because of the complexities of the crocodilian product manufacturing industry, and the regular movement of skins, skin parts, and product parts between manufacturers, this requirement. . . . will be impossible to meet." Furthermore, TRAFFIC USA expressed support for establishing "a water-tight system of controlling trade in the raw material."

The Service recognizes the concerns presented by ANPWS, CFAZ, and TRAFFIC USA, and agrees with TRAFFIC USA in seeking to strengthen the control in the trade in whole and partial skins. Therefore, the Service is proposing in this notice a revised special rule that would replace the present § 17.42(c) and that is significantly different from the proposed special rule accompanying the proposed rule to reclassify the Nile crocodile. The presently proposed special rule removes the requirement to keep track of each CITES crocodilian skin tag number through the product manufacturing process and to record the CITES tag numbers on the export permits issued for crocodilian products, but adds provisions designed to supplement the provisions of the universal tagging system being implemented by the CITES Parties. A discussion of the special rule and of the CITES tagging resolution is presented in a later paragraph on "Description of Proposed Special Rule."

C. Available Conservation Measures for Nile and Saltwater Crocodiles

Conservation measures provided to foreign species listed as endangered or threatened under the ESA include recognition, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by governments, private agencies and groups, and individuals.

Section 7(a) of the ESA, as amended, requires Federal agencies to evaluate their actions that are to be conducted within the United States or on the high seas, with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the ESA are codified at 50 CFR part 402.

Section 7(a)(2) of the ESA, as amended, requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a proposed Federal action may affect a listed species, the responsible Federal agency must enter into formal consultation with the Service. With respect to the Nile crocodile or to the saltwater crocodile in Australia, no Federal activities are known that would require conferral or consultation.

In general, sections 4(d) and 9 of the ESA and implementing regulations found at 50 CFR 17.31 (which incorporate certain provisions of 50 CFR 17.21) set forth a series of prohibitions and exceptions that generally apply to all threatened wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service, the National Marine Fisheries Service, and State conservation agencies.

In general, permits may be issued to carry out otherwise prohibited activities involving threatened wildlife species under certain circumstances. Regulations governing permits are codified at 50 CFR 17.32. With regard to threatened wildlife, a permit may be issued for the following purposes: scientific, enhancement of propagation or survival, economic hardship, zoological exhibition or educational purposes, incidental taking, or special purposes consistent with the ESA. All such permits must also be consistent with the purposes and policy of the ESA as required by section 10(d). Such a permit shall be governed by the provisions of § 17.32 unless a special rule applicable to the wildlife (appearing in §§ 17.40 to 17.48) provides otherwise.

Although threatened species are generally covered by all prohibitions applicable to endangered species, under section 4(d) of the ESA, the Secretary may propose special rules if deemed necessary and advisable to provide for the conservation of the species. The rule proposed to be included in § 17.42 would allow commercial importation into the United States of certain farm-raised specimens of Australia's saltwater crocodile population, specimens of this species from Papua New Guinea, and certain specimens of Nile crocodile populations downlisted to Appendix II by CITES Parties under ranching or quota provisions as provided for by CITES.

D. Description of Proposed Special Rule

The United States would allow import only of those specimens or parts or products authorized to be exported under CITES. In addition, the proposed special rule would not allow trade in such species with countries that are not parties to CITES, that have taken reservations for crocodilian species under CITES, that do not make required annual reports to the CITES Secretariat, that have failed to designate Management Authority(s) and Scientific Authorities, or that do not adequately control illegal trade in crocodilian species. Importation of parts of saltwater crocodiles directly from Australia or Papua New Guinea, or parts of Nile crocodiles directly from countries with Appendix II populations would also be allowed under certain circumstances, if the country of origin implements provisions of the universal tagging system.

1. *Marking.* International trade in certain crocodilians has presented significant problems for the Parties; several resolutions have been adopted at previous meetings of the Parties in an effort to establish management regimes to benefit the conservation of the species. The United States, in conjunction with Australia, Italy, and Germany submitted a resolution to the CITES Secretariat that was adopted at the eighth meeting of the Conference of the Parties in Kyoto, Japan (March 2–13,

1992). This resolution (Conf. 8.14) calls for a universal tagging system for the identification of crocodilian skins in international trade. Furthermore, in accordance with resolution Conf. 8.14, the Animals Committee at its July 1992 and September 1993 meetings adopted resolutions recommending additional practices for tracking and monitoring tags.

Aspects of this resolution dealing with imports into the United States are incorporated into this proposed rule, and U.S. implementation of this resolution for import, export, and re-export for all crocodilian species will be incorporated into a future revision of 50 CFR part 23. Adherence to the new marking requirements should reduce the potential for substitution of illegal skins and reduce the trade control problems with the similarity in appearance of skins and products among different species of crocodilians.

Prior to implementation of Conf. 8.14. certain taxa listed in Appendix II could be traded internationally without qualification or assurance of their identification. The CITES resolution on the universal tagging system for the identification of crocodilian skins (Conf. 8.14) requires, in part: (1) The universal tagging of raw and processed crocodilian skins with non-reusable tags for all crocodilian skins entering trade or being re-exported, unless substantial processing and manufacturing has taken place;

(2) That such non-reusable tags include as a minimum the International Organization for Standardization two-letter code for the country of origin, a unique serial identification number, a species code and the year of production, and further that such non-reusable tags have as a minimum the following characteristics: a self-locking system, heat resistance, inertia to chemical and mechanical processing, information that has been applied by permanent stamping [These requirements have been further specified by the CITES Animals Committee and, as a result, the Secretariat has identified manufacturers in three countries that are producing CITES-acceptable tags] and,

(3) That the same information as is on the tags [for whole skins, flanks, bellies, and "chalecos"] be given on the export permit, re-export certificate or other Convention document, or on a separate sheet which shall be considered an integral part of the permit, certificate or document and which should be validated by the same issuing authority;

(4) That each Party in which tags are applied maintain records accounting for tags issued and maintain records that relate each Convention document number to the tags of the crocodilian specimens traded thereunder and vice versa, and include this information in its annual report; and

(5) That Parties establish, where legally possible, a system of registration or licensing, or both, for importers and exporters of crocodilian skins and parts thereof.

2. *Special Rule.* This proposed rule allows trade through intermediary countries, i.e., all countries of re-export by definition, for Nile and saltwater crocodiles as long as such countries are effectively implementing CITES and they have adopted certain management measures to control trade in crocodilian skins and products. Countries are not considered as countries of re-export if the specimen remains in customs control while transiting or being transshipped through the country and provided those specimens have not entered into the commerce of that country. The special rule is intended to complement and strengthen the universal crocodilian tagging system as presently envisioned in CITES resolution Conf. 8.14 and the implementing resolutions prepared by the CITES Animals Committee. These measures include effective inspection of shipments to determine if the CITES country-of-origin tag is intact for skin imports and exports and implementing a monitoring system that relates goods produced to tagged skins received.

The purpose of this special rule is to address the monitoring measures in the countries of re-export in order to have a more accountable system for the transfer and processing of skins and products in the commercial crocodilian trade. The United States is a major importer of crocodilian products produced by countries of re-export. The Service inspections of importations have revealed a continuing pattern of commingling and misidentification of crocodilian leathers. Accompanying CITES documents have often declared the merchandise as American alligator when the product contains some species of crocodile, or as crocodile, when the goods are made from American alligator hide. The new CITES tagging system will represent a significant step towards eliminating misidentification of skins as they leave the country of origin. Since all American alligator skins are tagged upon export from the country of origin, the problems of commingling of alligator and crocodile clearly arise during the tanning and manufacturing process.

In addition, there are several species of crocodiles throughout Africa and Asia that remain listed as endangered. While identification of crocodile versus alligator can be made consistently in manufactured products, species identification of crocodile products is more difficult. Despite these difficulties, various species of endangered crocodilians have been identified in products declared as American alligator or non-endangered crocodiles.

This special rule is proposed with the goal of ensuring adequate control in the manufacturing countries to deter intermingling of the protected populations of the Nile and saltwater crocodiles, as well as the endangered populations of other crocodiles and alligators without imposing the overburdensome requirement of tracking each piece through the production process, and recording all incoming tag numbers on the re-exporting permit for products. The new CITES tagging system does not require that country of origin tags remain intact up to the point of manufacture. Since the commingling problems described above principally arise in the re-exporting countries, the special rule is designed to address these problems, to fulfill the ESA's criteria for the protection of threatened species and those with similar appearance, and to allow trade within the parameters outlined below.

The proposed special rule requires that a system for monitoring skins be implemented by the countries of re-export, so that the transaction history is provided, that inventory controls are maintained by the manufacturer, and that unmarked skins in re-exporting countries will not be allowed in trade after a specific period of time.

Furthermore, this special rule is written to allow the Service to respond quickly to changing situations that result in lessened protection to the crocodilians. Thus, the criteria described in the special rule establish non-discretionary bases for determining whether CITES provisions are being effectively implemented. Therefore, imports into the United States can be prohibited after publication of a notice of information on any country that fails to comply with the requirements of the special rule. For those additional situations outside of the ones set forth in the special rule, which involve a judgment as to whether necessary trade controls are being implemented, the Service will go through a separate proposed rule and comment process before reaching a final decision on any trade bans.

In a separate rule-making proposal, the Service will propose implementation of the CITES tagging system for all crocodilians. The rule proposed here will adopt the CITES-

approved tags as the required tag for all saltwater and Nile crocodile skins or partial skins being imported into or exported from any re-exporting country if the skin is eventually imported into the United States.

The proposed rule is designed to allow trade in saltwater and Nile crocodile skins and products from designated populations without the need to obtain a threatened species import permit. Tagged skins may be imported from the country of origin or any CITES-member country of re-export as long as the involved countries comply with certain criteria. Crocodilian products may be imported without individual tags, provided the involved countries comply with criteria described for products. The proposed rule provides several criteria for ensuring that countries of origin and re-export have implemented controls to monitor transactions in crocodilian skins and products and have a satisfactory enforcement and CITES implementation history. If a country fails to meet the criteria in the proposed rule, notice to that effect will be published in the **Federal Register**, and skins and products from Nile and saltwater crocodiles will not be able to be imported into the United States without the threatened species import permits required in Part 17.

3. *Section-by-Section Description.* The proposed rule at § 17.42(c)(1) contains definitions of "crocodilian skin" and "crocodilian product." A "crocodilian product" is an item that is fully manufactured and ready for retail sale without further processing. A "crocodilian skin" is any whole or partial skin, and thus includes skins that have been salted, crusted, tanned or partially tanned or otherwise processed, e.g., dyed, shaved, polished, or filled.

Paragraph 17.42(c)(2) stipulates those ESA prohibitions that apply to the saltwater crocodile from Australia and Papua New Guinea and the Nile crocodile. All ESA prohibitions apply to other saltwater crocodile populations. In addition, primarily commercial trade is prohibited for specimens from those saltwater crocodile and Nile crocodile populations listed in CITES Appendix I, and non-commercial imports or exports of specimens from Appendix I populations require a CITES permit issued by the Service's Office of Management Authority.

Paragraph 17.42(c)(3) describes exceptions to prohibitions stipulated in § 17.42(c)(2); specifically subparagraphs (i) and (ii) describe the exceptions for skins and products, respectively, provided the country of origin and all countries of re-export are in compliance with the criteria described in subparagraph (iii).

Paragraph 17.42(c)(3)(i)(A) provides that each crocodilian skin bear an intact, uncut tag from the country of origin, with the CITES-required number in compliance with 50 CFR part 23. When chalecos are traded, the two halves of any individual chaleco shall be tagged so that if the halves are separated each half bears a tag. Skins may be cut in the country of origin (for instance into flanks or tail and body pieces) but each piece must be separately tagged when it leaves the country of origin. Since it is impossible for skins currently present in re-exporting countries to be tagged by their country of origin, the special rule provides for a period of twelve months after publication of the final rule, for such skins to be imported as skins or products without the trading history requirement.

Paragraph 17.42(c)(3)(i)(B) requires that the information on each tag in a shipment be given on the accompanying CITES export permit, re-export certificate or other Convention document, or on a separate sheet validated by the same issuing authority as described in CITES Animals Committee's resolution adopted at its September 1993 meeting.

Paragraph 17.42(c)(3)(i)(C) requires that for each crocodilian skin the importer or exporter shall provide a copy of each CITES permit or certificate or identify the CITES permit/certificate number from the country of origin and each country of re-export on the permit or on a separate sheet. The transaction history will assist in verifying that the skins have moved through countries meeting the criteria of paragraphs (c)(3)(iii). Such information is now available only through the time-consuming process of querying each country in turn to trace its document files to determine the underlying importation record for any CITES document it has issued. Since commercial traders of skins and products record and reflect the country of origin for all shipments at present and will have to keep track of skin tag numbers under the CITES resolution, this provision simply requires that the sellers track the CITES certificate numbers or transmit copies of these documents from their buyers. This provision is in keeping with the Animals Committee resolutions calling on re-exporting countries to implement an administrative system for the effective matching of imports and re-exports.

Paragraph 17.42(c)(3)(i)(D) requires that the country of origin and the countries of re-export be in compliance with the criteria of paragraphs (c)(3)(iii)(A)–(iii)(F) and provides that countries meeting these criteria will be named in a Notice of Information published by the Service.

Paragraph 17.42(c)(3)(ii) sets forth the conditions for import, export, and re-export of crocodilian products. While it has frequently been suggested that the only absolutely reliable method for "cradle to grave" or "harvest to consumer" control is individual product tagging, the Service is not proposing such measures at this time. If the skin tagging inspection programs and criteria for evaluating whether party countries are implementing CITES responsibly are followed, and inventory controls are conscientiously implemented by the re-exporting country government and/or private sector, the Service hopes that more stringent measures for manufactured products will not be necessary to control commingling of illegal crocodilians.

Paragraph 17.42(c)(3)(ii)(A) requires that for each crocodilian product the importer or exporter shall provide a copy of each CITES permit or certificate or identify the CITES permit/certificate number from the country of origin and each country of re-export of the skins included in the product, except that such importation history does not need to be provided for any portions of a product which is 9 square inches or smaller. This provision is similar to the provision for skins in paragraph (c)(3)(i)(C), except that this provision exempts small pieces of skin from the importation history requirement. The exception for pieces 9 square inches or smaller will permit items generally made from scraps, such as watch bands, pieced belts, or trim, to be exempt from the importation history requirement. It must be emphasized, however, that manufacturers still must accurately identify all species of wildlife contained in any importation. Since many violations have been detected with the misuse of crocodilian skins on the gussets of handbags or trim on shoes, manufacturers are still urged to maintain vigilance over their inventory.

Paragraph 17.42(c)(3)(ii)(B) requires that the country of origin and the countries of re-export be in compliance with the criteria in subparagraphs (c)(3)(iii)(A)–(F) and provides that countries meeting these criteria will be named in a Notice of Information published by the Service.

The Service believes that to achieve a reliable system for the manufacture of crocodilian products from lawful skins and to be able to accurately identify what crocodilian the product was produced from, there must be effective

CITES implementation by the party countries, including rigorous inspection of the tagged skins at each international transaction and removal from commerce of any skins not bearing an intact tag from the country of origin, and requirements for manufacturers who receive the tagged skins (regardless of the number of intermediaries the skins have passed through) to maintain sufficient internal production controls over their inventory so they can account for the quantity of items they produce from each tagged skin. Paragraphs (c)(3)(iii)(F)(*1*)–(F)(*4*) set forth such criteria.

Paragraph 17.42(c)(3)(iii)(A) provides that each country of origin and each country of re-export be a member of CITES and not have entered into any reservations for any species within the Order Crocodylia.

Paragraphs 17.42(c)(3)(iii) (B) and (C) require that no notices have been received by the Service indicating that the CITES Parties or the CITES Secretariat (based on action by the Convention's Standing Committee) has determined that the country of origin or any country of re-export does not have adequate domestic legislation to enforce the Convention, that it has failed to properly implement the Convention, or that a moratorium on trade with that country is recommended.

Paragraph 17.42(c)(3)(iii)(D) requires that the countries of origin and re-export submit their annual reports within the prescribed time period. This CITES requirement enables a cross check of trade records from both exporting and importing countries.

Paragraph 17.42(c)(3)(iii)(E) requires that they have named their Management Authority and Scientific Authority, a CITES requirement that designates the competent authorities to issue appropriate no-detriment findings and proper issuance of export or re-export permits.

Paragraphs 17.42(c)(3)(iii)(F)(*1*)–(F)(*3*) require each country of origin and country of re-export to certify to the Service's Office of Management Authority that it has the legal authority to inspect and seize or refuse entry for unlawful shipments of crocodilian skins and products imported into or exported from that country and that it actually inspects no less than 40 percent of the crocodilian shipments imported into the country for compliance with the CITES tagging and document requirements. Further, these countries must certify that they require that crocodilian skins cannot be imported or exported without intact, uncut tags from the country of origin. If a tag has become separated during processing or tanning, that skin may be utilized in that country's domestic market. The premise behind this provision is the recognition that the CITES tagging requirement will work only if it is strictly enforced by the re-exporting countries. Therefore, every piece of crocodilian skin which is not manufactured into a finished product (and which exceeds 9 square inches in area) must bear an intact country of origin tag upon import and export. If the tags are intact through all re-exporting countries, then they should be intact at the point of manufacture so that the manufacturer can maintain an accurate inventory control system.

Paragraph 17.42(c)(3)(iii)(F)(*4*) requires that if the country exporting or re-exporting is a country of manufacture, it must certify that it requires a monitoring system that records tag numbers of skins received and relates the goods produced to the skins received. The proposed rule does not specify the exact parameters of a particular inventory control system. The Service encourages Party countries and the industry to explore established programs that have been in place for a number of years, as well as innovative technologies, such as bar code marking, or other approaches, to develop workable means to maintain accountability for products manufactured from tagged skins.

Paragraph 17.42(c)(3)(iv) allows for the importation of crocodilian skins and parts directly from those countries where the Nile crocodile populations are on Appendix II of CITES or for saltwater crocodile populations in Australia or Papua New Guinea, provided the requirements of 50 CFR parts 13, 14, and 23, including those provisions implementing the CITES resolution on the universal tagging system, are complied with. A direct import does not require routing directly from the country of origin, as long as the specimen remains under customs control and merely transits through a third country. Airway bills or shipping documents should indicate that the consignee/purchaser is located in the United States, as shipments that enter the stream of commerce in a third country are not included under this provision of the special rule.

Paragraph 17.42(c)(3)(v) stipulates that no 50 CFR part 17 permits will be required for products of Nile crocodile and saltwater crocodile from Australia and Papua New Guinea when imported into or exported from the United States as non-commercial accompanying personal baggage. However, trophies, skins, parts, and products acquired in those countries whose populations of saltwater or Nile crocodile populations are on CITES Appendix I, will require CITES import permits, issued by the Service's Office of Management Authority.

Paragraph 17.42(c)(4) stipulates that if a country of origin or re-export fulfills the criteria in paragraphs (c)(3)(iii)(A–F), the Service will publish a notice in the **Federal Register** informing the public to this effect, and the Service will implement these criteria by requiring compliance with the Part 17 permit requirements for any skins or products that originated in or have been imported or exported through any country not included on the approved list. A list of those countries that have met all criteria will be available from the Service's Office of Management Authority.

E. Effects of the Special Rule

The degree of endangerment of the many crocodilian species varies by species and specific populations. Some crocodilian species and populations are listed on Appendix I of CITES, and the remaining species and populations are included in Appendix II. Some species are listed as threatened or endangered on the U.S. List of Endangered and Threatened Wildlife, while other species are not included. In addition, actions have been taken by several countries to protect their wild populations but allow trade in specimens bred or raised in captivity under appropriate management programs.

Thus, trade in specimens from some populations is not detrimental to the wild population, and commercial trade is allowed under CITES with proper export permits from certain countries of origin and re-exporting countries. The Service's concern has been that trade in non-endangered species has in the past provided the opportunity for specimens of the endangered species or populations to be commingled with legal trade, especially during the manufacturing process. Numerous U.S. law enforcement actions as well as past actions by the CITES Parties attest to this concern. The underlying premise behind this special rule is that the current management systems for the Appendix II populations of Nile crocodile with assigned export quotas and the Australia and Papua New Guinea populations of saltwater crocodile are being sufficiently sustained to support controlled commercial use; the key risk to these populations as well as other similar-appearing crocodilians, is inadequate controls in the countries of re-export, especially in those countries in which manufacturing occurs.

The CITES Parties have adopted and are in the process of implementing provisions of a universal tagging system for crocodilian skins, and the Service supports these efforts. Adherence to the new marking requirements should reduce the potential for substitution of illegal skins and reduce the trade control problems with the similarity in appearance of skins and products among different species of crocodilians. Further, this proposed special rule contains other steps designed to ensure that the United States does not become a market for illegal trade in crocodilian species and to encourage other nations to control illegal trade. With the requirement that all skins are to be tagged up to the country of manufacture, and that manufacturers maintain records concerning the products produced from the tagged skins they receive, as well as document the chain of transactions preceding their acquisition of the skins, it is hoped that there will be greater accountability and accuracy in the manufacturing of crocodilian skins.

In summary, the proposed special rule allowing limited trade in these saltwater crocodile and Nile crocodile populations should provide incentives to maintain wild populations, as well as encourage all countries involved in commerce in crocodilian species to guard against illegal trade.

1. *Saltwater Crocodile.* Allowing import of farm-raised specimens is expected to benefit the conservation of wild populations. Under Australia's conservation program, eggs or hatchlings are removed from the wild for crocodile farm operations under an approved management program, and wild populations are carefully monitored. Should any decline occur in the wild populations, the program would return a greater number of 1-year-old captive raised crocodiles to the wild than would have survived to that age in the wild had no eggs or hatchlings been removed. Limited trade with the United States would provide economic incentives for conserving wild populations and their habitats, owing to the dependence on them as the source of eggs. Careful regulation of take and the prescription of specific corrective actions ensure that crocodile farming activities will not cause declines of wild populations, and have the added potential of reversing declines caused by other factors.

In addition, under this proposed special rule, parts or products of both the Australian and Papua New Guinea crocodile populations imported into the United States must be identified in accordance with the CITES marking system for crocodile skins and parts (refer to section on marking, and provisions of special rule). These marking requirements should ensure that only legally taken specimens are traded, and thus should also benefit the conservation of the species.

2. *Nile crocodile.* The appropriateness of the original endangered listing under the ESA and Appendix I listing under CITES has been the subject of much international debate. However, improvements in the status of Nile crocodile populations and their management have prompted the CITES Parties to transfer 11 national populations to Appendix II. The proposed downlisting to a "threatened" status does not end trade controls for the species. The species remains in Appendix II of CITES with export permits required. The proposed special rule should strengthen adherence to the CITES marking scheme for crocodilian skins as well as compliance with other CITES trade control provisions. Allowing commercial importation into the United States from CITES-approved countries is expected to benefit the species by encouraging proper conservation practices and by promoting adherence to the CITES marking system.

Effects of the Proposed Rules

This proposed rule, if made final, would change the status of the saltwater crocodile in Australia from endangered to threatened, and treat the saltwater crocodile in Papua New Guinea as threatened because of similarity of appearance so that the regulations specifically pertaining to threatened species (50 CFR 17.31, 17.32, 17.51, and 17.52) would apply to it. A special rule is proposed with this rule to amend 50 CFR 17.42 to allow the importation, under certain conditions, of whole and partial skins, and finished products thereof of Nile crocodile, which was previously reclassified as threatened (58 FR 49870), and saltwater crocodile that originate in Australia and Papua New Guinea, without a threatened species import permit for individual shipments otherwise required by 50 CFR part 17, *if* all requirements of the special rule are met.

Importation of skins and other parts of Nile crocodile from countries where this species is listed in Appendix II of CITES and of the saltwater crocodile from Australia and Papua New Guinea will be allowed without part 17 permits only in the case of shipments imported directly from respective range countries to the United States. Otherwise, the provisions of the proposed special rule, when applicable, or all provisions of subpart D of 50 CFR part 17 shall apply to Nile and saltwater crocodiles, and their eggs, meat, skins, and other parts and products.

Information Collection Requirements

The proposed special rule contains no information collection requirements for which Office of Management and Budget (OMB) approval under 44 U.S.C. 4401 et seq. The import/export permits and other documentation requirements are those currently required in parts 17 and 23 of this title 50, which are currently approved by OMB clearance number 1018–0022.

Public Comments Solicited

The Service intends that any action resulting from this proposal be as accurate and as effective as possible. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, the trade industry, or any other interested party concerning any aspect of this proposal are hereby solicited. Comments are particularly sought concerning biological or commercial trade impacts on any saltwater crocodile populations, or other relevant data concerning any threat (or lack thereof) to the wild populations throughout their range.

Final promulgation of the regulation on Australian and Papua New Guinea populations of saltwater crocodiles will take into consideration the comments and any additional information received by the Service. Such communications may lead to adoption of final regulations that differ from those in the proposed rule.

In addition, comments are solicited on the proposed special rule to accompany any downlisting of the Australian population of the saltwater crocodile or the Nile crocodile and the listing of the Papua New Guinea population of the saltwater crocodile. Comment is especially sought on the value, practicality, and enforceability of the proposed special rule.

The ESA provides for a public hearing on this proposal, if requested. All requests must be filed within 45 days of the date of publication of this proposal. Comments must be in writing and addressed to the Office of Scientific Authority (see **ADDRESSES** section).

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 connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of

1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** (48 FR 49244) on October 25, 1983.

Literature Cited

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Author

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List of Subjects in 50 CFR Part 17

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

Proposed Regulations Promulgation

Accordingly, the Service hereby proposes to amend part 17 subchapter B of chapter I, title 50 of the U.S. Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

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

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Section 17.11 is amended by revising the entry for the "Crocodile, saltwater (=estuarine)" under "Reptiles" on the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*		*	*
REPTILES							
*	*	*	*	*		*	*
Crocodile, saltwater (=estuarine).	*Crocodylus porosus*	Southeast Asia, Australia, Papua New Guinea, Pacific Islands.	Entire, except Papua New Guinea and Australia.	E	87,___	NA	NA
Do	....do	....do	Australia	T	87,___	NA	17.42(c)
Do	....do	....do	Papua New Guinea	T(S/A)	___	NA	17.42(c)
*	*	*	*	*		*	*

3. Paragraph (c) of § 17.42 is revised to read as follows:

§ 17.42 Special rules—reptiles.

* * * * *

(c) *Threatened crocodilians.* This paragraph applies to the following species: Saltwater crocodile (*Crocodylus porosus*) originating in Australia or Papua New Guinea and Nile crocodile (*Crocodylus niloticus*).

(1) *Definitions of terms for purposes of this paragraph (c).*

(i) *Crocodilian skin* shall mean whole or partial skins, flanks, bellies, or chalecos (whether salted, crusted, tanned or partially tanned or otherwise processed) from any reptile within the Order Crocodylia, which includes the families Alligatoridae (including caiman), Gavialidae, and Crocodylidae.

(ii) *Crocodilian product* shall mean fully manufactured products which are ready for retail sale without further processing or manufacture and which are composed, totally or in part, from any reptile within the Order Crocodylia, which includes the families Alligatoridae (including caiman), Gavialidae, and Crocodylidae.

(iii) *Crocodilian parts* shall mean eggs, meat, body parts other than crocodilian skins and products, and whole specimens, from any reptile within the Order Crocodylia, which includes the families Alligatoridae (including caiman), Gavialidae, and Crocodylidae.

(iv) *Country of origin* shall mean the country from which the crocodilian skins or parts were originally exported.

(v) *Country of re-export* shall mean those intermediary countries that import and re-export crocodilian skins and/or products, except that those countries through which crocodilian skins and/or products are transmitted or transhipped while remaining under Customs control shall not be considered to be imported or re-exported from the country.

(2) *Prohibitions.* The following prohibitions shall apply to the Nile crocodile (*Crocodylus niloticus*) and saltwater crocodile (*Crocodylus porosus*) originating in Australia or Papua New Guinea:

(i) *Unlawful importation and exportation.* Except as provided in paragraph (c)(3) of this section, it shall be unlawful to import, export, or present for export or re-export any Nile crocodile (*Crocodylus niloticus*) or saltwater crocodile (*Crocodylus porosus*) or their parts or products from a population listed as endangered, threatened, endangered or threatened by similarity of appearance, or listed on Appendix I or II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES or Convention), without appropriate permits required under parts 17 and 23.

(ii) *Commercial importation.* It shall be unlawful, in the course of a commercial activity, to deliver, receive, carry, transport, or ship in interstate or foreign commerce any Nile or saltwater crocodile skins, products or parts imported unlawfully.

(iii) *Commercial transactions.* It shall be unlawful to sell or offer for sale in

interstate or foreign commerce any Nile or saltwater crocodile skins, products or parts imported unlawfully.

(iv) All offenses defined in this paragraph (c) shall include the attempt to commit, solicitation of another to commit, or cause to be committed any such offense.

(3) *Exceptions.* The importation, exportation or re- exportation of crocodilian skins, products or parts pursuant to exceptions listed in this paragraph (c)(3) shall be in compliance with regulations in 50 CFR parts 13, 14, and 23.

(i) *Import, export or re-export of crocodilian skins.* The import, export or re-export into the United States of crocodilian skins of Nile crocodiles listed in Appendix II of the Convention, and of saltwater crocodiles originating in Australia and Papua New Guinea will be allowed without permits required by 50 CFR part 17 provided the following conditions are met:

(A) Each crocodilian skin, including both halves of a chaleco, imported into or presented for export or re-export from the United States after [*date to be 1 year after effective date of the final rule*] must bear an intact, uncut tag from the country of origin in compliance with 50 CFR part 23 including those provisions implementing the CITES resolution on the universal tagging system;

(B) The same information as is on the tags shall be given on the export permit, re-export certificate or other Convention document, or on a separate sheet which shall be considered an integral part of the permit, certificate or document and which shall be validated by the same issuing authority.

(C) The importer or exporter shall include a copy of each Convention permit or certificate or identify the Convention permit/certificate number and date of such permit/certificate from the involved country of origin and each involved country of re-export for each crocodilian skin imported or presented for export or re-export on the permit or certificate, or on a separate sheet accompanying the permit/certificate; and

(D) The Service has published a Notice of Information listing each of the involved countries of origin and each involved country of re-export indicating that each such country meets the criteria in paragraphs (c)(3)(iii)(A) through (F) of this section.

(ii) *Import, export or re-export of crocodilian products.* Import, export or re-export into the United States of crocodilian products of Nile crocodiles listed in Appendix II of the Convention, and saltwater crocodiles originating in Australia and Papua New Guinea will be allowed without permits required by 50 CFR part 17 provided the following conditions are met:

(A) For each crocodilian product imported into or presented for export or re-export from the United States after [*date to be 1 year after the effective date of the final rule*], the importer or exporter shall include a copy of each Convention permit or certificate or identify the Convention permit/certificate number and date of such permit/certificate from the involved country of origin and each involved country of re-export on the permit or certificate or on a separate sheet accompanying the permit or certificate, except that such importation history does not need to be provided for any portions of a product which is 9 square inches, e.g., 3 inches on a side, or smaller; and

(B) The Service has published a Notice of Information listing each of the involved countries of origin and each involved country of re-export indicating that each such country meets the criteria in paragraphs (c)(3)(iii)(A) through (F) of this section.

(iii) *Criteria.* The Office of the Management Authority shall identify the countries that meet the following criteria:

(A) The country of origin, at the time of export, and each re-exporting country is, at the time of the import and re-export, a Party of CITES and has not entered a reservation with respect to any species of the Order Crocodylia;

(B) The country of origin, at the time of export, and each re-exporting country, at the time of the import and re-export, has not been identified in a resolution or action adopted by the Parties to the Convention or a notification issued by the CITES Secretariat based on action by the Convention's Standing Committee with an accompanying recommendation to impose recommending a general (or crocodile-specific) trade moratorium because of failure to properly implement the Convention;

(C) The country of origin, at the time of export, and each re-exporting country, at the time of import and re-export, has not been identified in a resolution or action adopted by the Parties to the Convention or a notification issued by the CITES Secretariat based on action by the Convention's Standing Committee with an accompanying recommendation to impose a general (or crocodile-specific) trade moratorium because the country of origin or any country or re-export does not have adequate domestic legislation to prohibit trade in specimens in violation of the Convention, to penalize such trade, or to confiscate illegally traded or possessed crocodilian skins or products;

(D) The country of origin, at the time of export, and each re-exporting country, at the time of the import and re-export, has submitted an annual report to the CITES Secretariat concerning its international trade in species included in the appendices to the Convention not later than October 31 of the year following the year for which a report was due or has received an extension of time by the CITES Secretariat;

(E) The country of origin at the time of export, and each re-exporting country, at the time of the import and export, has provided the CITES Secretariat with the name and address of the competent Management Authority(s) and Scientific Authority(s) for their country; and

(F) The country of origin has certified to the Office of Management Authority that the country fulfills the criteria set forth as follows:

(*1*) It has the legal authority to inspect and seize or refuse entry for unlawful shipments of crocodilian skins and products imported into or exported from that country and has provided copies of such laws or other authority to the Office of Management Authority;

(*2*) It has a legal requirement that crocodilian skins may not be imported or exported without an attached, intact, uncut tag from the country of origin which conforms to the CITES-adopted tag manufacture and marking requirements;

(*3*) It physically inspects no less than 40 percent of the crocodilian skin and product shipments imported into that country to verify compliance with the CITES marking and tagging requirements and to ensure proper identification of specimens indicated on CITES documents; and

(*4*) If it is a country of manufacture, it requires its manufacturers to maintain an inventory control system which accounts by tag number for each crocodilian skin received and the type and quantity of the crocodilian products produced, and has provided copies of laws, regulations or decrees implementing such a control system to the Office of Management Authority.

(iv) *Importation of crocodilian skins directly from country of origin.* The importation of Nile crocodile skins for commercial purposes from countries where the Nile crocodile is listed in Appendix II of CITES, and the importation of skins of the saltwater crocodile from Australia and Papua New Guinea, will be allowed without permits for individual shipments

otherwise required by 50 CFR part 17, if imported directly from the country of origin (including shipments transited or transshipped through a third country while under customs control) into the United States if the crocodilian skin bears an intact, uncut tag from the country of origin in compliance with 50 CFR part 23, including those provisions implementing the CITES resolution on the universal tagging system.

(v) *Noncommercial accompanying baggage.* The conditions of paragraphs (c)(3)(ii) (A) and (B) of this section for products made of Nile crocodile or of saltwater crocodile from Australia or Papua New Guinea shall not apply to noncommercial accompanying personal baggage. Furthermore, no permits required by 50 CFR part 17 will be required for import of crocodilian skins and parts of Nile crocodile listed on Appendix II or of saltwater crocodile from Australia or Papua New Guinea when imported as non-commercial accompanying personal baggage.

(4) *Publication of information.* The Service shall publish appropriate notices of information in the **Federal Register** that shall list the countries that meet the conditions described in paragraph (c)(3)(iii) of this section. Based on the notices published pursuant to this section, the Service will maintain a current list of countries that meet the conditions described in paragraph (c)(3)(iii) of this section, and from which import or re-export of Nile crocodile from countries where this species is listed in Appendix II of CITES and the saltwater crocodile from Australia and Papua New Guinea will be allowed with proper CITES export permits. A list of these countries is available by writing: The Office of Management Authority, ARLSQ Room 420, 4401 N. Fairfax Drive, U.S. Fish and Wildlife Service, Arlington, Virginia, 22203.

Dated: March 23, 1994.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 94–9395 Filed 4–18–94; 8:45 am]

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Tuesday
April 19, 1994

Part VI

Department of Housing and Urban Development

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Parts 905, 913, 964, and 990
Tenant Participation and Tenant Opportunities in Public and Indian Housing; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Assistant Secretary for Public and Indian Housing

24 CFR Parts 905, 913, 964 and 990

[Docket No. R–94–1707; FR–3568–P–01]

RIN 2577–AB36

Public and Indian Housing Amendment to the Tenant Participation and Tenant Opportunities in Public and Indian Housing

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend regulations on tenant participation in public and Indian housing to add new policies, procedures and guidelines for tenant participation, revise the Resident Management Program to Tenant Opportunities Programs, and add regulations to govern the Family Investment Centers (FIC) Program. These changes would be made to address several weaknesses in the existing regulations which have interferred with successful program implementation.

DATES: Comments due: May 19, 1994.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Office of General Counsel, Rules Docket Clerk, room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Facsimile (FAX) are not acceptable. A copy of each communication submitted will be available for public inspection and copying on weekdays between 7:30 a.m. and 5:30 p.m. at the above address.

FOR FURTHER INFORMATION CONTACT: For questions concerning the Public Housing rule contact Dorothy Walker or Marcia Martin, Office of Resident Initiatives, room 4112, telephone (202) 708–3611, or 708–0850. For Indian Housing, contact Dom Nessi, Director, Office of Native American Programs, room 4141, telephone (202) 708–1015 (these are not toll-free numbers). Hearing- or speech-impaired persons may use the Telecommunications Devices for the Deaf (TDD) by contacting the Federal Information Relay Service on 1–800–877–TDDY (1–800–877–8339) or 202–708–9300 (not a toll free number) for information on the program.

The address for the above listed persons is: Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410. (The telephone numbers listed above are not toll-free.)

SUPPLEMENTARY INFORMATION:

I. Information Collections

The information collection requirements contained in this proposed rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520).

The public reporting burden for each of these collections of information is estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided under the preamble heading, Other Matters. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street SW., room 10276, Washington, DC 20410; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention Desk Officer for HUD, Washington, DC 20503.

II. Background

Section 20 of the United States Housing Act of 1937, as amended (42 U.S.C. 1437r) (the "1937 Act") was enacted to encourage increased resident management of public housing projects * * * "to promote formation and development of resident management entities." The Department implemented section 20 by regulations (24 CFR part 964 for Public Housing, and 24 CFR part 905, subpart O for Indian Housing), that governed tenant participation and resident management in public/Indian housing under Section 20 of the 1937 Act.

III. Overview of Public Housing Changes

Several weaknesses in the regulations have interfered with successful program implementation. The current regulations fail to establish clear and detailed policy on resident participation and guidance on the structure for public housing resident organizations. Additionally, the current regulations fail to establish specific requirements for resident involvement in public/Indian housing management, and a strong partnership between the PHAs/IHAs (thereinafter referred to as HAs) and resident councils. Internal conflict between competing resident councils in a development poses serious problems to HUD with respect to program eligibility and participation, as well as HA recognition. The Department is concerned about the need to provide more details on how resident councils/resident management corporations should be structured and how to broaden tenant involvement in public housing.

The Department recognizes the need to increase the amount of cash contributions for resident council activities, presently limited at three (3) dollars per unit per year, and to compensate resident council officers who are serving as volunteers in the public housing community.

The Secretary asked a former top HUD official to develop policy recommendations on the role of residents in the management of public housing. Based on these recommendations, the Secretary established an Interim Resident Advisory Committee consisting of representatives of regional and state resident organizations who developed a Policy Paper on resident involvement in public housing. Public Housing Advocacy Groups: Public Housing Authorities Directors Association (PHADA), Council of Large Public Housing Authorities (CLPHA) and National Association of Housing Redevelopment Officials (NAHRO), were given an opportunity to review and comment on the Policy Paper.

Section 20 authorizes funds for technical assistance and training to resident councils (RCs)/resident management corporations (RMCs) to promote increased resident management of public housing. HUD's experience in providing grants to RCs/RMCs under the Public Housing Resident Management Program has revealed that major changes were needed in the provisions of the program. RCs/RMCs and HAs across the country overwhelmingly requested revamping of the program to assist in meeting their residents' need for economic development, education, job training and development, social services, and opportunities for other self-help initiatives.

Recommendations from the Interim Resident Advisory Committee on Tenant Involvement in Public Housing, and requests for changes in the Resident Management Technical Assistance Program resulted in the proposed comprehensive revision of 24 CFR part 964.

The major changes in the proposed rule would allow for broader, more flexible programs aimed at increasing the capacity of resident entities to

participate significantly in all aspects of public housing operations while simultaneously permitting further economic uplift opportunities, to the extent permitted under section 20 of the United States Housing Act of 1937. Section 20 requires that all activities funded under it be related to improved living conditions and public housing operations. (See §§ 905.967 and 964.205.) The Department is now proposing amendments to section 20 to permit funding of a broader range of tenant development activities to include activities that are not necessarily related to resident management or housing authority operations.

The current regulation on the Tenant Participation and Resident Management Program is proposed to be renamed "Tenant Participation and Tenant Opportunities in the Public Housing Program." The proposed regulations would include the Tenant Opportunities Program (TOP), which replaces the Resident Management Program under subpart C in the current regulation.

The revised program was created in response to requests from resident councils/resident management corporations and HAs across the country for a more flexible program to address the needs in their communities related to encouraging increased resident management activities as a means of improved living conditions and public housing operations. The revised program is designed to prepare residents to experience the dignity of meaningful work; to own and operate resident businesses; to move toward financial independence; to enable them to choose where they want to live; and to assure meaningful participation in the management of their housing developments. The authority for the TOP program comes from section 20 of the 1937 Act, which discusses resident management of public housing. Section 20(f) authorizes technical assistance and training. Financial assistance in the form of technical assistance grants is provided by the Secretary to RCs/RMCs to prepare for management activities in their housing development (hereinafter referred to as TOP technical assistance grants). Technical assistance grants are available for "the development of resident managed entities, including the formation of such entities, the development of the management capability of newly formed or existing entities, the identification of the social support needs of residents of public housing projects and the securing of such support." TOP technical assistance grants can enable residents to manage their developments or portions of their developments. The results are significant and multifaceted. For example, resident managed activities have resulted in economic development, resident self-sufficiency, improved living conditions, and enhanced social services for residents (e.g., child care and other youth programs).

The Resident Management Program would continue to be an option to resident councils/resident management corporations who are interested in performing management functions in one or more projects of a HA. None of the requirements for the resident management program will be changed. However, some of the provisions are being moved to other regulations, or HUD documents. For example, the requirements under subpart C (§ 964.39) governing the operating subsidy, budget, operating reserves, etc. are proposed to be moved to 24 CFR Part 990—Annual Contributions for Operating Subsidy. The Department believes these provisions of § 964.39 are more appropriately placed in that regulation. Also, the requirements for the RMC management contract contents are being removed from subpart C and are contained in HUD Notice PIH 93–56 (HA) which also includes a model management contract. This contract must be followed unless HUD approves a requested change.

Subpart A would be expanded to add policies on partnerships between HAs and residents. For example, HAs are required to provide a duly elected resident council office space and meeting facilities, free of charge, for the purposes of conducting resident activities.

Also, the section on definitions (§ 964.7) would be amended by removing terms such as "resident council" and "resident management corporation" and expanding the definition of these terms to provide clarity on the eligibility of a voting member of the resident council and establish the frequency of elections for resident management corporations. The definitions for other terms such as "project" and "tenant participation" are eliminated.

The current rule under subpart B would be expanded substantially to establish policies and procedures for HAs with respect to resident participation activities. For example, HAs shall provide any funds they receive for resident participation activities to the duly elected resident council. Parts 990 and 905, subpart J would be amended to require an "add-on" of $25 per unit per year to the HA's operating subsidy calculation, which would be paid to the HA only if appropriations were available for that purpose, to support activities of the duly elected resident council. The HUD Circular HM 7475.9 dated February 10, 1992, authorized funds not to exceed three ($3) dollars per unit per year. The Department believes that an increase of $22 per unit per year is reasonable and, if available, would guarantee the resources necessary to create a bonafide partnership among the duly elected resident council and the HA. Strong partnerships are critical for achieving mutual goals contained in this subpart.

Also, HUD proposes to encourage HAs to provide stipends in an amount up to $200 per month/per officer to resident council officers who serve as volunteers in the public housing development to carry out these duties and functions as officers of the resident council. The Department believes that these volunteers should be reimbursed for their expenses related to volunteer efforts, such as child care, transportation, special equipment, clothing, etc.

The current part 964 regulations lack specificity regarding resident elections and organizational policies, and have made it difficult to determine what is a duly elected resident council and that has caused conflicts among the residents.

The proposed regulations would add new policies and procedures for resident councils by defining what is a duly elected resident council, detailing minimum standards for elections of resident councils and specifying the relationship between the resident councils and resident management corporations. Resident councils would be required to meet HUD's election standards in order to receive official recognition from the HA and HUD, as well as to receive funds in conjunction with the conduct of resident council business. The role of the jurisdiction-wide resident council would be established under the proposed rule. The rule also contains provisions that expand the resident participation requirements to strongly support resident participation in all aspects of a HA's management operations and that give rights to residents to freely organize and represent their interests.

The proposed rule would add a new subpart D to implement the Family Investment Center (FIC) Program under section 22 of the 1937 Act (42 U.S.C. 1437t) (added by section 515 of the Cranston-Gonzalez National Affordable Housing Act). The FIC program provides families living in public housing with better access to educational and employment opportunities. This new subpart will be added to part 964 to include FIC because it complements the

Department's resident participation and self-sufficiency initiatives. The program was proposed by a national association on behalf of numerous housing authorities. Representatives from public/Indian housing authorities, resident councils/resident management corporations and nonprofit housing agencies were convened at the Department to discuss program provisions and provide policy recommendations during the initial program planning stage. Some HAs will combine their FIC and Family Self-Sufficiency (FSS) programs. This rule would provide that section 8 FSS Program participants are eligible to participate in the FIC program when it is combined with FSS, but that income exclusions that are provided to public housing residents participating in employment training and supportive service programs would not apply to Section 8 FSS families. The treatment of the FSS escrow account for public housing FIC/FSS families is not addressed in this proposed rule, but will be included in the final rulemaking.

Proposed § 964.320 provides HUD policy on training, employment and contracting of public/Indian housing residents under section 3 of the Housing and Community Development Act of 1968. Section 915 of the Housing and Community Development Act of 1992 made significant changes to section 3. HUD recently published a proposed rule implementing those changes (see 58 FR 52534, October 8, 1993). Section 3, as amended, requires that HAs make their best efforts, consistent with existing Federal, State, and local laws and regulations, to amend contracts for work to be performed in connection with development, operation and modernization assistance provided pursuant to sections 5, 9 and 14 of the U.S. Housing Act of 1937. As amended, section 3 establishes an order of priority to which the HA's efforts must be directed. Thus, the first level of priority is to residents of the housing development, for which the assistance is provided. This proposed rule includes provisions consistent with the proposed section 3 rule.

The reader should note that combination terms such as "tenant and resident", "tenant council," and "resident council", and "tenant management corporation" and "resident management corporation" are similar terms and may be used interchangeably. Hereafter, for ease of discussion, the proposed rule will use the terms resident, resident council and resident management corporation, as appropriate.

IV. Amendments of the Tenant Participation and Tenant Opportunities Program in Public Housing

A. Regulatory Actions: 964

Based on recommendations of the Interim Resident Advisory Committee, program experience, and comments from various Housing Interest Groups, the regulations are proposed to be revised to: (1) Expand tenant participation in various programs and involvement in public housing operations, and (2) change the Resident Management Program to the Tenant Opportunities Program (TOP), and (3) add a new subpart D to the 964 regulations which contains policies and procedures for the FIC Program.

This section discusses each of the specific regulatory revisions.

1. Subpart A would be amended as follows:

a. Section 964.1 Purpose would be streamlined.

b. Section 964.3 Applicability and scope would remain unchanged.

c. Section 964.7 Definitions would be amended by removing several definitions such as project and tenant participation; by moving terms such as Resident Council and Resident Management Corporation to a more appropriate section under subpart B, and by expanding definitions; and by adding new terms which relate to the FIC program.

d. Section 964.11 HUD policy on tenant participation would be amended to strongly support tenant participation in all the functions of a HA's management operations and give rights to residents to freely organize and represent their interests.

e. Section 964.12 HUD policy on Tenant Opportunities Program (TOP) would provide HUD's policy on the Tenant Opportunities Program. Subpart C of the current regulation would be changed from "Resident Management Program" to "Tenant Opportunities Program" (TOP). The name is being changed to TOP because it reflects the evolution of the program over time, to enhance resident capacity in a variety of ways, including job training, economic development, and self-sufficiency activities carried out by resident councils/resident management corporations in public housing. Resident management is a component of TOP and resident councils/resident management corporations may continue to engage in activities relative to public housing management. Tenant opportunities programs are proven to be effective in facilitating economic uplift as well as in improving the overall conditions in public housing.

f. Section 964.14 HUD policy on partnerships would be added to provide HUD policy on Partnerships between HAs and residents. Strong partnerships between HAs and resident councils/resident management corporations are key to the success of program objectives, and critical for achieving specific and mutual goals and creating positive change for residents in public housing.

g. Section 964.15 HUD policy on resident management would remain unchanged. This section states HUD's support for resident councils/resident management corporations who are interested in becoming resident managed entities in public housing.

h. Section 964.16 HUD role in activities under this part—Monitoring would be added to describe HUD's proactive responsibility for promoting tenant participation and tenant opportunities in public housing. It provides that HUD will monitor program progress to ensure efficient and effective operations pursuant to this rule.

i. Section 964.18 HA role in activities under subparts B&C would establish a stronger HA role under this subpart. HAs shall, upon request, provide office space to a duly elected resident council and shall negotiate in good faith usage of community space for meetings and other activities for residents. HAs have a responsibility to negotiate such usage of space with the duly elected resident council.

j. Section 964.24 HUD policy on FIC program would provide HUD's policy and support for the FIC program.

2. Subpart B would be amended as follows:

a. Section 964.100 Role of resident council which establishes the role of a resident council and Section 964.105 Role of the jurisdiction-wide resident council which establishes the role of a jurisdiction-wide resident council would be added to the rule.

b. Section 964.110 Resident membership on HA Board of Commissioners would encourage resident membership on HA Board of Commissioners.

c. Section 964.115 Resident council requirements would describe the provisions necessary for the Resident Council to receive official recognition from the HA and HUD. In the current rule, this provision was included in the definitions section, and in this proposed rule it becomes a separate section.

d. Section 964.117 Resident council partnerships would be added to encourage and promote partnerships between the resident councils and public/private organizations. While the Department encourages partnerships to

complement council activities, such organizations must not become the governing entity of the resident council.

e. Section 964.120 Resident management corporation requirements would establish characteristics in order to receive formal recognition by the HA and HUD. In the current rule, this was included in the definitions sections and in this proposed rule, it becomes a separate section.

f. Section 964.125 Eligibility for resident council membership would be added to provide guidance on eligibility for council membership. This section establishes that any member of a household, who is on the lease, may be a member of a resident council. However, in order to be a voting member of the resident council, a person's name must appear on the lease of a unit in the public housing development, and he/she must be: (1) A legal head of household (means the member of the family who is the head of the household for purposes of determining income eligibility and rent), or (2) 18 years of age or older.

g. Section 964.130 Election procedures and standards would be added to provide minimum standards for resident council elections including the requirement for supervision by an independent third party. HAs shall monitor the resident council's elections to ensure compliance with HUD's minimum standards.

h. Section 964.135 Resident involvement in HA management would be added to provide policy on resident involvement in HA management operations. Residents shall participate fully in the overall policy development and direction of a HA operations.

i. Section 964.140 Resident training would be added to encourage HAs to take the lead in providing training opportunities for public housing residents. If residents are willing, they may receive training from the HA and become involved in implementing various Federal programs.

j. Section 964.145 Conflict of interest would be added to provide policy on resident council officers serving as contractors or as employees of a HA.

k. Section 964.150 Funding tenant participation would be added to establish policy on funding duly elected resident councils. Subject to appropriations, HAs shall provide funds to the duly elected resident council for tenant participation activities. This rule also proposes amendment to 24 CFR part 990 for tenant services to include up to $25 per unit per year, subject to the availability of appropriations, as an add-on to the Performance Funding System (PFS).

3. Subpart C would be amended as follows:

a. Section 964.200 General would be added to provide information on the provisions of the TOP.

b. Section 964.205 Eligibility would be added to define who is eligible to apply and receive a technical assistance grant, and would outline eligible activities under TOP.

c. Section 964.210 Announcement of funding availability would be added to describe notification of funding availability for obtaining funds to participate in TOP.

d. Section 964.215 Grant agreement would provide the terms of the grant agreement for the proposed activities under the TOP program.

e. Section 964.220 Technical assistance would describe HUD's commitment to fund TOP activities.

f. Section 964.225 Resident management requirements would provide minimal guidelines for HAs and residents for the performance of management functions.

g. Section 964.230 Audit and administrative requirements would provide audit and administrative guidelines for recipients of TOP grant funds and resident management corporations contracting with a HA for management responsibilities.

4. Subpart D would be added to the part 964 as follows:

a. Section 964.300 General would provide the purpose and program provisions of the FIC program. FIC provides families living in public housing with better access to educational and employment opportunities to achieve self-sufficiency and independence.

b. Section 964.305 Eligibility for FIC would provide eligible activities and requirements under the FIC program.

c. Section 964.308 Supportive services requirements for FIC would provide supportive services requirements essential for families living with children in public housing.

d. Section 964.310 Audit/Compliance Requirements for FIC would provide audit and compliance requirements governing the program.

e. Section 964.315 HAs role in FIC activities under this part would provide the process required to assure that HA residents are informed about FIC.

f. Section 964.320 HUD policy on training, employment, contracting and subcontracting of public/Indian housing residents under FIC would state HUD's policy on resident training, employment and contracting under FIC.

g. Section 964.325 Announcement of funding availability for FIC would indicate that the Notice of Funding Availability (NOFA) will be published periodically and contain specific information regarding eligibility, funding criteria, etc.

h. Section 964.330 Grant set-aside assistance for FIC would state HUD's policy of permitting up to five percent (5%) of amounts available in any fiscal year to augment grants previously awarded under this program.

i. Section 964.335 Grant agreement for FIC would provide the grant agreement term.

j. Section 964.340 Resident compensation for FIC would provide guidelines governing employment compensation under this program.

k. Section 964.45 Treatment of income would provide provisions for income exclusions for any resident participating in the FIC program.

l. Section 964.350 Administrative Requirements for FIC would provide administrative and reporting requirements governing the FIC program.

B. Indian Housing Changes—Part 905

The proposed rule also revises 24 CFR part 905, subpart O, "Resident Participation and Opportunities". The Indian housing section is similar to its public housing counterpart, but does not contain some of the provisions in 24 CFR part 964 in an effort to streamline the regulations and tailor them specifically to the generally smaller size of most Indian Housing Authorities (IHA). However, all activities, functions and benefits permitted under any public housing resident programs will remain eligible activities, functions and benefits for Indian housing resident programs.

The major changes in the proposed rule will allow for broader, more flexible programs aimed at increasing the capacity of Indian housing resident organizations and resident management corporations to carry out their organizational functions in a more structured manner while simultaneously permitting further economic uplift opportunities.

Within the subpart there is a general section; a Tenant Opportunities Program (TOP) section; and a Family Investment Centers Program section. The current Indian Housing Resident Management Program under existing regulations is viable and remains an option under TOP. None of the requirements for the resident management program will be changed; however, some sections are being moved to other sections of the 905 regulations or HUD handbooks.

C. Miscellaneous Conforming Changes

Changes that have been made to other parts are the exclusion from income of

stipends to RC officers and of training grants under the FIC program that would be added to 905 and 913; the provision for payments to duly elected resident council officers, and the inclusion of requirements governing the RMC Operating subsidy, budget, operating reserves, etc., that would be made to 990; and changes for the resident participation subpart that would be made in part 905 to parallel changes in part 964.

Other Matters

Justification for Shortened Comment Period

It is the general practice of the Department to provide a 60-day comment period on all proposed rules. However, the Department is shortening its usual 60-day comment period to 30 days because it would be contrary to the public interest to delay the benefits of the rule another 30 days and because it is unnecessary to have a longer comment period. The policies contained in this proposed rule are the result of collaborative efforts with various housing interest groups, i.e., public housing resident leaders, Public/Indian Housing Authorities, Public Housing Advocacy Groups. This should decrease the need for the usual time period for comment, since consultation took place while the policy was being developed.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this proposed rule before publication and by approving it certifies that this proposed rule does not have a significant economic impact on a substantial number of small entities. The proposed rule provides substantial revisions to the regulations concerning Tenant Participation and Management in Public Housing under which resident councils/resident management corporations receive funding on a competitive basis. HUD does not anticipate a significant economic impact on small entities since resident councils/resident management corporations will continue to obtain by contract technical assistance to carry out program activities.

Environmental Impact

A finding of no significant impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the office of the Rules Docket Clerk at the above address.

Executive Order 12866

This proposed rule was reviewed by the Office of Management and Budget under Executive Order 12866, Regulatory Planning and Review. Any changes made to the proposed rule as a result of that review are clearly identified in the docket file which is available for public inspection in the office of the Department's Rules Docket Clerk, room 10276, 451 Seventh Street SW., Washington, DC.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this proposed rule will not have substantial direct effects on states or their political subdivisions, or the relationship between the federal government and the states, or on the distribution of power and responsibilities among the various levels of government. As a result, the proposed rule is not subject to review under the order. The revised proposed rule is consistent with federalism principles since it reduces unnecessary burdens on resident organizations. Since participation by resident organizations is discretionary, this proposed rule lacks the direct and substantial effects on resident organizations required for a policy with federalism implications under the Order.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this proposed rule has a beneficial effect on the family, and thus, does not require further review. No significant change in existing HUD policies or programs will result from promulgation of this proposed rule, as those policies and programs relate to family concerns.

Regulatory Agenda

This proposed rule was listed as Item No. 1636 in the Department's Semiannual Agenda of Regulations published on October 25, 1993, (58 FR 56402, 56448) in accordance with Executive Order 12291 and the Regulatory Flexibility Act.

Public Reporting Burden

The information collection requirements contained in this proposed rule have been submitted to the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520). The Department has determined that the following provisions contain information collection requirements.

The Department has estimated the public reporting burden involved in the information collections contained in the proposed rule as shown below. The public reporting burden for each of these collections of information is estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

INFORMATION COLLECTION BURDEN OF TOP RULE

Reference	No. of respondents	Freq. of responses	Est. avg. response time (hours)	Est. annual burden (hours)
964.18 & 905.964	1500	1	3	4500
964.115 & 964.130	1500	1	3	4500
964.215	200	1	2	400
964.225 (b) & 905.969	25	1	3	75
964.230, 964.305 & 905.982	500	1	1	500
964.310	500	1	8	4000
964.335	75	1	2	150
964.350, 964.350(a) & 905.988	75	1	1	75
Total Reporting Burden				14,200

INFORMATION COLLECTION BURDEN OF TOP RULE—Continued

Reference	No. of respondents	Freq. of responses	Est. avg. response time (hours)	Est. annual burden (hours)
Recordkeeping Burden: 964.230(a)(2) & 905.972	200		1	200
Total Recordkeeping Burden				200

The Catalog of Federal Domestic Assistance program number is 14.853.

List of Subjects

24 CFR Part 905

Aged, Energy conservation, Grant programs—housing and community development, Grant programs—Indians, Indians, Individuals with disabilities, Lead poisoning, Loan programs—housing and community development, Loan programs—Indians, Low and moderate income housing, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 913

Grant programs—housing and community development, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 964

Grant programs—housing and community development, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 990

Grant programs—housing and community development, Public housing, Reporting and recordkeeping requirements.

Accordingly, parts 905, 913, 964, and 990 of title 24 of the Code of Federal Regulations are proposed to be amended as follows:

PART 905—INDIAN HOUSING PROGRAMS

1. The authority citation for part 905 would be revised to read as follows:

Authority: 25 U.S.C. 450e(b); 42 U.S.C. 1437aa, 1437bb, 1437c, 1437cc, 1437d(c)(4)(D), 1437ee and 3535(d).

2. In § 905.102, the definition of *Annual income* would be amended by removing the word "or" from paragraph (2)(viii)(B); by adding the word "or" at the end of paragraph (2)(viii)(C); by adding a new paragraph (2)(viii)(D); by removing the word "or" from paragraph (2)(x); by designating paragraph (2)(xi) as paragraph (2)(xii); and by adding a new paragraph (2)(xi) to read as follows:

§ 905.102. Definitions.

* * * * *

Annual income.

* * * * *

(2) * * *

(viii) * * *

(D) A resident stipend, but only if the resident stipend does not exceed $200 per month per officer to resident council officers. Stipends are intended to cover costs related to officers volunteer efforts and include but are not limited to the following items: child care, transportation, special equipment and special clothing.

* * * * *

(xi) The earnings and benefits to any resident resulting from the participation in a program providing employment training and supportive services in accordance with the Family Support Act of 1988, section 22 of the U.S. Housing Act of 1937, or any comparable Federal, State, Tribal or local law during the exclusion period. For purposes of this paragraph, the following definitions apply:

(A) *Comparable Federal, State, Tribal or Local law* means a program providing employment training and supportive services that—

(*1*) is authorized by a Federal, State, Tribal or local law;

(*2*) is funded by Federal, State, Tribal or local government;

(*3*) is operated or administered by a public agency; and

(*4*) has as its objective to assist participants in acquiring job skills.

(B) *Exclusion period* means the period during which the resident participates in a program described in this section, plus 18 months from the date the resident begins the first job acquired by the resident after completion of such program that is not funded by public housing assistance under the U.S. Housing Act of 1937 or the date the resident is terminated from employment without good cause. If the resident is terminated from employment without good cause, the exclusion period shall end.

(C) *Earnings and Benefits* means the incremental earnings and benefits resulting from a qualifying job training program or subsequent job; or

* * * * *

3. In § 905.720, a new paragraph (f) would be added, to read as follows:

§ 905.720 Other costs.

* * * * *

(f) *Funding for Resident Organization Expenses.* In accordance with the provisions of 24 CFR part 905, subpart O and procedures determined by HUD, each HA with a duly elected resident organization shall include in the operating subsidy eligibility calculation, $25 per unit per year (subject to appropriations) in support of the duly elected resident organization's activities.

* * * * *

4. Subpart O of part 905 would be revised to read as follows:

Subpart O—Resident Participation and Opportunities

General Provisions

Sec.
905.960 Purpose.
905.961 Applicability and scope.
905.962 Definitions.
905.963 HUD's role in activities under this subpart.
905.964 Resident participation requirements.
905.965 Funding Resident Participation.

Tenant Opportunities Program

905.966 General.
905.967 Eligible TOP Activities.
905.968 Technical assistance.
905.969 Resident management requirements.
905.970 Management specialist.
905.971 Operating subsidy, preparation of operating budget, operating reserves and retention of excess revenues.
905.972 TOP Audit and administrative requirements.

Family Investment Centers (FIC) Program

905.980 General.
905.982 Eligibility.
905.983 FIC Activities.
905.984 HA role in activities under this part.
905.985 HUD Policy on training, employment, contracting and subcontracting of Indian housing residents.
905.986 Grant set-aside assistance.

905.987 Resident compensation.
905.988 Administrative requirements.

Subpart O—Resident Participation and Opportunities

General Provisions

§ 905.960 Purpose.

The purpose of this subpart is to recognize the importance of involving residents in creating a positive living environment and in contributing to the successful operation of Indian housing.

§ 905.961 Applicability and scope.

(a) This subpart applies to any Indian housing authority (HA) that has an Annual Contributions Contract (ACC) with the Department. This subpart does not apply to housing assistance payments under section 8 of the U.S. Housing Act of 1937.

(b) This subpart contains HUD's policies, procedures, and requirements for the participation of Indian housing residents in Indian housing management.

(c) This subpart is designed to encourage increased tenant participation in Indian housing.

(d) This subpart is not intended to negate any pre-existing arrangements for resident management in Indian housing between a HA and a resident management corporation. On or after [*insert effective date of the final rule*], any new, renewed or renegotiated contracts must meet the requirements of this subpart, the ACC and all applicable laws and regulations.

(e) This subpart includes requirements for the Family Investment Centers (FIC) Program, which was established by Section 515 of the Cranston-Gonzalez National Affordable Housing Act, which created a new section 22 of the Act. The FIC program is designed to provide families living in Indian housing with better access to educational and employment opportunities.

§ 905.962 Definitions.

Family Investment Center. A Facility in or near Indian housing which provides families living in Indian housing with better access to educational and employment opportunities to achieve self sufficiency and independence.

Management. All activities for which the HA is responsible to HUD under the ACC, within the definition of "operation" under the Act and the ACC, including the development of resident programs and services.

Management contract. A written agreement between a resident management corporation and a HA, as provided by § 905.969. Project. For purposes of this subpart, the term includes any of the following:

(1) One or more contiguous buildings.
(2) An area of contiguous row houses.
(3) Scattered site buildings.
(4) Scattered site single-family units.

Resident management. The performance of one or more management activities for one or more projects by a resident management corporation under a management contract with the HA.

Resident Management Corporation (RMC). A Resident Management Corporation is an entity that proposes to enter into, or enters into, a contract to manage HA property. The corporation must have each of the following characteristics:

(1) It must be a nonprofit organization that is incorporated under the laws of the State or Indian tribe in which it is located.

(2) It may be established by more than one resident organization, so long as each such organization both approves the establishment of the corporation and has representation on the Board of Directors of the corporation.

(3) It must have an elected Board of Directors.

(4) Its by-laws must require the Board of Directors to include representatives of each resident organization involved in establishing the corporation.

(5) Its voting members are required to be residents of the project or projects it manages.

(6) It must be approved by the resident organization. If there is no organization, a majority of the households of the project or projects must approve the establishment of such an organization.

Resident Organization (RO). A Resident Organization (or "Resident Council" as defined in section 20 of the Act) is an incorporated or unincorporated nonprofit organization or association that meets each of the following criteria:

(1) It must consist of residents only, and only residents may vote.

(2) If it represents residents in more than one development or in all of the developments of a HA, it must fairly represent residents from each development that it represents.

(3) It must adopt written procedures providing for the election of specific officers on a regular basis.

(4) It must have a democratically elected governing board. The voting membership of the board shall consist solely of the residents of the development or developments that the RO represents.

Resident participation. A process of consultation between residents and the HA concerning matters affecting the management of Indian housing.

Resident-owned business. A Business staffed by residents that is related to the management of the IHA development(s).

§ 905.963 HUD's role in activities under this subpart.

(a) General. Subject to the requirements of this part and other requirements imposed on HAs by the ACC, statute or regulation, the form and extent of resident participation or resident management are local decisions to be made jointly by ROs and the HAs.

(b) *Duty to bargain in good faith.* If a HA refuses to negotiate with a RMC in good faith or, after negotiations, refuses to enter into a contract, the corporation may file an informal appeal with HUD, setting out the circumstances and providing copies of relevant materials evidencing the corporation's efforts to negotiate a contract. HUD shall require the HA to respond with a report stating the HA's reasons for rejecting the corporation's contract offer or for refusing to negotiate. Thereafter, HUD shall require the parties (with or without direct HUD participation) to undertake or to resume negotiations on a contract providing for resident management, and shall take such other actions as are necessary to resolve the conflicts between the parties. If no resolution is achieved within 90 days from the date HUD required the parties to undertake or resume such negotiations, HUD shall serve notice on both parties that administrative remedies have been exhausted (except that, pursuant to mutual agreement of the parties, the time for negotiations may be extended by no more than an additional 30 days).

§ 905.964 Resident participation requirements.

(a) *HA responsibilities.* (1) A HA must provide the residents or any resident organization with current information concerning the HA's policies on resident participation in management, including guidance on information and recognition of a RO, and, where appropriate, a RMC.

(2) A HA must consult with residents or resident organizations (if they exist), to determine the extent to which residents desire to participate in the management of their housing and the specific methods that may be mutually agreeable to the HA and the residents.

(3) When requested by residents, a HA must provide appropriate guidance to residents to assist them in establishing and maintaining a RO, and, where appropriate, a RMC.

(b) *Recognition.* A resident organization may request that it be recognized as the official organization representing the residents in meetings with the HA or with other entities.

(c) *Written understanding.* At a minimum, the HA and the RO shall put in writing their understanding concerning the elements of their relationship.

§ 905.965 Funding Resident Participation.

Funding will be provided under subpart J, for the following:

(a) *Resident Organizations.* Subject to appropriations, the HA shall provide funds to ROs for resident participation activities. Eligibility to receive operating subsidy for RO activities at $25 per unit per year is a separate cost item under the Performance Funding System. Of this amount, $15 per unit per year shall fund resident participation activities of the RO. Ten dollars per unit per year shall fund HA costs incurred in carrying out resident participation activities.

(b) *Stipends.* HAs may provide stipends to officers of the RO. The stipend, which may be up to $200 per month per officer, shall be decided locally by the RO and HA. (See definition of annual income in § 905.102 for exclusion for these stipends.)

Tenant Opportunities Program

§ 905.966 General.

The Indian Tenant Opportunities Program (TOP) (which is the program similar to the public housing TOP for public housing residents) provides technical assistance for various activities including resident management for ROs/RMCs as authorized by Section 20 of the Act. The TOP provides opportunities for RO/RMCs to improve living conditions and resident satisfaction in Indian housing communities.

§ 905.967 Eligible TOP Activities.

Activities to be funded and carried out by an eligible resident council or resident management corporation, as defined in subpart B, must improve the living conditions and public housing operations and may include any combination of, but are not limited to, the following:

(a) *Resident Capacity Building.* (1) Training Board members in community organizing, Board development, and leadership training;

(2) Determining the feasibility of resident management enablement for a specific project or projects; and

(3) Assisting in the actual creation of an RMC, such as consulting and legal assistance to incorporate, preparing by-laws and drafting a corporate charter.

(b) *Resident Management.* (1) Training residents, as potential employees of an RMC, in skills directly related to the operation, management, maintenance and financial systems of a project;

(2) Training of residents with respect to fair housing requirements; and

(3) Gaining assistance in negotiating management contracts, and designing a long-range planning system.

(c) *Resident Management Business Development.*

(1) Training related to resident-owned business development and technical assistance for job training and placement in RMC developments;

(2) Technical assistance and training in resident managed business development through:

(i) Feasibility and market studies;

(ii) Development of business plans;

(iii) Outreach activities; and

(iv) Innovative financing methods including revolving loan funds.

(3) Legal advice in establishing resident managed business entity.

(d) *Social Support Needs (such as self-sufficiency and youth initiatives).* (1) Feasibility studies to determine training and social services needs;

(2) Training in management-related trade skills, computer skills, etc;

(3) Management-related employment training and counseling;

(4) Coordination of support services;

(5) Training for programs such as child care, early childhood development, parent involvement, volunteer services, parenting skills, before and after school programs; and

(6) Training programs on health, nutrition and safety.

(7) Training in the development of strategies to successfully implement a youth program. For example, assessing the needs and problems of the youth, improving youth initiatives that are currently active, and training youth, housing authority staff, resident management corporations and resident organizations on youth initiatives and program activities.

(8) Workshops for youth services, child abuse and neglect prevention, tutorial services, in partnership with community-based organizations such as local Boys and Girls Clubs, YMCA/YWCA, Boy/Girl Scouts, Campfire and Big Brother/Big Sisters, etc. Other HUD programs such as the Youth Sports Program and the Public Housing Drug Elimination Programs also provide funding in these areas; and

(e) *General.* (1) Required training on HUD regulations and policies governing the operation of low-income public and Indian housing, financial management, capacity building to develop the necessary skills to assume management responsibilities at the development and property management;

(2) Purchasing hardware, i.e., computers and software, office furnishings and supplies, in connection with business development. Every effort must be made to acquire donated or discounted hardware;

(3) Training in accessing other funding sources; and

(4) Hiring trainers or other experts (RO/RMCs) must ensure that this training is provided by a qualified housing management specialist, a community organizer, the HA, or other sources knowledgeable about the program.

§ 905.968 Technical assistance.

To the extent that grant authority is available, HUD shall provide financial assistance to ROs or RMCs that obtain, by contract or otherwise, technical assistance for the development of resident management entities, including the formation of these entities; the development of the management capabilities of newly formed or existing entities; the identification of the social support needs of residents of projects, and the securing of this support; and a wide range of activities to further the purposes of this subpart.

§ 905.969 Resident management requirements.

The following requirements apply when a HA and its residents are interested in providing for resident performance of management functions in one or more projects under this subpart.

(a) *Resident management corporation.* Residents interested in contracting with a HA must establish a RMC that meets the requirements for such a corporation, as specified in this subpart.

(b) *Management Contract.* (1) A management contract between the HA and a RMC is required for resident management. The HA and the corporation may agree to the performance by the corporation of any or all management functions for which the HA is responsible to HUD under the ACC, and any other functions not inconsistent with the ACC and applicable laws and regulations. The management contract must be in conformance with the minimum requirements established by HUD.

(2) The management contract may include specific provisions governing management personnel; compensation for maintenance laborers and mechanics and administrative employees employed in the operation of the project, except that the amount of this compensation

must meet applicable labor standard requirements of Federal law; rent collection procedures; resident income verification; resident eligibility determinations; resident eviction; the acquisition of supplies and materials; and such other matters as the HA and the corporation determine to be appropriate, and as HUD may specify in administrative instructions.

(3) The management contract shall be treated as a contracting out of services, and must be subject to any provision of a collective bargaining agreement regarding the contracting out of services to which the HA is subject.

(4) Provisions on competitive bidding and requirements of prior written HUD approval of contracts contained in the ACC do not apply to the decision of a HA to contract with a RMC.

(c) *Prohibited activities.* A HA may not contract for assumption by the RMC of the HA's underlying responsibilities to HUD under the ACC.

(d) *Bonding and insurance.* Before assuming any management responsibility under its contract, the RMC must provide fidelity bonding and insurance, or equivalent protection that is adequate (as determined by HUD and the HA) to protect HUD and the HA against loss, theft, embezzlement, or fraudulent acts on the part of the corporation or its employees.

§ 905.970 Management specialist.

The RO must select, in consultation with the HA, a qualified Indian housing management specialist to assist in determining the feasibility of, and to help establish, a RMC and to provide training and other duties in connection with operating the TOP project. The Housing Management Specialist (Trainer) can be a non-profit organization, the HA or a consultant.

§ 905.971 Operating subsidy, preparation of operating budget, operating reserves and retention of excess revenues.

(a) *Calculation of operating subsidy.* Operating subsidy will be calculated separately for any project managed by a resident management corporation. This subsidy computation will be the same as the separate computation made for the balance of the projects in the HA in accordance with subpart J of this part, with the following exceptions: (1) The project managed by a resident management corporation will have an Allowable Expense Level based on the actual expenses for the project in the fiscal year immediately preceding management under this subpart. These expenditures will include the project's share of any expenses which are overhead or centralized HA expenditures. The expenses must represent a normal year's expenditures for the project, and must exclude all expenditures which are not normal fiscal year expenditures as to amount or as to the purpose for which expended. Documentation of this expense level must be presented with the project budget and approved by HUD. Any project expenditures funded from a source of income other than operating subsidies or income generated by the locally owned Indian housing program will be excluded from the subsidy calculation. For budget years after the first budget year under management by the resident management corporation, the Allowable Expense Level will be calculated as it is for all other projects, in accordance with subpart J of this part.

(2) The resident management corporation project will estimate dwelling rental income based on the rent roll of the project immediately preceding the assumption of management responsibility under this subpart, increased by the estimate of inflation of resident income used in calculating PFS subsidy.

(3) The resident management corporation will exclude, from its estimate of other income, any increased income directly generated by activities of the corporation or facilities operated by the corporation.

(4) Any reduction in the subsidy of a HA that occurs as a result of fraud, waste, or mismanagement by the HA shall not affect the subsidy calculation for the resident management corporation project.

(b) *Calculation of total income and preparation of operating budget.—No reduction.* (1) Subject to paragraph (c) of this section, the amount of funds provided by a HA to a project managed by a resident management corporation under this subpart may not be reduced during the three-year period beginning on the date a resident management corporation first assumes management responsibility for the project.

(2) *Treatment of technical assistance.* For purposes of determining the amount of funds provided to a project under paragraph (b)(1) of this section, the provision of technical assistance by the HA to the resident management corporation will not be included.

(3) *Operating budget.* The resident management corporation and the HA shall submit a separate operating budget, including the calculation of operating subsidy eligibility in accordance with paragraph (a) of this section, for the project managed by a resident management corporation to HUD for approval. This budget will reflect all project expenditures and will identify which expenditures are related to the responsibilities of the resident management corporation and which are related to functions which will continue to be performed by the HA.

(4) *Operating reserves.* (i) Each project or part of a project that is operating in accordance with the ACC amendment relating to this subpart and in accordance with a contract vesting maintenance responsibilities in the resident management corporation will have transferred, into a sub-account of the operating reserve of the host HA, an operating reserve. Where all maintenance responsibilities for the resident-managed project are the responsibility of the corporation, the amount of the reserve made available to projects under this subpart will be the per unit cost amount available in the HA operating reserve, exclusive of all inventories, prepaids and receivables (at the end of the HA fiscal year preceding implementation), multiplied by the number of units in the project operated in accordance with the provisions of this subpart. Where some, but not all, maintenance responsibilities are vested in the resident management corporation, the contract may provide for an appropriately reduced portion of the operating reserve to be transferred into the corporation's sub-account.

(ii) The use of the reserve will be subject to all administrative procedures generally applicable to the Indian housing program. Any expenditure of funds from the reserve will be for eligible expenditures which are incorporated into an operating budget subject to approval by HUD.

(iii) Investment of funds held in the reserve will be in accordance with the provisions of chapter 4 of the Financial Management Handbook, 7475.1 REV, and interest generated will be included in the calculation of operating subsidy in accordance with subpart J of this part.

(c) *Adjustments to total income.* (1) Operating subsidy will reflect changes in inflation, utility rates and consumption, and changes in the number of units in the project.

(2) In addition to the amount of income derived from the project (from sources such as rents and charges) and the operating subsidy calculated in accordance with paragraph (a) of this section, the contract may specify that income be provided to the project from other sources of income of the HA.

(3) The following conditions may not affect the amounts to be provided to a project managed by a resident management corporation under this subpart:

(i) Any reduction in the total income of a HA that occurs as a result of fraud, waste, or mismanagement by the HA; or

(ii) Any change in the total income of a HA that occurs as a result of project-specific characteristics that are not shared by the project managed by the corporation under this subpart.

(d) *Retention of excess revenues.* Any income generated by a resident management corporation that exceeds the income estimated for the income category involved must be excluded in subsequent years in calculating: (1) The operating subsidy provided to a HA under subpart J of this part; and

(2) The funds provided by the HA to the resident management corporation.

(e) *Use of retained revenues.* Any revenues retained by a resident management corporation under paragraph (d) of this section may only be used for purposes of improving the maintenance and operation of the project, establishing business enterprises that employ residents of Indian housing, or acquiring additional dwelling units for low-income families. Units acquired by the resident management corporation will not be eligible for payment of operating subsidy.

§ 905.972 TOP Audit and administrative requirements.

(a) *Annual audit of books and records.* The financial statements of a RMC managing a project under this subpart must be audited annually by a licensed certified public accountant, designated by the RMC, in accordance with generally accepted government audit standards. A written report of each audit must be forwarded to HUD and the HA within 30 days of issuance.

(b) *Relationship to other authorities.* The requirements of paragraph (a) of this section are in addition to any other Federal law or other requirement that would apply to the availability and audit of books and records of RMCs under this part.

(c) *General administrative requirements.* Except as modified by this part, RMCs must comply with the requirements of OMB Circulars A–110 and A–122, as applicable.

Family Investment Centers (FIC) Program

§ 905.980 General.

(a) *The Family Investment Centers (FIC) Program.* This program provides families living in Indian housing with better access to educational and employment opportunities by:

(1) developing facilities in or near Indian housing for training and support services;

(2) mobilizing public and private resources to expand and improve the delivery of such services;

(3) providing funding for such essential training and support services that cannot otherwise be funded; and

(4) improving the capacity of management to assess the training and service needs of families, coordinating the provision of training and services that meet such needs, and ensuring the long-term provision of such training and services.

(b) *Supportive Services.* New or significantly expanded services essential to providing families in Indian housing with better access to educational and employment opportunities to achieve self-sufficiency and independence. HAs applying for funds to provide supportive services must demonstrate that the services will be provided at a higher level than currently provided. Supportive services may include:

(1) Child care;

(2) Employment training and counseling;

(3) Computer skills training;

(4) Education including remedial education; literacy training; completion of secondary or post secondary education and assistance in the attainment of certificates of high school equivalency;

(5) Business, entrepreneurial training and counseling;

(6) Transportation necessary to enable any participating family member to receive available services or to commute to his/her place of employment;

(7) Personal welfare (e.g. substance/alcohol abuse treatment and counseling, self-development counseling, etc.);

(8) Supportive Health Care Services (e.g., outreach and referral services; and

(9) Any other services and resources, including case management, determined to be appropriate in assisting eligible residents.

(c) *FIC Service Coordinator.* Any person who is responsible for:

(1) determining the eligibility and assessing needs of families to be serviced by the FIC;

(2) assessing training and service needs of eligible residents;

(3) working with service providers to coordinate the provision of services and to tailor the services to the needs and characteristics of eligible residents;

(4) mobilizing public and private resources to ensure that the supportive services identified can be funded over the five-year period, at least, following the initial receipt of funding;

(5) monitoring and evaluating the delivery, impact and effectiveness of any supportive service funded with capital or operating assistance under the FIC program.

(6) coordinating the development and implementation of the FIC Program with other self-sufficiency, educational and employment programs; and

(7) performing other duties and functions that are appropriate for providing eligible residents with better access to educational and employment opportunities.

§ 905.982 Eligibility.

A HA may apply to establish one or more FICs for more than one Indian housing development. A HA must demonstrate a firm commitment of assistance from one or more sources ensuring that supportive services will be provided for not less than one year following the completion of activities.

§ 905.983 FIC Activities.

Activities that may be funded and carried out by an eligible HA may include: (a) The renovation, conversion, or combination of vacant dwelling units to create common areas to accommodate the provision of supportive services;

(b) The renovation of existing common areas to accommodate the provision of supportive services;

(c) The renovation of facilities located near the premises of one or more HA developments to accommodate the provision of supportive services;

(d) The provision of not more than 15 percent of the total cost of supportive services (which may be provided directly to eligible residents by the HA or by contract or lease through other appropriate agencies or providers), but only if the HA demonstrates that:

(1) The supportive services are appropriate to improve the access of eligible residents to employment and educational opportunities; and

(2) The HA has made diligent efforts to use or obtain other available resources to fund or provide such services; and

(e) The employment of service coordinators.

§ 905.984 HA role in activities under this part.

A HA shall develop a process that ensures that RO/RMC representatives and residents are fully informed of, and have an opportunity to comment on, the contents of the application and activities at all stages of the application and grant award process. The HA shall give full and fair consideration to the comments and concerns of the residents.

§ 905.985 HUD Policy on training, employment, contracting and subcontracting of Indian housing residents.

In accordance with section 3 of the Housing and Urban Development Act of 1968 and the implementing regulations at 24 CFR part 135, HAs, their contractors and subcontractors shall use best efforts, consistent with existing Federal, State, Tribal and local laws and regulations (including section 7(b) of the Indian Self-Determination and Education Assistance Act, to give low and very low-income persons the training and employment opportunities generated by section 3 covered assistance (as this term is defined in 24 CFR 135.7) to give section 3 business concerns the contracting opportunities generated by section 3 covered assistance.

§ 905.986 Grant set-aside assistance.

HUD may set-aside five percent of any amounts available in each fiscal year (subsequent to the first funding cycle) to supplement grants previously awarded under this program. These supplemental grants would be awarded to HAs that demonstrate that funds cannot otherwise be obtained and are needed to provide adequate service levels to residents.

§ 905.987 Resident compensation.

Residents employed pursuant to a FIC grant shall be paid at a rate not less than the highest of:

(a) The minimum wage that would be applicable to the employee under the Fair Labor Standards Act of 1938 (FLSA), if section 6(a)(1) of the FLSA applied to the resident and if the resident was not exempt under section 13 of the FLSA;

(b) The State, local or Tribal minimum wage for the most nearly comparable covered employment; or

(c) The prevailing rate of pay for persons employed in similar public occupations by the same employer.

§ 905.988 Administrative requirements.

Each HA receiving a grant shall submit to the HUD Field Office an annual progress report describing and evaluating the use of grant amounts received under this program.

PART 913—DEFINITION OF INCOME, INCOME LIMITS, RENT AND REEXAMINATION OF FAMILY INCOME FOR THE PUBLIC HOUSING PROGRAM

5. The authority citation for part 913 would continue to read as follows:

Authority: 42 U.S.C. 1437a, 1437d, 1437n and 3535(d).

6. In § 913.106, paragraph (c) would be amended by removing the word "or" from paragraph (c)(8)(ii); by adding the word "or" at the end of paragraph (c)(8)(iii); by adding a new paragraph (c)(8)(iv); by removing the word "or" from paragraph (c)(10); by redesignating paragraph (c)(11) as paragraph (c)(12); and by adding a new paragraph (c)(11), to read as follows:

§ 913.106 Annual income.

* * * * *

(c) * * *

(8) * * *

(iv) A resident service stipend, but only if the resident service stipend does not exceed $200 per month/per officer to resident council officers. Stipends are intended to cover costs related to officer's volunteer efforts and include but are not limited to the following items: Child care, transportation, special equipment and special clothing.

* * * * *

(11) The earnings and benefits to any resident resulting from the participation in a program providing employment training and supportive services in accordance with the Family Support Act of 1988, section 22 of the U.S. Housing Act of 1937, or any comparable Federal, State, or local law during the exclusion period. For purposes of this paragraph, the following definitions apply.

(i) *Comparable Federal, State or Local law* means a program providing employment training and supportive services that—

(A) is authorized by a federal, state or local law;

(B) is funded by federal, state or local government;

(C) is operated or administered by a public agency; and

(D) has as its objective to assist participants in acquiring job skills.

(ii) *Exclusion period* means the period during which the resident participates in a program described in this section, plus 18 months from the date the resident begins the first job acquired by the resident after completion of such program that is not funded by public housing assistance under the U.S. Housing Act of 1937. If the resident is terminated from employment without good cause, the exclusion period shall end.

(iii) *Earnings and Benefits* means the incremental earnings and benefits resulting from a qualifying job training program or subsequent job;

* * * * *

7. Part 964, would be revised to read as follows:

PART 964—TENANT PARTICIPATION AND TENANT OPPORTUNITIES IN PUBLIC HOUSING

Subpart A—General Provisions

Sec.

964.1 Purpose.
964.3 Applicability and scope.
964.7 Definitions.
964.11 HUD policy on tenant participation.
964.12 HUD policy on the Tenant Opportunities Program (TOP).
964.14 HUD policy on partnerships.
964.15 HUD policy on resident management.
964.16 HUD role in activities under this rule.
964.18 HA role in activities under subpart B & C.
964.24 HUD policy on FIC Program.

Subpart B—Tenant Participation

964.100 Role of resident council.
964.105 Role of the Jurisdiction-Wide Resident Council.
964.110 Resident membership on HA board of Commissioners.
964.115 Resident council requirements.
964.117 Resident council partnerships.
964.120 Resident management corporation requirements.
964.125 Eligibility for resident council membership.
964.130 Election procedures and standards.
964.135 Resident Involvement in HA Management Operations.
964.140 Resident training.
964.145 Conflict of interest.
964.150 Funding tenant participation.

Subpart C—Tenant Opportunities Program

964.200 General.
964.205 Eligibility.
964.210 Announcement of Funding Availability.
964.215 Grant agreement.
964.220 Technical Assistance.
964.225 Resident management requirements.
964.230 Audit and administrative requirements.

Subpart D—Family Investment Centers (FIC) Program

964.300 General.
964.305 Eligibility.
964.308 Supportive services requirements.
964.310 Audit/Compliance Requirements.
964.315 HAs role in activities under this part.
964.320 HUD Policy on training, employment, contracting and subcontracting of public housing residents.
964.325 Announcement of funding availability.
964.330 Grant Set-Aside Assistance.
964.335 Grant agreement.
964.340 Resident compensation.
964.345 Treatment of income.
964.350 Administrative requirements.

Authority: 42 U.S.C. 1437d, 1437g, 1437l, 1437r, 1437t, 3535(d).

Subpart A—General Provisions

§ 964.1 Purpose.

The purpose of this part is to recognize the importance of resident involvement in creating a positive living environment and in actively participating in the overall mission of public housing.

§ 964.3 Applicability and scope.

(a) The policies and procedures contained in this part apply to any HA that has a Public Housing Annual Contributions Contract (ACC) with HUD. This part does not apply to PHAs with housing assistance payments contracts with HUD under section 8 of the U. S. Housing Act of 1937.

(b) Subpart B of this part contains HUD policies, procedures, and requirements for the participation of residents in public housing operations. These policies, procedures, and requirements apply to all residents participating under this part.

(c)(1) Subpart C of this part contains HUD policies, procedures, and requirements for residents participating in the Tenant Opportunities Program (TOP) (replaces the Resident Management Program under section 20 of the United States Housing Act of 1937). Resident management in public housing is viable and remains an option under TOP.

(2) Subpart C of this part is not intended to negate any pre-existing arrangements for resident management in public housing between a PHA and a resident management corporation. On or after [insert effective date of this regulation], any new, renewed or renegotiated contracts must meet the requirements of this part, the ACC and all applicable laws and regulations.

(d) Subpart D of this part includes requirements for the Family Investment Centers (FIC) Program which was established by section 22 of the United States Housing Act of 1937 (42 U.S.C. 1437t) to provide families living in public housing and Indian housing with better access to educational and employment opportunities.

(e) The term "resident," as used throughout this part, is interchangeable with the term "tenant," to reflect the fact that local resident organizations have differing preferences for the terms. Terms such as "resident council" and "tenant council" and "resident management" and "tenant management" are interchangeable. Hereafter, for ease of discussion, the proposed rule will use the terms resident, resident council and resident management corporation, as appropriate.

§ 964.7 Definitions.

Annual Contributions Contract (ACC). A contract (in the form prescribed by HUD) under which HUD agrees to provide financial assistance, and the HA agrees to comply with HUD requirements for the development and operation of the public housing project.

Eligible Residents for FIC. A participating resident of a participating HA. If the HA is combining FIC with the Family Self-Sufficiency (FSS) program, the term also means Public Housing FSS and Section 8 families participating in the FSS program. Although Section 8 FSS families are eligible residents for FIC, they do not qualify for income exclusions that are provided for public housing residents participating in employment and supportive service programs.

Family Investment Centers (FIC). A facility on or near public housing which provides families living in public housing with better access to educational and employment opportunities to achieve self-sufficiency and independence.

FIC Service Coordinator. Any person who is responsible for:

(1) Determining the eligibility and assessing needs of families to be served by the FIC;

(2) Assessing training and service needs of eligible residents;

(3) Working with service providers to coordinate the provision of services on a HA-wide or less than HA-wide basis, and to tailor the services to the needs and characteristics of eligible residents;

(4) Mobilizing public and private resources to ensure that the supportive services identified can be funded over the five-year period, at least, following the initial receipt of funding.

(5) Monitoring and evaluating the delivery, impact, and effectiveness of any supportive service funded with capital or operating assistance under FIC program;

(6) Coordinating the development and implementation of the FIC program with other self-sufficiency programs, and other education and employment programs; and

(7) Performing other duties and functions that are appropriate for providing eligible residents with better access to educational and employment opportunities.

Management. All activities for which the HA is responsible to HUD under the ACC, within the definition of "operation" under the Act and the ACC, including the development of resident programs and services.

Management contract. A written agreement between a resident management corporation and a HA, as provided by subpart C.

Public Housing Agency (HA). Any State, county, municipality, or other governmental entity or public body (or agency or instrumentality thereof) which is authorized to engage in or assist in the development and operation of low-income housing.

Public Housing Development (Development). Any conventional housing project that is owned and operated by a HA, including the authorities of Guam, Puerto Rico, Alaska and the Virgin Islands, for which it receives operating subsidy from HUD under the Performance Funding System (PFS) to engage in the operation of low-income housing.

Resident Management. The performance of one or more management activities for one or more projects by a resident management corporation under a management contract with the HA.

Resident Management Corporation. An entity that proposes to enter into, or enters into, a contract to manage one or more management activities of a HA.

Resident-owned business. A Business staffed by residents that is related to the management of the HA development(s).

Supportive Services for FIC. New or significantly expanded services that are essential to providing families living with children in public housing with better access to educational and employment opportunities to achieve self-sufficiency and independence.

Tenant Opportunities Program (TOP). The TOP program is designed to prepare residents to experience the dignity of meaningful work, to own and operate resident businesses, to move toward financial independence, and to enable them to choose where they want to live and engage in meaningful participation in the management of housing developments in which they live. Financial assistance in the form of technical assistance grants are available to RCs/RMCs to prepare to manage activities in their public housing developments. TOP will include components such as economic development, self-sufficiency initiatives, and social services for public housing residents.

Vacant Unit under FIC. A dwelling unit that is not under an effective lease to an eligible family. An effective lease is a lease under which an eligible family has a right to possession of the unit and is being charged rent, even if the amount of any utility allowance equals or exceeds the amount of a total resident payment that is based on income and, as a result, the amount paid by the family to the HA is zero.

§ 964.11 HUD policy on tenant participation.

HUD promotes resident participation and the active involvement of residents in all aspects of a HA's overall mission and operation. Residents have a right to organize and elect a resident council to represent their interests. As long as proper procedures are followed, the HA shall recognize the duly elected resident council to participate fully through a working relationship with the HA. HUD encourages HAs and residents to work together to determine the most appropriate ways to foster constructive relationships, particularly through duly-elected resident organizations.

§ 964.12 HUD policy on the Tenant Opportunities Program (TOP).

HUD promotes TOP programs to support activities that enable residents to improve the quality of life and resident satisfaction, and obtain other social and economic benefits for residents and their families. Tenant opportunity programs are proven to be effective in facilitating economic uplift, as well as in improving the overall conditions of the public housing communities.

§ 964.14 HUD policy on partnerships.

HUD promotes partnerships between residents and HAs which are an essential component to building, strengthening and improving public housing. Strong partnerships are critical for creating positive changes in lifestyles thus improving the quality of life for public housing residents, and the surrounding community.

§ 964.15 HUD policy on resident management.

It is HUD's policy to encourage resident management. HUD encourages HAs, resident councils and resident management corporations to explore the various functions involved in management to identify appropriate opportunities for contracting with a resident management corporation. Potential benefits of resident-managed entities include improved quality of life, experiencing the dignity of meaningful work, enabling residents to choose where they want to live, and meaningful participation in the management of the housing development.

§ 964.16 HUD role in activities under this rule.

(a) *General.* Subject to the requirements of this part and other requirements imposed on HAs by the ACC, statute or regulation, the form and extent of resident participation including resident management are local decisions to be made jointly by resident councils/resident management corporations and their HAs. HUD will promote tenant participation and tenant opportunities programs, and will provide additional guidance, as necessary and appropriate. In addition, HUD will endeavor to provide technical assistance in connection with these initiatives.

(b) *Monitoring.* HUD shall ensure that the requirements under this rule are operating efficiently and effectively.

§ 964.18 HA role in activities under subparts B & C.

(a) *HAs with 100 units or more.* (1) A HA shall officially recognize a duly elected resident council as the sole representative of the residents it purports to represent, and support its tenant participation activities.

(2) When requested by residents, a HA shall provide appropriate guidance to residents to assist them in establishing and maintaining a resident council.

(3) A HA may consult with residents, or resident councils (if they exist), to determine the extent to which residents desire to participate in activities involving their community, including the management of specific functions of a public housing development that may be mutually agreeable to the HA and the resident council/resident management corporation.

(4) A HA shall provide the residents or any resident council with current information concerning the HA's policies on tenant participation in management.

(5) If requested, a HA shall provide a duly recognized resident council office space and meeting facilities, free of charge, preferably within the development it represents.

(6) If requested, a HA shall negotiate with the duly elected resident council on all uses of community space for meetings, recreation and social services and other resident participation activities pursuant to HUD guidelines. Such agreements shall be put into a written document to be signed by the HA and the resident council. If a HA fails to negotiate with a resident council in good faith or, after negotiations, refuses to permit such usage of community space, the resident council may file an informal appeal with HUD, setting out the circumstances and providing copies of relevant materials evidencing the resident council's efforts to negotiate a written agreement. HUD shall require the HA to respond with a report stating the HA's reasons for rejecting the request or for refusing to negotiate. HUD shall require the parties (with or without direct HUD participation) to undertake or to resume negotiations on an agreement. HUD shall take other actions as are necessary to resolve the conflicts between the parties.

(7) In no event shall HUD or a HA recognize a competing resident council once a duly elected resident council has been established. Any funding of resident activities and resident input into decisions concerning public housing operations shall be made only through the officially recognized resident council.

(8) The HA shall ensure open communication and frequent meetings between HA management and resident councils and shall encourage the formation of joint HA management-resident committees to work on issues and planning.

(9) The resident council shall hold frequent meetings with the residents to ensure that residents have input, and are aware and actively involved in HA management-resident council decisions and activities.

(10) The HA and resident council shall put in writing in the form of a Memorandum of Understanding the elements of their partnership agreement and it shall be updated at least once every three (3) years.

(11) The HA, in collaboration with the resident councils, shall assume the lead role for assuring maximum opportunities for skills training for public housing residents. To the extent possible, the training resources should be local to ensure maximum benefit and on-going access.

(b) *HAs with fewer than 100 units.* (1) HAs with fewer than 100 units of public housing have the option of participating in programs under this rule.

(2) HAs shall not deny residents the opportunity to organize. If the residents decide to organize and form a resident council, the HA shall comply with the following:

(i) A HA shall officially recognize a duly elected resident council as the sole representative of the residents it purports to represent, and support its tenant participation activities.

(ii) When requested by residents, a HA shall provide appropriate guidance to residents to assist them in establishing and maintaining a resident council.

(iii) A HA shall provide the residents or any resident council with current information concerning the HA's policies on tenant participation in management.

(iv) In no event shall HUD or a HA officially recognize a competing resident council once a duly elected resident council has been established. If a duly elected resident council has been

formed, any input into changes concerning public housing operations shall be made only through the officially recognized resident council.

§ 964.24 HUD policy on FIC Program.

HUD promotes Family Investment Centers which provide better access to educational and employment opportunities for residents living in public housing. HUD encourages resident involvement in the FIC Program and promotes resident-HA partnerships to achieve mutual goals.

Subpart B—Tenant Participation

§ 964.100 Role of resident council.

The role of a resident council is to improve the quality of life and resident satisfaction and participate in self-help initiatives to enable residents to create a positive living environment for families living in public housing. Resident councils may actively participate through a working partnership with the HA to advise and assist in all aspects of public housing operations.

§ 964.105 Role of the Jurisdiction-Wide Resident Council.

(a) *Jurisdiction-Wide Resident Council.* Resident councils may come together to form an organization which can represent the interest of residents residing in units under a HA's jurisdiction. This can be accomplished by the presidents of duly elected resident councils forming an organization, by resident councils electing a representative to the organization, or through jurisdiction-wide elections. If duly elected resident councils form such an organization, the HA shall recognize it as the voice of authority-wide residents for input into housing authority policy making.

(b) *Function.* The jurisdiction-wide council may advise the Board of Commissioners and executive director in all areas of HA operations, including but not limited to occupancy, general management, maintenance, security, resident training, resident employment, social services and modernization priorities.

(c) *Cooperation with other groups.* There shall be regularly scheduled meetings between the HA and the local duly elected resident council, and the jurisdiction-wide resident council to discuss problems, plan activities and review progress.

§ 964.110 Resident membership on HA Board of Commissioners.

HUD encourages to the maximum extent possible resident membership on HA Board of Commissioners, for the purpose of having maximum input into HA policy and decision-making on matters concerning public housing.

§ 964.115 Resident council requirements.

A resident council shall consist of residents residing in public housing and must meet each of the following requirements in order to receive official recognition from the HA/HUD, and be eligible to receive funds for resident council activities, and stipends for their related costs for volunteer work in public housing: (a) It may represent residents residing in scattered site buildings, in areas of contiguous row houses; or in one or more contiguous buildings; in a development; or in a combination of these buildings or developments;

(b) It must adopt written procedures such as by-laws, or a constitution which provides for the election of residents to the governing board by the voting membership of the residents residing in public housing, described in paragraph (b) of this section, on a regular basis but at least once every three (3) years. The written procedures must provide for the recall of the resident board by approval of at least 51 percent of the voting membership; and

(c) It must have a democratically elected governing board that is elected by the voting membership. The voting membership must consist of residents at least 18 years of age and whose name appears on a lease for the unit in the public housing that the resident council represents.

§ 964.117 Resident council partnerships.

A resident council may form partnerships with outside organizations, provided that such relationships are complementary to the resident council in its duty to represent the residents, and provided that such outside organizations do not become the governing entity of the resident council.

§ 964.120 Resident management corporation requirements.

A resident management corporation must consist of residents residing in public housing and have each of the following characteristics in order to receive official recognition by the HA and HUD: (a) It shall be a non-profit organization that is validly incorporated under the laws of the State in which it is located;

(b) It may be established by more than one resident council, so long as each such council:

(1) Approves the establishment of the corporation, and

(2) Has representation on the Board of Directors of the corporation;

(c) It shall have an elected Board of Directors, and elections must be held at least once every three (3) years;

(d) Its by-laws shall require the Board of Directors to include resident representatives of each resident council involved in establishing the corporation;

(e) Its voting members shall be residents at least 18 years of age and whose name appears on the lease of a unit in the public housing represented by the resident management corporation;

(f) Where a resident council already exists for the development, or a portion of the development, the resident management corporation shall be approved by the resident council board and a majority of the residents. If there is no resident council, a majority of the residents of the public housing development it will represent must approve the establishment of such a corporation for the purposes of managing the project; and

(g) It may serve as both the resident management corporation and the resident council, so long as the corporation meets the requirements of this part for a resident council.

§ 964.125 Eligibility for resident council membership.

(a) Any member of a public housing household who is on the lease of a unit in the public housing development and meets the requirements of the by-laws is eligible to be a member of a resident council. The resident council may establish additional criteria that are non-discriminatory and do not infringe on rights of other residents in the development. Such criteria must be stated in the by-laws or constitution as appropriate.

(b) The right to vote for resident council board shall be limited to designated heads of households and other members of the household who are 18 years or older whose name appears on the lease of a unit in the public housing development represented by the resident council.

(c) Any qualified voting member of a resident council who meets the requirements described in the by-laws and is in compliance with the lease may seek office and serve on the resident council governing board.

§ 964.130 Election procedures and standards.

At a minimum, a resident council may use local election boards/commissions or if none exists, or is unwilling, an independent third-party to oversee elections and recall procedures.

(a) Resident councils shall adhere to the following minimum standards regarding election procedures:

(1) All procedures must assure fair and frequent elections of resident council members—at least once every three years for each member.

(2) Staggered terms for resident council governing board members and term limits shall be discretionary with the resident council.

(3) Each resident council shall adopt and issue election and recall procedures in their by-laws.

(4) The election procedures shall include qualifications to run for office, frequency of elections, procedures for recall, and term limits if desired.

(5) Sufficient notice of nomination and election, minimally 30 days, describing election procedures, eligibility requirements and dates of nominations/elections must be given to all voting members prior to the date of the nominations/elections.

(b) If a resident council fails to satisfy HUD minimum standards for fair and frequent elections, or fails to follow its own election procedures as adopted, HUD shall require the HA to withdraw recognition of the resident council and to withhold resident services funds as well as funds provided in conjunction with services rendered for resident participation in public housing.

(c) HAs shall monitor the resident council election process and shall establish a procedure to appeal any adverse decision relating to failure to satisfy HUD minimum standards. Such appeal shall be submitted to a jointly selected third-party arbitrator at the local level. If costs are incurred by using a third-party arbitrator, then such costs should be paid from the HAs resident services funds pursuant to § 964.150.

§ 964.135 Resident involvement in HA management operations.

Residents shall be involved and participate in the overall policy development and direction of Public Housing operations.

(a) Resident management corporations (RMCs) may contract with HAs to perform one or more management functions provided the resident entity has received sufficient training and/or has staff with the necessary expertise to perform the management functions and provided the RMC meets bonding and licensing requirements.

(b) Residents shall be actively involved in a HA's decision-making process and give advice on matters such as modernization, security, maintenance, resident screening and selection, and recreation.

(c) While a HA has responsibility for management operations, it shall ensure strong resident participation in all issues and facets of its operations through the duly elected resident councils at public housing developments, and with jurisdiction-wide resident councils.

(d) A HA shall work in partnership with the duly elected resident councils.

(e) HAs, upon request from the duly elected resident council, shall ensure that the duly elected resident council officers as defined in subpart B of this rule, and other residents in the development are fully trained and involved in developing and implementing Federal programs including but not limited to Comprehensive Improvement Assistance Program (CIAP), Comprehensive Grant Program, Urban Revitalization Demonstration, Drug Elimination, and FIC.

(f) HAs shall involve resident council officers and other interested residents at the development through education and direct participation in all phases of the budgetary process.

(g) Resident council officers shall be encouraged to become involved in the resident screening and selection process for prospective residents at the development. Those selected to perform resident screening and selection functions must be trained by the HA in resident screening and selection and must sign a legal document committing to confidentiality.

§ 964.140 Resident training.

(a) *Resident training opportunities.* HUD encourages a partnership between the residents, the HA and HUD, as well as with the public and non-profit sectors to provide training opportunities for public housing residents. The categories in which training could occur include, but are not limited to:

(1) Community organization and leadership training;

(2) Organizational development training for Resident Management Corporations and duly elected Resident Councils;

(3) Public housing policies, programs, rights and responsibilities training; and

(4) Business entrepreneurial training, planning and job skills.

(b) *Local training resources.* HUD encourages the use of local training resources to ensure the ongoing accessibility and availability of persons to provide training and technical assistance. Possible training resources may include:

(1) Resident organizations;

(2) Housing authorities;

(3) Local community colleges, vocational schools; and

(4) HUD and other Federal agencies and other local public, private and non-profit organizations.

§ 964.145 Conflict of interest.

Resident council officers cannot serve as contractors or employees at the HA.

§ 964.150 Funding tenant participation.

(a) *Funding duly elected resident councils.* (1) The HA shall provide funds it receives for this purpose to the duly elected resident council to use for resident participation activities. This shall be an add-on to the Performance Funding System (PFS), as provided by 24 CFR part 990, to permit HAs to fund $25 per unit per year for resident services, subject to the availability of appropriations. Of this amount, $15 per unit per year would be provided to fund appropriate activities for duly elected resident councils, and $10 per unit per year would be used by the HA to pay for costs incurred in carrying out tenant participation activities under subpart B of this rule, including the expenses for an arbitrator required under subpart B § 964.130. This will guarantee the resources necessary to create a bonafide partnership among the duly elected resident council, the HA and HUD.

(2) A duly elected resident council shall receive tenant services funding regardless of the HA's financial status. The resident council funds shall not be impacted or restricted by the HA financial status and all said funds must be used for the purpose set forth in subparts B & C under this rule.

(b) *Stipends.* (1) HUD encourages HAs to provide stipends to resident council officers who serve as volunteers in their public housing developments. The amount of the stipend, up to $200 per month/per officer, shall be decided locally by the resident council and the HA. Pursuant to § 913.106, stipends are excluded from income for rent purposes.

(2) Stipends are not to be construed as salaries and should not be included as income for calculation of rents, and are not subject to conflict of interest requirements.

(3) Funding provided by a HA to a duly elected resident council may be made only under a written agreement between the HA and a resident council, which includes a resident council budget and assurance that all resident council expenditures will not contravene provisions of law and will promote serviceability, efficiency, economy and stability in the operation of the local development. The agreement must require the local resident council to account to the HA for the use of the funds and permit the

HA to inspect and audit the resident council's financial records related to the agreement.

Subpart C—Tenant Opportunities Program

§ 964.200 General.

(a) The Tenant Opportunities Program (TOP) provides technical assistance for various activities including resident management for resident councils/resident management corporations as authorized by section 20 of the U.S. Housing Act of 1937. The TOP provides opportunities for resident organizations to improve living conditions and resident satisfaction in public housing communities.

(b) This subpart establishes the policies, procedures and requirements for participating in the TOP with respect to applications for funding for programs identified in this subpart.

(c) This subpart contains the policies, procedures and requirements for the resident management program as authorized by section 20 of the U.S. Housing Act of 1937.

§ 964.205 Eligibility.

(a) *Resident councils/resident management corporations.* Any eligible resident council/resident management corporation as defined in subpart B is eligible to participate in a program administered under this subpart.

(b) *Activities.* Activities to be funded and carried out by an eligible resident council or resident management corporation, as defined in subpart B, must improve the living conditions and public housing operations and may include any combination of, but are not limited to, the following: (1) *Resident Capacity Building.* (i) Training Board members in community organizing, Board development, and leadership training;

(ii) Determining the feasibility of resident management enablement for a specific project or projects; and

(iii) Assisting in the actual creation of an RMC, such as consulting and legal assistance to incorporate, preparing by-laws and drafting a corporate charter.

(2) *Resident Management.* (i) Training residents, as potential employees of an RMC, in skills directly related to the operation, management, maintenance and financial systems of a project;

(ii) Training of residents with respect to fair housing requirements; and

(iii) Gaining assistance in negotiating management contracts, and designing a long-range planning system.

(3) *Resident Management Business Development.* (i) Training related to resident-owned business development and technical assistance for job training and placement in RMC developments;

(ii) Technical assistance and training in resident managed business development through:

(A) Feasibility and market studies;

(B) Development of business plans;

(C) Outreach activities; and

(D) Innovative financing methods including revolving loan funds; and

(iii) Legal advice in establishing resident managed business entity.

(4) *Social Support Needs (such as self-sufficiency and youth initiatives).* (i) Feasibility studies to determine training and social services needs;

(ii) Training in management-related trade skills, computer skills, etc.;

(iii) Management-related employment training and counseling;

(iv) Coordination of support services;

(v) Training for programs such as child care, early childhood development, parent involvement, volunteer services, parenting skills, before and after school programs;

(vi) Training programs on health, nutrition and safety;

(vii) Workshops for youth services, child abuse and neglect prevention, tutorial services, in partnership with community-based organizations such as local Boys and Girls Clubs, YMCA/YWCA, Boy/Girl Scouts, Campfire and Big Brother/Big Sisters, etc. Other HUD programs such as the Youth Sports Program and the Public Housing Drug Elimination Programs also provide funding in these areas; and

(viii) Training in the development of strategies to successfully implement a youth program. For example, assessing the needs and problems of the youth, improving youth initiatives that are currently active, and training youth, housing authority staff, resident management corporations and resident councils on youth initiatives and program activities.

(5) *General.* (i) Required training on HUD regulations and policies governing the operation of low-income public housing, financial management, capacity building to develop the necessary skills to assume management responsibilities at the project and property management;

(ii) Purchasing hardware, i.e., computers and software, office furnishings and supplies, in connection with business development. Every effort must be made to acquire donated or discounted hardware;

(iii) Training in accessing other funding sources; and

(iv) Hiring trainers or other experts (RCs/RMCs must ensure that this training is provided by a qualified housing management specialist, a community organizer, the HA, or other sources knowledgeable about the program).

§ 964.210 Announcement of funding availability.

A Notice of Funding Availability shall be published periodically in the **Federal Register** containing the amounts of funds available, funding criteria, where to obtain and submit applications, the deadline for submissions, and further explanation of the selection criteria.

§ 964.215 Grant agreement.

(a) *General.* HUD shall enter into a grant agreement with the recipient of a technical assistance grant which defines the legal framework for the relationship between HUD and a resident council or resident management corporation for the proposed funding.

(b) *Term of grant agreement.* A grant shall be for a term of three to five years (3–5 years), and renewable at the expiration of the term.

§ 964.220 Technical assistance.

(a) *Financial assistance.* HUD will provide financial assistance, to the extent available, to resident councils or resident management corporations for technical assistance and training to further the activities under this subpart.

(b) *Requirements for a management specialist.* If a resident council or resident management corporation seeks to manage a development, it must select, in consultation with the HA, a qualified housing management specialist to assist in determining the feasibility of, and to help establish, a resident management corporation and to provide training and other duties in connection with the daily operations of the project.

§ 964.225 Resident management requirements.

The following requirements apply when a HA and its residents are interested in providing for resident performance of several management functions in one or more projects.

(a) *Resident management corporation.* Resident councils interested in contracting with a HA must establish a resident management corporation that meets the requirements for such a corporation, as specified in subpart B. The RMC and its employees must demonstrate their ability and skill to perform in the particular areas of management pursuant to the management contract.

(b) *HA responsibilities.* HAs shall give full and serious consideration to resident management corporations seeking to enter into a management contract with the HA. A HA shall enter into good-faith negotiations with a

corporation seeking to contract to provide management services.

(c) *Duty to bargain in good faith.* If a HA refuses to negotiate with a resident management corporation in good faith or, after negotiations, refuses to enter into a contract, the corporation may file an informal appeal with HUD, setting out the circumstances and providing copies of relevant materials evidencing the corporation's efforts to negotiate a contract. HUD shall require the HA to respond with a report stating the HA's reasons for rejecting the corporation's contract offer or for refusing to negotiate. Thereafter, HUD shall require the parties (with or without the direct HUD participation) to undertake or to resume negotiations on a contract providing for resident management, and shall take such other actions as are necessary to resolve the conflicts between the parties. If no resolution is achieved within 90 days from the date HUD required the parties to undertake or resume such negotiations, HUD shall serve notice on both parties that administrative remedies have been exhausted (except that, pursuant to mutual agreement of the parties, the time for negotiations may be extended by no more than an additional 30 days).

(d) *Management contract.* A management contract between the HA and a resident management corporation is required for property management. The HA and the resident management corporation may agree to the performance by the corporation of any or all management functions for which the HA is responsible to HUD under the ACC and any other functions not inconsistent with the ACC and applicable state and local laws, regulations and licensing requirements.

(e) *Procurement requirements.* The management contract shall be treated as a contracting out of services, and must be subject to any provision of a collective bargaining agreement regarding the contracting out of services to which the HA is subject. Provisions on competitive bidding and requirements of prior written HUD approval of contracts contained in the ACC do not apply to the decision of a HA to contract with a RMC.

(f) *Prohibited activities.* A HA may not contract for assumption by the resident management corporation of the HA's underlying responsibilities to HUD under the ACC.

(g) *Bonding and insurance.* Before assuming any management responsibility under its contract, the RMC must provide fidelity bonding and insurance, or equivalent protection that is adequate (as determined by HUD and the HA) to protect HUD and the HA against loss, theft, embezzlement, or fraudulent acts on the part of the resident management corporation or its employees.

(h) *Waiver of HUD requirements.* Upon the joint request of a resident management corporation and the HA, HUD may waive any requirement that HUD has established and that is not required by law, if HUD determines, after consultation with the resident management corporation and the HA, that the requirement unnecessarily increases the costs to the project or restricts the income of the project; and that the waiver would be consistent with the management contract and any applicable collective bargaining agreement. Any waiver granted to a resident management corporation under this section will apply as well to the HA to the extent the waiver affects the HA's remaining responsibilities relating to the resident management corporation's project.

§ 964.230 Audit and administrative requirements.

(a) *TOP grant recipients.* The HUD Inspector General, the Comptroller General of the United States, or any duly authorized representative shall have access to all records required to be retained by this subpart or by any agreement with HUD for the purpose of audit or other examinations.

(1) Grant recipients must comply with the requirements of OMB Circulars A–110 and A–122, as applicable.

(2) A final audit shall be required for the activities and expenditures made pursuant to this subpart by a Certified Public Accountant (CPA), in accordance with generally accepted government audit standards. A written report of the audit must be forwarded to HUD within 60 days of issuance.

(b) *Resident management corporations.* Resident management corporations who have entered into a contract with a HA with respect to management of a development(s) must comply with the requirements of OMB Circulars A–110 and A–122, as applicable. Resident management corporations managing a development(s) must be audited annually by a licensed certified public accountant, designated by the corporation, in accordance with generally accepted government audit standards.

Subpart D—Family Investment Centers (FIC) Program

§ 964.300 General.

The Family Investment Centers Program provides families living in public housing with better access to educational and employment opportunities by:

(a) Developing facilities in or near public housing for training and support services;

(b) Mobilizing public and private resources to expand and improve the delivery of such services;

(c) Providing funding for such essential training and support services that cannot otherwise be funded; and

(d) Improving the capacity of management to assess the training and service needs of families, coordinate the provision of training and services that meet such needs, and ensure the long-term provision of such training and services. FIC provides funding to HAs to access educational, housing, or other social service programs to assist public housing residents toward self-sufficiency.

§ 964.305 Eligibility.

(a) *Public Housing Authorities.* HAs may apply to establish one or more FICs for more than one public housing development.

(b) *FIC Activities.* Activities that may be funded and carried out by eligible HAs, as defined in 964.305(a) and 964.310 (a) may include:

(1) The renovation, conversion, or combination of vacant dwelling units in a HA development to create common areas to accommodate the provision of supportive services;

(2) The renovation of existing common areas in a HA development to accommodate the provision of supportive services;

(3) The renovation of facilities located near the premises of one or more HA developments to accommodate the provision of supportive services;

(4) The provision of not more than 15 percent of the total cost of supportive services (which may be provided directly to eligible residents by the HA or by contract or lease through other appropriate agencies or providers), but only if the HA demonstrates that:

(i) The supportive services are appropriate to improve the access of eligible residents to employment and educational opportunities; and

(ii) The HA has made diligent efforts to use or obtain other available resources to fund or provide such services; and

(5) The employment of service coordinators.

(c) *Follow up.* A HA must demonstrate a firm commitment of assistance from one or more sources ensuring that supportive services will be provided for not less than one year following the completion of activities.

(d) *Environmental Review.* Any environmental impact regarding eligible

activities will be addressed through an environmental review of that activity as required by 24 CFR part 50, including the applicable related laws and authorities under section 50.4, to be completed by HUD, to ensure that any environmental impact will be addressed before assistance is provided to the HA. Grantees will be expected to adhere to all assurances applicable to environmental concerns.

§ 964.308 Supportive services requirements.

HAs shall provide new or significantly expanded services essential to providing families in public housing with better access to educational and employment opportunities to achieve self-sufficiency and independence. HAs applying for funds to provide supportive services must demonstrate that the services will be provided at a higher level than currently provided. Supportive services may include:

(a) Child care, of a type that provides sufficient hours of operation and serves appropriate ages as needed to facilitate parental access to education and job opportunities;

(b) Employment training and counseling (e.g., job training, preparation and counseling, job development and placement, and follow-up assistance after job placement);

(c) Computer skills training;

(d) Education (e.g., remedial education, literacy training, completion of secondary or post-secondary education, and assistance in the attainment of certificates of high school equivalency;

(e) Business entrepreneurial training and counseling;

(f) Transportation, as necessary to enable any participating family member to receive available services or to commute to his or her place of employment;

(g) Personal welfare (*e.g.*, substance/alcohol abuse treatment and counseling, self-development counseling, etc.);

(h) Supportive Health Care Services (e.g., outreach and referral services; and

(i) Any other services and resources, including case management, that are determined to be appropriate in assisting eligible residents.

§ 964.310 Audit/Compliance Requirements.

HAs cannot have serious unaddressed, outstanding Inspector General audit findings or fair housing and equal opportunity monitoring review findings or Field Office management review findings. In addition, the HA must be in compliance with civil rights laws and equal opportunity requirements. A HA will be considered to be in compliance if:

(a) As a result of formal administrative proceedings, there are no outstanding findings of noncompliance with civil rights laws unless the HA is operating in compliance with HUD-approved compliance agreement designed to correct the area(s) of noncompliance;

(b) There is no adjudication of a civil rights violation in a civil action brought against it by a private individual, unless the HA demonstrates that it is operating in compliance with a court order, or implementing a HUD-approved resident selection and assignment plan or compliance agreement, designed to correct the area(s) of noncompliance;

(c) There is no deferral of Federal funding based upon civil rights violations;

(d) HUD has not 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 HUD's Title VI regulations (24 CFR 1.8) and procedures (HUD Handbook 8040.1) [HAs only] or under Section 504 of the Rehabilitation Act of 1973 and HUD regulations (24 CFR 8.57) [HAs and IHAs];

(e) There is no pending civil rights suit brought against the HA by the Department of Justice; and

(f) There is no unresolved charge of discrimination against the HA issued by the Secretary under Section 810(g) of the Fair Housing Act, as implemented by 24 CFR 103.400.

§ 964.315 HAs role in activities under this part.

The HAs shall develop a process that assures that RC/RMC representatives and residents are fully briefed and have an opportunity to comment on the proposed content of the HA's application for funding. The HA shall give full and fair consideration to the comments and concerns of the residents. The process shall include:

(a) Informing residents of the selected developments regarding the preparation of the application, and providing for residents to assist in the development of the application.

(b) Once a draft application has been prepared, the HA shall make a copy available for reading in the management office; provide copies of the draft to any resident organization representing the residents of the development(s) involved; and provide adequate opportunity for comment by the residents of the development and their representative organizations prior to making the application final.

(c) After HUD approval of a grant, notify the duly elected resident organization and if none exists, notify the residents of the development of the approval of the grant; provide notification of the availability of the HUD-approved implementation schedule in the management office for reading; and develop a system to facilitate a regular resident role in all aspects of program implementation.

§ 964.320 HUD Policy on training, employment, contracting and subcontracting of public housing residents.

In accordance with section 3 of the Housing and Urban Development Act of 1968 and the implementing regulations at 24 CFR part 135, PHAs, their contractors and subcontractors shall make best efforts, consistent with existing Federal, State, and local laws and regulations, to give low and very low-income persons the training and employment opportunities generated by section 3 covered assistance (as this term is defined in 24 CFR 135.7) and to give section 3 business concerns the contracting opportunities generated by section 3 covered assistance.

§ 964.325 Announcement of funding availability.

A Notice of Funding Availability will be published periodically in the **Federal Register** containing the amounts of funds available, funding criteria, where to obtain and submit applications, the deadline for the submissions, and further explanation of the selection criteria.

§ 964.330 Grant Set-Aside Assistance.

The Department may make available five percent (5%) of any amounts available in each fiscal year (subsequent to the first funding cycle) available to eligible HAs to supplement grants previously awarded under this program. These supplemental grants would be awarded if the HA demonstrates that the funds cannot otherwise be obtained and are needed to maintain adequate levels of services to residents.

§ 964.335 Grant agreement.

(a) *General.* HUD will enter into a grant agreement with the recipients of a Family Investment Centers grant, which defines the legal framework for the relationship between HUD and a HA.

(b) *Term of grant agreement.* A grant will be for a term of three to five years depending upon the tasks undertaken, as defined under this subpart.

§ 964.340 Resident compensation.

Residents employed to provide services or renovation or conversion work funded under this program shall be paid at a rate not less than the highest of:

(a) The minimum wage that would be applicable to the employees under the Fair Labor Standards Act of 1938 (FLSA), if section 6(a)(1) of the FLSA applied to the resident and if the resident were not exempt under section 13 of the FLSA;

(b) The State or local minimum wage for the most nearly comparable covered employment; or

(c) The prevailing rate of pay for persons employed in similar public occupations by the same employer.

§ 964.345 Treatment of income.

Program participation shall begin on the first day the resident enters training or begins to receive services. Furthermore, the earnings of and benefits to any HA resident resulting from participation in the FIC program shall not be considered as income in computing the resident's total annual income that is used to determine the resident rental payment during:

(a) The period that the resident participates in the program; and

(b) The period that begins with the commencement of employment of the resident in the first job acquired by the resident after completion of the program that is not funded by assistance under the 1937 Act, and ends on the earlier of:

(1) The date the resident ceases to continue employment without good cause; or

(2) The expiration of the 18-month period beginning on the date of commencement of employment in the first job not funded by assistance under this program. (See § 913.106, Annual Income.)

§ 964.350 Administrative requirements.

The HUD Inspector General, the Comptroller General of the United States, or any duly authorized representative shall have access to all records required to be retained by this subpart or by any agreements with HUD for the purpose of audit or other examinations.

(a) Each HA receiving a grant shall submit to HUD an annual progress report, participant evaluation and assessment data and other information, as needed, regarding the effectiveness of FIC in achieving self-sufficiency.

(b) The policies, guidelines, and requirements of OMB Circular Nos. A–110 and A–122 are applicable with respect to the acceptance and use of assistance by private nonprofit organizations.

PART 990—ANNUAL CONTRIBUTIONS FOR OPERATING SUBSIDY

8. The authority citation for part 990 would continue to read as follows:

Authority: 42 U.S.C. 1437g and 3535(d).

9. In § 990.108, a new paragraph (f) would be added, to read as follows:

§ 990.108 Other costs.

* * * * *

(f) *Funding for Resident Council Expenses.* In accordance with the provisions of 24 CFR part 964 and procedures determined by HUD, each HA with a duly elected resident council shall include in the operating subsidy eligibility calculation, $25 per unit per year in support of the duly elected resident council's activities.

* * * * *

9. A new subpart D, consisting of §§ 990.401 through 990.405, would be added to read as follows:

Subpart D—Resident Management Corporations Operating Subsidy

Sec.

990.401 Calculation of operating subsidy.
990.402 Calculation of total income and preparation of operating budget.
990.403 Adjustments to total income.
990.404 Retention of excess revenues.
990.405 Use of retained revenues.

Subpart D—Resident Management Corporations Operating Subsidy

§ 990.401 Calculation of operating subsidy.

Operating subsidy will be calculated separately for any project managed by a resident management corporation. This subsidy computation will be the same as the separate computation made for the balance of the projects in the PHA in accordance with this part, with the following exceptions:

(a) The project managed by a resident management corporation will have an Allowable Expense Level based on the actual expenses for the project in the fiscal year immediately preceding management under this subpart. These expenditures will include the project's share of any expenses which are overhead or centralized PHA expenditures. The expenses must represent a normal year's expenditures for the project, and must exclude all expenditures which are not normal fiscal year expenditures as to amount or as to the purpose for which expended. Documentation of this expense level must be presented with the project budget and approved by HUD. Any project expenditures funded from a source of income other than operating subsidies or income generated by the locally owned public housing program will be excluded from the subsidy calculation. For budget years after the first budget year under management by the resident management corporation, the Allowable Expense Level will be calculated as it is for all other projects in accordance with § 990.105(e)(5).

(b) The resident management corporation project will estimate dwelling rental income based on the rent roll of the project immediately preceding the assumption of management responsibility under this subpart, increased by the estimate of inflation of tenant income used in calculating PFS subsidy.

(c) The resident management corporation will exclude, from its estimate of other income, any increased income directly generated by activities by the corporation or facilities operated by the corporation.

(d) Any reduction in the subsidy of a PHA that occurs as a result of fraud, waste, or mismanagement by the PHA shall not affect the subsidy calculation for the resident management corporation project.

§ 990.402 Calculation of total income and preparation of operating budget.

(a) Subject to § 990.403 of this section, the amount of funds provided by a PHA to a project managed by a resident management corporation under this subpart may not be reduced during the three-year period beginning on February 5, 1988 or on such later date as a resident management corporation first assumes management responsibility for the project.

(b) For purposes of determining the amount of funds provided to a project under § 990.402(a) of this section, the provision of technical assistance by the PHA to the resident management corporation will not be included.

(c) The resident management corporation and the PHA shall submit a separate operating budget, including the calculation of operating subsidy eligibility in accordance with § 990.401 of this section, for the project managed by a resident management corporation to HUD for approval. This budget will reflect all project expenditures and will identify which expenditures are related to the responsibilities of the resident management corporation and which are

related to the functions which will continue to be performed by the PHA.

(d) Each project or part of a project that is operating in accordance with the ACC amendment relating to this subpart and in accordance with a contract vesting maintenance responsibilities in the resident management corporation will have transferred, into a sub-account of the operating reserve of the host PHA, an operating reserve. Where all maintenance responsibilities for the resident-managed project are the responsibility of the corporation, the amount of the reserve made available to projects under this subpart will be the per unit cost amount available to the PHA operating reserve, exclusive of all inventories, prepaids and receivables (at the end of the PHA fiscal year preceding implementation), multiplied by the number of units in the project operated in accordance with the provision of this subpart. Where some, but not all, maintenance responsibilities are vested in the resident management corporation, the contract may provide for an appropriately reduced portion of the operating reserve to be transferred into the corporation's sub-account.

(e) The use of the reserve will be subject to all administrative procedures applicable to the conventionally owned public housing program. Any expenditure of funds from the reserve will be for eligible expenditures which are incorporated into an operating budget subject to approval by HUD.

(f) Investment of funds held in the reserve will be in accordance with the provisions of Chapter 4 of the Financial Management Handbook, 7476.1 REV.1 and interest generated will be included in the calculation of operating subsidy in accordance with this part.

§ 990.403 Adjustments to total income.

(a) Operating subsidy calculated in accordance with § 964.401 will reflect changes in inflation, utility rates and consumption, and changes in the number of units in the resident management project.

(b) In addition to the amount of income derived from the project (from sources such as rents and charges) and the operating subsidy calculated in accordance with § 990.401 of this subpart, the contract may specify that income be provided to the project from other sources of income of the PHA.

(c) The following conditions may not affect the amounts to be provided to a project managed by a resident management corporation under this subpart:

(1) Any reduction in the total income of a PHA that occurs as a result of fraud, waste, or mismanagement by the PHA.

(2) Any change in the total income of a PHA that occurs as a result of project-specific characteristics that are not shared by the project managed by the corporation under this subpart.

§ 990.404 Retention of excess revenues.

(a) Any income generated by a resident management corporation that exceeds the income estimated for the income category involved as specified in the RMC's management contract must be excluded in subsequent years in calculating: (1) The operating subsidy provided to a PHA under part 990 subpart A of this chapter.

(2) The funds provided by the PHA to the resident management corporation.

(b) The management contract must specify the amount of income expected to be derived from the project (from sources such as rents and charges) and the amount of income to be provided to the project from the other sources of income of the PHA (such as operating subsidy under part 990 subpart A of this chapter, interest income, administrative fees, and rents). These income estimates must be calculated on a PHA-wide basis, as well as for each category of income on which the PHA and the resident management corporation agree, consistent with HUD's administrative instructions. Income estimates may provide for proration of anticipated project income between the corporation and the PHA, based upon the management and other project-associated responsibilities (if any) that are to be retained by the PHA under the contract.

§ 990.405 Use of retained revenues.

Any revenues retained by a resident management corporation under § 990.404 of this subpart may only be used for purposes of improving the maintenance and operation of the project, establishing businesses enterprises that employ residents of public housing, or acquiring additional dwelling units for lower income families. Units acquired by the resident management corporation will not be eligible for payment of operating subsidy.

Dated: April 11, 1994.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 94–9319 Filed 4–18–94; 8:45 am]

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Part VII

Environmental Protection Agency

Combined Sewer Overflow (CSO) Control Policy; Notice

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4732–7]

Combined Sewer Overflow (CSO) Control Policy

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final policy.

SUMMARY: EPA has issued a national policy statement entitled "Combined Sewer Overflow (CSO) Control Policy." This policy establishes a consistent national approach for controlling discharges from CSOs to the Nation's waters through the National Pollutant Discharge Elimination System (NPDES) permit program.

FOR FURTHER INFORMATION CONTACT: Jeffrey Lape, Office of Wastewater Enforcement and Compliance, MC–4201, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 260–7361.

SUPPLEMENTARY INFORMATION: The main purposes of the CSO Control Policy are to elaborate on the Environmental Protection Agency's (EPA's) National CSO Control Strategy published on September 8, 1989, at 54 FR 37370, and to expedite compliance with the requirements of the Clean Water Act (CWA). While implementation of the 1989 Strategy has resulted in progress toward controlling CSOs, significant public health and water quality risks remain.

This Policy provides guidance to permittees with CSOs, NPDES authorities and State water quality standards authorities on coordinating the planning, selection, and implementation of CSO controls that meet the requirements of the CWA and allow for public involvement during the decision-making process.

Contained in the Policy are provisions for developing appropriate, site-specific NPDES permit requirements for all combined sewer systems (CSS) that overflow as a result of wet weather events. For example, the Policy lays out two alternative approaches—the "demonstration" and the "presumption" approaches—that provide communities with targets for CSO controls that achieve compliance with the Act, particularly protection of water quality and designated uses. The Policy also includes enforcement initiatives to require the immediate elimination of overflows that occur during dry weather and to ensure that the remaining CWA requirements are complied with as soon as practicable.

The permitting provisions of the Policy were developed as a result of extensive input received from key stakeholders during a negotiated policy dialogue. The CSO stakeholders included representatives from States, environmental groups, municipal organizations and others. The negotiated dialogue was conducted during the Summer of 1992 by the Office of Water and the Office of Water's Management Advisory Group. The enforcement initiatives, including one which is underway to address CSOs during dry weather, were developed by EPA's Office of Water and Office of Enforcement.

EPA issued a Notice of Availability on the draft CSO Control Policy on January 19, 1993, (58 FR 4994) and requested comments on the draft Policy by March 22, 1993. Approximately forty-one sets of written comments were submitted by a variety of interest groups including cities and municipal groups, environmental groups, States, professional organizations and others. All comments were considered as EPA prepared the Final Policy. The public comments were largely supportive of the draft Policy. EPA received broad endorsement of and support for the key principles and provisions from most commenters. Thus, this final Policy does not include significant changes to the major provisions of the draft Policy, but rather, it includes clarification and better explanation of the elements of the Policy to address several of the questions that were raised in the comments. Persons wishing to obtain copies of the public comments or EPA's summary analysis of the comments may write or call the EPA contact person.

The CSO Policy represents a comprehensive national strategy to ensure that municipalities, permitting authorities, water quality standards authorities and the public engage in a comprehensive and coordinated planning effort to achieve cost effective CSO controls that ultimately meet appropriate health and environmental objectives. The Policy recognizes the site-specific nature of CSOs and their impacts and provides the necessary flexibility to tailor controls to local situations. Major elements of the Policy ensure that CSO controls are cost effective and meet the objectives and requirements of the CWA.

The major provisions of the Policy are as follows.

CSO permittees should immediately undertake a process to accurately characterize their CSS and CSO discharges, demonstrate implementation of minimum technology-based controls identified in the Policy, and develop long-term CSO control plans which evaluate alternatives for attaining compliance with the CWA, including compliance with water quality standards and protection of designated uses. Once the long-term CSO control plans are completed, permittees will be responsible to implement the plans' recommendations as soon as practicable.

State water quality standards authorities will be involved in the long-term CSO control planning effort as well. The water quality standards authorities will help ensure that development of the CSO permittees' long-term CSO control plans are coordinated with the review and possible revision of water quality standards on CSO-impacted waters.

NPDES authorities will issue/reissue or modify permits, as appropriate, to require compliance with the technology-based and water quality-based requirements of the CWA. After completion of the long-term CSO control plan, NPDES permits will be reissued or modified to incorporate the additional requirements specified in the Policy, such as performance standards for the selected controls based on average design conditions, a post-construction water quality assessment program, monitoring for compliance with water quality standards, and a reopener clause authorizing the NPDES authority to reopen and modify the permit if it is determined that the CSO controls fail to meet water quality standards or protect designated uses. NPDES authorities should commence enforcement actions against permittees that have CWA violations due to CSO discharges during dry weather. In addition, NPDES authorities should ensure the implementation of the minimum technology-based controls and incorporate a schedule into an appropriate enforceable mechanism, with appropriate milestone dates, to implement the required long-term CSO control plan. Schedules for implementation of the long-term CSO control plan may be phased based on the relative importance of adverse impacts upon water quality standards and designated uses, and on a permittee's financial capability.

EPA is developing extensive guidance to support the Policy and will announce the availability of the guidances and other outreach efforts through various means, as they become available. For example, EPA is preparing guidance on the nine minimum controls, characterization and monitoring of CSOs, development of long-term CSO control plans, and financial capability.

Permittees will be expected to comply with any existing CSO-related requirements in NPDES permits,

consent decrees or court orders unless revised to be consistent with this Policy.

The policy is organized as follows:

I. Introduction
A. Purpose and Principles
B. Application of Policy
C. Effect on Current CSO Control Efforts
D. Small System Considerations
E. Implementation Responsibilities
F. Policy Development
II. EPA Objectives for Permittees
A. Overview
B. Implementation of the Nine Minimum Controls
C. Long-Term CSO Control Plan
1. Characterization, Monitoring, and Modeling of the Combined Sewer Systems
2. Public Participation
3. Consideration of Sensitive Areas
4. Evaluation of Alternatives
5. Cost/Performance Consideration
6. Operational Plan
7. Maximizing Treatment at the Existing POTW Treatment Plant
8. Implementation Schedule
9. Post-Construction Compliance Monitoring Program
III. Coordination With State Water Quality Standards
A. Overview
B. Water Quality Standards Reviews
IV. Expectations for Permitting Authorities
A. Overview
B. NPDES Permit Requirements
1. Phase I Permits—Requirements for Demonstration of the Nine Minimum Controls and Development of the Long-Term CSO Control Plan
2. Phase II Permits—Requirements for Implementation of a Long-Term CSO Control Plan
3. Phasing Considerations
V. Enforcement and Compliance
A. Overview
B. Enforcement of CSO Dry Weather Discharge Prohibition
C. Enforcement of Wet Weather CSO Requirements
1. Enforcement for Compliance With Phase I Permits
2. Enforcement for Compliance With Phase II Permits
D. Penalties

List of Subjects in 40 CFR Part 122

Water pollution control.

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

Dated: April 8, 1994.

Carol M. Browner,

Administrator.

Combined Sewer Overflow (CSO) Control Policy

I. Introduction

A. Purpose and Principles

The main purposes of this Policy are to elaborate on EPA's National Combined Sewer Overflow (CSO) Control Strategy published on September 8, 1989 at 54 FR 37370 (1989 Strategy) and to expedite compliance with the requirements of the Clean Water Act (CWA). While implementation of the 1989 Strategy has resulted in progress toward controlling CSOs, significant water quality risks remain.

A combined sewer system (CSS) is a wastewater collection system owned by a State or municipality (as defined by section 502(4) of the CWA) which conveys sanitary wastewaters (domestic, commercial and industrial wastewaters) and storm water through a single-pipe system to a Publicly Owned Treatment Works (POTW) Treatment Plant (as defined in 40 CFR 403.3(p)). A CSO is the discharge from a CSS at a point prior to the POTW Treatment Plant. CSOs are point sources subject to NPDES permit requirements including both technology-based and water quality-based requirements of the CWA. CSOs are not subject to secondary treatment requirements applicable to POTWs.

CSOs consist of mixtures of domestic sewage, industrial and commercial wastewaters, and storm water runoff. CSOs often contain high levels of suspended solids, pathogenic microorganisms, toxic pollutants, floatables, nutrients, oxygen-demanding organic compounds, oil and grease, and other pollutants. CSOs can cause exceedances of water quality standards (WQS). Such exceedances may pose risks to human health, threaten aquatic life and its habitat, and impair the use and enjoyment of the Nation's waterways.

This Policy is intended to provide guidance to permittees with CSOs, National Pollutant Discharge Elimination System (NPDES) permitting authorities, State water quality standards authorities and enforcement authorities. The purpose of the Policy is to coordinate the planning, selection, design and implementation of CSO management practices and controls to meet the requirements of the CWA and to involve the public fully during the decision making process.

This Policy reiterates the objectives of the 1989 Strategy:

1. To ensure that if CSOs occur, they are only as a result of wet weather;
2. To bring all wet weather CSO discharge points into compliance with the technology-based and water quality-based requirements of the CWA; and
3. To minimize water quality, aquatic biota, and human health impacts from CSOs.

This CSO Control Policy represents a comprehensive national strategy to ensure that municipalities, permitting authorities, water quality standards authorities and the public engage in a comprehensive and coordinated planning effort to achieve cost-effective CSO controls that ultimately meet appropriate health and environmental objectives and requirements. The Policy recognizes the site-specific nature of CSOs and their impacts and provides the necessary flexibility to tailor controls to local situations. Four key principles of the Policy ensure that CSO controls are cost-effective and meet the objectives of the CWA. The key principles are:

1. Providing clear levels of control that would be presumed to meet appropriate health and environmental objectives;
2. Providing sufficient flexibility to municipalities, especially financially disadvantaged communities, to consider the site-specific nature of CSOs and to determine the most cost-effective means of reducing pollutants and meeting CWA objectives and requirements;
3. Allowing a phased approach to implementation of CSO controls considering a community's financial capability; and
4. Review and revision, as appropriate, of water quality standards and their implementation procedures when developing CSO control plans to reflect the site-specific wet weather impacts of CSOs.

This Policy is being issued in support of EPA's regulations and policy initiatives. This Policy is Agency guidance only and does not establish or affect legal rights or obligations. It does not establish a binding norm and is not finally determinative of the issues addressed. Agency decisions in any particular case will be made by applying the law and regulations on the basis of specific facts when permits are issued. The Administration has recommended that the 1994 amendments to the CWA endorse this final Policy.

B. Application of Policy

The permitting provisions of this Policy apply to all CSSs that overflow as a result of storm water flow, including snow melt runoff (40 CFR 122.26(b)(13)). Discharges from CSSs during dry weather are prohibited by the CWA. Accordingly, the permitting provisions of this Policy do not apply to CSOs during dry weather. Dry weather flow is the flow in a combined sewer that results from domestic sewage, groundwater infiltration, commercial and industrial wastewaters, and any other non-precipitation related flows (e.g., tidal infiltration). In addition to

the permitting provisions, the Enforcement and Compliance section of this Policy describes an enforcement initiative being developed for overflows that occur during dry weather.

Consistent with the 1989 Strategy, 30 States that submitted CSO permitting strategies have received EPA approval or, in the case of one State, conditional approval of its strategy. States and EPA Regional Offices should review these strategies and negotiate appropriate revisions to them to implement this Policy. Permitting authorities are encouraged to evaluate water pollution control needs on a watershed management basis and coordinate CSO control efforts with other point and nonpoint source control activities.

C. Effect on Current CSO Control Efforts

EPA recognizes that extensive work has been done by many Regions, States, and municipalities to abate CSOs. As such, portions of this Policy may already have been addressed by permittees' previous efforts to control CSOs. Therefore, portions of this Policy may not apply, as determined by the permitting authority on a case-by-case basis, under the following circumstances:

1. Any permittee that, on the date of publication of this final Policy, has completed or substantially completed construction of CSO control facilities that are designed to meet WQS and protect designated uses, and where it has been determined that WQS are being or will be attained, is not covered by the initial planning and construction provisions in this Policy; however, the operational plan and post-construction monitoring provisions continue to apply. If, after monitoring, it is determined that WQS are not being attained, the permittee should be required to submit a revised CSO control plan that, once implemented, will attain WQS.

2. Any permittee that, on the date of publication of this final Policy, has substantially developed or is implementing a CSO control program pursuant to an existing permit or enforcement order, and such program is considered by the NPDES permitting authority to be adequate to meet WQS and protect designated uses and is reasonably equivalent to the treatment objectives of this Policy, should complete those facilities without further planning activities otherwise expected by this Policy. Such programs, however, should be reviewed and modified to be consistent with the sensitive area, financial capability, and post-construction monitoring provisions of this Policy.

3. Any permittee that has previously constructed CSO control facilities in an effort to comply with WQS but has failed to meet such applicable standards or to protect designated uses due to remaining CSOs may receive consideration for such efforts in future permits or enforceable orders for long-term CSO control planning, design and implementation.

In the case of any ongoing or substantially completed CSO control effort, the NPDES permit or other enforceable mechanism, as appropriate, should be revised to include all appropriate permit requirements consistent with Section IV.B. of this Policy.

D. Small System Considerations

The scope of the long-term CSO control plan, including the characterization, monitoring and modeling, and evaluation of alternatives portions of this Policy may be difficult for some small CSSs. At the discretion of the NPDES Authority, jurisdictions with populations under 75,000 may not need to complete each of the formal steps outlined in Section II.C. of this Policy, but should be required through their permits or other enforceable mechanisms to comply with the nine minimum controls (II.B), public participation (II.C.2), and sensitive areas (II.C.3) portions of this Policy. In addition, the permittee may propose to implement any of the criteria contained in this Policy for evaluation of alternatives described in II.C.4. Following approval of the proposed plan, such jurisdictions should construct the control projects and propose a monitoring program sufficient to determine whether WQS are attained and designated uses are protected.

In developing long-term CSO control plans based on the small system considerations discussed in the preceding paragraph, permittees are encouraged to discuss the scope of their long-term CSO control plan with the WQS authority and the NPDES authority. These discussions will ensure that the plan includes sufficient information to enable the permitting authority to identify the appropriate CSO controls.

E. Implementation Responsibilities

NPDES authorities (authorized States or EPA Regional Offices, as appropriate) are responsible for implementing this Policy. It is their responsibility to assure that CSO permittees develop long-term CSO control plans and that NPDES permits meet the requirements of the CWA. Further, they are responsible for coordinating the review of the long-term CSO control plan and the development of the permit with the WQS authority to determine if revisions to the WQS are appropriate. In addition, they should determine the appropriate vehicle (i.e., permit reissuance, information request under CWA section 308 or State equivalent or enforcement action) to ensure that compliance with the CWA is achieved as soon as practicable.

Permittees are responsible for documenting the implementation of the nine minimum controls and developing and implementing a long-term CSO control plan, as described in this Policy. EPA recognizes that financial considerations are a major factor affecting the implementation of CSO controls. For that reason, this Policy allows consideration of a permittee's financial capability in connection with the long-term CSO control planning effort, WQS review, and negotiation of enforceable schedules. However, each permittee is ultimately responsible for aggressively pursuing financial arrangements for the implementation of its long-term CSO control plan. As part of this effort, communities should apply to their State Revolving Fund program, or other assistance programs as appropriate, for financial assistance.

EPA and the States will undertake action to assure that all permittees with CSSs are subject to a consistent review in the permit development process, have permit requirements that achieve compliance with the CWA, and are subject to enforceable schedules that require the earliest practicable compliance date considering physical and financial feasibility.

F. Policy Development

This Policy devotes a separate section to each step involved in developing and implementing CSO controls. This is not to imply that each function occurs separately. Rather, the entire process surrounding CSO controls, community planning, WQS and permit development/revision, enforcement/compliance actions and public participation must be coordinated to control CSOs effectively. Permittees and permitting authorities are encouraged to consider innovative and alternative approaches and technologies that achieve the objectives of this Policy and the CWA.

In developing this Policy, EPA has included information on what responsible parties are expected to accomplish. Subsequent documents will provide additional guidance on how the objectives of this Policy should be met. These documents will provide further guidance on: CSO permit writing, the nine minimum controls, long-term CSO

control plans, financial capability, sewer system characterization and receiving water monitoring and modeling, and application of WQS to CSO-impacted waters. For most CSO control efforts however, sufficient detail has been included in this Policy to begin immediate implementation of its provisions.

II. EPA Objectives for Permittees

A. Overview

Permittees with CSSs that have CSOs should immediately undertake a process to accurately characterize their sewer systems, to demonstrate implementation of the nine minimum controls, and to develop a long-term CSO control plan.

B. Implementation of the Nine Minimum Controls

Permittees with CSOs should submit appropriate documentation demonstrating implementation of the nine minimum controls, including any proposed schedules for completing minor construction activities. The nine minimum controls are:

1. Proper operation and regular maintenance programs for the sewer system and the CSOs;
2. Maximum use of the collection system for storage;
3. Review and modification of pretreatment requirements to assure CSO impacts are minimized;
4. Maximization of flow to the POTW for treatment;
5. Prohibition of CSOs during dry weather;
6. Control of solid and floatable materials in CSOs;
7. Pollution prevention;
8. Public notification to ensure that the public receives adequate notification of CSO occurrences and CSO impacts; and
9. Monitoring to effectively characterize CSO impacts and the efficacy of CSO controls.

Selection and implementation of actual control measures should be based on site-specific considerations including the specific CSS's characteristics discussed under the sewer system characterization and monitoring portions of this Policy. Documentation of the nine minimum controls may include operation and maintenance plans, revised sewer use ordinances for industrial users, sewer system inspection reports, infiltration/inflow studies, pollution prevention programs, public notification plans, and facility plans for maximizing the capacities of the existing collection, storage and treatment systems, as well as contracts and schedules for minor construction programs for improving the existing system's operation. The permittee should also submit any information or data on the degree to which the nine minimum controls achieve compliance with water quality standards. These data and information should include results made available through monitoring and modeling activities done in conjunction with the development of the long-term CSO control plan described in this Policy.

This documentation should be submitted as soon as practicable, but no later than two years after the requirement to submit such documentation is included in an NPDES permit or other enforceable mechanism. Implementation of the nine minimum controls with appropriate documentation should be completed as soon as practicable but no later than January 1, 1997. These dates should be included in an appropriate enforceable mechanism.

Because the CWA requires immediate compliance with technology-based controls (section 301(b)), which on a Best Professional Judgment basis should include the nine minimum controls, a compliance schedule for implementing the nine minimum controls, if necessary, should be included in an appropriate enforceable mechanism.

C. Long-Term CSO Control Plan

Permittees with CSOs are responsible for developing and implementing long-term CSO control plans that will ultimately result in compliance with the requirements of the CWA. The long-term plans should consider the site-specific nature of CSOs and evaluate the cost effectiveness of a range of control options/strategies. The development of the long-term CSO control plan and its subsequent implementation should also be coordinated with the NPDES authority and the State authority responsible for reviewing and revising the State's WQS. The selected controls should be designed to allow cost effective expansion or cost effective retrofitting if additional controls are subsequently determined to be necessary to meet WQS, including existing and designated uses.

This policy identifies EPA's major objectives for the long-term CSO control plan. Permittees should develop and submit this long-term CSO control plan as soon as practicable, but generally within two years after the date of the NPDES permit provision, Section 308 information request, or enforcement action requiring the permittee to develop the plan. NPDES authorities may establish a longer timetable for completion of the long-term CSO control plan on a case-by-case basis to account for site-specific factors which may influence the complexity of the planning process. Once agreed upon, these dates should be included in an appropriate enforceable mechanism.

EPA expects each long-term CSO control plan to utilize appropriate information to address the following minimum elements. The Plan should also include both fixed-date project implementation schedules (which may be phased) and a financing plan to design and construct the project as soon as practicable. The minimum elements of the long-term CSO control plan are described below.

1. Characterization, Monitoring, and Modeling of the Combined Sewer System

In order to design a CSO control plan adequate to meet the requirements of the CWA, a permittee should have a thorough understanding of its sewer system, the response of the system to various precipitation events, the characteristics of the overflows, and the water quality impacts that result from CSOs. The permittee should adequately characterize through monitoring, modeling, and other means as appropriate, for a range of storm events, the response of its sewer system to wet weather events including the number, location and frequency of CSOs, volume, concentration and mass of pollutants discharged and the impacts of the CSOs on the receiving waters and their designated uses. The permittee may need to consider information on the contribution and importance of other pollution sources in order to develop a final plan designed to meet water quality standards. The purpose of the system characterization, monitoring and modeling program initially is to assist the permittee in developing appropriate measures to implement the nine minimum controls and, if necessary, to support development of the long-term CSO control plan. The monitoring and modeling data also will be used to evaluate the expected effectiveness of both the nine minimum controls and, if necessary, the long-term CSO controls, to meet WQS.

The major elements of a sewer system characterization are described below.

a. Rainfall Records—The permittee should examine the complete rainfall record for the geographic area of its existing CSS using sound statistical procedures and best available data. The permittee should evaluate flow variations in the receiving water body to correlate between CSOs and receiving water conditions.

b. Combined Sewer System Characterization—The permittee should evaluate the nature and extent of its sewer system through evaluation of available sewer system records, field inspections and other activities necessary to understand the number, location and frequency of overflows and their location relative to sensitive areas and to pollution sources in the collection system, such as indirect significant industrial users.

c. CSO Monitoring—The permittee should develop a comprehensive, representative monitoring program that measures the frequency, duration, flow rate, volume and pollutant concentration of CSO discharges and assesses the impact of the CSOs on the receiving waters. The monitoring program should include necessary CSO effluent and ambient in-stream monitoring and, where appropriate, other monitoring protocols such as biological assessment, toxicity testing and sediment sampling. Monitoring parameters should include, for example, oxygen demanding pollutants, nutrients, toxic pollutants, sediment contaminants, pathogens, bacteriological indicators (e.g., Enterococcus, E. Coli), and toxicity. A representative sample of overflow points can be selected that is sufficient to allow characterization of CSO discharges and their water quality impacts and to facilitate evaluation of control plan alternatives.

d. Modeling—Modeling of a sewer system is recognized as a valuable tool for predicting sewer system response to various wet weather events and assessing water quality impacts when evaluating different control strategies and alternatives. EPA supports the proper and effective use of models, where appropriate, in the evaluation of the nine minimum controls and the development of the long-term CSO control plan. It is also recognized that there are many models which may be used to do this. These models range from simple to complex. Having decided to use a model, the permittee should base its choice of a model on the characteristics of its sewer system, the number and location of overflow points, and the sensitivity of the receiving water body to the CSO discharges. Use of models should include appropriate calibration and verification with field measurements. The sophistication of the model should relate to the complexity of the system to be modeled and to the information needs associated with evaluation of CSO control options and water quality impacts. EPA believes that continuous simulation models, using historical rainfall data, may be the best way to model sewer systems, CSOs, and their impacts. Because of the iterative nature of modeling sewer systems, CSOs, and their impacts, monitoring and modeling efforts are complementary and should be coordinated.

2. Public Participation

In developing its long-term CSO control plan, the permittee will employ a public participation process that actively involves the affected public in the decision-making to select the long-term CSO controls. The affected public includes rate payers, industrial users of the sewer system, persons who reside downstream from the CSOs, persons who use and enjoy these downstream waters, and any other interested persons.

3. Consideration of Sensitive Areas

EPA expects a permittee's long-term CSO control plan to give the highest priority to controlling overflows to sensitive areas. Sensitive areas, as determined by the NPDES authority in coordination with State and Federal agencies, as appropriate, include designated Outstanding National Resource Waters, National Marine Sanctuaries, waters with threatened or endangered species and their habitat, waters with primary contact recreation, public drinking water intakes or their designated protection areas, and shellfish beds. For such areas, the long-term CSO control plan should:

a. Prohibit new or significantly increased overflows;

b. i. Eliminate or relocate overflows that discharge to sensitive areas wherever physically possible and economically achievable, except where elimination or relocation would provide less environmental protection than additional treatment; or

ii. Where elimination or relocation is not physically possible and economically achievable, or would provide less environmental protection than additional treatment, provide the level of treatment for remaining overflows deemed necessary to meet WQS for full protection of existing and designated uses. In any event, the level of control should not be less than those described in Evaluation of Alternatives below; and

c. Where elimination or relocation has been proven not to be physically possible and economically achievable, permitting authorities should require, for each subsequent permit term, a reassessment based on new or improved techniques to eliminate or relocate, or on changed circumstances that influence economic achievability.

4. Evaluation of Alternatives

EPA expects the long-term CSO control plan to consider a reasonable range of alternatives. The plan should, for example, evaluate controls that would be necessary to achieve zero overflow events per year, an average of one to three, four to seven, and eight to twelve overflow events per year. Alternatively, the long-term plan could evaluate controls that achieve 100% capture, 90% capture, 85% capture, 80% capture, and 75% capture for treatment. The long-term control plan should also consider expansion of POTW secondary and primary capacity in the CSO abatement alternative analysis. The analysis of alternatives should be sufficient to make a reasonable assessment of cost and performance as described in Section II.C.5. Because the final long-term CSO control plan will become the basis for NPDES permit limits and requirements, the selected controls should be sufficient to meet CWA requirements.

In addition to considering sensitive areas, the long-term CSO control plan should adopt one of the following approaches:

a. "Presumption" Approach

A program that meets any of the criteria listed below would be presumed to provide an adequate level of control to meet the water quality-based requirements of the CWA, provided the permitting authority determines that such presumption is reasonable in light of the data and analysis conducted in the characterization, monitoring, and modeling of the system and the consideration of sensitive areas described above. These criteria are provided because data and modeling of wet weather events often do not give a clear picture of the level of CSO controls necessary to protect WQS.

i. No more than an average of four overflow events per year, provided that the permitting authority may allow up to two additional overflow events per year. For the purpose of this criterion, an overflow event is one or more overflows from a CSS as the result of a precipitation event that does not receive the minimum treatment specified below; or

ii. The elimination or the capture for treatment of no less than 85% by volume of the combined sewage collected in the CSS during precipitation events on a system-wide annual average basis; or

iii. The elimination or removal of no less than the mass of the pollutants, identified as causing water quality impairment through the sewer system

characterization, monitoring, and modeling effort, for the volumes that would be eliminated or captured for treatment under paragraph ii. above. Combined sewer flows remaining after implementation of the nine minimum controls and within the criteria specified at II.C.4.a.i or ii, should receive a minimum of:

- Primary clarification (Removal of floatables and settleable solids may be achieved by any combination of treatment technologies or methods that are shown to be equivalent to primary clarification.);
- Solids and floatables disposal; and
- Disinfection of effluent, if necessary, to meet WQS, protect designated uses and protect human health, including removal of harmful disinfection chemical residuals, where necessary.

b. "Demonstration" Approach

A permittee may demonstrate that a selected control program, though not meeting the criteria specified in II.C.4.a. above is adequate to meet the water quality-based requirements of the CWA. To be a successful demonstration, the permittee should demonstrate each of the following:

i. The planned control program is adequate to meet WQS and protect designated uses, unless WQS or uses cannot be met as a result of natural background conditions or pollution sources other than CSOs;

ii. The CSO discharges remaining after implementation of the planned control program will not preclude the attainment of WQS or the receiving waters' designated uses or contribute to their impairment. Where WQS and designated uses are not met in part because of natural background conditions or pollution sources other than CSOs, a total maximum daily load, including a wasteload allocation and a load allocation, or other means should be used to apportion pollutant loads;

iii. The planned control program will provide the maximum pollution reduction benefits reasonably attainable; and

iv. The planned control program is designed to allow cost effective expansion or cost effective retrofitting if additional controls are subsequently determined to be necessary to meet WQS or designated uses.

5. Cost/Performance Considerations

The permittee should develop appropriate cost/performance curves to demonstrate the relationships among a comprehensive set of reasonable control alternatives that correspond to the different ranges specified in Section II.C.4. This should include an analysis to determine where the increment of pollution reduction achieved in the receiving water diminishes compared to the increased costs. This analysis, often known as knee of the curve, should be among the considerations used to help guide selection of controls.

6. Operational Plan

After agreement between the permittee and NPDES authority on the necessary CSO controls to be implemented under the long-term CSO control plan, the permittee should revise the operation and maintenance program developed as part of the nine minimum controls to include the agreed-upon long-term CSO controls. The revised operation and maintenance program should maximize the removal of pollutants during and after each precipitation event using all available facilities within the collection and treatment system. For any flows in excess of the criteria specified at II.C.4.a.i., ii. or iii and not receiving the treatment specified in II.C.4.a, the operational plan should ensure that such flows receive treatment to the greatest extent practicable.

7. Maximizing Treatment at the Existing POTW Treatment Plant

In some communities, POTW treatment plants may have primary treatment capacity in excess of their secondary treatment capacity. One effective strategy to abate pollution resulting from CSOs is to maximize the delivery of flows during wet weather to the POTW treatment plant for treatment. Delivering these flows can have two significant water quality benefits: First, increased flows during wet weather to the POTW treatment plant may enable the permittee to eliminate or minimize overflows to sensitive areas; second, this would maximize the use of available POTW facilities for wet weather flows and would ensure that combined sewer flows receive at least primary treatment prior to discharge.

Under EPA regulations, the intentional diversion of waste streams from any portion of a treatment facility, including secondary treatment, is a bypass. EPA bypass regulations at 40 CFR 122.41(m) allow for a facility to bypass some or all the flow from its treatment process under specified limited circumstances. Under the regulation, the permittee must show that the bypass was unavoidable to prevent loss of life, personal injury or severe property damage, that there was no feasible alternative to the bypass and that the permittee submitted the required notices. In addition, the regulation provides that a bypass may be approved only after consideration of adverse effects.

Normally, it is the responsibility of the permittee to document, on a case-by-base basis, compliance with 40 CFR 122.41(m) in order to bypass flows legally. For some CSO-related permits, the study of feasible alternatives in the control plan may provide sufficient support for the permit record and for approval of a CSO-related bypass in the permit itself, and to define the specific parameters under which a bypass can legally occur. For approval of a CSO-related bypass, the long-term CSO control plan, at a minimum, should provide justification for the cut-off point at which the flow will be diverted from the secondary treatment portion of the treatment plant, and provide a benefit-cost analysis demonstrating that conveyance of wet weather flow to the POTW for primary treatment is more beneficial than other CSO abatement alternatives such as storage and pump back for secondary treatment, sewer separation, or satellite treatment. Such a permit must define under what specific wet weather conditions a CSO-related bypass is allowed and also specify what treatment or what monitoring, and effluent limitations and requirements apply to the bypass flow. The permit should also provide that approval for the CSO-related bypass will be reviewed and may be modified or terminated if there is a substantial increase in the volume or character of pollutants being introduced to the POTW. The CSO-related bypass provision in the permit should also make it clear that all wet weather flows passing the headworks of the POTW treatment plant will receive at least primary clarification and solids and floatables removal and disposal, and disinfection, where necessary, and any other treatment that can reasonably be provided.

Under this approach, EPA would allow a permit to authorize a CSO-related bypass of the secondary treatment portion of the POTW treatment plant for combined sewer flows in certain identified circumstances. This provision would apply only to those situations where the POTW would ordinarily meet the requirements of 40 CFR 122.41(m) as evaluated on a case-by-case basis. Therefore, there must be sufficient data in the administrative record (reflected in the permit fact sheet or statement of basis) supporting all the requirements in 40 CFR 122.41(m)(4) for approval of an anticipated bypass.

For the purposes of applying this regulation to CSO permittees, "severe property damage" could include

situations where flows above a certain level wash out the POTW's secondary treatment system. EPA further believes that the feasible alternatives requirement of the regulation can be met if the record shows that the secondary treatment system is properly operated and maintained, that the system has been designed to meet secondary limits for flows greater than the peak dry weather flow, plus an appropriate quantity of wet weather flow, and that it is either technically or financially infeasible to provide secondary treatment at the existing facilities for greater amounts of wet weather flow. The feasible alternative analysis should include, for example, consideration of enhanced primary treatment (e.g., chemical addition) and non-biological secondary treatment. Other bases supporting a finding of no feasible alternative may also be available on a case-by-case basis. As part of its consideration of possible adverse effects resulting from the bypass, the permitting authority should also ensure that the bypass will not cause exceedances of WQS.

This Policy does not address the appropriateness of approving anticipated bypasses through NPDES permits in advance outside the CSO context.

8. Implementation Schedule

The permittee should include all pertinent information in the long term control plan necessary to develop the construction and financing schedule for implementation of CSO controls. Schedules for implementation of the CSO controls may be phased based on the relative importance of adverse impacts upon WQS and designated uses, priority projects identified in the long-term plan, and on a permittee's financial capability.

Construction phasing should consider:

a. Eliminating overflows that discharge to sensitive areas as the highest priority;

b. Use impairment;

c. The permittee's financial capability including consideration of such factors as:

i. Median household income;

ii. Total annual wastewater and CSO control costs per household as a percent of median household income;

iii. Overall net debt as a percent of full market property value;

iv. Property tax revenues as a percent of full market property value;

v. Property tax collection rate;

vi. Unemployment; and

vii. Bond rating;

d. Grant and loan availability;

e. Previous and current residential, commercial and industrial sewer user fees and rate structures; and

f. Other viable funding mechanisms and sources of financing.

9. Post-Construction Compliance Monitoring Program

The selected CSO controls should include a post-construction water quality monitoring program adequate to verify compliance with water quality standards and protection of designated uses as well as to ascertain the effectiveness of CSO controls. This water quality compliance monitoring program should include a plan to be approved by the NPDES authority that details the monitoring protocols to be followed, including the necessary effluent and ambient monitoring and, where appropriate, other monitoring protocols such as biological assessments, whole effluent toxicity testing, and sediment sampling.

III. Coordination With State Water Quality Standards

A. Overview

WQS are State adopted, or Federally promulgated rules which serve as the goals for the water body and the legal basis for the water quality-based NPDES permit requirements under the CWA. WQS consist of uses which States designate for their water bodies, criteria to protect the uses, an anti-degradation policy to protect the water quality improvements gained and other policies affecting the implementation of the standards. A primary objective of the long-term CSO control plan is to meet WQS, including the designated uses through reducing risks to human health and the environment by eliminating, relocating or controlling CSOs to the affected waters.

State WQS authorities, NPDES authorities, EPA regional offices, permittees, and the public should meet early and frequently throughout the long-term CSO control planning process. Development of the long-term plan should be coordinated with the review and appropriate revision of WQS and implementation procedures on CSO-impacted waters to ensure that the long-term controls will be sufficient to meet water quality standards. As part of these meetings, participants should agree on the data, information and analyses needed to support the development of the long-term CSO control plan and the review of applicable WQS, and implementation procedures, if appropriate. Agreements should be reached on the monitoring protocols and models that will be used to evaluate the water quality impacts of the overflows, to analyze the attainability of the WQS and to determine the water quality-based requirements for the permit. Many opportunities exist for permittees and States to share information as control programs are developed and as WQS are reviewed. Such information should assist States in determining the need for revisions to WQS and implementation procedures to better reflect the site-specific wet weather impacts of CSOs. Coordinating the development of the long-term CSO control plan and the review of the WQS and implementation procedures provides greater assurance that the long-term control plan selected and the limits and requirements included in the NPDES permit will be sufficient to meet WQS and to comply with sections 301(b)(1)(C) and 402(a)(2) of the CWA.

EPA encourages States and permittees jointly to sponsor workshops for the affected public in the development of the long-term CSO control plan and during the development of appropriate revisions to WQS for CSO-impacted waters. Workshops provide a forum for including the public in discussions of the implications of the proposed long-term CSO control plan on the water quality and uses for the receiving water.

B. Water Quality Standards Reviews

The CWA requires States to periodically, but at least once every three years, hold public hearings for the purpose of reviewing applicable water quality standards and, as appropriate, modifying and adopting standards. States must provide the public an opportunity to comment on any proposed revision to water quality standards and all revisions must be submitted to EPA for review and approval.

EPA regulations and guidance provide States with the flexibility to adapt their WQS, and implementation procedures to reflect site-specific conditions including those related to CSOs. For example, a State may adopt site-specific criteria for a particular pollutant if the State determines that the site-specific criteria fully protects the designated use (40 CFR 131.11). In addition, the regulations at 40 CFR 131.10(g), (h), and (j) specify when and how a designated use may be modified. A State may remove a designated use from its water quality standards only if the designated use is not an existing use. An existing use is a use actually attained in the water body on or after November 28, 1975. Furthermore, a State may not remove a designated use that will be attained by implementing the

technology-based effluent limits required under sections 301(b) and 306 of the CWA and by implementing cost-effective and reasonable best management practices for nonpoint source controls. Thus, if a State has a reasonable basis to determine that the current designated use could be attained after implementation of the technology-based controls of the CWA, then the use could not be removed.

In determining whether a use is attainable and prior to removing a designated use, States must conduct and submit to EPA a use attainability analysis. A use attainability analysis is a structured scientific assessment of the factors affecting the use, including the physical, chemical, biological, and economic factors described in 40 CFR 131.10(g). As part of the analysis, States should evaluate whether the designated use could be attained if CSO controls were implemented. For example, States should examine if sediment loadings from CSOs could be reduced so as not to bury spawning beds, or if biochemical oxygen demanding material in the effluent or the toxicity of the effluent could be corrected so as to reduce the acute or chronic physiological stress on or bioaccumulation potential of aquatic organisms.

In reviewing the attainability of their WQS and the applicability of their implementation procedures to CSO-impacted waters, States are encouraged to define more explicitly their recreational and aquatic life uses and then, if appropriate, modify the criteria accordingly to protect the designated uses.

Another option is for States to adopt partial uses by defining when primary contact recreation such as swimming does not exist, such as during certain seasons of the year in northern climates or during a particular type of storm event. In making such adjustments to their uses, States must ensure that downstream uses are protected, and that during other seasons or after the storm event has passed, the use is fully protected.

In addition to defining recreational uses with greater specificity, States are also encouraged to define the aquatic uses more precisely. Rather than "aquatic life use protection," States should consider defining the type of fishery to be protected such as a cold water fishery (e.g., trout or salmon) or a warm weather fishery (e.g., bluegill or large mouth bass). Explicitly defining the type of fishery to be protected may assist the permittee in enlisting the support of citizens for a CSO control plan.

A water quality standard variance may be appropriate, in limited circumstances on CSO-impacted waters, where the State is uncertain as to whether a standard can be attained and time is needed for the State to conduct additional analyses on the attainability of the standard. Variances are short-term modifications in water quality standards. Subject to EPA approval, States, with their own statutory authority, may grant a variance to a specific discharger for a specific pollutant. The justification for a variance is similar to that required for a permanent change in the standard, although the showings needed are less rigorous. Variances are also subject to public participation requirements of the water quality standards and permits programs and are reviewable generally every three years. A variance allows the CSO permit to be written to meet the "modified" water quality standard as analyses are conducted and as progress is made to improve water quality.

Justifications for variances are the same as those identified in 40 CFR 131.10(g) for modifications in uses. States must provide an opportunity for public review and comment on all variances. If States use the permit as the vehicle to grant the variance, notice of the permit must clearly state that the variance modifies the State's water quality standards. If the variance is approved, the State appends the variance to the State's standards and reviews the variance every three years.

IV. Expectations for Permitting Authorities

A. Overview

CSOs are point sources subject to NPDES permit requirements including both technology-based and water quality-based requirements of the CWA. CSOs are not subject to secondary treatment regulations applicable to publicly owned treatment works (*Montgomery Environmental Coalition* vs. *Costle*, 646 F.2d 568 (D.C. Cir. 1980)).

All permits for CSOs should require the nine minimum controls as a minimum best available technology economically achievable and best conventional technology (BAT/BCT) established on a best professional judgment (BPJ) basis by the permitting authority (40 CFR 125.3). Water quality-based requirements are to be established based on applicable water quality standards.

This policy establishes a uniform, nationally consistent approach to developing and issuing NPDES permits to permittees with CSOs. Permits for CSOs should be developed and issued expeditiously. A single, system-wide permit generally should be issued for all discharges, including CSOs, from a CSS operated by a single authority. When different parts of a single CSS are operated by more than one authority, permits issued to each authority should generally require joint preparation and implementation of the elements of this Policy and should specifically define the responsibilities and duties of each authority. Permittees should be required to coordinate system-wide implementation of the nine minimum controls and the development and implementation of the long-term CSO control plan.

The individual authorities are responsible for their own discharges and should cooperate with the permittee for the POTW receiving the flows from the CSS. When a CSO is permitted separately from the POTW, both permits should be cross-referenced for informational purposes.

EPA Regions and States should review the CSO permitting priorities established in the State CSO Permitting Strategies developed in response to the 1989 Strategy. Regions and States may elect to revise these previous priorities. In setting permitting priorities, Regions and States should not just focus on those permittees that have initiated monitoring programs. When setting priorities, Regions and States should consider, for example, the known or potential impact of CSOs on sensitive areas, and the extent of upstream industrial user discharges to the CSS.

During the permittee's development of the long-term CSO control plan, the permit writer should promote coordination between the permittee and State WQS authority in connection with possible WQS revisions. Once the permittee has completed development of the long-term CSO control plan and has coordinated with the permitting authority the selection of the controls necessary to meet the requirements of the CWA, the permitting authority should include in an appropriate enforceable mechanism, requirements for implementation of the long-term CSO control plan, including conditions for water quality monitoring and operation and maintenance.

B. NPDES Permit Requirements

Following are the major elements of NPDES permits to implement this Policy and ensure protection of water quality.

1. Phase I Permits—Requirements for Demonstration of Implementation of the Nine Minimum Controls and Development of the Long-Term CSO Control Plan

In the Phase I permit issued/modified to reflect this Policy, the NPDES authority should at least require permittees to:

a. Immediately implement BAT/BCT, which at a minimum includes the nine minimum controls, as determined on a BPJ basis by the permitting authority;

b. Develop and submit a report documenting the implementation of the nine minimum controls within two years of permit issuance/modification;

c. Comply with applicable WQS, no later than the date allowed under the State's WQS, expressed in the form of a narrative limitation; and

d. develop and submit, consistent with this Policy and based on a schedule in an appropriate enforceable mechanism, a long-term CSO control plan as soon as practicable, but generally within two years after the effective date of the permit issuance/modification. However, permitting authorities may establish a longer timetable for completion of the long-term CSO control plan on a case-by-case basis to account for site-specific factors that may influence the complexity of the planning process.

The NPDES authority should include compliance dates on the fastest practicable schedule for each of the nine minimum controls in an appropriate enforceable mechanism issued in conjunction with the Phase I permit. The use of enforceable orders is necessary unless Congress amends the CWA. All orders should require compliance with the nine minimum controls no later than January 1, 1997.

2. Phase II Permits—Requirements for Implementation of a Long-Term CSO Control Plan

Once the permittee has completed development of the long-term CSO control plan and the selection of the controls necessary to meet CWA requirements has been coordinated with the permitting and WQS authorities, the permitting authority should include, in an appropriate enforceable mechanism, requirements for implementation of the long-term CSO control plan as soon as practicable. Where the permittee has selected controls based on the "presumption" approach described in Section II.C.4, the permitting authority must have determined that the presumption that such level of treatment will achieve water quality standards is reasonable in light of the data and analysis conducted under this Policy. The Phase II permit should contain:

a. Requirements to implement the technology-based controls including the nine minimum controls determined on a BPJ basis;

b. Narrative requirements which insure that the selected CSO controls are implemented, operated and maintained as described in the long-term CSO control plan;

c. Water quality-based effluent limits under 40 CFR 122.44(d)(1) and 122.44(k), requiring, at a minimum, compliance with, no later than the date allowed under the State's WQS, the numeric performance standards for the selected CSO controls, based on average design conditions specifying at least one of the following:

i. A maximum number of overflow events per year for specified design conditions consistent with II.C.4.a.i; or

ii. A minimum percentage capture of combined sewage by volume for treatment under specified design conditions consistent with II.C.4.a.ii; or

iii. A minimum removal of the mass of pollutants discharged for specified design conditions consistent with II.C.4.a.iii; or

iv. performance standards and requirements that are consistent with II.C.4.b. of the Policy.

d. A requirement to implement, with an established schedule, the approved post-construction water quality assessment program including requirements to monitor and collect sufficient information to demonstrate compliance with WQS and protection of designated uses as well as to determine the effectiveness of CSO controls.

e. A requirement to reassess overflows to sensitive areas in those cases where elimination or relocation of the overflows is not physically possible and economically achievable. The reassessment should be based on consideration of new or improved techniques to eliminate or relocate overflows or changed circumstances that influence economic achievability;

f. Conditions establishing requirements for maximizing the treatment of wet weather flows at the POTW treatment plant, as appropriate, consistent with Section II.C.7. of this Policy;

g. A reopener clause authorizing the NPDES authority to reopen and modify the permit upon determination that the CSO controls fail to meet WQS or protect designated uses. Upon such determination, the NPDES authority should promptly notify the permittee and proceed to modify or reissue the permit. The permittee should be required to develop, submit and implement, as soon as practicable, a revised CSO control plan which contains additional controls to meet WQS and designated uses. If the initial CSO control plan was approved under the demonstration provision of Section II.C.4.b., the revised plan, at a minimum, should provide for controls that satisfy one of the criteria in Section II.C.4.a. unless the permittee demonstrates that the revised plan is clearly adequate to meet WQS at a lower cost and it is shown that the additional controls resulting from the criteria in Section II.C.4.a. will not result in a greater overall improvement in water quality.

Unless the permittee can comply with all of the requirements of the Phase II permit, the NPDES authority should include, in an enforceable mechanism, compliance dates on the fastest practicable schedule for those activities directly related to meeting the requirements of the CWA. For major permittees, the compliance schedule should be placed in a judicial order. Proper compliance with the schedule for implementing the controls recommended in the long-term CSO control plan constitutes compliance with the elements of this Policy concerning planning and implementation of a long term CSO remedy.

3. Phasing Considerations

Implementation of CSO controls may be phased based on the relative importance of and adverse impacts upon WQS and designated uses, as well as the permittee's financial capability and its previous efforts to control CSOs. The NPDES authority should evaluate the proposed implementation schedule and construction phasing discussed in Section II.C.8. of this Policy. The permit should require compliance with the controls proposed in the long-term CSO control plan no later than the applicable deadline(s) under the CWA or State law. If compliance with the Phase II permit is not possible, an enforceable schedule, consistent with the Enforcement and Compliance Section of this Policy, should be issued in conjunction with the Phase II permit which specifies the schedule and milestones for implementation of the long-term CSO control plan.

V. Enforcement and Compliance

A. Overview

It is important that permittees act immediately to take the necessary steps to comply with the CWA. The CSO enforcement effort will commence with

an initiative to address CSOs that discharge during dry weather, followed by an enforcement effort in conjunction with permitting CSOs discussed earlier in this Policy. Success of the enforcement effort will depend in large part upon expeditious action by NPDES authorities in issuing enforceable permits that include requirements both for the nine minimum controls and for compliance with all other requirements of the CWA. Priority for enforcement actions should be set based on environmental impacts or sensitive areas affected by CSOs.

As a further inducement for permittees to cooperate with this process, EPA is prepared to exercise its enforcement discretion in determining whether or not to seek civil penalties for past CSO violations if permittees meet the objectives and schedules of this Policy and do not have CSOs during dry weather.

B. Enforcement of CSO Dry Weather Discharge Prohibition

EPA intends to commence immediately an enforcement initiative against CSO permittees which have CWA violations due to CSOs during dry weather. Discharges during dry weather have always been prohibited by the NPDES program. Such discharges can create serious public health and water quality problems. EPA will use its CWA Section 308 monitoring, reporting, and inspection authorities, together with NPDES State authorities, to locate these violations, and to determine their causes. Appropriate remedies and penalties will be sought for CSOs during dry weather. EPA will provide NPDES authorities more specific guidance on this enforcement initiative separately.

C. Enforcement of Wet Weather CSO Requirements

Under the CWA, EPA can use several enforcement options to address permittees with CSOs. Those options directly applicable to this Policy are section 308 Information Requests, section 309(a) Administrative Orders, section 309(g) Administrative Penalty Orders, section 309 (b) and (d) Civil Judicial Actions, and section 504 Emergency Powers. NPDES States should use comparable means.

NPDES authorities should set priorities for enforcement based on environmental impacts or sensitive areas affected by CSOs. Permittees that have voluntarily initiated monitoring and are progressing expeditiously toward appropriate CSO controls should be given due consideration for their efforts.

1. Enforcement for Compliance With Phase I Permits

Enforcement for compliance with Phase I permits will focus on requirements to implement at least the nine minimum controls, and develop the long-term CSO control plan leading to compliance with the requirements of the CWA. Where immediate compliance with the Phase I permit is infeasible, the NPDES authority should issue an enforceable schedule, in concert with the Phase I permit, requiring compliance with the CWA and imposing compliance schedules with dates for each of the nine minimum controls as soon as practicable. All enforcement authorities should require compliance with the nine minimum controls no later than January 1, 1997. Where the NPDES authority is issuing an order with a compliance schedule for the nine minimum controls, this order should also include a schedule for development of the long-term CSO control plan.

If a CSO permittee fails to meet the final compliance date of the schedule, the NPDES authority should initiate appropriate judicial action.

2. Enforcement for Compliance With Phase II Permits

The main focus for enforcing compliance with Phase II permits will be to incorporate the long-term CSO control plan through a civil judicial action, an administrative order, or other enforceable mechanism requiring compliance with the CWA and imposing a compliance schedule with appropriate milestone dates necessary to implement the plan.

In general, a judicial order is the appropriate mechanism for incorporating the above provisions for Phase II. Administrative orders, however, may be appropriate for permittees whose long-term control plans will take less than five years to complete, and for minors that have complied with the final date of the enforceable order for compliance with their Phase I permit. If necessary, any of the nine minimum controls that have not been implemented by this time should be included in the terms of the judicial order.

D. Penalties

EPA is prepared not to seek civil penalties for past CSO violations, if permittees have no discharges during dry weather and meet the objectives and schedules of this Policy. Notwithstanding this, where a permittee has other significant CWA violations for which EPA or the State is taking judicial action, penalties may be considered as part of that action for the following:

1. CSOs during dry weather;

2. Violations of CSO-related requirements in NPDES permits; consent decrees or court orders which predate this policy; or

3. Other CWA violations.

EPA will not seek penalties for past CSO violations from permittees that fully comply with the Phase I permit or enforceable order requiring compliance with the Phase I permit. For permittees that fail to comply, EPA will exercise its enforcement discretion in determining whether to seek penalties for the time period for which the compliance schedule was violated. If the milestone dates of the enforceable schedule are not achieved and penalties are sought, penalties should be calculated from the last milestone date that was met.

At the time of the judicial settlement imposing a compliance schedule implementing the Phase II permit requirements, EPA will not seek penalties for past CSO violations from permittees that fully comply with the enforceable order requiring compliance with the Phase I permit and if the terms of the judicial order are expeditiously agreed to on consent. However, stipulated penalties for violation of the judicial order generally should be included in the order, consistent with existing Agency policies. Additional guidance on stipulated penalties concerning long-term CSO controls and attainment of WQS will be issued.

Paperwork Reduction Act

The information collection requirements in this policy have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq* and have been assigned OMB control number 2040–0170.

This collection of information has an estimated reporting burden averaging 578 hours per response and an estimated annual recordkeeping burden averaging 25 hours per recordkeeper. These estimates include 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; EPA; 401 M Street SW. (Mail Code 2136); Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and

Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

[FR Doc. 94–9295 Filed 4–18–94; 8:45 am]

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federal register

Tuesday
April 19, 1994

Part VIII

Department of Transportation

Coast Guard

33 CFR Part 151
Recordkeeping of Refuse Discharges From Ships; Final Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 151

[CGD 92–71]

RIN 2115–AE17

Recordkeeping of Refuse Discharges From Ships

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is issuing regulations to require that all manned, oceangoing U.S. vessels 12.2 meters (approximately 40 feet) or more in length engaged in commerce and all manned fixed or floating platforms subject to the jurisdiction of the United States keep records of garbage discharges and disposals. Regulations specifying the vessels and platforms required to maintain these records are mandated by statute. The use of shipboard garbage discharge and disposal records will promote compliance, facilitate enforcement, and reduce the amount of plastics discharged into the marine environment.

EFFECTIVE DATE: May 19, 1994.

ADDRESSES: Unless otherwise indicated, documents referenced in this preamble are available for inspection and copying at the office of the Executive Secretary, Marine Safety Council (G–LRA/3406), U.S. Coast Guard Headquarters, 2100 Second Street SW., room 3406, Washington, DC 20593–0001 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–6234.

FOR FURTHER INFORMATION CONTACT: Lieutenant Jonathan C. Burton, Project Manager, Marine Environmental Protection Division (G–MEP), (202) 267–6714.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are Lieutenant Jonathan C. Burton, Project Manager, Marine Environmental Protection Division, and Mr. Stephen H. Barber, Project Counsel, Office of Chief Counsel.

Regulatory History

On May 20, 1993, the Coast Guard published a notice of proposed rulemaking entitled "Recordkeeping of Refuse Discharges From Ships" in the **Federal Register** (58 FR 29482). The Coast Guard received 23 letters commenting on the proposal. A public hearing was not requested and one was not held.

These statutory provisions had been addressed previously in a Coast Guard notice of proposed rulemaking (54 FR 37084; September 6, 1989) but the regulatory section, as proposed, failed to receive OMB approval under the Paperwork Reduction Act and was deleted from the interim rule published on May 2, 1990 (55 FR 18578).

Background and Purpose

The Marine Plastic Pollution Research and Control Act of 1987 (the Act) (Pub. L. 100–220) implements Annex V of MARPOL 73/78. Section 2107 of the Act (33 U.S.C. 1903 (b)(2)(A)) requires that the Secretary of the Department in which the Coast Guard is operating prescribe regulations which (a) require certain U.S. "ships" (defined in the Act to include fixed or floating platforms, as well as vessels) to maintain refuse record books and (b) specify the ships to which the regulations apply. Refuse record books will be used to document waste discharges from the ships.

Despite implementation of other Coast Guard Annex V regulations to date, large amounts of plastic continue to wash ashore, obstruct navigation, and entangle marine life. Very likely, much of this plastic was illegally discharged as garbage from ships. According to the Coast Guard's "MARPOL Reception Facility Study," an informal survey of all Annex V reception facilities on the East and Gulf coasts, less than 20 percent of the vessels calling at these ports off-load garbage at a reception facility. Yet, Coast Guard boarding officers frequently find no trace of garbage, separated plastics, or incinerated ash on ships that doubtlessly generate large quantities of garbage, such as vessels on long voyages. The evidence strongly suggests that, despite current regulations, large amounts of garbage are still being discharged overboard before plastics are separated out for later disposal ashore or incineration aboard.

Though no regulation can stop a crew member intent on violating the regulation from illegally discharging garbage, certain measures can be taken to reduce the number of intentional, as well as negligent, illegal discharges. Under 33 CFR 151.63(a), the master or person in charge of a "ship" is made personally responsible for all discharge or disposal operations. Therefore, a requirement for the master or person in charge to maintain detailed records of each disposal operation will promote knowledge of the discharge regulations and awareness of waste handling practices on the ship, and provide a means of verifying that masters and persons in charge are carrying out their responsibilities. These records will provide a more complete and accurate source of information for boarding officers than would the recollections, over the duration of a voyage, of the master or person in charge. The Coast Guard has already identified the benefits of records by stating in 33 CFR 151.63(b)(2) that log entries indicating discharge operations may be considered by enforcement personnel in evaluating compliance.

Furthermore, the Coast Guard's "MARPOL Reception Facility Study" states that refuse recordkeeping is critical to strengthening enforcement efforts. It is clear that the previous regulations have failed to curtail the growing pollution problem. The waste management plans required by 33 CFR 151.57, which, it was hoped, would satisfy the statutory mandate for a refuse record book, have in and of themselves produced inadequate results. It is now believed that, in conjunction with waste management plans, refuse recordkeeping will measurably improve the management of refuse aboard ships. In addition, it will provide data for evaluating this regulatory program and its effect on the environment. Coast Guard boarding officers are noting with continued frequency that foreign vessels are maintaining refuse records in order to demonstrate that they follow proper discharge procedures.

In addition to this rulemaking, the Coast Guard is pursuing adoption of an international requirement for refuse recordkeeping through the International Maritime Organization (IMO). In this regard, the Coast Guard submitted an action paper at IMO's Marine Environment Protection Committee meeting in July 1993.

Discussion of Comments and Changes

I. General Comments

(1) Three comments were in favor of the regulations. Of these three, one saw no problems with the rule and the other two encouraged vigorous enforcement.

The Coast Guard intends to vigorously enforce these regulations.

(2) One comment stated that the rule would have no effect on the discharge of garbage in the marine environment since those who illegally dump would merely falsify records and continue the practice.

The recording of waste disposal will aid in enforcement by identifying those ships that do not appear to have policies and disposal methods that support the records they provide.

(3) One comment suggested that methods other than recordkeeping be used to reduce the amount of garbage in the marine environment. Specifically, they proposed that plastic packaging materials be banned and replaced with biodegradable materials, that ship operators be required to provide garbage handling personnel, and that on board waste processing equipment be required.

These ideas may have merit and deserve future consideration. However, they are outside of the scope of this rulemaking, which is limited to implementing 33 U.S.C. 1903(b)(2)(A).

(4) One comment stated that this recordkeeping should be required on the international level to avoid duplicative national laws.

Though this idea may have merit, it is outside of the scope of this rulemaking.

II. Applicability (Section 151.55(a))

(1) The Coast Guard is in the process of converting measurements in many of its regulations to the metric system. Therefore, § 151.55(a)(1) has been changed to refer to vessels of "12.2 meters (approximately 40 feet)."

(2) Eleven comments were received from representatives of the offshore oil and gas industry indicating that regulations on discharges already exist for fixed and floating platforms and that this additional requirement would be unnecessary and redundant.

Offshore platforms are made subject to the recordkeeping requirement in 33 U.S.C. 1903(b)(2)(A)(i) because platforms are included in the term "ship" as used in that provision. However, this rulemaking should have little effect on platform operators as all discharges, except for ground victual waste beyond 12 nautical miles, are prohibited already under 33 CFR 151.73.

(3) One comment suggested that vessels or platforms discharging garbage to offshore supply vessels (OSV's) be required to provide the OSV with records indicating the generator and amount of waste so that the OSV can make an accurate record of waste it discharges ashore.

The records required by this rule are for establishing compliance and maintaining a statistical record of garbage discharged at sea. This will be done by inspections on the ships in question. Therefore, there is no justification to put an additional burden on vessels and platforms by requiring them to provide OSV's with garbage records. Furthermore, an OSV is not required under this rule to keep records of garbage it takes as cargo from another vessel or platform. The word "garbage", as used throughout part 151, is defined in 33 CFR 151.05 as waste generated during the normal operation of the ship. Garbage taken from a vessel or platform for shipment ashore is considered cargo on the OSV and is regulated by the Shore Protection Act of 1988 (33 U.S.C. 2601 *et seq.*). It can not be mixed with the OSV's ship-generated garbage and disposed of at sea.

(4) One comment from an association representing a large segment of the passenger vessel industry recommended that passenger vessels certificated for ocean service, though engaged exclusively in inland trade, not be required to maintain refuse records.

While these vessels usually discharge at shore reception facilities, it would be difficult, if not impossible, for enforcement officials to determine that these vessels never operate outside of inland waters. However, § 151.55(c)(6) has been changed to exclude garbage discharged to shore reception facilities from the requirement that garbage be described by category. Shore discharges do not have the limitations as to contents as to discharges at sea. This change significantly reduces the reporting burden for passenger, as well as other, vessels that discharge to shore.

(5) One comment from a representative of the coastal towing industry stated that their vessels rarely operate outside of 20 miles, have small crews, and are able to retain their garbage on board for shore disposal. Therefore, they should be exempt from the rule.

The capability of retaining garbage on board for disposal ashore is not sufficient justification to be exempted from this rule. However, as with other vessels, if towing vessels retain their garbage on board for disposal to a shore reception facility, they would be exempt from the requirements that they categorize their garbage under § 151.55(d)(6).

(6) Two comments stated that foreign ships were a major contributor to debris in the marine environment and should be included in this rule.

These regulations are limited by 33 U.S.C. 1903(b)(2)(A) to ships of United States registry or nationality or operated under the authority of the United States.

(7) One comment stated that recreational vessels were a major cause of garbage in the marine environment and should be included in this requirement.

As discussed in the preamble of the proposed rule, the majority of recreational vessels do not operate outside of the inland or coastal waters of the United States. They usually are engaged in voyages of short duration and do not generate large amounts of garbage. Recreational vessels have a greater ability to retain garbage on board until returning to port, where they usually have access to trash receptacles at the marina. Additionally, there is no requirement for recreational vessels to maintain a log of any kind, making recordkeeping a greater burden.

(8) One comment stated that there is no evidence that vessels are the problem and that the major cause of garbage in the water is sewage outflows.

An increasing number of Coast Guard pollution cases clearly document a pattern of illegal garbage discharges from vessels. This is confirmed each year by the beach cleanups conducted under the guidance of the Center for Marine Conservation. While sewage outflows may be a significant cause of garbage in the marine environment, regulation of these outflows is outside of the scope of this rulemaking.

(9) One comment stated that public vessels are a major cause of garbage in the water.

Public vessels were not required to be in compliance with the Marine Plastic Pollution Research and Control Act of 1987 until December 31, 1993. Guidance has been, or will be, developed by the agencies responsible for these vessels.

(10) One comment questioned why this rule applies to vessels of 40 feet or more, where the 1989 proposal applied to vessels of 79 feet or more.

The Coast Guard lowered the size requirement in order to include classes of vessels that have been identified as possible polluters in a study conducted by the Coast Guard and submitted to Congress on the implementation of MARPOL, Annex V. This study, entitled "Compliance with the Marine Plastic Pollution Research and Control Act of 1987", was required by that Act. There is further discussion of the 40 foot threshold in the preamble to the May 20, 1993, notice of proposed rulemaking (58 FR 29483).

III. Information on Discharge or Disposal Operations (Section 151.55(c))

(1) The MARPOL protocols request that the quantity of garbage disposed of at a shore reception facility be recorded in cubic meters. Therefore, § 151.55(c)(5) has been changed to this standard.

(2) One comment stated that the requirement to log the distance to shore in addition to recording the latitude and longitude was unnecessary. The comment stated that many vessels do not routinely keep track of the vessels's distance from shore.

The provisions in §§ 151.51 through 151.77 that specify where each type of garbage can be discharged are based on the distance of the vessel from shore. Effective enforcement depends on knowing how far from shore a particular type of garbage was discharged. However, recognizing that calculating the precise distance from shore using the latitude and longitude is burdensome, the Coast Guard has changed § 151.55(c)(4) to allow the distance from shore to be estimated. This alleviates the need for a specific calculation.

(2) One comment recommended that the number of categories for recording of the contents of garbage be reduced.

Categories are necessary because the discharge regulations in §§ 151.51 through 151.77 are based on garbage contents. However, upon review of the various regulations, it was determined that none of the regulations applicable to vessels made a distinction between ground and unground victual waste. [Section 151.73 for platforms refers to ground victual wastes, but this is the only category allowed to be discharged from a platform.] Therefore, § 151.55(c)(6) has been changed to combine ground and unground victual waste into a single category. The word "victual" replaces "food", as used in the proposed rule, because it is a defined word used throughout part 151. [See § 151.05.]

(3) One comment stated that a single book should be developed to record the discharge of oil, noxious liquid substances, and garbage.

This rule allows ship operators to use such a book at their option. To require such a book is unnecessarily restrictive.

IV. Cost to Industry

(1) One comment stated that the estimate used in the draft Regulatory Evaluation of two minutes to sort garbage and record its disposal was too short a time.

The two minute estimate was intended only to cover the recording of the disposal of garbage, not the sorting as well. The sorting of garbage for disposal is an action that already must be undertaken to comply with the discharge restrictions of §§ 151.51 through 151.77, regardless of whether or not a ship is required to record that disposal. Sorting was not considered when determining the two minute estimate. Nevertheless, the Coast Guard has reevaluated the time necessary to determine and record the amount and type of garbage being discharged and has found that five minutes per entry is a more reasonable estimate.

(2) One comment was received from an association representing the towing industry stating that the Coast Guard's estimate of the number of coastal towing boats that would be subject to this rule was incorrect. Rather than the number 23, as used in the draft Regulatory Evaluation, they stated that the correct number was closer to 350.

The Regulatory Evaluation has been changed accordingly. In preparing the draft Regulatory Evaluation, the wrong number was inadvertently transposed and misstated. The Coast Guard agrees with the number provided by the comment.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It is not significant under the "Department of Transportation Regulatory Policies and Procedures" (44 FR 11040; February 26, 1979). A final Regulatory Evaluation has been prepared and is available in the docket for inspection or copying where indicated under ADDRESSES. The following is a summary of the Evaluation.

The total annual projected cost to industry of requiring that refuse records be maintained is estimated to be $12,370,915.54. The increase in this total, as compared to that in the draft Regulatory Evaluation, is due to the increase in the estimated recording time from two to five minutes. The total annual projected cost does not reflect the potential reduction in reporting time for ships discharging at shore facilities or incinerating on board. In the final rule, ship operators who discharge on shore or who incinerate on board no longer need to categorize the contents of their garbage. Nor does the projected cost reflect the potential reduction in reporting time resulting from the deletion of the requirement that the ship's distance from shore be precisely calculated. In the final rule, the distance may be estimated.

The Coast Guard based the implementation costs of these regulations on the following categories of U.S. ships: freight and tank vessels, tug and tow vessels, small fishing vessels (less than 300 gross tons), large fishing vessels (300 gross tons or more), passenger vessels, cruise vessels, vessels engaged in offshore oil and gas operations, research and other miscellaneous classes of vessels, and manned fixed and floating platforms. The annual cost for a ship to comply with these regulations was calculated by multiplying the time it would take to complete a refuse record entry (five minutes), by the number of discharges per day (one), by the average wage per minute of the deck officer, chief steward, or operator aboard each category of ship, and by the average number of discharges per year for each category of ship.

The annual cost per ship in each category is estimated to be: freight or tank vessel: $2,145.79; tug or tow vessel: $804.67; small fishing vessel: $468.48; large fishing vessel: $585.21; passenger vessel: $804.67; cruise vessel: $6,437.37; offshore oil or mineral vessel: $890.01; research or other miscellaneous class of vessel: $420.62; and manned fixed or floating platform: $128.01.

The estimated numbers of vessels affected in each category are: 586 freight and tank vessels, 350 tug and tow vessels, 16,948 small fishing vessels, 224 large fishing vessels, 2,870 passenger vessels, 4 cruise vessels, 276 offshore oil and mineral vessels, 124 research and other miscellaneous classes of vessels, and 1,000 manned fixed and floating platforms.

The total annual cost for each category of ship was calculated by multiplying annual cost per ship by the estimated number of ships effected in each category: freight and tank vessels: $1,257,432.94; tug and tow vessels: $281,634.50; small fishing vessels: $7,939,799.04; large fishing vessels: $131,087.04; passenger vessels: $2,309,402.90; cruise vessels: $25,749.48; offshore oil and mineral vessels: $245,642.76; research and other miscellaneous classes of vessels: $52,156.88; and manned fixed and floating platforms: $128,010.00.

The average annual burden of this requirement per respondent is estimated to be 20.9 hours. This average was calculated by dividing the total number of hours spent on recordkeeping annually, by the total number of applicable ships.

Small Entities

The Coast Guard does not have accurate information on how many vessels or manned fixed or floating platforms would qualify as small entities and what the economic impact on them would be. However, because the recordkeeping is expected to require only five minutes per day and no particular record book or format is prescribed, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains a collection of information requirement. The Coast Guard has submitted the requirements to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), and OMB has approved them. The section number is § 151.55 and the corresponding OMB approval number is OMB Control Number 2115–0613.

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have 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 of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. The regulations are administrative in nature and are expected to have some positive but no negative impact on the environment. The regulations should contribute to the reduction of the occurrence of plastic, as well as other ship-generated garbage, in the marine environment. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 151

Oil pollution, Reporting and recordkeeping requirements, Water pollution control.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 151 as follows:

PART 151—VESSELS CARRYING OIL, NOXIOUS LIQUID SUBSTANCES, GARBAGE, MUNICIPAL OR COMMERCIAL WASTE, AND BALLAST WATER

1. The authority citation for part 151 continues to read as follows:

Authority: 33 U.S.C. 1321(j)(1)(C) and 1903(b); E.O. 11735, 3 CFR, 1971–1975 Comp., p. 793; 49 CFR 1.46.

2. Section 151.55 is added to read as follows:

§ 151.55 Recordkeeping requirements.

(a) This section applies to the following:

(1) Each manned oceangoing ship (other than a fixed or floating platform) of 12.2 meters (approximately 40 feet) or more in length that is engaged in commerce and that is documented under the laws of the United States or numbered by a State.

(2) Each manned fixed or floating platform subject to the jurisdiction of the United States.

(b) The master or person in charge of each ship under paragraph (a)(1) or (a)(2) of this section shall ensure that a written record is maintained on the ship of each of the following garbage discharge or disposal operations:

(1) Discharge overboard.

(2) Discharge to another ship.

(3) Discharge to a reception facility.

(4) Incineration on the ship.

(c) The record under paragraph (b) of this section must contain the following information on each discharge or disposal operation:

(1) The type of operation as described under paragraphs (b)(1) through (b)(4) of this section.

(2) The date and time of the operation.

(3) If the operation was conducted at a port, the name of the port.

(4) If the operation was not conducted at a port, the latitude and longitude of the location where the operation was conducted and the estimated distance of that location from shore. If the operation involved off-loading to another ship, the identity of the receiving ship by name and official number.

(5) The amount of garbage involved, described by volume in cubic meters.

(6) For discharges into the sea, a description of the contents of the garbage, described by the following categories:

(i) Plastic material.

(ii) Floating dunnage, lining, or packing material.

(iii) Ground paper products, rags, glass, metal, bottles, crockery, or other similar garbage.

(iv) Unground paper products, rags, glass, metal, bottles, crockery, or other similar garbage.

(v) Victual wastes.

(vi) Incinerated ash.

(vii) Incinerated plastic residue.

(d) The record under paragraph (b) of this section must be prepared at the time of the operation, certified as correct by the master or person in charge of the ship, maintained on the ship for two years following the operation, and made available for inspection by the Coast Guard.

3. In § 151.63, paragraph (b)(2) is revised to read as follows:

§ 151.63 Shipboard control of garbage.

* * * * *

(b) * * *

(2) Records under § 151.55 or log entries of garbage discharges.

* * * * *

Dated: April 1, 1994.

A.E. Henn,

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

[FR Doc. 94–9409 Filed 4–18–94; 8:45 am]

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federal register

Tuesday
April 19, 1994

Part IX

The President

Proclamation 6673—National Volunteer Week, 1994

Federal Register
Vol. 59, No. 75
Tuesday, April 19, 1994

Presidential Documents

Title 3—

The President

Proclamation 6673 of April 15, 1994

National Volunteer Week, 1994

By the President of the United States of America

A Proclamation

Since the founding of our democracy, the ideal of community service has been an integral part of our national character. As the words of Thomas Jefferson remind us, "A debt of service is due from every man to his country proportioned to the bounties which nature and fortune have measured to him." Throughout our history, Americans have been called upon to meet his challenge a thousandfold. For our Nation is a place of tremendous blessings—a noble purpose, a wealth of resources, a diverse and determined people. We are rich in the gifts of freedom. During this week especially, we realize anew that shared responsibility is freedom's price.

That our vibrant spirit of community has made our country strong reflects our understanding of this enduring truth. Every day, countless volunteers across America work to address the fundamental necessities of our people—educating our youth, protecting our environment, caring for those in need. From children who help older Americans after school to volunteer firemen who guard our neighborhoods while we sleep, these dedicated individuals bring a sense of hope and security to everyone whose lives they touch. Their service makes us stronger as a Nation, setting a powerful example of leadership and compassion to which we all can aspire.

This past year has marked the beginning of a new era for America, an era in which those of us who have benefited from this great land are acting on our instincts to help others in return. Though government has an important role to play in meeting the many challenges that remain before us, we are coming to understand that no organization, including government, will fully succeed without the active participation of each of us. Working family by family, block by block, the efforts of America's volunteers are vital to enabling this country to live up to the true promise of its heritage.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by the authority vested in me by the Constitution and laws of the United States, do hereby proclaim the week of April 17 through April 23, 1994, as "National Volunteer Week." I call upon all Americans to observe this week with appropriate programs, ceremonies, and activities as an expression of their gratitude.

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

William J. Clinton

[FR Doc. 94–9613
Filed 4–18–94; 11:03 am]
Billing code 3195–01–P

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Vol. 59, No. 75

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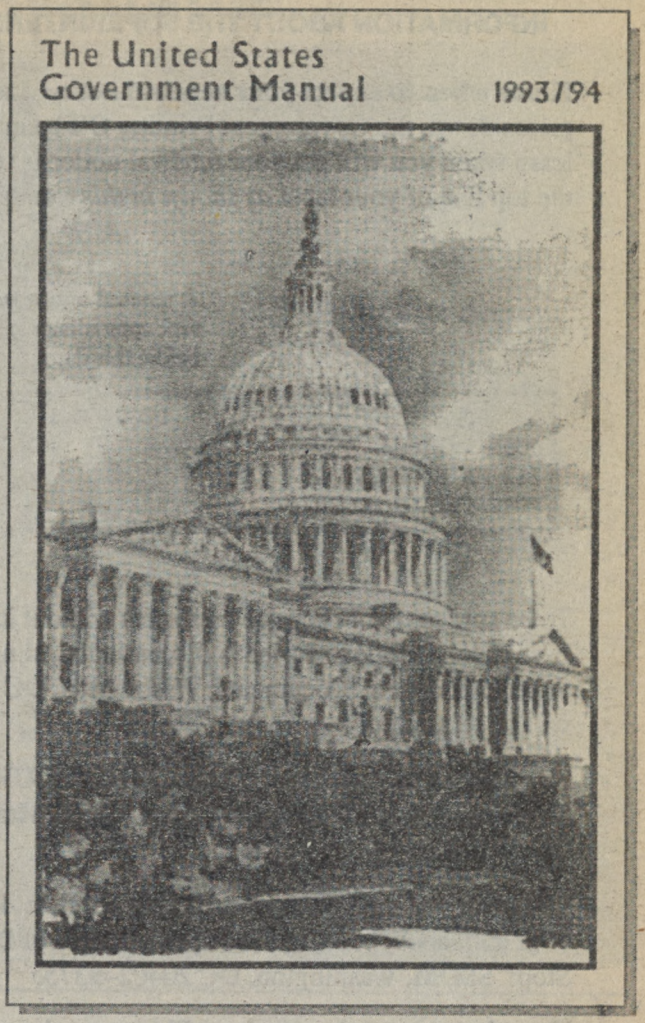
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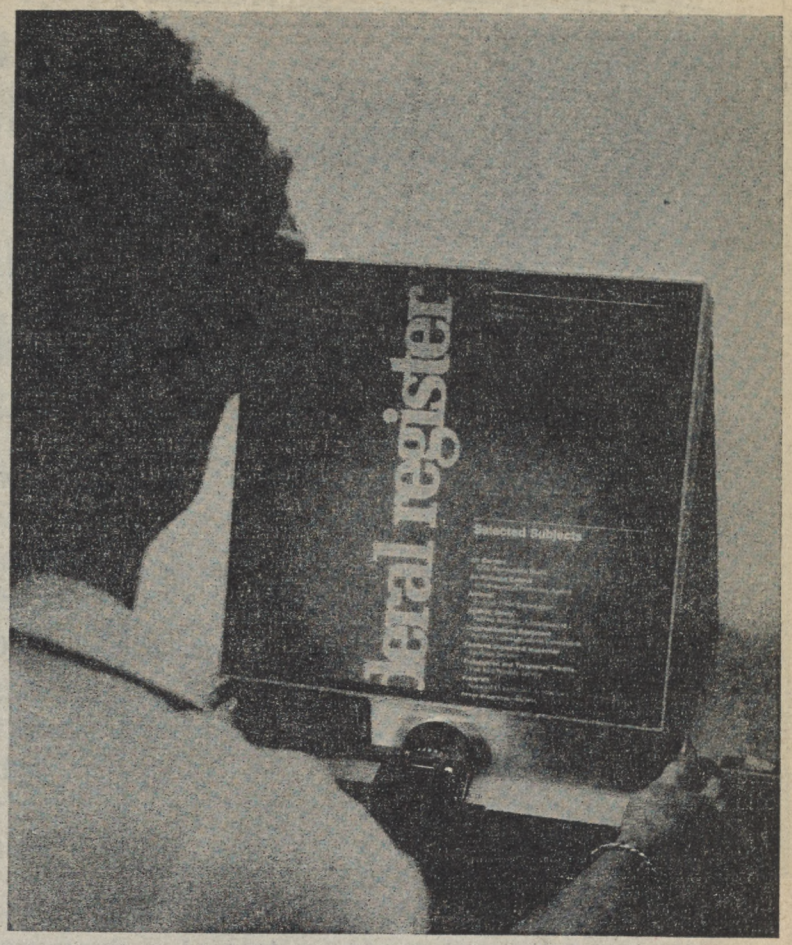
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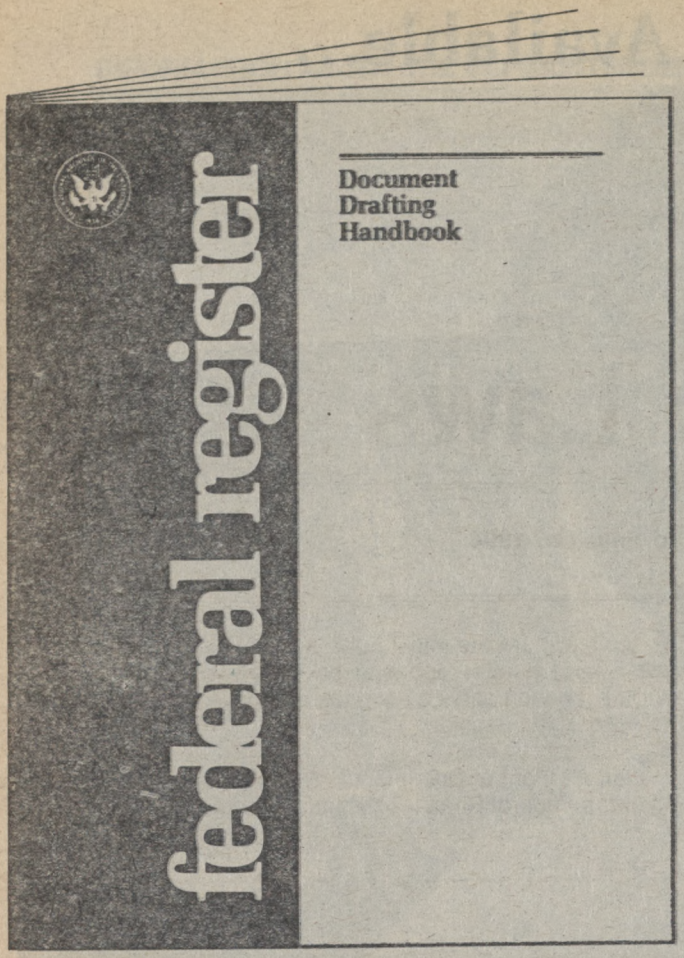
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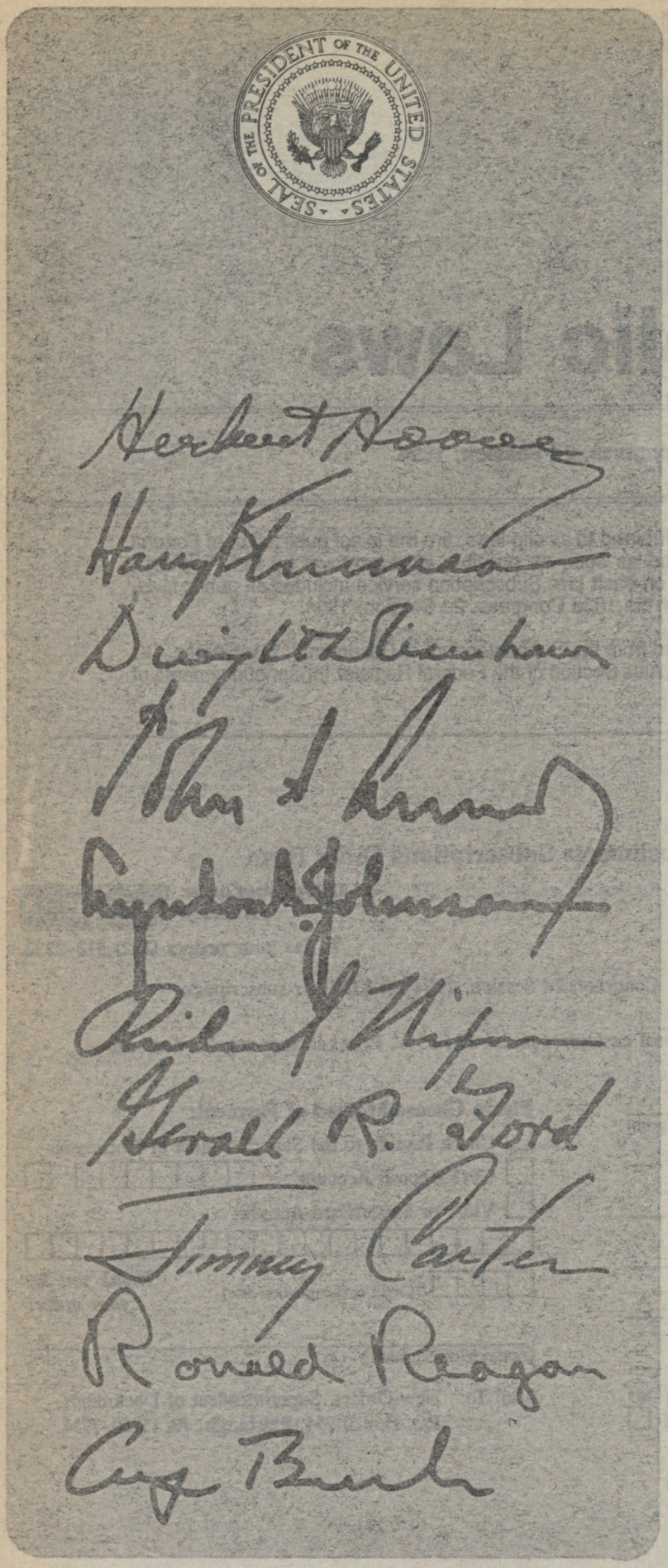
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