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federal register

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(ISSN 0097–6326)

6–22–94
Vol. 59 No. 119
Pages 32075–32308

Wednesday
June 22, 1994

federal register

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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Contents

Federal Register

Vol. 59, No. 119

Wednesday, June 22, 1994

Agricultural Marketing Service
See Packers and Stockyards Administration
PROPOSED RULES
Practice and procedure:
Formal adjudicatory proceedings, cease and desist proceedings, etc.; telephone and correspondence conferences, etc., 32138

Agriculture Department
See Agricultural Marketing Service
See Packers and Stockyards Administration
PROPOSED RULES
Practice and procedure:
Formal adjudicatory proceedings, cease and desist proceedings, etc.; telephone and correspondence conferences, etc., 32138

Commerce Department
See Foreign-Trade Zones Board
See International Trade Administration
See Minority Business Development Agency
See National Institute of Standards and Technology
See National Oceanic and Atmospheric Administration

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
China, 32190
Korea, 32190–32191

Consumer Product Safety Commission
RULES
Privacy Act; implementation, 32077–32078
NOTICES
Meetings; Sunshine Act, 32260

Drug Enforcement Administration
NOTICES
Schedules of controlled substances; production quotas:
Schedules I and II—
1994 aggregate, 32223–32224
Applications, hearings, determinations, etc.:
Townsend, Linwood T., D.D.S., 32224–32225

Education Department
RULES
Postsecondary education:
Student financial assistance programs; eligibility requirements, etc.
Correction, 32081–32082
PROPOSED RULES
Postsecondary education:
Student assistance general provisions, Federal Perkins loan, Federal work-study, and Federal supplemental education opportunity grant programs, 32264–32287
NOTICES
Agency information collection activities under OMB review, 32191–32192

Energy Department
See Federal Energy Regulatory Commission
See Hearings and Appeals Office, Energy Department

Environmental Protection Agency
RULES
Acquisition regulations:
Reporting and recordkeeping requirements, 32082–32083
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
N-(n-octyl)-2-pyrrolidone, etc., 32083–32084
Thifensulfuron methyl, etc., 32084–32085
Reporting and recordkeeping requirements, 32133–32134
PROPOSED RULES
Air pollutants, hazardous; national emission standards:
Early reductions program high risk list, 32165—32167
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Bifenthrin, 32167–32169
Dimethyl ether, 32170–32172
Ethyl oleate, 32169–32170
Poly(vinylpyrrolidone-1-eicosene), etc., 32173–32175
Sulfur dioxide and tetradifon, 32172–32173
NOTICES
Clean Air Act:
Acid rain provisions—
State permits, 32203–32204
Meetings:
Science Advisory Board, 32204
Pesticide programs:
Ciba-Geigy Corp.—
Genetically modified microbial pesticides; field test, 32204–32205
Nonindigenous microbial pesticides; field test, 32205
Pesticides; emergency exemptions, etc.:
4-bromo-2-(4-chlorophenyl)-1-(ethoxymethyl)-5-(trifluoromethyl)-1H-pyrrole-3-carbonitrile, 32205–32206, 32207
Imidacloprid, 32206–32207

Equal Employment Opportunity Commission
NOTICES
Meetings; Sunshine Act, 32261

Executive Office of the President
See Trade Representative, Office of United States

Farm Credit Administration
NOTICES
Regulatory philosophy; policy statement, 32189

Federal Aviation Administration
RULES
Class E airspace, 32075–32077
PROPOSED RULES
Airworthiness directives:
Sikorsky, 32144–32146
Class D airspace, 32146
Class E airspace, 32146–32147
NOTICES
Meetings:
Research, Engineering, and Development Advisory Committee, 32258

Federal Communications Commission
RULES
Organization, functions, and authority delegations:
Cable Services Bureau, 32131–32133
Radio stations; table of assignments:
Virginia, 32133
PROPOSED RULES
Radio stations; table of assignments:
Illinois, 32177–32178
Louisiana, 32177
Maryland, 32177
Mississippi and Louisiana, 32177
Television stations; table of assignments:
Hawaii, 32176

Federal Election Commission
NOTICES
Special elections; filing dates:
Oklahoma, 32207–32208

Federal Emergency Management Agency
RULES
Flood elevation determinations:
Arkansas et al., 32130–32131
Iowa et al., 32127–32128
Oklahoma et al., 32128–32130
NOTICES
Disaster and emergency areas:
Michigan, 32208–32209

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
Canal Electric Co. et al., 32191–32192
Environmental statements; availability, etc.:
Northern States Power Co., 32192
Natural Gas Policy Act:
Self-implementing transactions, 32192–32200
Applications, hearings, determinations, etc.:
Kentucky West Virginia Gas Co., 32200–32201
Mississippi River Transmission Corp., 32201
Natural Gas Pipeline Co. of America, 32201–32202
Southern California Gas Co., 32202
Texas Gas Transmission Corp., 32202
Transwestern Pipeline Co., 32202

Federal Mine Safety and Health Review Commission
NOTICES
Meetings; Sunshine Act, 32260

Federal Reserve System
NOTICES
Committees; establishment, renewal, termination, etc.:
Consumer Advisory Council, 32209–32210
Meetings; Sunshine Act, 32260

Financial Management Service
See Fiscal Service

Fiscal Service
NOTICES
Senior Executive Service:
Performance Review Board; membership, 32258

Fish and Wildlife Service
PROPOSED RULES
Endangered and threatened species:
Recovery plans—
Railroad valley springfish, 32178–32179
NOTICES
Endangered and threatened species permit applications, 32218

Food and Drug Administration
RULES
Food for human consumption:
Evaporated milk; identity standard
Effective date, 32078
NOTICES
Food additive petitions:
Ciba-Geigy Corp., 32210

Foreign-Trade Zones Board
NOTICES
Applications, hearings, determinations, etc.:
Pennsylvania
Chevron U.S.A. Products Co.; oil refinery complex; correction, 32180
Virginia, 32180

Health and Human Services Department
See Food and Drug Administration
See Health Care Financing Administration
See Inspector General Office, Health and Human Services Department

Health Care Financing Administration
See Inspector General Office, Health and Human Services Department
RULES
Medicare program:
CHAMPUS and CHAMPVA participation, hospital admissions for veterans, discharge rights notice and hospital responsibility for emergency care, 32086–32127

Hearings and Appeals Office, Energy Department
NOTICES
Special refund procedures; implementation, 32202–32203

Housing and Urban Development Department
NOTICES
Agency information collection activities under OMB review, 32210–32216
Organization, functions, and authority delegations:
Regional Administrators et al.; authority revocation and redelegation; correction, 32217–32218
Privacy Act:
Systems of records, 32217

Inspector General Office, Health and Human Services Department
RULES
Medicare program:
CHAMPUS and CHAMPVA participation, hospital admissions for veterans, discharge rights notice and hospital responsibility for emergency care, 32086–32147

Interior Department
See Fish and Wildlife Service
See Interior Department
See Land Management Bureau
See National Park Service
PROPOSED RULES
Natural resource damage assessments, 32175–32176

Internal Revenue Service
RULES
Income taxes:
Income and loss allocations; periods before and after date of loss corporation ownership change, 32078–32081
PROPOSED RULES
Income taxes:
Stock and stock rights; constructive distributions, 32160–32165

International Trade Administration
NOTICES
Antidumping:
Antifriction bearings (other than tapered roller bearings) and parts from—
France et al., 32180–32181
High-tenacity rayon filament yarn from—
Germany, 32181–32183
Industrial phosphoric acid from—
Israel, 32184
Countervailing duties:
Hot rolled lead and bismuth carbon steel products from—
Germany, 32184–32185
United Kingdom, 32185

International Trade Commission
NOTICES
Import investigations:
Aramid fiber formed of poly para-phenylene terephthalamide from—
Netherlands, 32220
Phthalic anhydride from—
Venezuela, 32220–32221
Sports sandals and components, 32220

Interstate Commerce Commission
PROPOSED RULES
Practice and procedure:
Single State insurance registration, 32178
NOTICES
Railroad operation, acquisition, construction, etc.:
Fort Worth & Dallas Belt Railroad, 32221–32222

Justice Department
See Drug Enforcement Administration
NOTICES
Agency information collection activities under OMB review, 32222–32223

Land Management Bureau
NOTICES
Withdrawal and reservation of lands:
Nevada, 32218–32219
Wyoming, 32219

Mine Safety and Health Federal Review Commission
See Federal Mine Safety and Health Review Commission

Minority Business Development Agency
NOTICES
Business development center program applications:
California, 32185–32186
Nevada, 32186

National Aeronautics and Space Administration
NOTICES
Meetings:
Advisory Council task forces, 32225–32226
Aeronautics Advisory Committee, 32226

National Institute of Standards and Technology
NOTICES
Information processing standards, Federal:
Advanced data communication control procedures; withdrawn, 32186
SQL environments, 32186–32188
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Radcal Corp., 32188–32189

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Atlantic swordfish, 32136–32137
Northeast multispecies, 32134–32136
PROPOSED RULES
Oil Pollution Act:
Natural resource damage assessments, 32148–32155

National Park Service
NOTICES
Meetings:
Delta Region Preservation Commission, 32219–32220

Nuclear Regulatory Commission
PROPOSED RULES
Decommissioning funding requirements; clarification, 32138–32143
NOTICES
Meetings:
Pressurized thermal shock, 32246
Operating licenses, amendments; no significant hazards considerations; biweekly notices, 32226–32246
Petitions; Director's decisions:
Northeast Utilities, 32246–32247
Applications, hearings, determinations, etc.:
Illinois Power Co., 32247–32249
Southern Nuclear Operating Co., 32249–32251
Washington Public Power Supply System, 32251–32252

Office of United States Trade Representative
See Trade Representative, Office of United States

Packers and Stockyards Administration
PROPOSED RULES
Practice and procedure:
Formal adjudicatory proceedings, cease and desist proceedings, etc.; telephone and correspondence conferences, etc., 32138

Personnel Management Office
NOTICES
Agency information collection activities under OMB review, 32290–32308

Postal Service
PROPOSED RULES
Domestic Mail Manual:
Standards for annual fees and use of permit imprints, 32165

Public Health Service
See Food and Drug Administration

Research and Special Programs Administration
PROPOSED RULES
Pipeline safety:
Hazardous liquid transportation—
Environmentally sensitive areas; meeting, 32178

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
Depository Trust Co., 32252–32254
International Securities Clearing Corp., 32254–32256
Options Clearings Corp., 32256–32258

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Thrift Supervision Office
PROPOSED RULES
Savings associations:
Capital—
Common stockholders' equity, 32143–32144

Trade Representative, Office of United States
NOTICES
General Agreement on Tariffs and Trade (GATT); accession:
China, 32252

Transportation Department
See Federal Aviation Administration
See Research and Special Programs Administration
RULES
Organization, functions, and authority delegations:
General Counsel, 32134

Treasury Department
See Fiscal Service
See Internal Revenue Service
See Thrift Supervision Office
PROPOSED RULES
Government Securities Act of 1986; financial responsibility and recordkeeping requirement amendments, 32155–32160

Veterans Affairs Department
NOTICES
Meetings:
Persian Gulf Expert Scientific Committee, 32258–32259

Separate Parts In This Issue

Part II
Department of Education, 32264–32287

Part III
Office of Personnel Management, 32290–32308

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

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CFR PARTS AFFECTED IN THIS ISSUE

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

7 CFR

Proposed Rules:

0.....32138
1.....32138
7.....32138
47.....32138
50.....32138
51.....32138
52.....32138
53.....32138
54.....32138
180.....32138

9 CFR

Proposed Rules:

202.....32138

10 CFR

Proposed Rules:

30.....32138
40.....32138
70.....32138
72.....32138

12 CFR

Proposed Rules:

567.....32143

14 CFR

71 (3 documents).....32075, 32076

Proposed Rules:

39.....32144
71 (3 documents).....32146

15 CFR

Proposed Rules:

990 (2 documents).....32148

16 CFR

1014.....32077

17 CFR

Proposed Rules:

402.....32155
404.....32155

21 CFR

131.....32078

26 CFR

1.....32078
602.....32078

Proposed Rules:

1.....32160

34 CFR

600.....32081

Proposed Rules:

668.....32264
674.....32264
675.....32264
676.....32264

39 CFR

Proposed Rules:

111.....32165

40 CFR

9.....32082
180 (2 documents).....32083, 32084,

Proposed Rules:

63.....32165
180 (5 documents).....32167, 32169, 32170, 32172, 32173
185.....32172

42 CFR

405.....32086
489.....32086
1003.....32086

43 CFR

Proposed Rules:

11.....32175

44 CFR

65 (2 documents).....32127, 32128
67.....32130

47 CFR

0.....32131
73.....32133

Proposed Rules:

73 (6 documents).....32176, 32177

48 CFR

1501.....32133

49 CFR

1.....32134

Proposed Rules:

194.....32178
1023.....32178

50 CFR

630.....32136
651.....32134

Proposed Rules:

17.....32178

Rules and Regulations

Federal Register
Vol. 59, No. 119
Wednesday, June 22, 1994

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.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 94–AGL–17]

Establishment of Class E Airspace Areas; Waukegan, IL, et al.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments; correction.

SUMMARY: This action corrects an error by removing the airspace designation Willoughby, OH, Class E airspace published in a final rule, request for comments on May 13, 1994 [59 FR 24911], Airspace Docket No. 94–AGL–17.

EFFECTIVE DATE: 0901 UTC June 23, 1994.

FOR FURTHER INFORMATION CONTACT: Angeline D. Perri, Air Traffic Division, System Management Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (708) 294–7571.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 94–11720, Airspace Docket No. 94–AGL–17 published on May 13, 1994 [59 FR 24911], established Class E airspace at several locations. Class E airspace inadvertently was established at Willoughby, OH, by error. This action corrects that error by removing the Willoughby, OH, Class E airspace.

Correction of Final Rule; Request for Comments

Accordingly, pursuant to the authority delegated to me, Airspace Docket No. 94–AGL–17, as published in the **Federal Register** on May 13, 1994 [59 FR 24911], (**Federal Register** Document 94–11720, page 24912, column 2) is corrected in the amendment to the incorporation by reference in 14 CFR part 71 as follows:

71.1 [Corrected]

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

* * * * *

AGL OH E2 Willoughby, OH [Removed]

* * * * *

Issued in Des Plaines, Illinois, on June 15, 1994.

Roger Wall,

Manager, Air Traffic Division.

[FR Doc. 94–15150 Filed 6–21–94; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 93–ASW–33]

Modification of Class E Airspace: Refugio, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the Class E airspace at Refugio, TX. Class E airspace extending upward from 700 feet above ground level, has been designated at the Mellon Ranch Airport, Refugio, TX. This airspace overlies Rooke Field, located approximately 6 nautical miles (NM) west of the Mellon Ranch Airport. Operators at Rooke Field have requested that Rooke Field be excluded from the Class E airspace at Mellon Ranch Airport. Since the airspace within a ½ mile radius of Rooke Field is not needed to conduct safe operations, this action is intended to exclude that airspace from the Mellon Ranch Airport, Refugio, TX, Class E airspace.

EFFECTIVE DATE: 0901 UTC, August 18, 1994.

FOR FURTHER INFORMATION CONTACT: Alvin DeVane, System Management Branch, Air Traffic Division, Southwest Region, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530, telephone 817–222–5595.

SUPPLEMENTARY INFORMATION:

History

On March 9, 1994, a proposal to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify the Class E airspace at Refugio, TX, was published in the **Federal Register** (59 FR 11010).

Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. One commenter expressed concern about excluding the airspace within a 2 NM radius of Rooke Field from the Class E airspace at Mellon Ranch Airport. However, in a subsequent comment, the same commenter stated that he had no objection to excluding the airspace within a ½ mile radius of Rooke Field from the Mellon Ranch Airport Class E airspace. After further analysis, the FAA concurs with the final position of the commenter and is reducing the amount of excluded airspace to that airspace within a ½ mile radius of Rooke Field. This change will allow the continuation of more controlled airspace for the Mellon Ranch Airport while relinquishing unneeded control over the operations at Rooke Field. Additionally, the NPRM incorrectly listed the airspace in the narrative description as "E2". The designation of E2 is used to designate Class E airspace from the surface. The correct designation for this Class E airspace is "E5". Except for these modifications, this amendment is adopted as proposed.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace designations for airspace areas extending upward from 700 feet or more above ground level are published in Paragraph 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1994). The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations modifies the Class E airspace located at Refugio, TX.

The FAA has determined that this regulation only involves an established body of technical regulations that need frequent and routine amendments to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant

preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

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

* * * * *

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

* * * * *

ASW TX E5 Refugio. TX [Revised]

Refugio, Mellon Ranch Airport, TX
(lat 28°16'51" N., long. 97°12'41" W.)
Mellon Ranch RBN
lat 28°16'48" N., long. 97°12'21" W.)
Refugio, Rooke Field, TX
(lat. 28°17'37" N., long. 97°19'23" W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Mellon Ranch Airport and within 2.7 miles each side of the 345° bearing from the Mellon Ranch RBN extending from the 6.6-mile radius to 7.4 miles north of the airport and within 2.7 miles each side of the 145° bearing from the Mellon Ranch RBN extending from the 6.6-mile radius to 7.4 miles south of the airport, excluding that airspace within a ½ mile radius of Refugio, Rooke Field, TX, and excluding that airspace within the Rockport, TX, Class E airspace.

* * * * *

Issued in Fort Worth, TX, on June 2, 1994.

Larry D. Gray,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 94–15154 Filed 6–21–94; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 93–ASW–50]

Modification of Class E Airspace: Dallas/Fort Worth, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the Class E airspace at Dallas/Fort Worth, TX. An amendment to the very high frequency omnidirectional range/distance measuring equipment (VOR/DME) standard instrument approach procedure (SIAP) at Cleburne Municipal Airport, Cleburne, TX, has necessitated this action. Controlled airspace extending upward from 700 feet above ground level designated in conjunction with an airport for which an approved instrument approach procedure has been prescribed is needed to control aircraft executing the SIAP's. This action is intended to provide adequate Class E airspace for IFR operations at Cleburne, TX.

EFFECTIVE DATE: 0901 UTC, August 18, 1994.

FOR FURTHER INFORMATION CONTACT: Alvin DeVane, System Management Branch, Air Traffic Division, Southwest Region, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530, telephone 817–222–5595.

SUPPLEMENTARY INFORMATION:

History

On December 1, 1993, a proposal to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify the Class E airspace at Dallas/Fort Worth, TX, was published in the **Federal Register** (58 FR 63309).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments were received. Except for latitude/longitude position updates for Dallas/Fort Worth International Airport; McKinney Municipal Airport; Mesquite, Phil Hudson Municipal Airport; Mesquite radio beacon (RBN); Lancaster RBN; Fort Worth Spinks Airport; Weatherford, Parker Country Airport; Bridgeport Municipal Airport; and Decatur Municipal Airport, this amendment is the same as that proposed in the notice.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace designations for airspace areas extending upward from 700 feet or more above ground level are published in Paragraph 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1994). The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations revises the Class E airspace located at Dallas/Fort Worth, TX, to provide for adequate Class E airspace for aircraft executing the SIAP's at Cleburne, TX.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

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

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

* * * * *

ASW TX E5 Dallas/Fort Worth, TX [Modify]

Dallas/Fort Worth International Airport, TX

(lat. 32°53'49" N., long. 97°02'33" W.)
McKinney Municipal Airport, TX
(lat. 33°10'50" N., long. 96°35'26" W.)
Rockwall Municipal Airport, TX
(lat. 32°55'50" N., long. 96°26'08" W.)
Blue Ridge VORTAC
(lat. 33°17'00" N., long. 96°21'54" W.)
Mesquite, Phil L. Hudson Municipal Airport, TX
(lat. 32°44'49" N., long. 96°31'50" W.)
Mesquite RBN
(lat. 32°48'33" N., long. 96°31'44" W.)
Phil L. Hudson ILS Localizer
(lat. 32°44'21" N., long. 96°31'50" W.)
Lancaster Airport, TX
(lat. 32°34'45" N., long. 96°43'09" W.)
Lancaster RBN
(lat. 32°34'40" N., long. 96°43'18" W.)
Dallas/Fort Worth VORTAC
(lat. 32°51'57" N., long. 97°01'41" W.)
Fort Worth Spinks Airport, TX
(lat. 32°33'55" N., long. 97°18'30" W.)
Cleburne Municipal Airport, TX
(lat. 32°21'17" N., long. 97°26'03" W.)
Bourland Field, TX
(lat. 32°34'47" N., long. 97°35'34" W.)
Acton VORTAC
(lat. 32°26'05" N., long. 97°39'50" W.)
Granbury Municipal Airport, TX
(lat. 32°26'40" N., long. 97°49'01" W.)
Weatherford, Parker County Airport, TX
(lat. 32°44'47" N., long. 97°40'57" W.)
Bridgeport Municipal Airport, TX
(lat. 33°10'29" N., long. 97°49'42" W.)
Bridgeport VORTAC
(lat. 33°14'16" N., long. 97°45'59" W.)
Decatur Municipal Airport, TX
(lat. 33°15'17" N., long. 97°34'50" W.)

That airspace extending upward from 700 feet above the surface within a 30-mile radius of Dallas/Fort Worth International Airport and within a 6.5-mile radius of McKinney Municipal Airport and within a 6.3-mile radius of Rockwall Municipal Airport and within 1.6 miles each side of the 190° radial of the Blue Ridge VORTAC extending from the 6.3-mile radius to 10.8 miles north of the airport and within a 6.5-mile radius of Phil L. Hudson Airport and within 8 miles east and 4 miles west of the 001° bearing from the Mesquite RBN extending from the 6.5-mile radius to 19.7 miles north of the airport and within 1.7 miles each side of Phil L. Hudson ILS Localizer south course extending from the 6.5-mile radius to 11.1 miles south of the airport and within a 6.5-mile radius of the Lancaster Airport and within 8 miles west and 4 miles east of the 129° bearing from the Lancaster RBN extending from the 6.5-mile radius to 16 miles southeast of the RBN and within 8 miles northeast and 4 miles southwest of the 144° radial of the Dallas/Fort Worth VORTAC extending from the 30-mile radius of Dallas/Fort Worth International Airport to 35 miles southeast of the VORTAC and within a 6.5-mile radius of Fort Worth Spinks Airport and within 8 miles east and 4 miles west of the 178° bearing from the airport extending from the 6.5-mile radius to 21 miles south of the airport and within a 6.9-mile radius of Cleburne Municipal Airport and within 3.6 miles each side of the 112° radial of the Acton VORTAC extending from the 6.9-mile radius of the Cleburne Municipal Airport to 12.2 miles northwest of the airport and within a 6.5-mile radius of Bourland Field and within a 6.3-mile radius of Granbury Municipal Airport and within a 6.3-mile radius of Parker County Airport and within 8 miles east and 4 miles west of the 357° radial of the Acton VORTAC extending from the 6.3-mile radius to 21.4 miles south of the airport and within a 6.3-mile radius of Bridgeport Municipal Airport and within 1.6 miles each side of the 220° and 040° radials of the Bridgeport VORTAC extending from the 6.3-mile radius to 10.6 miles northeast of the airport and within a 6.3-mile radius of Decatur Municipal Airport and within 1.5 miles each side of the 083° radial of the Bridgeport VORTAC extending from the 6.3-mile radius to 9.2 miles west of the airport.

* * * * *

Issued in Fort Worth, TX, on June 2, 1994.

Larry D. Gray,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 94–15152 Filed 6–21–94; 8:45 am]

BILLING CODE 4910–13–M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1014

Privacy Act of 1974; Specific Exemptions

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: The Consumer Product Safety Commission ("Commission") is issuing a rule to exempt a system of records from certain provisions of the Privacy Act of 1974, 5 U.S.C. 552a ("Privacy Act"), to the extent that the system contains investigatory material pertaining to the enforcement of criminal laws or compiled for law enforcement purposes. The system of records includes the investigative files of the Office of Inspector General of the Commission.

EFFECTIVE DATE: July 22, 1994.

FOR FURTHER INFORMATION CONTACT: Richard W. Allen, Counsel to the Inspector General, Office of the General Counsel, Consumer Product Safety Commission, Washington, DC 20207, telephone 301–504–0980.

SUPPLEMENTARY INFORMATION:

Background

The Commission proposed this rule on August 2, 1990, at 55 FR 31404. No comments have been received, and the rule is being issued without change except for a fuller description of the record system subject to the rule and the correction of typographical errors. The purpose and effect of the rule is set forth below.

The Inspector General Act, 5 U.S.C. App., authorizes the Office of Inspector General of the Commission to conduct investigations to detect fraud and abuse in the programs and operations of the Commission and to assist in the prosecution of participants in such fraud or abuse. The Office of Inspector General of the Commission maintains information in a system of records, identified as "Office of the Inspector General Investigative Files—CPSC–6," pursuant to its law enforcement and criminal investigation functions. Disclosure of information in these investigatory files or disclosure of the identity of confidential sources could seriously undermine the effectiveness of the Inspector General's investigations. For example, premature disclosure of information of such investigations could enable suspects to take action to prevent detection of criminal activities, conceal or destroy evidence, or escape prosecution. Premature disclosure of this information could also lead to the possible intimidation of, or harm to, informants, witnesses, or investigative personnel and their families. Further, the imposition of certain Privacy Act restrictions on the manner in which information is collected, verified, or retained could significantly impede the effectiveness of the Inspector General's investigations and could preclude the apprehension and successful prosecution of persons engaged in fraud or criminal activity.

Thus, the Commission is issuing a rule to exempt this system of records from certain provisions of the Privacy Act where application of the Privacy Act would interfere with the conduct of an investigation by the Inspector General. Section (k)(2) of the Privacy Act, 5 U.S.C. 552a(k)(2), provides the authority for agencies to exempt records containing investigatory material compiled for law enforcement purpose from certain other provisions of the Act.

The information in this system of records may also be used for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment. Section (k)(5) of the Privacy Act, 5 U.S.C. 552a(k)(5), provides that investigatory material compiled solely for those purposes may be exempted from certain other provisions of the Privacy Act, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information under an express promise that the identity of the source would be held in confidence. The rule being issued provides for such exemptions.

16 CFR 1014.12 currently exempts other systems of records from certain

requirements of the Privacy Act. This rule adds a new paragraph to § 1014.12 to exempt the Inspector General's investigative files from certain requirements of the Privacy Act.

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Commission certifies that the amendment to 16 CFR 1014.12, Specific Exemptions, will not have a significant impact on a substantial number of small entities.

List of Subjects in 16 CFR Part 1014

Privacy.

For the reason stated in the preamble, Chapter II, Title 16 of the Code of Federal Regulations is amended as follows:

PART 1014—POLICIES AND PROCEDURES IMPLEMENTING THE PRIVACY ACT OF 1974

1. The authority citation for part 1014 continues to read as follows:

Authority: Privacy Act of 1974 (5 U.S.C. 552a).

§ 1014.12 [Amended]

2. Section 1014.12, *Specific exemptions,* is amended by adding paragraph (b) to read as follows:

* * * * *

(b) *Inspector General Investigative Files—CPSC–6.* All portions of this system of records which fall within 5 U.S.C. 552a(k)(2) (investigatory materials compiled for law enforcement purposes) and 5 U.S.C. 552a(k)(5) (investigatory materials solely compiled for suitability determinations) are exempt from 5 U.S.C. 552a(c)(3) (mandatory accounting of disclosures); 5 U.S.C. 552a(d) (access by individuals to records that pertain to them); 5 U.S.C. 552a(e)(1) (requirement to maintain only such information as is relevant and necessary to accomplish an authorized agency purpose); 5 U.S.C. 552a(e)(4)(G) (mandatory procedures to notify individuals of the existence of records pertaining to them); 5 U.S.C. 552a(e)(4)(H) (mandatory procedures to notify individuals how they can obtain access to and contest records pertaining to them); 5 U.S.C. 552a(e)(4)(I) (mandatory disclosure of records source categories); and the Commission's regulations in 16 CFR part 1014 which implement these statutory provisions.

Dated: June 17, 1994.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 94–15177 Filed 6–21–94; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 131

[Docket No. 91P–0090]

Evaporated Milk; Amendment of the Standard of Identity; Confirmation of Effective Date

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA) is confirming the effective date of June 13, 1994, for the final rule that amended the standard of identity for evaporated milk by revising the minimum milkfat and total milk solids content requirements and establishing a minimum milk solids-not-fat content requirement.

DATES: Effective date confirmed: June 13, 1994.

FOR FURTHER INFORMATION CONTACT: Nannie H. Rainey, Center for Food Safety and Applied Nutrition (HFS–158), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5099.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 14, 1994 (59 FR 17689), FDA published a final rule that amended the standard of identity for evaporated milk (21 CFR 131.130) to: (1) Reduce the minimum milkfat content requirement from 7.5 percent to 6.5 percent by weight; (2) reduce the minimum total milk solids content requirement from 25 percent to 23 percent by weight; and (3) add a minimum milk solids-not-fat content requirement of 16.5 percent by weight. This action was based on a petition from the American Dairy Products Institute, 130 North Franklin St., Chicago, IL 60606.

FDA gave interested persons until May 16, 1994, to file objections or requests for a hearing. The agency received no objections or requests for a hearing on the final rule. Therefore, FDA finds that the final rule published in the **Federal Register** of April 14, 1994, should be confirmed.

List of Subjects in 21 CFR Part 131

Cream, Food grades and standards, Milk, Yogurt.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201, 401, 403, 409, 701, 721 (21 U.S.C. 321, 341, 343, 348, 371, 379e)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), and redelegated to the Director, Center for Food Safety and Applied Nutrition (21 CFR 5.62), notice is given that the amendments of 21 CFR part 131 that were set forth in the **Federal Register** of April 14, 1994, final rule became effective June 13, 1994.

Dated: June 15, 1994.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 94–15186 Filed 6–21–94; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 8546]

RIN 1545–AL58

Limitations on Corporate Net Operating Loss

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final income tax regulations providing rules for allocating net operating loss or taxable income, and net capital loss or gain, within the taxable year in which a loss corporation has an ownership change under section 382 of the Internal Revenue Code of 1986. These regulations permit the loss corporation to elect to allocate these amounts between the period ending on the change date and the period beginning on the day after the change date as if its books were closed on the change date.

EFFECTIVE DATE: These regulations are effective June 22, 1994.

For dates of applicability of these regulations, see the **EFFECTIVE DATE** paragraph in the **SUPPLEMENTARY INFORMATION** portion of the preamble.

FOR FURTHER INFORMATION CONTACT: Roberta F. Mann of the Office of Assistant Chief Counsel (Corporate), Office of Chief Counsel, IRS, 1111 Constitution Avenue, NW, Washington, DC 20224 (Attention: CC:DOM:CORP:5) or telephone 202–622–7550 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3504(h)) under

control number 1545–1381. The estimated annual burden per respondent is estimated to be 0.1 hour.

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

Background

This document contains final regulations to be added to the Income Tax Regulations (26 CFR part 1) under section 382 of the Internal Revenue Code. The final regulations provide rules for the allocation of net operating loss or taxable income and net capital loss or gain within the taxable year in which a loss corporation has an ownership change. Proposed regulations on this subject were set forth in a notice of proposed rulemaking published in the **Federal Register** on November 19, 1992 (57 FR 54535). The IRS received public comments on the proposed regulations. No public hearing was requested and none was held. Having considered the comments submitted, the IRS and the Treasury Department adopt the proposed regulations as revised by this Treasury decision.

Explanation of Provisions

Following an ownership change, section 382 limits the amount of post-change income that may be offset by a corporation's pre-change loss. Sections 382(b)(3)(A) and (d)(1) require that, except as provided in section 382(h)(5) (relating to certain built-in gains and losses) and in regulations, taxable income or net operating loss must be allocated ratably to each day in the change year for purposes of applying the section 382 limitation. Under section 383, similar rules apply with respect to pre-change capital losses and certain pre-change credits.

The proposed regulations provide rules for allocation of net operating loss or taxable income, and net capital loss or gain, within the change year. The proposed regulations generally provide that a loss corporation may allocate such items between the pre-change period and the post-change period (1) by ratably allocating an equal portion to each day in the change year, or (2) if it so elects, based on a closing of its books as of the change date. The final regulations adopt the proposed regulations with few changes. The most significant comments and changes are described below.

A. Consistency Rules for Consolidated and Controlled Groups

The proposed regulations provide consistency rules for corporations that are members of consolidated groups or controlled groups. These consistency rules are based on proposed regulations applying section 382 to consolidated and controlled groups. The consistency rules contained in the proposed regulations have been revised in the final regulations because the proposed consolidated and controlled group regulations have not been finalized yet. The final regulations provide that if a closing-of-the-books election is made with respect to an ownership change occurring during a consolidated return year, all allocations with respect to that ownership change must be consistent with the election. Further consideration will be given to consistency rules for consolidated groups in the development of final regulations applying section 382 to these groups.

B. Limitation Increase Rule

In Notice 87–79, 1987–2 C.B. 387, the IRS announced its intention to issue regulations that would allow taxpayers to make a closing-of-the-books election. The Notice stated that, prior to the issuance of regulations, taxpayers would be required to use the statutory ratable allocation method unless they obtained a private letter ruling allowing them to use a different method.

Pursuant to Notice 87–79, the IRS issued a number of private letter rulings that authorized allocations based on a closing of the taxpayers' books. Some of these rulings allowed taxpayers to increase in their section 382 limitation to the extent that any net pre-change income was offset by net post-change loss in computing taxable income or loss for the change year. The purpose of the increased limitation was to put the taxpayer in a position similar to the position it would have been in had its taxable year ended on the change date.

In the interest of simplicity, the proposed regulations do not include a rule providing for increases in the annual section 382 limitation in cases in which net post-change loss offsets net pre-change income. Several commentators questioned the failure to include a limitation increase rule.

The final regulations retain the approach of the proposed regulations, in which change year income and losses may be netted together without limitation. This approach may be either favorable or unfavorable to taxpayers, depending on the circumstances. This approach is disadvantageous when it results in the netting of a post-change loss against pre-change income. Conversely, the approach is advantageous to taxpayers that are able to net a pre-change loss against post-change income without limitation. In these cases, if the taxpayers' year had ended on the change date, the loss so used would have been subject to the section 382 limitation.

Adoption of a limitation increase rule would add significant complexity to the regulations. If taxpayers were protected from the disadvantages of netting a post-change loss against pre- change income, consistency would require that taxpayers not be allowed the benefit of netting pre-change loss against post-change income without limitation. In other words, detailed rules for applying the section 382 limitation within the change year to limit the use of a loss in the pre-change portion of the year against income in the post-change period would be necessary concomitants of a limitation increase rule. To avoid this complexity, the final regulations allow change year losses to offset change year income without limitation and do not include a limitation increase rule.

C. Additional Issues

The preamble to the proposed regulations requested comments on the interaction of the ratable allocation rules under the proposed regulations and the built-in gain and loss rules under section 382(h), particularly with respect to extraordinary items (*e.g.*, an asset sale not made in the ordinary course of business). A commentator recommended that the final regulations include both a rule for extraordinary items and the limitation increase rule (described in paragraph B above). After due consideration, the IRS and the Treasury Department decided that rules relating to extraordinary items would add unnecessary complexity to the final regulations. Thus, the final regulations do not contain special rules with respect to the allocation of extraordinary items. The IRS and the Treasury Department may give further consideration to the desirability of rules addressing extraordinary items.

D. Effective Date

The regulations apply to ownership changes occurring on or after June 22, 1994.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory

assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Roberta F. Mann, Office of the Assistant Chief Counsel (Corporate), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

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

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * * § 1.382–6 also issued under 26 U.S.C. 382(b)(3)(A), 26 U.S.C. 382(d)(1), 26 U.S.C. 382(m), and 26 U.S.C. 383(d) * * *

Par 2. Section 1.382–1 is amended by revising the entry for § 1.382–6 and adding additional entries to read as follows:

§ 1.382–1 Table of contents.

* * * * *

§ 1.382–6 Allocation of income and loss to periods before and after the change date for purposes of section 382.

(a) General rule.
(b) Closing-of-the-books election.
(1) In general.
(2) Making the closing-of-the-books election.
(i) Time and manner.
(ii) Election irrevocable.
(3) Special rules relating to consolidated and controlled groups.
(i) Consolidated groups.
(ii) Controlled groups.
(c) Operating rules for determining net operating loss, taxable income, net capital loss, modified capital gain net income, and special allocations.
(1) In general.
(2) Adjustment to net operating loss.
(i) Determination of remaining capital gain.
(ii) Reduction of net operating loss by remaining capital gain.
(d) Coordination with rules relating to the allocation of income under § 1.1502–76(b).
(e) Allocation of certain credits.
(f) Examples.
(g) Definitions and nomenclature.
(1) Change year.
(2) Pre-change period.
(3) Post-change period.
(4) Modified capital gain net income.
(h) Effective date.

* * * * *

Par. 3. The heading of § 1.382–6 is revised, and the text of the section is added to read as follows:

§ 1.382–6 Allocation of income and loss to periods before and after the change date for purposes of section 382.

(a) *General rule.* Except as provided in paragraphs (b) and (d) of this section, a loss corporation must allocate its net operating loss or taxable income (see section 382(k)(4)), and its net capital loss (see section 1222(10)) or modified capital gain net income (as defined in paragraph (g)(4) of this section), for the change year between the pre-change period and the post-change period by ratably allocating an equal portion to each day in the year.

(b) *Closing-of-the-books election*—(1) *In general.* Subject to paragraphs (b)(3)(ii) and (d) of this section, a loss corporation may elect to allocate its net operating loss or taxable income and its net capital loss or modified capital gain net income for the change year between the pre-change period and the post-change period as if the loss corporation's books were closed on the change date. An election under this paragraph (b)(1) does not terminate the loss corporation's taxable year as of the change date (e.g., the change year is a single tax year for purposes of section 172).

(2) *Making the closing-of-the-books election*—(i) *Time and manner.* A loss corporation makes the closing-of-the-books election by including the following statement on the information statement required by § 1.382–2T(a)(2)(ii) for the change year: "THE CLOSING-OF-THE-BOOKS ELECTION UNDER § 1.382–6(b) IS HEREBY MADE WITH RESPECT TO THE OWNERSHIP CHANGE OCCURRING ON [INSERT DATE]." The election must be made on or before the due date (including extensions) of the loss corporation's income tax return for the change year.

(ii) *Election irrevocable.* An election under this paragraph (b) is irrevocable.

(3) *Special rules relating to consolidated and controlled groups*—(i) *Consolidated groups.* If an election under this paragraph (b) is made with respect to an ownership change occurring in a consolidated return year, all allocations under this section with respect to that ownership change must be consistent with the election.

(ii) *Controlled groups.* If paragraph (b)(3)(i) of this section does not apply, and if, as part of the same plan or arrangement, two or more members of a controlled group (as defined in section 1563(a), determined by substituting "50 percent" for "80 percent" each place that it appears, and without regard to section 1563(a)(4)), have ownership changes and continue to be members of the controlled group (or become members of the same other controlled group), a closing-of-the-books election applies only if the election is made by all members having the ownership changes.

(c) *Operating rules for determining net operating loss, taxable income, net capital loss, modified capital gain net income, and special allocations.* For purposes of this section, for the change year—

(1) *In general*—(i) Net operating loss or taxable income is determined without regard to gains or losses on the sale or exchange of capital assets; and

(ii) Net operating loss or taxable income and net capital loss or modified capital gain net income are determined without regard to the section 382 limitation and do not include the following items, which are allocated entirely to the post-change period—

(A) Any income, gain, loss, or deduction to which section 382(h)(5)(A) applies; and

(B) Any income or gain recognized on the disposition of assets transferred to the loss corporation during the post-change period for a principal purpose of ameliorating the section 382 limitation.

(2) *Adjustment to net operating loss*—(i) *Determination of remaining capital gain.* The amount of modified capital gain net income (defined in paragraph (g)(4) of this section) allocated to each period is offset by capital losses to which section 382(h)(5)(A) applies and capital loss carryovers, subject to the section 382 limitation (in the case of modified capital gain net income allocated to the post-change period).

(ii) *Reduction of net operating loss by remaining capital gain.* The amount of net operating loss allocated to each period is reduced (but not below zero)

without regard to the section 382 limitation, first by the modified capital gain net income remaining in the same period, and then by the modified capital gain net income remaining in the other period.

(d) *Coordination with rules relating to the allocation of income under § 1.1502–76(b).* If § 1.1502–76 applies (relating to the taxable year of members of a consolidated group), an allocation of items under paragraph (a) or (b) of this section is determined after applying § 1.1502–76. Thus, if a short taxable year under § 1.1502–76 is a change year for which an allocation under this section is to be made, the allocation under this section applies only to the items allocated to that short taxable year under § 1.1502–76.

(e) *Allocation of certain credits.* The principles of this section apply for purposes of allocating, under section 383, excess foreign taxes under section 904(c), current year business credits under section 38, and the minimum tax credit under section 53. The loss corporation must use the same method of allocation (ratable allocation or closing-of-the-books) for purposes of sections 382 and 383.

(f) *Examples.* The rules of this section are illustrated by the following examples:

Example 1. (i) Assume that the loss corporation, L, a calendar year taxpayer with a May 26, 1995, change date, determines a section 382 limitation under section 382(b)(1) of $100,000. Thus, for the change year, its section 382 limitation is $100,000 × (219/365)=$60,000. L makes the closing-of-the-books election under paragraph (b) of this section.

(ii) Assume that L has a $150,000 capital loss carryover (from its 1994 taxable year) and a $300,000 net operating loss carryover (from its 1994 taxable year) to the change year. L recognizes, in the pre-change period, $200,000 of ordinary loss, and, in the post-change period, $150,000 of capital gain and $100,000 of ordinary income. Assume that section 382(h) does not apply to the capital gain or the ordinary income.

(iii) L has a $100,000 net operating loss for the change year ($200,000 pre-change loss less $100,000 post-change income), as determined under paragraph (c)(1)(i) of this section. Because L has no current year capital losses, L's $150,000 capital gain recognized in the post-change period is its modified capital gain net income for the change year (as defined at paragraph (g)(4) of this section). L allocates $100,000 of net operating loss to the pre-change period and $150,000 of modified capital gain net income to the post-change period.

(iv) Under paragraph (c)(2)(i) of this section, L uses its capital loss carryover to offset its modified capital gain net income allocated to the post-change period, subject to its section 382 limitation. L's section 382 limitation is $60,000, so L uses $60,000 of its capital loss carryover to offset $60,000 of its $150,000 modified capital gain net income. L has absorbed its entire section 382 limitation for the change year and has $90,000 of modified capital gain net income remaining in the post-change period.

(v) Under paragraph (c)(2)(ii) of this section, L offsets its $100,000 net operating loss allocated to the pre-change period by the $90,000 of modified capital gain net income remaining in the post-change period, without regard to the section 382 limitation, thereby reducing its pre-change net operating loss to $10,000.

(vi) From its 1994 taxable year, L will carry over $90,000 of capital loss and $300,000 of net operating loss to its 1996 taxable year. From its 1995 taxable year, L will carry over $10,000 of net operating loss subject to the section 382 limitation to its 1996 taxable year.

Example 2. (i) Assume the facts of *Example 1*, except that L does not make the closing-of-the-books election under paragraph (b) of this section.

(ii) L ratably allocates its $100,000 net operating loss and its $150,000 of modified capital gain net income for the change year. $40,000 of net operating loss ($100,000 × (146/365)) and $60,000 of modified capital gain net income ($150,000 × (146/365)) are allocated to the pre-change period. $60,000 of net operating loss ($100,000 × (219/365)) and $90,000 of modified capital gain net income ($150,000 × (219/365)) are allocated to the post-change period.

(iii) Under paragraph (c)(2)(i) of this section, L uses its capital loss carryovers to offset modified capital gain net income. The capital loss carryovers offset the $60,000 modified capital gain net income allocated to the pre-change period without limitation. Subject to the section 382 limitation, the remaining $90,000 of capital loss carryovers offset the modified capital gain net income allocated to the post-change period. Accordingly, L uses $60,000 of its capital loss carryovers to offset $60,000 of its $90,000 modified capital gain net income allocated to the post-change period. L has absorbed its entire section 382 limitation for the change year.

(iv) Under paragraph (c)(2)(ii) of this section, L's $60,000 net operating loss allocated to the post-change period is offset by its remaining $30,000 of post-change modified capital gain net income, reducing its post-change net operating loss to $30,000.

(v) From its 1994 taxable year, L will carry over $30,000 of capital loss and $300,000 of net operating loss to its 1996 taxable year. From its 1995 taxable year, L will carry over $70,000 of net operating loss ($40,000 pre-change +$30,000 post-change) to its 1996 taxable year. The $40,000 pre-change portion of that carryover is subject to the section 382 limitation.

(g) *Definitions and nomenclature.* The terms and nomenclature used in this section and not otherwise defined herein have the same meanings as in sections 382 and 383 and the regulations thereunder. For purposes of this section:

(1) *Change year.* A loss corporation's taxable year that includes the change date is its *change year.*

(2) *Pre-change period.* The *pre-change period* is the portion of the change year ending on the close of the change date.

(3) *Post-change period.* The *post-change period* is the portion of the change year beginning with the day after the change date.

(4) *Modified capital gain net income.* A loss corporation's *modified capital gain net income* is the excess of the gains from sales or exchanges of capital assets over the losses from such sales or exchanges for the change year, determined by excluding any short-term capital losses under section 1212.

(h) *Effective date.* This section applies to ownership changes occurring on or after June 22, 1994.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

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

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 5. Section 602.101(c) is amended by adding the entry "1.382–6. . . .1545–1381" in numerical order to the table.

Dated: June 2, 1994.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved:

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 94–14970 Filed 6–21–94; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF EDUCATION

34 CFR Part 600

RIN 1840–AB87

Institutional Eligibility Under the Higher Education Act of 1965, As Amended

AGENCY: Department of Education.

ACTION: Final regulations; Correction.

SUMMARY: This document corrects errors in the final regulations published in the **Federal Register** on April 29, 1994 for Institutional Eligibility Under the Higher Education Act of 1965, as Amended (59 FR 22324). These regulations implement statutory changes in the programs authorized by the Higher Education Act of 1965, as amended by the Higher Education Amendments of 1992, and the Higher Education Technical Amendments of 1993.

EFFECTIVE DATE: July 1, 1994.

FOR FURTHER INFORMATION CONTACT: Cheryl Leibovitz, U.S. Department of Education, 400 Maryland Avenue SW. (Room 4318, ROB–3), Washington, DC 20202. Telephone (202) 708–7888. 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.

Dated: June 14, 1994.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

The following corrections are made in FR Doc. 94–10139, published on April 29, 1994 (59 FR 22324):

1. On page 22324, column 3, remove the third full paragraph beginning "Institutions may choose . . .", and insert in its place "An institution substantiates its compliance with this standard by having either the auditor who prepares its financial statement audit or the auditor who prepares its title IV, HEA program compliance audit report on the accuracy of its compliance determination. The auditor's report must be based on performing an "attestation engagement" in accordance with the American Institute of Certified Public Accountants (AICPA's) Statement on Standards for Attestation Engagements. The auditor must submit his or her report with the appropriate audit report. In the attestation report, the auditor must indicate whether the institution's determination that the percentage of its revenues derived from title IV, HEA program funds is not more than 85 percent of its revenues is accurate; *i.e.*, fairly presented in all material respects."

2. On page 22325, in column 2, before heading "Section 600.9 Written Arguments", add the paragraph "An institution substantiates its compliance with the provisions of this section in the same manner as a proprietary institution of higher education substantiates its compliance with the 85 percent rule."

§ 600.5 [Corrected]

3. On page 22338, in column 2, § 600.5 (e)(1) is corrected by removing the remainder of the sentence following the words "accuracy of", and adding in its place "its determination that the percentage of its revenue derived from title IV, HEA program funds is not more that 85 percent of its revenue."; and by correcting paragraphs (e)(2) and (e)(3) to read as follows:

(2) The certified public accountant's report must be based on performing an "attestation engagement" in accordance with the American Institute of Certified Public Accountants (AICPA's) Statement on Standards for Attestation Engagements. The certified public accountant shall include that attestation report with the audit report referenced in paragraph (e)(1) of this section.

(3) The certified public accountant's attestation report must indicate whether the institution's determination that the percentage of its revenues derived from title IV, HEA program funds is not more than 85 percent of its revenues is accurate; *i.e.*, fairly presented in all material respects.

4. On page 22340, in paragraph (e)(2) introductory text, in column 3, the cross-reference to paragraph "(e)(3)(ii)" is corrected to read "(c)(3)(ii)".

§ 600.7 [Amended]

5. On page 22340, column 3, § 600.7 (g)(1) is corrected by removing the remainder of the sentence following the words "accuracy of", and adding in its place "those determinations."; and by correcting paragraphs (g)(2) and (g)(3) on pages 22340, column 3, and 22341, column 1 to read as follows:

(2) The certified public accountant's report must be based on performing an "attestation engagement" in accordance with the American Institute of Certified Public Accountants (AICPA's) Statement on Standards for Attestation Engagements. The certified public accountant shall include that attestation report with or as part of the audit report referenced in paragraph (g)(1) of this section.

(3) The certified public accountant's attestation report must indicate whether the institution's determinations regarding paragraph (a)(1) of this section and any relevant waiver or exception under paragraphs (b), (c), and (d) of this section are accurate; *i.e.*, fairly presented in all material respects.

[FR Doc. 94–14993 Filed 6–21–94; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 9

[FRL–5001–9]

OMB Approval Numbers Under the Paperwork Reduction Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Technical amendment.

SUMMARY: The Environmental Protection Agency is amending a table to display Office of Management and Budget (OMB) control numbers issued under the Paperwork Reduction Act (PRA) to the consolidated table at 40 CFR Part 9.

EFFECTIVE DATE: This final rule is effective July 22, 1994.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer on (202) 260–2740.

SUPPLEMENTARY INFORMATION: EPA is today amending the table of currently approved information collection request (ICR) control numbers issued by OMB for various regulations. Today's amendment updates the table to accurately display those information requirements promulgated under the Federal Grant and Cooperative Agreement Act. The affected regulations are codified at 40 CFR parts 30, 31 and 33. EPA will continue to present OMB control numbers in a consolidated table format to be codified in 48 CFR Part 1501 of EPA's Acquisition Regulations, in 40 CFR Part 9 of the Agency's regulations, and in each 40 CFR volume containing EPA regulations. The table lists the part and section numbers with reporting and recordkeeping requirements, and the current OMB control numbers. This display of the OMB control numbers and their subsequent codification in the Code of Federal Regulations satisfies the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and OMB's implementing regulations at 5 CFR Part 1320.

The ICR(s) were previously subject to public notice and comment prior to OMB approval. As a result, EPA finds that there is "good cause" under section 553(b)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(B)) to amend this table without prior notice and comment. Due to the technical nature of the table, further notice and comment would be unnecessary.

List of Subjects in 40 CFR Part 9

Reporting and recordkeeping requirements.

Dated: June 14, 1994.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble 40 CFR part 9 is amended as follows:

PART 9—[AMENDED]

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

Authority: 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1321, 1326, 1330, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4,

300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

2. Section 9.1 is amended by revising under the heading "Procurement Under Assistance Agreements" the OMB control number "2030–0013" to read "2030–0020" wherever it appears and by adding new entries and new headings in numerical order to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
General Regulation for Assistance Programs for Other than State and Local Governments	
30.400	2030–0020
30.500	2030–0020
30.501	2030–0020
30.503	2030–0020
30.505	2030–0020
30.510	2030–0020
30.520	2030–0020
30.530	2030–0020
30.531	2030–0020
30.532	2030–0020
30.535	2030–0020
30.1002	2030–0020
30.1003	2030–0020
30.1200	2030–0020
Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments	
31.10	2030–0020
31.20–31.21	2030–0020
31.31–31.32	2030–0020
31.36(g)–31.36(h)	2030–0020
31.40	2030–0020
31.42	2030–0020
31.6	2030–0020

* * * * *

[FR Doc. 94–15071 Filed 6–21–94; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 180

[OPP–300349; FRL–4871–4]

RIN 2070–AC18

N-(n-Octyl)-2-Pyrrolidone and N-(n-Dodecyl)-2-Pyrrolidone; Tolerance Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes tolerance exemptions for residues of *N*-(*n*-octyl)-2-pyrrolidone and *N*-(*n*-dodecyl)-2-pyrrolidone as inert ingredients (solvents) applied to growing crops. These exemptions were requested by NOR-AM Chemical Co.

EFFECTIVE DATE: This regulation becomes effective June 22, 1994.

ADDRESSES: Written objections, identified by the document control number, [OPP-300349], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

In person, bring copy of objections and hearing requests to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

FOR FURTHER INFORMATION CONTACT: By mail: Tina Levine, Registration Support Branch, Registration Division (7505W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Westfield Building North, 6th floor, 2800 Crystal Drive, Arlington, VA 22202, (703)-308-8393

SUPPLEMENTARY INFORMATION: NOR-AM Chemical Co., Little Falls Centre One, 2711 Centerville Rd., Wilmington, DE 19808, submitted pesticide petitions (PPs) proposing to amend 40 CFR part 180 to establish a tolerance exemption for residues of *N*-(*n*-octyl)-2-pyrrolidone (PP 1E3959) and *N*-(*n*-dodecyl)-2-pyrrolidone (PP 1E3960) as inert ingredients (solvents) applied to growing crops. EPA issued a notice, published in the **Federal Register** of March 23, 1994 (57 FR 13720), announcing receipt of these petitions. No comments were received in response to the notice.

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 162.3(c), and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting and spreading agents; propellants in aerosol dispensers; and emulsifiers. The term "inert" is not intended to imply to nontoxicity; the ingredient may or may not be chemically active.

As part of the EPA policy statement on inert ingredients published in the **Federal Register** of April 22, 1987 (52 FR 13305), the Agency set forth a list of studies which would generally be used to evaluate the risks posed by the presence of an inert ingredient in a pesticide formulation. The data submitted in the petitions and other relevant material have been evaluated. This inert ingredient is considered useful for the purpose for which the tolerance is sought. Toxicological, ecological, and environmental fate data were considered in evaluating this inert ingredient for use in pesticides. The data considered in support of these exemptions from tolerance include:

1. A 90-day oral toxicity study in the rat using *N*-(*n*-octyl)-2-pyrrolidone with a no-observed-adverse-effect level (NOAEL) of 600 ppm (53 mg/kg) and a lowest-observed-adverse-effect level (LOAEL) of 8,460 ppm. Effects observed include significantly increased absolute and relative liver weights and mild hepatocellular hypertrophy.

2. A 90-day oral toxicity study in the dog using *N*-(*n*-octyl)-2-pyrrolidone with a NOAEL of 30 mg/kg and a LOAEL of 90 mg/kg. Effects observed include increased absolute and relative liver weights, hepatocellular hypertrophy, and altered blood levels of liver enzymes.

3. A developmental toxicity study in the rat using *N*-(*n*-octyl)-2-pyrrolidone with a maternal NOAEL of 50 mg/kg and a developmental NOAEL of 200 mg/kg. At the developmental LOAEL of 800 mg/kg there was altered growth and an increased incidence of wavy ribs.

4. A negative mutagenicity battery for *N*-(*n*-octyl)-2-pyrrolidone including an Ames Test, Micronucleus Test, and TK Locus Test and negative Ames and Micronucleus Tests for *N*-(*n*-dodecyl)-2-pyrrolidone.

5. An oncogenicity study on *N*-methyl pyrrolidone, a related compound, was judged negative by reviewers in the Office of Pollution Prevention and Toxics, EPA.

Residue data is generally not required for inert ingredient exemptions from tolerance. In this case, worst-case residue calculations were done based on the proposed uses. These calculations indicated that a broad exemption could not be granted without additional residue information because of the potential for high dietary exposure. The petitioner therefore requested that the exemption be modified to include only the use of these solvents in cotton defoliant formulations containing

thidiazuron and diuron as active ingrdients. This yielded worstcase residue estimates of 735 ppm in cotton seed, concentrating to 4,630 ppm in cottonseed oil. Consumption of cottonseed oil in children, the subgroup with the highest exposure, is .036355 gms/kg/day. This leads to an exposure of .18 mg/kg/day, with a margin of exposure of 166 from the NOAEL in the 90 day dog study. Residue information from thidiazuron as a cotton defoliant indicates that actual residues for these inerts are expected to be orders of magnitude below this worst-case estimate.

Based upon the above information and review of its use, EPA has found that, when used in accordance with good agricultural practice, these ingredients are useful and a tolerance is not necessary to protect the public health. Therefore, EPA proposes that the exemptions from the requirement of a tolerance be established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections and/or request a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

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

Pursuant to the terms of the Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review. Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Recording and recordkeeping requirements.

Dated: June 2, 1994.

Daniel M. Barolo,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In subpart D, by adding new § 180.1130, to read as follows:

§ 180.1130 N-(n-octyl)-2-pyrrolidone and N-(n-dodecyl)-2-pyrrolidone; exemptions from the requirement of a tolerance.

N-(*n*-octyl)-2-pyrrolidone and *N*-(*n*-dodecyl)-2-pyrrolidone are exempt from the requirement of a tolerance when used as solvents in cotton defoliant formulations containing thidiazuron and diuron as active ingredients.

[FR Doc. 94-15081 Filed 6-21-94; 8:45 am]
BILLING CODE 6560-50-F

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40 CFR Part 180

[PP 1F3961 and 1F3962/R2065; FRL-4868-8]

RIN 2070-AB78

Pesticide Tolerances for Thifensulfuron Methyl and Tribenuron Methyl

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document sets tolerances for residues of the herbicides thifensulfuron methyl and tribenuron methyl on the raw agricultural commodities (RAC) oat grain at 0.05 part per million (ppm) and oat straw at 0.1 ppm. E.I. DuPont de Nemours & Co., Inc., requested this regulation.

EFFECTIVE DATE: This regulation becomes effective June 22, 1994.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [PP 1F3961 and 1F3962/R2065], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

FOR FURTHER INFORMATION CONTACT: By mail: Joanne I. Miller, Product Manager (PM) 23, Registration Division (7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 237, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-7830.

SUPPLEMENTARY INFORMATION: In the Federal Register of April 14, 1994 (59 FR 17751), EPA issued a proposed rule that gave notice that E.I. DuPont de

Nemours & Co., Inc., Barley Mill Plaza, P.O. Box 80038, Wilmington, DE 19880-0038, had submitted pesticide petitions (PP) 1F3961 and 1F3962 to EPA proposing that 40 CFR part 180 be amended under section 408 of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a, by establishing tolerances for the herbicides thifensulfuron methyl (methyl-3-[[[[(4-methoxy-6-methyl-1,3,5-triazin-2-yl)amino]carbonyl]amino]sulfonyl]-2-thiophene carboxylate) and tribenuron methyl (methyl-2-[[[[*N*- (4-methoxy-6-methyl-1,3,5-triazin-2-yl) methylamino] carbonyl] amino]sulfonyl] benzoate), each on the raw agricultural commodities (RAC) oat grain at 0.05 part per million (ppm) and oat straw at 0.1 ppm.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted on the proposal and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerances will protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections and/or request a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

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

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 7, 1994.

Daniel M. Barolo,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. By revising § 180.439, to read as follows:

§ 180.439 Thifensulfuron methyl (methy-3-[[[[(4-methoxy-6-methyl-1,3,5-triazin-2-yl) amino]carbonyl]amino]sulfonyl]-2-thiophene carboxylate); tolerances for residues.

Tolerances are established for residues of the herbicide thifensulfuron methyl (methyl-3-[[[[(4-methoxy-6-methyl-1,3,5-triazin-2-yl)amino] carbonyl] amino] sulfonyl]-2-thiophene carboxylate) in or on the following raw agricultural commodities:

Commodity	Parts per million
Barley, grain	0.05
Barley, straw	0.1
Oat, grain	0.05
Oat, straw	0.10
Soybeans	0.1
Wheat, grain	0.05
Wheat, straw	0.1

2. By revising § 180.451, to read as follows:

§ 180.451 Tribenuron methyl (methy-2-[[[[N-(4-methoxy-6-methyl-1,3,5-triazin-2- yl) methylamino] carbonyl]amino]sulfonyl]benzoate); tolerances for residues.

Tolerances are established for the residues of the herbicide tribenuron methyl (methyl-2-[[[[*N*-(4-methoxy-6-methyl-1,3,5-triazin-2-yl) methylamino] carbonyl]amino]sulfonyl] benzoate) in or on the following raw agricultural commodities:

Commodity	Parts per million
Barley, grain	0.05
Barley, straw	0.10
Oat, grain	0.05
Oat, straw	0.10
Wheat, grain	0.05
Wheat, straw	0.10

[FR Doc. 94–15079 Filed 6–21–94; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 405 and 489

Office of Inspector General

42 CFR Part 1003

[BPD–393–IFC]
RIN 0938–AC58

Medicare Program; Participation in CHAMPUS and CHAMPVA, Hospital Admissions for Veterans, Discharge Rights Notice, and Hospital Responsibility for Emergency Care

AGENCIES: Health Care Financing Administration (HCFA) and Office of Inspector General (OIG).

ACTION: Interim final rule with comment period.

SUMMARY: We are revising requirements for Medicare participating hospitals by adding the following:

A hospital must provide inpatient hospital services to individuals who have health coverage provided by either the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) or the Civilian Health and Medical Program of the Veterans Administration (CHAMPVA), subject to limitations provided by regulations that require the hospital to collect the beneficiary's cost-share and accept payment from the CHAMPUS/CHAMPVA programs as payment in full.

A hospital must provide inpatient hospital services to military veterans (subject to the limitations provided in 38 CFR 17.50 ff.) and accept payment from the Department of Veterans Affairs as payment in full.

A hospital must give each Medicare beneficiary (or his or her representative) at or about the time of admission, a written statement of his or her rights concerning discharge from the hospital.

A hospital (including a rural primary care hospital) with an emergency department must provide, upon request and within the capabilities of the hospital or rural primary care hospital, an appropriate medical screening examination, stabilizing treatment and/or an appropriate transfer to another medical facility to any individual with an emergency medical condition, regardless of the individual's eligibility for Medicare.

The statute provides for the termination of a provider's agreement for violation of any of these provisions.

These revisions implement sections 9121 and 9122 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (as amended by section 4009 of the Omnibus Budget Reconciliation Act of 1987), section 233 of the Veteran's Benefit Improvement and Health Care Authorization Act of 1986, sections 9305(b)(1) and 9307 of the Omnibus Budget Reconciliation Act of 1986, sections 6003(g)(3)(D)(xiv), 6018 and 6211 of the Omnibus Budget Reconciliation Act of 1989, and sections 4008(b), 4027(a), and 4027(k)(3) of the Omnibus Budget Reconciliation Act of 1990.

DATES: *Effective date:* This interim final rule with comment period is effective July 22, 1994, with the exception of the new information collection and recordkeeping requirements contained in § 488.18, § 489.20(m), § 489.20(r)(2) and (3), and § 489.24(d) and (g), which are not yet approved by OMB under the Paperwork Reduction Act of 1980. Following OMB approval, a document will be published in the **Federal Register** announcing the effective date for those sections.

Comment date: Comments on changes to the June 16, 1988 proposed rule resulting from provisions of the Omnibus Budget Reconciliation Act of 1989 (OBRA 89) or the Omnibus Budget Reconciliation Act of 1990 (OBRA 90) will be considered if we receive them at the appropriate address as provided below, no later than 5:00 p.m. on August 22, 1994. These changes generally concern the responsibility of Medicare participating hospitals in emergency cases. The specific new provisions in this area from OBRA 89 and OBRA 90 are discussed in section II.D.2 of this preamble. We will also accept comments on Appendix II to this interim final rule. Appendix II instructs hospitals with emergency departments on their responsibilities concerning the posting of signs specifying rights of individuals under section 1867 of the Act with respect to examination and treatment for emergency medical conditions. We will not consider comments on provisions that remain unchanged from the June 16, 1988 proposed rule or on provisions that were changed based on public comments.

ADDRESSES: Mail comments (an original and three copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BPD–393–FC, P.O. Box 7517 Baltimore, MD 21207–0517.

If you prefer, you may deliver your comments (an original and three copies) to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, DC 20201, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, MD 21207.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code BPD–393–FC. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 309–G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5:00 P.M. (Phone: 202–690–7890).

If you wish to submit comments on the information collection requirements contained in this interim final rule with comment period, you may submit comments to: Allison Herron Eydt, HCFA Desk Officer, Office of Information and Regulatory Affairs, Room 3002, New Executive Office Building, Washington, DC 20503.

Copies: To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 783–3238 or by faxing to (202) 275–6802. The cost for each copy is $6.00. As an alternative, you may view and photocopy the **Federal Register** document at most libraries designated as U.S. Government Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

FOR FURTHER INFORMATION, CONTACT:

Arlene Ford, 410–966–4617—For provisions relating to the beneficiary statement of discharge rights.

Tom Hoyer, 410–966–4607—For provisions relating to individuals with emergency medical conditions.

Lindsey Bramwell, 410–966–6747—For PRO provisions relating to responsibilities to determine whether the individual involved had an emergency medical condition that had not been stabilized.

Joel Schaer, 202–619–0089—For OIG civil monetary penalty and physicia exclusion provisions relating to

individuals with emergency medical conditions.

Beverly Christian, 410–966–4616—For provisions relating to participation in the CHAMPUS/CHAMPVA and VA health care programs.

Rose Sabo, 303–361–1178—For questions regarding CHAMPUS and CHAMPVA programs.

Wanda Elam, 202–535–7434—For questions regarding the Department of Veterans Affairs health care program.

SUPPLEMENTARY INFORMATION:

I. Background

On June 16, 1988, we published a proposed rule concerning participation in the CHAMPUS and CHAMPVA programs, hospital admissions for veterans, a requirement for a discharge rights notice, and hospital responsibility for emergency care (53 FR 22513). Below is a discussion of the issues for which we proposed regulations.

A. Participation in the CHAMPUS and CHAMPVA Programs

CHAMPUS (Civilian Health and Medical Program of the Uniformed Services) and CHAMPVA (Civilian Health and Medical Program of the Veterans Administration) programs pay for health care services furnished to dependents and survivors of military personnel, to retirees and their dependents, and to veterans. Generally, the programs have paid hospitals based on the hospital's charges. Section 931 of the Department of Defense Authorization Act, 1984 (Pub. L. 98–94), authorized these programs to pay (to the extent practicable) for inpatient hospital services using Medicare payment procedures. Because the Medicare prospective payment system (the system whereby we pay a hospital a predetermined amount based on the patient's diagnosis and any surgical procedures performed, rather than by the number of days hospitalized) results in Medicare cost savings, the Department of Defense (DoD) expected to realize similar savings if it were to use a model similar to Medicare's prospective payment system. Paying on the basis of a fixed rate appropriate to the particular diagnosis involved has been shown to be an equitable method of paying for hospital care. Therefore, the Office of Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS) published a final rule on September 1, 1987, that included provisions for the implementation of a DRG-based payment system modeled after Medicare's prospective payment system for CHAMPUS inpatient hospital admissions occurring on or after October 1, 1987 (52 FR 32992).

Hospitals that furnish services to CHAMPUS and CHAMPVA beneficiaries are authorized to provide services to these beneficiaries following an approval process similar to that used for Medicare participation. Generally, that means the hospital is licensed and accredited by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO), and otherwise meets CHAMPUS requirements. A hospital certified and participating under Medicare may be deemed to meet CHAMPUS requirements.

"Participation" has a different meaning for CHAMPUS and CHAMPVA than for Medicare. Providers have been able to decide on a claim-by-claim basis whether to "participate" in the program and thus accept the CHAMPUS/CHAMPVA-determined allowable amount, plus the patient cost-share, as payment in full. Beneficiaries are required to pay a cost-share for each hospital admission. The CHAMPUS/CHAMPVA payment, plus the beneficiary's cost-share, constitute payment in full for the covered services when the provider signs and submits an appropriately completed program claim form that indicates participation. Under Medicare, hospitals must agree to bill the program for all beneficiaries and accept the CHAMPUS/CHAMPVA payment as payment in full (less applicable deductibles, coinsurance amounts, and noncovered items).

As indicated above, Medicare hospitals also may be authorized providers in CHAMPUS and CHAMPVA on the basis of their JCAHO-approved status or may be deemed authorized providers based on their Medicare-approved status. The benefits to the DoD of requiring the providers to be paid either under a DRG-based payment system or based on reasonable cost are lost, however, if the hospitals can selectively participate in the CHAMPUS and CHAMPVA programs.

Under section 9122 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), Pub. L. 99–272, all Medicare hospitals are now required, beginning January 1987, to participate in CHAMPUS or CHAMPVA as authorized providers (that is, they must bill CHAMPUS or CHAMPVA and accept the CHAMPVA/CHAMPUS-determined allowable amount as payment in full, less applicable deductible, patient cost-share, and noncovered items).

B. Participation in the Department of Veterans Affairs (VA) Health Care Program

Broadly speaking, a veteran can only receive services from a non-VA hospital for a service-connected disability when there is a medical emergency or when a VA facility is not available. In such cases, the VA in the past paid for the services based on usual and customary charges.

As this type of payment is more expensive than payment made on a prospective basis or based on reasonable costs, the VA has implemented a national prospective payment system.

To alleviate hospital expenses for the VA, Congress passed section 233 of the Veterans' Benefit Improvement and Health-Care Authorization Act of 1986 (Pub. L. 99–576). This section requires Medicare hospitals to be participating providers of medical care to veterans eligible to receive care at the hospital. The hospital then receives payment for the services under the applicable VA payment system, in accord with the recent regulations concerning the payment methodology and amounts that the VA provides for those hospitals that furnish inpatient hospital care to veterans whose care has been authorized or will be sponsored by the VA (55 FR 42848). This rule was developed jointly by VA and HHS, and the VA payment system conforms to Medicare's hospital inpatient prospective payment system in most cases.

C. Statement of Beneficiary Rights

After the prospective payment system became effective for the Medicare program, we began to hear allegations that Medicare beneficiaries were discharged too early from the hospital. We also began to receive complaints that patients did not understand their rights as Medicare beneficiaries in cases in which they were advised that discharge was appropriate but they disagreed. On April 17, 1985, we revised 42 CFR 466.78(b)(3) to require all hospitals to provide Medicare beneficiaries with information about Utilization and Quality Control Peer Review Organization (PRO) review, including beneficiary appeal rights (50 FR 15331). In further response to concerns about early discharges and lack of adequate appeal information, we began requiring all hospitals to furnish each Medicare beneficiary upon admission a specific statement developed by HCFA (that is, "An Important Message from Medicare" (see Appendix I)) telling a beneficiary of his or her rights to be fully informed about

decisions affecting Medicare coverage or payment and about his or her appeal rights in response to any hospital's notice to the effect that Medicare will no longer cover the care. The "Message" we developed also advises the patient of what to do when he or she receives such a hospital statement and how to elicit more information. The requirements relating to "An Important Message from Medicare" were incorporated into the program's operating instructions.

Congress subsequently passed section 9305(b) of the Omnibus Budget Reconciliation Act of 1986 (OBRA 86). Now, as part of its participation agreement with Medicare, each hospital (including those not paid under the prospective payment system) must agree to furnish each Medicare beneficiary with a notice, at or about the time of admission, that explains the patient's rights in detail.

D. Responsibilities of Medicare Participating Hospitals in Emergency Cases

Hospitals that choose to participate in the Medicare program agree in writing to meet various requirements included in section 1866 of the Social Security Act (the Act). Before enactment of COBRA on April 7, 1986, the Act did not specifically address the issue of how hospitals with emergency medical departments must handle individuals who have emergency medical conditions or who are in labor.

In its Report accompanying H.R. 3128, the House Ways and Means Committee indicated that Congress was concerned about the increasing number of reports that hospital emergency rooms were refusing to accept or treat individuals with emergency conditions if the patients did not have medical insurance.

In addition, the Report stated that there were reports that individuals in an unstable condition were transferred improperly, sometimes without the consent of the receiving hospital. Because Congress believed that this situation may have worsened since the Medicare prospective payment system for hospitals became effective, the Report stated that the Committee "wants to provide a strong assurance that pressures for greater hospital efficiency are not to be construed as license to ignore traditional community responsibilities and loosen historic standards." (H.R. Rep. No. 99–241, 99th Cong., 1st Sess. 27 (1985).)

Subsequently, section 9121 of COBRA, sections 6003(g)(3)(D)(XIV), 6018, and 6211 of the Omnibus Budget Reconciliation Act of 1989 (OBRA 89), Pub. L. 101–239, and sections 4008(b), 4027(a), and 4027(k)(3) of the Omnibus Budget Reconciliation Act of 1990 (OBRA 90), Pub. L. 101–508, have all addressed this concern.

II. Legislation

A. Participation in CHAMPUS and CHAMPVA Programs

Section 9122 of COBRA amended section 1866(a)(1) of the Act by adding a new paragraph (J), which requires hospitals in the Medicare program to be participating providers of medical care, for inpatient services only, under any health plan contracted for under 10 U.S.C. 1079 or 1086 (CHAMPUS) or under 38 U.S.C. 613 (CHAMPVA), in accordance with admission practices and payment methodology and amounts as prescribed under joint regulations issued by the Secretaries of Health and Human Services, Defense, and Transportation. This requirement applies to services furnished to CHAMPUS and CHAMPVA beneficiaries admitted on or after January 1, 1987.

(Section 9122 of COBRA also required that the legislation apply to all agreements entered into on or after April 7, 1986, but this requirement was deleted by section 1895(b)(6) of the Tax Reform Act of 1986 (Pub. L. 99–514), enacted October 22, 1986.)

B. Participation in the Veterans Administration Health Care Program

Section 233 of the Veterans' Benefit Improvement and Health-Care Authorization Act of 1986 (Pub. L. 99–576) was enacted on October 28, 1986. It added a new paragraph (L) to section 1866 (a)(1) of the Act. It requires hospitals that participate in Medicare to be participating providers under 38 U.S.C. 603, in accordance with the admissions practices, and payment methodology and amounts, prescribed under joint regulations issued to implement this section by the Secretary of HHS and the Administrator of the VA. This provision applies to services furnished to veterans admitted on or after July 1, 1987.

C. Statement of Beneficiary Rights

Section 9305(b)(1) of OBRA 86, which was enacted on October 21, 1986, added a new paragraph (M) to section 1866(a)(1) of the Act. That paragraph requires a hospital that is eligible to participate in the Medicare program to agree to furnish a beneficiary, or an individual acting on his or her behalf, at or about the time of admission, with a written statement of the beneficiary's discharge rights. The statement must explain:

(a) The individual's rights to benefits for inpatient hospital services and for posthospital services under Medicare;

(b) The circumstances under which the individual will and will not be liable for charges for continued stay in the hospital;

(c) The individual's right to appeal denials of benefits for continued inpatient hospital services, including the practical steps to initiate the appeal;

(d) The individual's liability for services if the denial of benefits is upheld on appeal; and

(e) Additional information that the Secretary specifies.

Section 9305(b)(2) of OBRA 86 requires that we prescribe the language to be used in the statement not later than 6 months after the effective date of OBRA 86. After development of the revised language for the statement required under OBRA 86, the hospitals must comply with the requirement to give the revised statement to beneficiaries upon admission.

D. Responsibilities of Medicare Participating Hospitals in Emergency Cases

Set forth below is a summary of the current legislative provisions concerning the responsibilities of Medicare participating hospitals (including rural primary care hospitals) in emergency cases. This legislative summary first sets forth the major provisions of section 1867 of the Act, as originally enacted by COBRA on April 7, 1986, and including all amendments that have occurred since that time. The summary then describes separately the amendments made by OBRA 89 and OBRA 90, which were enacted after the publication of the June 16, 1988, notice of proposed rulemaking.

1. Current Provisions

Section 9121 of COBRA added a paragraph (I) to section 1866(a)(1) of the Act and added a new section 1867 to the Act. As amended, these sections prohibit hospitals (including rural primary care hospitals) with emergency medical departments from refusing to treat individuals with unstable emergency medical conditions and also contain provisions designed to halt the inappropriate transfers of these individuals to other medical facilities.

(Note: For purposes of this preamble, all further references to "hospital" in the context of a "Hospital's Responsibility for Emergency Care" include rural primary care hospitals.)

Section 1866(a)(1)(I) of the Act requires that a hospital participating in the Medicare program must agree to comply with the requirements of section

1867 of the Act to the extent applicable. Section 1867 of the Act currently provides the following:

• A hospital with an emergency department must, within the capabilities of its emergency department (including ancillary services routinely available to the emergency department), provide an appropriate medical screening examination to any individual who comes to the emergency department for examination or treatment of a medical condition and on whose behalf the examination or treatment is requested; the purpose of the examination is to determine whether the individual has an emergency medical condition. This requirement applies regardless of the individual's eligibility for Medicare benefits.

• If an individual, regardless of eligibility for Medicare benefits, has an emergency medical condition, the hospital must either provide for further examination and treatment (within its capabilities) to stabilize the medical condition or make an appropriate transfer, with a proper certification, of the individual to another medical facility, unless the treatment or transfer is refused.

• A hospital may not transfer an individual unless—

+ —The individual, or a legally responsible person acting on his or her behalf, requests the transfer, or

—A physician, or other qualified medical personnel, after consulting with a physician (who later countersigns the certification because a physician is not physically present in the emergency department), has certified that the medical benefits expected from the treatment at the receiving facility outweigh the increased risks to the individual and, in the case of labor, to the unborn child, from effecting the transfer; and

+ The transfer is an "appropriate transfer", that is, a transfer—

—Where the transferring hospital provides the medical treatment within its capacity that minimizes the risks to the individual's health and, in the case of a woman in labor, the health of the unborn child;

—In which the receiving facility has available space and qualified personnel for the treatment of the individual and has agreed to accept the transfer and to provide appropriate medical treatment;

—In which the transferring hospital sends to the receiving facility all appropriate medical records (or copies) available at the time of transfer that are related to the emergency condition for which the individual has presented including records related to the individual's emergency medical condition, observation of signs or symptoms, preliminary diagnosis, treatment provided, results of any tests and informal written consent or certification (or copies), and the name and address of any on-call physician who has refused or failed to appear within a reasonable time to provide necessary stabilizing treatment;

—In which the transfer is effected through qualified personnel and transportation equipment, as required, including the use of necessary and medically appropriate life support measures during the transfer; and

—That meets other requirements as the Secretary may find necessary in the interest of the health and safety of the patient.

• A hospital that fails to meet the requirements of section 1867 of the Act—

+ Is subject to termination of its Medicare provider agreement if it fails to comply with section 1867; and

+ Is subject to civil monetary penalties if it negligently violates section 1867 of the Act. The penalty cannot exceed $25,000 for each violation committed between August 1, 1986 (the effective date of the statute) and December 21, 1987, or $50,000 for violations on or after December 22, 1987. (The amount was raised by section 4009(a)(1) of the Omnibus Budget Reconciliation Act of 1987 (OBRA 87), Pub. L. 100–203, effective December 22, 1987.)

(Exception: If the hospital has fewer than 100 State-licensed, Medicare-certified beds, then the maximum civil monetary penalty is $25,000. See discussion of section 4008 of OBRA 90 below.)

• Each physician who is responsible for the examination, treatment or transfer of an individual (including a physician who is on-call for the care of such individual) is also subject to a civil money penalty of not more than $25,000 for each violation ($50,000 for violations on or after December 22, 1987), including—

+ The signing of transfer certifications if the physician knew or should have known that the benefits of transfer did not outweigh the risks, and

+ Misrepresenting an individual's condition or other information, including a hospital's obligations under this section.

A physician may also be excluded from participation in the Medicare and State health care programs for a violation that is gross and flagrant or repeated.

• If a hospital violates the requirements of section 1867 of the Act and a patient suffers personal harm as a direct result, he or she may, in a civil action against the participating hospital, obtain damages for personal injury under the law of the State in which the hospital is located and may obtain such equitable relief as is appropriate.

• Any medical facility that suffers a financial loss as a direct result of a participating hospital's violation of section 1867 of the Act may obtain damages available in a civil action against the participating hospital, under the law of the State in which the hospital is located, and may obtain such equitable relief as is appropriate.

• No civil action to obtain damages, as described above, may be brought more than 2 years after the date of the violation with respect to which the action is brought.

• The following terms are defined for purposes of section 1867 of the Act: "emergency medical condition," "hospital," "participating hospital," "to stabilize," "stabilized," and "transfer."

• The provisions of section 1867 of the Act do not preempt any State or local law except where they directly conflict.

• Participating hospitals are not to delay a medical screening examination or treatment to ask about an individual's status or method of payment.

• Participating hospitals with specialized capabilities or facilities are obligated to accept the appropriate transfer of an individual requiring such services if the hospital has the capacity to treat them.

• Except when a delay would jeopardize the health and safety of individuals, or when there was no screening examination, the appropriate PRO will assess whether the individual had an emergency condition that had not been stabilized before the Office of Inspector General (OIG) imposes a civil monetary penalty or exclusion.

• Hospitals are required, among other things, to maintain medical and other records related to individuals transferred to and from a hospital for a period of 5 years from the transfer date. Each hospital must maintain a list of on-call physicians available to provide stabilizing treatment. Each hospital must also post a conspicuously placed sign in its emergency department that lists the individuals' rights regarding their examination and treatment.

• Hospitals are not to penalize or take an adverse action against a physician or a qualified medical person who refused to authorize the transfer of an

unstabilized individual with an emergency medical condition or against a hospital employee because the employee reported a violation.

2. Summary of the Related OBRA 89 and OBRA 90 Provisions

Set forth below is a brief summary of the new and revised provisions from OBRA 89 (enacted December 19, 1989) and OBRA 90 (enacted November 5, 1990) that were added to strengthen and clarify the requirements concerning the examination, treatment and transfer of individuals with emergency medical conditions.

a. OBRA 89 Provisions

• Rural primary care hospitals. A new category of provider, rural primary care hospitals, was established (section 6003(g)(3) of OBRA 89). Only facilities currently certified as hospitals and not in violation of any conditions of participation (42 CFR part 482) could be designated by the Secretary as rural primary care hospitals.

• Compliance requirements (section 6018 of OBRA 89). Hospitals are required to—

+ Adopt and enforce a policy to ensure compliance with section 1867 of the Act;

+ Maintain medical and other records related to individuals transferred to or from a hospital for a period of 5 years from the transfer date; and

+ Maintain a list of on-call physicians available for duty to provide treatment needed to stabilize an individual with an emergency medical condition.

• Posted information (section 6018 of OBRA 89). Participating hospitals must post conspicuously in their emergency departments—

+ A sign listing the rights of individuals under section 1867 of the Act regarding examination and treatment for emergency medical conditions; and

+ Information indicating whether the facility participates in the Medicaid program under a State plan approved under title XIX of the Act.

Both posted items are to be in a form specified by the Secretary.

• Additional requirements for Medicare participating hospitals with emergency departments (section 6211 of OBRA 89).

+ The medical screening requirement was changed to indicate that the capability of the facility's emergency department includes "ancillary services routinely available to the emergency department."

+ Participating facilities are now required to inform each individual (or a person acting on his or her behalf) of the risks and benefits to the individual of examination and treatment and/or transfer, and to "take all reasonable steps to secure the individual's (or person's) written informed consent to refuse such examination and treatment" and/or transfer.

+ Changes were made relating to the restrictions on transfers to include—

—A requirement that participating facilities obtain written requests for transfer to another medical facility after informing individuals (or legally responsible persons acting on their behalf) of the hospital's obligations and the risk of transfer;

—An explicit statement that there should be consideration of the risks and benefits to unborn children of women in labor in determining whether the physician should certify that the benefits outweigh the risks of transfer;

—A requirement that transfer certifications by participating facilities include a summary of the risks and benefits upon which the certification is based;

—A requirement that when a qualified medical person signs the certification, it be done in consultation with a physician and that the physician later countersign the certification;

—A requirement that the hospital provide medical treatment within its capacity to minimize the risks of transfer; and

—A requirement that the transferring hospital include specified documents in the medical records sent to receiving hospitals.

• Civil monetary penalties (section 6211(e) of OBRA 89).

+ Physicians, including on-call physicians, are subject to civil monetary penalties and exclusion from Medicare and the State health care programs for violations of section 1867 of the Act, including—

—The signing of transfer certifications if the physician knew or should have known that the benefits of transfer did not outweigh the risks; or

—Misrepresenting an individual's condition or other information on the transfer certification.

+ A participating facility or an on-call physician is subject to a penalty if the on-call physician fails or refuses to appear within a reasonable period of time when notified by an emergency department physician that his or her services are needed and the emergency physician orders a transfer because he or she determines that without the services of the on-call physician the benefits of transfer outweigh the risks of transfer.

• Specialty hospitals (section 6211(f) of OBRA 89). Participating hospitals with special capabilities or facilities are obligated to accept the appropriate transfer of an individual who requires such specialized capabilities or facilities if the hospital has the capacity to treat the individual.

• No delay in examination or treatment (section 6211(f) of OBRA 89). Participating hospitals are not to delay the provision of a medical screening examination, treatment, or both, to inquire about the individual's method of payment or insurance status.

• Whistleblower protections (section 6211(f) of OBRA 89). Participating hospitals may not take action against a physician because he or she refused to authorize the transfer of an unstabilized individual with an emergency medical condition.

• Definitions.

+ The term "responsible physician" is no longer used in section 1867(d) of the statute. It was changed to "a physician who is responsible for the examination, treatment or transfer of an individual" under section 1867(d)(1)(B) of the Act. (Section 6211(e)(1) of OBRA 89.)

+ The term "patient" was replaced with the term "individual." (Section 6211(g) of OBRA 89.)

+ The term "emergency medical condition" now includes a pregnant woman who is having contractions, either when there is inadequate time to effect safe transfer, or when the transfer may pose a threat to the health or safety of a pregnant woman or her unborn child. The term "active labor" was deleted. (Section 6211(h) of OBRA 89.)

+ The terms "to stabilize" and "stabilized" now take into account what might occur during a transfer and explicitly extend the protection of section 1867 of the Act to a pregnant woman until delivery (including the delivery of the placenta). (Section 6211(h) of OBRA 89.)

All of the provisions described above were effective beginning July 1, 1990, with the exception of the definition of the term "rural primary care hospital", which was effective upon enactment.

b. OBRA 90 Provisions

• Civil monetary penalties.

+ The standard for liability for imposing civil monetary penalties against hospitals and physicians was changed from "knowingly" to "negligently." (Sections 4008(b)(1) and 4027(a)(2) of OBRA 90.)

+ Hospitals with fewer than 100 State-licensed, Medicare-certified beds are subject to a civil monetary penalty of not more than $25,000, while all

other hospitals remain subject to a maximum CMP of $50,000. (Section 4008(b)(2) of OBRA 90.)

• Termination of hospital provider agreements (section 4008(b)(3) of OBRA 90).

+ The provision in section 1867(d)(1) of the Act that subjected violating hospitals to termination or suspension of their Medicare provider agreements was deleted.

+ Hospitals are now required, under section 1866(a)(1)(I)(i), to adopt and enforce a policy to ensure compliance with the requirements of section 1867 in order to participate in and receive payments under the Medicare program.

• PRO assessment (section 4027(a)(1) of OBRA 90).

+ In considering allegations of violations, before the OIG imposes a sanction, HCFA is required to request the appropriate PRO (with a contract under part B of title XI) to assess whether the individual involved had an emergency medical condition that had not been stabilized, except when a delay would jeopardize the health and safety of individuals.

+ The PRO must provide—

—An assessment of the alleged violation to determine whether the individual involved had an emergency medical condition that had not been stabilized and a report of the violation to the Secretary;

—Reasonable notice of the review to the physician and hospital involved;

—Within the time allotted by the Secretary, reasonable opportunity for the affected physician and the hospital to discuss the case with the PRO and to submit additional information before the PRO issues its report. The Secretary will request such a review, except when delay would jeopardize the health or safety of individuals or when there was no screening examination, before effectuating a sanction. When a delay would not jeopardize the health or safety of individuals, the PRO will have at least 60 calendar days to complete its review.

• Standard for excluding physicians (section 4027(a)(3) of OBRA 90). The standard for excluding physicians, including on-call physicians, from participation in the Medicare and State health care programs was changed from "knowing and willful or negligent" to "gross and flagrant or is repeated."

• Revised whistleblower protections (section 4027(k)(3) of OBRA 90). The prohibition of a hospital from penalizing or taking adverse action against a physician because he or she refused to authorize the transfer of an unstabilized individual with an emergency medical condition was extended to protect a qualified medical person. Also, a hospital is prohibited from taking action against a hospital employee because the employee reported a violation of these requirements.

• Drafting errors. We note that the drafters of OBRA 90 misnumbered the section following section 4206, calling it section 4027. The drafters also misnumbered the subsections of section 4027, so that what should have been section 4027(k) was misnumbered as section 4027(m). The error in misnumbering the subsections was corrected between the submission of the conference report and the enrolled bill, Pub. L. 101–508. The error in misnumbering the section was not corrected, however. Therefore, the correct section numbers at present for the relevant sections of OBRA 90 are 4008(b), 4027(a) and 4027(k)(3). The above provisions were effective May 1, 1991, with the exception of the provisions of section 4027(a)(1), which were effective February 1, 1991, and the provisions of section 4027(k)(3), which were effective upon enactment.

III. Proposed Regulations

As noted earlier, on June 16, 1988 (53 FR 22513), we published a notice of proposed rulemaking to implement the legislative changes enacted before that date. Following is a summary of that proposal.

A. Participation in CHAMPUS and CHAMPVA Programs

We proposed to revise § 489.20, Basic commitments, to show that a participating Medicare hospital must agree to participate in the CHAMPUS and CHAMPVA programs and accept payment from the CHAMPUS/CHAMPVA program as payment in full in accordance with a new § 489.25, which incorporates statutory provisions.

In new § 489.25, we would require Medicare participating hospitals to be participating providers in the CHAMPUS and CHAMPVA programs. We proposed to require the hospitals to comply with DoD regulations governing admissions practices and payment methodology and amounts for such services. As noted above, CHAMPUS published a final rule on September 1, 1987, that contains provisions for the implementation of a DRG-based payment system. We would continue the policy that hospitals participating in CHAMPUS and CHAMPVA that also participate in Medicare must meet all Medicare conditions of participation. Thus, if CHAMPUS or CHAMPVA have requirements for participating that differ from Medicare's, Medicare's requirements also would have to be met.

We proposed to require hospitals to accept payment from CHAMPUS/CHAMPVA programs as payment in full for the services provided to these beneficiaries (less applicable deductible, patient cost-share, and noncovered items).

In addition, we intended to add a new paragraph (11) to § 489.53, Terminations by HHS, to show that a hospital that does not meet the requirements of § 489.25 would be subject to possible termination.

The proposed changes would apply only to inpatient hospital services furnished to beneficiaries admitted on or after January 1, 1987.

B. Participation in the Department of Veterans Affairs (VA) Health Care Program

To implement section 233 of Pub. L. 99–576, we proposed to add a new § 489.26. Hospitals do not enter into participation agreements with the Department of Veterans Affairs program as they do if they choose to participate in the Medicare program or the CHAMPUS or CHAMPVA programs. Instead, the VA authorizes payment for the treatment, usually on a preadmission basis at a designated hospital that furnishes the service. We proposed to require a Medicare participating hospital to admit any veteran whose hospitalization is authorized by the VA under 38 U.S.C. 603 (this includes emergency cases, which may be authorized after admission). The hospital would have to meet the requirements of 38 CFR Part 17 regarding admission practices and payment methodology and amounts published October 24, 1990 (55 FR 42848). This arrangement would not affect the hospital's need to meet all Medicare hospital conditions of participation.

We also proposed to revise § 489.20, Basic commitments, to require hospitals to admit veterans whose admission is authorized under 38 U.S.C. 603 and to meet the requirements of § 489.26.

We also proposed to revise § 489.53, Termination by HCFA, to show that HHS may terminate any hospital that fails to meet the requirements of § 489.26.

The proposed regulations would apply to inpatient services furnished to veterans admitted on or after July 1, 1987.

C. Statement of Beneficiary Rights

We proposed to add a new § 489.27, to require participating hospitals that

furnish inpatient hospital services to Medicare beneficiaries to give every beneficiary (or individual acting on his or her behalf) at or about the time of admission the publication "An Important Message from Medicare." We did not specify the contents of the "Message" in the proposed rule, as hospitals are not responsible for writing it. We have distributed and will continue to distribute to hospitals the language of the "Message" that they are to use. A copy of the "Message" is included as Appendix I to this interim final rule.

We proposed to require hospitals to obtain a separate signed acknowledgment from the beneficiary attesting to the receipt of "An Important Message from Medicare" and to retain a copy of the acknowledgment. Effective with admissions on and after March 24, 1986, PROs were required to monitor each hospital to assure that the hospital distributes "An Important Message from Medicare" to all Medicare beneficiaries. Therefore, we proposed to require the hospital to obtain the beneficiary's separate, signed acknowledgment attesting to the receipt of the "Message" and to retain a copy of the acknowledgment.

We also proposed to revise § 489.20, Basic commitments, to show that a hospital must distribute "An Important Message from Medicare".

We planned to add a new paragraph (12) to § 489.53, Terminations by HHS, to show that a hospital failing to meet the requirements of § 489.27 may be terminated. Whether or not HHS would terminate a provider would depend on HCFA's judgment as to the scope of the failure and the hospital's correction or plan for correction of the failure. We did not anticipate any hospital opposition to the requirement that the "Message" be distributed. We believe we already have full cooperation from hospitals.

The revisions were to apply only to Medicare admissions beginning after we distributed "An Important Message from Medicare".

D. Hospital Emergency Care

The revisions to the regulations we proposed on June 16, 1988 would have been revisions and additions to 42 CFR Part 489, Provider Agreements under Medicare, and revisions to 42 CFR Part 1001, Program Integrity—Medicare, and Part 1003, Civil Money Penalties and Assessments. Basically, the proposed provisions paralleled the statutory requirements that were then in effect. We note that, as discussed above in section II.D. of this preamble, OBRA 89 and OBRA 90 included amendments to section 1867 of the Act.

1. Requirements for Hospitals With Emergency Care Departments

• We proposed to revise § 489.20, which discusses basic commitments, by adding a new paragraph to require hospitals with emergency departments, as part of their participation agreement, to agree to comply with the new § 489.24, which incorporates the statutory requirements.

• We proposed to add a new section § 489.24, Special responsibilities of Medicare hospitals in emergency cases, to set forth requirements for emergency cases for all hospitals that have provider agreements with Medicare. We planned to require a hospital to take the following measures:

+ Medical screening requirement—For any individual, regardless of his or her eligibility for Medicare, for whom emergency treatment or examination is requested, we proposed to require a hospital with an emergency department to provide for an appropriate medical screening examination within the emergency department's capability to determine whether an emergency medical condition exists or whether the individual is in active labor, as defined below. The examinations would be conducted by individuals determined qualified by hospital by-laws and who meet the requirements of § 482.55, which are that emergency services be supervised by a qualified member of the medical staff and that there be adequate medical and nursing personnel qualified in emergency care to meet the written emergency procedures and needs anticipated by the facility. We proposed to allow hospitals maximum flexibility in their utilization of emergency care personnel by not including specific requirements concerning education or credentials for individuals conducting emergency medical examinations.

+ Necessary stabilizing treatment for emergency medical conditions and active labor—

If the individual has an emergency medical condition or is in active labor, we proposed that the hospital be required to provide either further medical examination and treatment to stabilize the medical condition or treatment of the labor or transfer the individual appropriately to another medical facility. We would not hold the hospital responsible if the individual, or a legally responsible person acting on the individual's behalf, refuses to consent in writing to the further examination and treatment or the appropriate transfer to another hospital.

Under these provisions, the hospital would be responsible for treating and stabilizing any individual, regardless of eligibility for Medicare, who presents himself or herself with an emergency condition at the hospital, and for providing such care until the condition ceases to be an emergency or until the individual is properly transferred to another facility. We interpreted this to mean, for example, that if a hospital were to admit and then transfer an individual before his or her condition is stabilized, except as provided below, it would be a violation of section 1867 of the Act.

+ Transfers and restrictions—

If an individual at a hospital has an emergency medical condition that has not been stabilized or the individual is in active labor, the hospital could not appropriately transfer the individual unless one of the following conditions exist:

—The individual (or a legally responsible person acting on the individual's behalf) requests the transfer.

—A physician (or other qualified medical personnel if a physician is not readily available in the emergency department) has certified in writing that, based upon the reasonable risks and benefits to the individual and the information available at the time, the medical benefits reasonably expected from the provision of appropriate medical treatment at the other facility outweigh the increased risks to the individual's medical condition from the transfer.

We considered a transfer to be appropriate only if the receiving medical facility has available space and qualified personnel for the treatment of the individual and has agreed to accept the transfer of the individual and to provide appropriate medical treatment. The transferring hospital would have to furnish the receiving medical facility with timely appropriate medical records (for example, copies of the available history, examination, and treatment records as well as any available reports of diagnostic studies performed). The patient would have to be accompanied by qualified personnel during the transfer; transportation arrangements would have to include the use of necessary and medically appropriate life support measures.

Although the statute authorized the Secretary to find that the transfer must meet "other requirements" in the interest of the health and safety of individuals transferred, we did not propose to adopt any. We did, however, specifically invite public comment concerning any "other requirements" the Secretary should consider adopting regarding the health and safety of

emergency department patients being transferred between medical facilities.

• Definitions.

We proposed to include in § 489.24 the following definitions as included in the statute, without interpretation—

+ "Active labor" means labor at a time when delivery is imminent, there is inadequate time to effect safe transfer to another hospital before delivery, or a transfer may pose a threat to the health and safety of the patient or the unborn child.

+ An "emergency medical condition" means a medical condition manifested by acute symptoms of sufficient severity (including severe pain) that the absence of immediate medical attention could reasonably be expected to result in: (a) Placing the patient's health in serious jeopardy; (b) serious impairment to bodily functions; or (c) serious dysfunction of any bodily organ or part.

+ "To stabilize" means, with respect to an emergency medical condition, to provide the medical treatment of the condition necessary to assure, within reasonable medical probability, that no material deterioration of the condition is likely to result from the transfer of the individual from a facility.

+ "Stabilized" means, with respect to an emergency medical condition, that no material deterioration of the condition is likely, within reasonable medical probability, to result from the transfer of an individual from a facility.

+ "Transfer" means the movement (including the discharge) of a patient to outside a hospital's facilities at the direction of any person employed by (or affiliated or associated with, directly or indirectly) the hospital, but it does not include moving a patient who has been declared dead or who leaves the facility without the permission of any person responsible for directing transfers.

For the purpose of these definitions, the term "hospital" means a Medicare facility certified as a hospital with its own provider number.

We did not plan to define "participating provider" in part 489; 42 CFR 400.202 defines terms applicable to all of 42 CFR Chapter IV and already defines "provider". A provider by definition agrees to participate in Medicare. We proposed to add a definition of "participating hospital" and the remaining statutory definition, that of "responsible physician", to 42 CFR Chapter V (Parts 1001 and 1003), since these terms are used in conjunction with monetary penalties, which is under the jurisdiction of the Office of Inspector General. We discuss the proposed definition of "responsible physician" below under "Civil Monetary Penalties."

• We proposed to amend 42 CFR Parts 489, 1001 and 1003 to provide for types of sanctions that would be applied by the Department, as appropriate—

+ Resolution of allegations and determination of liability.

If the evidence available establishes that a hospital knowingly and willfully, or negligently, failed to provide the appropriate screening and treatment or transfer as explained above, it would be subject to either termination of its provider agreement by HCFA in accordance with section 1866(b) of the Act, or suspension of its provider agreement by the OIG. In addition, the OIG could also impose civil monetary penalties for knowing violations.

When the Department receives a complaint, or any information or allegation, to the effect that a Medicare hospital did not appropriately comply with the emergency medical screening, stabilizing, treatment or transfer requirements, HCFA would, upon receipt of all available information and evidence, conduct sufficient review to determine whether the complaint falls within the jurisdiction of section 1867. If so, HCFA would consider the complaint a substantial allegation and would investigate the allegation thoroughly.

If complaints allege acts of discrimination in violation of the civil rights laws, HCFA will refer them to the Office for Civil Rights. In the case of other complaints, HCFA would send each complainant a letter acknowledging receipt of the complaint, advising him or her of his or her rights to consider independently the civil enforcement provisions of section 1867 and stating that it will refer the complaint to other agencies if, during the complaint investigation, it determines that the matter falls under the jurisdiction of other agencies. Thus, HCFA would refer a complaint to the Office for Civil Rights if it determines that a hospital may be in violation of the Hill-Burton Subpart G Community Service regulations at 42 CFR 124.603(b)(1), which require Medicare participating hospitals that receive Hill-Burton construction grants and loans to provide emergency medical services to any person who resides (or, in the case of some hospitals, works) in the hospital's designated health service area. HCFA would, of course, inform complainants of the outcome of its investigations.

HCFA would notify State Medicaid authorities, State licensing bodies, the Office of Inspector General, appropriate PROs and the Office for Civil Rights concerning all complaint investigations and all termination actions.

HCFA would determine whether the hospital knowingly and willfully, or negligently, failed to comply with the requirement of § 489.24 based on evidence of: (a) Inadequate treatment or treatment not being provided; (b) patients in unstable condition or in active labor not being properly transferred as defined in § 489.24(d)(2); (c) the hospital's actions, or lack of actions, causing a patient's or infant's death or serious or permanent impairment to a patient's bodily functions; or (d) a hospital's actions placing a patient's health in serious jeopardy. HCFA would determine the hospital to have been negligent if the hospital and its personnel failed to exercise care that should normally be supplied to a patient experiencing an emergency medical condition or active labor as defined in § 489.24(b).

+ Termination of a provider agreement by HCFA.

HCFA's termination authority under this provision was designed so that quick action may be taken to protect Medicare beneficiaries and other individuals from any potential harm. The termination of a provider agreement was to be the initial action contemplated against a hospital that knowingly and willfully, or negligently, failed to meet the requirements set forth in § 489.24. This section would allow for the termination of the hospital's provider agreement under Medicare in accordance with section 1866(b) of the Act. The termination requirement was to be contained in § 489.24(e). (The authority to terminate has been delegated from HHS through the HCFA Administrator to HCFA Regional Offices.)

HCFA was to revise § 489.53, Termination by HCFA, to include in paragraph (b) failure to comply with the requirements of § 489.24 as a mandatory cause for termination of a provider agreement. HCFA would also revise paragraph (c) to state that, if it determines that a hospital is in violation of § 489.24(a) through (d), HCFA would usually consider the violation to pose an immediate and serious threat to the health and safety of persons presenting themselves to the hospital for emergency services and would terminate the hospital's approval for Medicare participation within 2 days of the determination unless the violation is corrected.

In those instances in which HCFA determined that a hospital was in violation of the requirements of the Act, it would initiate termination action. When that action was resolved, HCFA would refer the case to the OIG for possible imposition of civil monetary

penalties. If the OIG, upon further investigation, discovered past violations that did not form the basis of the termination action, it could decide that a sanction is warranted and exercise its authority to impose a suspension against the reinstated provider. (See the next section.)

In instances where HCFA found no violation, and therefore did not take an action, the closed case would still be transmitted to the OIG. If the OIG, upon reviewing the case file, believed that further case development was warranted, it would be free to do so. If OIG's investigation indicated that there were additional violations that were not reflected in HCFA's case file, it would refer the new case information back to HCFA with a recommendation on whether HCFA should terminate the hospital's provider agreement based on the new findings.

Whether or not HCFA took a termination action on a given case, all investigated cases were to be referred to the OIG for possible imposition of civil monetary penalties.

+ Suspension of a provider agreement by the OIG and imposition of civil monetary penalties.

We proposed for the OIG to suspend providers, impose monetary penalties on violators and exclude responsible physicians. The proposed rule stated that the OIG would not be precluded from suspending a hospital if, upon further investigation, it determined there were additional violations of section 1867 beyond those warranting the HCFA termination that indicated a pattern of dumping more widespread than initially believed by HCFA, or that additional instances of dumping were so egregious that a penalty of suspension was appropriate. In addition, the proposed rule stated that the OIG could also impose a civil monetary penalty (of not more than $50,000 per violation) for a hospital knowingly violating the screening, treatment and transfer requirements of the statute and a civil monetary penalty (also of not more than $50,000) against each responsible physician. The proposed regulations also stated that, in addition to imposing civil monetary penalties, the OIG may exclude the responsible physician from Medicare participation for up to five years.

Congress repealed the suspension authority in section 4008(b) of OBRA 90.

• Civil enforcement.

An individual who suffers personal harm, or a medical facility that suffers a financial loss, as a direct result of the hospital's violation of a requirement in § 489.24, may bring a civil action, in an appropriate Federal district court, against the hospital for damages and other equitable relief as appropriate. No civil action may be brought more than 2 years after the date of the violation. The Federal district court will apply the law of the State in which the hospital is located.

We continue to believe that it was neither necessary nor appropriate to revise the regulations to reflect this provision.

• Preemption of State law.

The legislation provides that it does not preempt State or local law except where there is a conflict with the statutory provision. Since Federal law ordinarily supersedes State law where there is a conflict, it was not necessary to propose this provision for the regulations.

2. Responsibilities of Hospitals Receiving Improperly Transferred Individuals

Preliminary findings of a study being conducted by the OIG ("Patient Dumping After COBRA: Assessing the Incidences and the Perspectives of Health Care Professionals" (August 1988)) confirmed that a number of individuals in unstable condition have been transferred improperly and that the cases were not reported to HCFA. Because we needed to know about all improper transfers, we proposed to add new paragraphs § 489.20(g) and § 489.24(f) to require a hospital that suspects it may have received an improperly transferred individual to promptly report the matter to HCFA and to the State survey agency. To be in compliance with this requirement, the receiving hospital would have to report any suspected incident within 72 hours of its occurrence; this requirement would appear in manual instructions.

We also proposed to add material to § 489.53(a) to show that failure to report improper transfers may subject the receiving hospital to termination of its provider agreement.

In those instances in which HCFA determines that a hospital is in violation of § 489.20(g) and § 489.24(f), we proposed to initiate termination action.

3. State Survey Agency Responsibilities

The preliminary findings of the OIG study previously cited also identified incidents of improper transfer being reported to the State survey agency that were not then reported to HCFA.

To assure that we are aware of all instances of improper transfer, we also proposed to require the State survey agencies to report promptly any credible complaints (that is, complaints that are specific and detailed enough to be investigated) related to violations of section 1867 of the Act. Therefore, we intended to revise § 405.1903 (recodified as § 488.18), Documentation of findings, by adding a new paragraph (d) that would require State survey agencies to inform HCFA of credible reports of violations of § 489.24.

IV. Comments and Responses

A. Participation in the CHAMPUS, CHAMPVA and VA Health Care Programs

We received comments from nine commenters concerning the CHAMPUS/CHAMPVA and VA issues. They were from hospitals, professional organizations and one individual.

Comment: Two commenters raised numerous issues relating to the operations of the CHAMPUS/CHAMPVA programs and the operation of the prospective payment system under those programs (CHAMPVA payments are made under CHAMPUS' DRG-based payment system). The issues concerned such items as the status of hospitals operating under demonstration programs conducted by those programs, and the obligation of CHAMPUS/CHAMPVA patients for making cost-share amounts required under those programs.

Response: The purpose of these regulations is to require hospitals that participate in Medicare to participate as well in the CHAMPUS/CHAMPVA and VA programs. These regulations do not relate to rules under which those programs function and do not make any changes in their operations. We have referred questions concerning operational issues to appropriate administrative officials at OCHAMPUS who assure us that providers who are participating in the CHAMPUS Reform Initiative area will not be forced to accept payment less than the DRG amounts. They also tell us that the adjusted standardized amount used in the CHAMPUS DRG-based payment system contains a factor to reimburse hospitals for CHAMPUS' share of the hospitals' bad debts. These regulations do not change the beneficiary's obligation to pay required cost-share amounts.

Comment: Four commenters stated that the provider's freedom of choice in making management decisions of participating or not in these additional programs would be taken away by implementing these regulations.

Response: The legislation clearly ties participation in Medicare to acceptance, as well, of the CHAMPUS and CHAMPVA participation responsibility. We recognize that this change in the law

alters the range of discretion that a hospital may have in selecting participation options but the law offers no alternative to accepting all the programs or declining to participate in Medicare.

Comment: One commenter believed that, as a provider of services to CHAMPUS/CHAMPVA and VA beneficiaries for many years, his institution has the right to receive a notice of government action and have a chance to respond to the government decision-making. He received no notice of government action until reading this notice of proposed rulemaking.

Response: Under the Administrative Procedure Act (5 U.S.C. 553 et seq.), it is the notice of proposed rulemaking that is the vehicle for providing notice of this type of government action. Should a provider be subject to termination for not being in compliance with requirements added by this rule, we believe the procedures for termination by HCFA located at § 489.53 are fundamentally fair. These procedures include our proposed rules under § 489.53(a)(11) that allow HCFA to terminate an agreement with any provider, if HCFA finds that the provider no longer meets the appropriate conditions of participation such as those found in new § 489.25 or § 489.26, which address providing medical services to CHAMPUS/CHAMPVA or VA beneficiaries. Before we find a hospital in violation, we expect, as discussed in the preamble of the proposed rule, that efforts to resolve any problem will have taken place. If problems are not resolved then the actual notice of termination procedures listed in § 489.53(c) will be initiated.

Comment: Four commenters stated that third party payors, such as Medicaid and CHAMPUS, pay smaller and smaller proportions of the costs these hospitals incur in serving those covered by these programs. In their view, if hospitals are to continue to provide full access, then Congress, HCFA, the Department of Defense, and State governments must recognize their responsibility to adequately finance the care that they require to be provided.

Response: We believe that the prospective payment system results in fair payments. As implemented under Medicare, the prospective payment system differentiates payments by location and type of provider as well as by the relative resource intensity of individual cases. The CHAMPUS and VA DRG-payment systems are similar to that used by Medicare; however, they have been tailored to their own health care utilization patterns. Under a prospective payment system, many of the operational costs have been factored into the DRG.

We have been informed that under the CHAMPUS DRG-payment system the cost sharing provisions have been changed to ensure that the amount of the shared cost incurred by the beneficiary will be more equitable. In fact, we have learned that most beneficiaries will pay less under this new system than the old, and no beneficiary is expected to pay more in cost share amounts. As under the Medicare prospective payment system, annual evaluations to recalculate DRG weights are taking place under the CHAMPUS DRG-based system using the most recent period of CHAMPUS data. During annual evaluations, consideration can be given to any problems which have surfaced.

For services provided to CHAMPVA patients, inpatient hospital services are being reimbursed through the CHAMPUS DRG-based payment system with, we expect, similar results. With regard to VA beneficiaries, for admissions on or after November 23, 1990, hospital reimbursements are being made in accordance with the regulations published on October 24, 1990 (55 FR 42848) concerning the payment methodology and amounts that the VA provides for those hospitals that furnish inpatient hospital care to veterans whose care has been authorized or will be sponsored by the VA. As noted in section I.B. of this preamble, this rule was developed jointly by VA and HHS, and the VA payment system conforms to Medicare's inpatient hospital prospective payment system in most cases.

Comment: One commenter believes that, at a minimum, disproportionate share providers should receive special protection. He stated that since Congress recognized that additional Medicare payments under the prospective payment system should be made to hospitals that admit a disproportionate share of low-income patients, a similar disproportionate share status may be necessary to protect Medicare providers located in areas surrounding military bases or other military installations.

Response: The preamble to the final rule implementing the CHAMPUS DRG-Based Payment System (52 FR 32992) provides information to suggest that there should not be a disproportionate number of CHAMPUS beneficiaries seeking care in Medicare participating hospitals (civilian hospitals). Specifically, when discussing "emergency treatment" (page 32996, first column), it states that "* * *all CHAMPUS beneficiaries who live within catchment areas of military treatment facilities (MTFs) are required to first seek inpatient care at the MTF before going to a civilian hospital* * *" The catchment area is defined as within 40 miles of an MTF. On the other hand, however, we have been informed that CHAMPVA beneficiaries are not eligible for care in MTFs; therefore, they must use either VA or civilian hospitals.

We believe the payment rates under CHAMPUS are adequate to pay for treatment of its enrolled population. If the commenter believes otherwise he should furnish the VA with data on this matter and present detailed findings to support the need for a suggested adjustment to payment rates.

Comment: Two commenters stated that these regulations should not be imposed until the joint regulations are issued and thereafter should be prospective in nature only.

Response: The joint regulations to which the statute refers are regulations establishing payment procedures and amounts, not regulations requiring participation. Such regulations have already been published (55 FR 42848 for VA and 52 FR 32992 for CHAMPUS/CHAMPVA). In addition, we consulted on these regulations with pertinent members of OCHAMPUS and VA before publication; thus, these regulations are also a joint action. They are also prospective, not retroactive.

B. Discharge Rights Notice

Twenty-five commenters addressed the hospital discharge rights notice. These comments were from a physician, citizen organizations, professional organizations, hospital associations, a consultant group, and hospitals.

Comment: Three commenters suggested alternatives to the notice, including the posting of signs in the hospital, sending a copy of the notice with each beneficiary's social security check, and having the hospital mail the notice to the beneficiary before his or her admission to the hospital.

Response: We do not believe that most of these methods would serve the purpose Congress intended. Posting a sign could still result in many, if not most, beneficiaries not noticing it at all; a mass mailing would be untimely for most patients and thus subject to being ignored. Moreover, the law requires that the notice be furnished by the hospital. Finally, many admissions are not planned or occur with little advance notice; so, having the hospital mail the statement before admission would be a viable method of informing some but not all beneficiaries of their discharge rights on a timely basis. We note, however, that hospitals may choose this

approach with patients whose admissions are planned in advance.

Comment: One commenter stated that the public had not had adequate opportunity to participate in developing the discharge rights statement.

Response: Section 1866(a)(1)(M) of the Act requires a Medicare participating hospital to furnish a statement concerning discharge rights to each Medicare beneficiary.

The law is self-implementing; that is, it did not require public comment or regulations in order to be implemented. However, we did consult extensively with major beneficiary and provider organizations (such as the Gray Panthers, American Hospital Association, and the American Association of Retired Persons) and have subsequently revised the final version of "An Important Message from Medicare" (the "Message") after these consultations.

Comment: One commenter stated that the "Message" is inadequate, especially as it pertains to discharge planning, and suggested either a separate notice or an expanded notice to focus on the discharge planning requirements of section 1861(e)(6) of the Act. Another commenter asserted that the original "Message" was poorly written, as it tries to cover legal requirements. The commenter also asserted that there is a need for the "Message" to be more supportive and informative.

Response: The revised "Message" contains several references to the availability of hospital discharge planning and the need to consult a physician or appropriate hospital staff for assistance. Beneficiaries have a current need for the "Message," and we do not believe it would have been appropriate to delay its distribution until after the condition of participation for discharge planning, proposed to be included in our regulations at § 482.43 (see 53 FR 22506, June 16, 1988), is published as a final rule. Requiring a notice of hospital discharge rights and requiring hospitals to provide a discharge planning process are two separate statutory provisions of OBRA 86 that were not meant to be combined. Further, Congress did not specify explicitly in section 1866(a)(1)(M) that discharge planning should be included in the notice. We have revised the original "Message" to improve its readability as well as its content. We note that it has always been our intention to revise the "Message" in the future as patient needs change.

Comment: One commenter thought we should include an explanation of the content of the "Message" in the final rule and that an outline of it in the regulations would aid in its later interpretation.

Response: We are including as Appendix I to this interim final rule the current "Message"; it is self-explanatory. We do not believe it is necessary to outline its content in the regulations text, as the "Message" is readily available at hospitals.

Comment: One commenter thought we should advise the public how they can obtain a copy of the "Message" or that we should send each commenter a copy.

Response: The "Message" was distributed to all hospitals via Medicare Hospital Manual Transmittal No. 545, dated July 1988. The "Message" is readily available to the public since it has been reproduced in the 1989 through 1994 editions of "The Medicare Handbook." As stated above, we are also publishing it as Appendix I to this final rule.

Comment: We received four comments, all from beneficiary organizations, in favor of our requirement that the hospital obtain a signed acknowledgement of the discharge rights notice. We also received 17 comments against it, primarily from hospitals and hospital organizations. Four of these commenters stated that there is no need for this requirement. They cited HCFA's statement in the preamble to the proposed rule that, "we believe we already have full cooperation from hospitals."

Response: We strongly believe that the requirement that a hospital furnish a statement concerning discharge rights to each Medicare beneficiary must be fully met. However, we are persuaded by the commenters that full compliance has already been achieved in most hospitals. Therefore, we have eliminated the requirement for a signed acknowledgement. In its place, we now specify under § 489.27 that a hospital must be able to demonstrate that it complies with the requirement that each beneficiary be furnished with a discharge rights notice at or about the time of admission. We note, however, that signed acknowledgements could be required as part of a plan of correction for a hospital that was found to be out of compliance with this requirement.

Comment: Fourteen commenters objected to the requirement that hospitals retain the signed acknowledgement by the beneficiary, as they anticipate it will be a tremendous burden in terms of cost of the forms, storage of the acknowledgements, and added processing time by the admissions staff.

Response: In conjunction with the elimination of the signed acknowledgement requirement, we have deleted the accompanying retention requirement from this interim final rule. When we published the proposed rule, our PRO program was oriented towards review of hospital medical records, and so we chose initially to implement the discharge rights requirement specifically in terms of an acknowledgement in the medical record. More recently, however, we have reoriented our PRO program towards efforts more likely to bring about general improvements in quality and have minimized our funding of more limited "process" requirements such as review of individual medical records. Accordingly, we recognize that the proposed acknowledgement and retention requirements have become obsolete and are eliminating them. Again, the final rule does require hospitals to demonstrate compliance with the discharge rights notification requirement, but does not specify the manner of compliance. We expect some hospitals may continue to seek and retain signed acknowledgements but believe they should have other, less burdensome, options as well.

Comment: Eight commenters believed that this requirement would be a burden on the beneficiary and his or her family as there are already too many forms to complete at admission; one commenter felt that securing a signed acknowledgement would do little to improve beneficiary attention to the "Message" because it is the presence of a problem, rather than the presence of the notice, that generates beneficiary attention to discharge rights issues.

Response: We realize that being admitted to a hospital is a stressful event for patients and their families. As noted above, we have removed the requirement for a signed and dated acknowledgement, in part because of its impact on beneficiaries. We expect in the future to look more carefully at innovative ways to ensure that patients get the information they need when they need it.

Comment: In addition to the concerns discussed above, commenters also addressed specific aspects of the requirement that hospitals obtain and retain signed acknowledgement statements. For example, one commenter suggested that we require that the date and time of the patient's signature on the acknowledgement statement be recorded; another recommended that the acknowledgement statement be accompanied by an additional statement that signing the acknowledgement in no

way compromises a patient's discharge rights; another suggested that the acknowledgement specify that the beneficiary has been given the name of an individual at the hospital who is available to explain the "Message." Similarly, commenters asked that we specify where, in what form, and for how long acknowledgements be retained. Finally, several commenters recommended that we allow hospitals as much flexibility as possible in implementing the acknowledgement and retention requirements.

Response: Given that we have decided to eliminate the requirement for a signed acknowledgement and its retention, most of these comments are now moot. Thus, we agree with the commenters who believe that hospitals should be given maximum flexibility in determining how they can best comply with the requirement that all beneficiaries be furnished with a notice of discharge rights. We do not intend to specify the actual mechanics of having this notice presented to patients. Instead, we expect individual hospitals to exercise their own discretion in dealing with the associated administrative issues. We emphasize that, for survey purposes, hospitals that do not choose to obtain and retain signed acknowledgement statements must be able to document compliance by some other means with the requirement for timely distribution of the discharge rights notice.

Comment: One commenter contended that we should have done more consulting with organizations knowledgeable about hospital management practices before developing a proposal that related to the creation and retention of a record.

Response: We believe that the publication of the proposed rule represents a valuable form of consultation. The issue we dealt with in the proposed rule was primarily an issue relating to beneficiary awareness and the creation of a record that it has been successfully accomplished. As discussed above, we received comments on the recordkeeping and management aspects of the issue, and we have fully considered them in developing the final regulation.

Comment: Some commenters believed that the regulations should address those situations in which the patient is physically and/or mentally unable to understand the message or to sign the acknowledgement and has no one to perform these functions.

Response: We do not agree that the regulations themselves should address these situation. Such situations will be relatively rare. Hospitals will need to be in compliance with applicable State statutes in dealing with informing patients who cannot receive information on their own behalf. Program instructions are a more appropriate vehicle for discussing specific difficulties if they occur and additional guidance is needed.

Comment: One commenter recommended that we specify whether we are requiring hospitals to educate Medicare beneficiaries about the patient's rights listed in the "Message" and to assure that the patient fully understands his or her rights.

Response: We are not requiring the hospital to educate beneficiaries as to their rights, beyond having beneficiaries read the "Message" and signing an acknowledgement that they have read it, nor are we requiring the hospitals to assure that the beneficiaries understand their rights. Beneficiaries are instructed in the "Message" to consult the PRO, their physician or the hospital's patient representative if they do have questions.

Comment: Four commenters believe HCFA, rather than the hospitals, should educate beneficiaries about their rights. One commenter noted that PROs, as part of their Federal contracts, are responsible for community education programs.

Response: HCFA carries out a variety of activities to educate beneficiaries and will continue to do so. However, section 1866(a)(1)(M) of the Act requires that this explanation of patient rights be provided by the hospital. This is an appropriate hospital responsibility since inpatient hospital care is under the control of the hospital and the patient looks to the hospital for information about rights and options concerning care. Also, these rights are related to discharge planning, which is most appropriately a hospital function.

Comment: One commenter wanted us to specify what, if any, changes a hospital can make to the "Message." The commenter also requested that some monitoring requisites from the new PRO scope of work requirements be included in the regulation.

Response: We believe these items are better addressed in program operating instructions. Medicare Hospital Manual Transmittal No. 545, dated July 1988, and subsequent transmittals, inform hospitals that they may use their own letterhead but may not alter or change the language of the "Message." Peer Review Organization Manual Transmittals instructions will be updated, as needed, to reflect this final regulation.

Comment: Three commenters believed that termination for failure to comply with provisions of this regulation is too extreme a penalty.

Response: Although a hospital may be terminated for failing to meet our requirements we will not institute termination before providing an opportunity for correction. As stated in the preamble to the proposed rule, the speed with which we move to termination would depend on HCFA's judgment as to the scope of the failure and the hospital's correction or plan for correction of the failure. This approach will be reflected in implementing program instructions.

Comment: One commenter thought that the acknowledgement requirement should not be subject to the 2-day termination procedure.

Response: The 2-day termination procedure was not proposed to apply to the discharge rights provision, but only to the "anti-dumping" provision.

C. Hospital Responsibility for Emergency Care

We received comments from 68 commenters on the anti-dumping provisions as they existed before the passage of OBRA 89. Commenters included hospitals, professional health organizations, State hospital associations and medical societies, State agencies, physicians, attorneys and other individuals. We have taken into account the OBRA 89 and OBRA 90 statutory changes when responding to the comments we received, and we are adding the OBRA 89 and OBRA 90 requirements to this interim final rule. We are doing this without publishing a second notice of proposed rulemaking pertaining to the OBRA 89 and OBRA 90 requirements because we believe the extensive detail of the statute makes many provisions self-executing and because commenters suggested changes similar to many of those embodied in the legislation.

(Please note that, with respect to the anti-dumping provisions, the statute now uses the term "individual" and not "patient." While our response to comments refers to "individuals," we have not made the parallel change when the term "patient" appears in a commenter's statement.)

General

Comment: A number of commenters suggested that HCFA require hospitals to post signs in their emergency departments advising patients of the hospital's obligation to provide emergency care. Two other commenters recommended that we require emergency room personnel to give emergency room patients both written and oral notice of the hospital's

obligations and the patient's rights under these regulations.

Response: The provisions of section 1867 of the Act address what is appropriate performance on the part of hospitals in meeting medical needs of individuals who need emergency services. Additionally, as amended by section 6018(a)(2) of OBRA 89, section 1866(a)(1)(N)(iii) of the Act explicitly directs the Secretary to require Medicare participating hospitals to post conspicuously in all emergency departments a sign (in a form specified by the Secretary) specifying rights of individuals under section 1867 of the Act with respect to examination and treatment for emergency medical conditions and women in labor. Further, since some hospitals do not have traditional emergency departments, we are amending § 489.20 to include a new paragraph (q)(1) to reflect this statutory requirement and to specify other hospital areas in which such signs should be posted. It should be noted that Medicare participating hospitals that do not offer emergency services do not have to comply with this requirement. However, all hospitals do have to comply with the provision of section 1866(a)(1)(N)(iv) of the Act, as also amended by section 6018(a)(2) of OBRA 89, that directs hospitals to post conspicuously (in a form specified by the Secretary) information indicating whether or not the hospital participates in the Medicaid program under a State plan approved under title XIX. (See § 489.20(q)(2).)

We have also published an interim manual instruction (IMI)(IM–90–1, June 1990) in HCFA Pub. 10, the Medicare Hospital Manual, listing minimum criteria for the signs and an example of language for this sign that would meet such criteria. We are including the IMI language as shown in the IMI exhibit for informational purposes in Appendix II to this final rule and request comments on the exhibit.

We believe that the statutory requirement for the posting of signs, which does not also require individual written or oral notice, is adequate for the general purpose of informing patients of their rights to a medical screening and stabilizing treatment under the anti-dumping statute. This is consistent with the overall drafting of section 1867 of the Act, which specifically requires individual notice in other situations such as consent to transfer. Accordingly, when an individual's specific treatment is involved, we agree with the commenters that it is essential for patients to be fully informed about all the critical medical issues with which they are faced. That is why we require a more detailed process for ensuring that hospitals obtain the informed consent of an individual who is faced with the prospect of a transfer. (See § 489.24(c).) In such cases, we agree that both oral and written interaction are necessary.

Comment: A number of commenters objected to our proposal concerning furnishing emergency services on the grounds that our rule applies to all patients (rather than Medicare patients only). They believe that any problems were of limited scope and noted that implementation of the requirement will establish an adversarial relationship among HCFA, providers, and patients.

Response: The protections of the statute are expressly extended to all individuals who come to a facility regardless of whether the individual is eligible for benefits under Medicare. The Federal Government has always viewed that a provider's obligation is to all persons, regardless of entitlement. This obligation has been well understood and universally applied to all providers. Congress, in apparent awareness of this universal obligation, has in some instances limited the scope of a provider's obligation. An example of this is discharge planning, as provided under section 1861(ee) of the Act, which limits the scope of this requirement specifically to individuals covered under the Act. Since Congress has not chosen to narrow the scope of section 1867 by limiting it only to persons entitled to benefits under the Act, we are confident that the provisions of section 1867 of the Act extend to all persons.

We believe that section 1867 of the Act also applies to all individuals who attempt to gain access to the hospital for emergency care. An individual may not be denied services simply because the person failed to actually enter the facility's designated emergency department. To read the statute in such a narrow fashion would in our view frustrate the objectives of the statute in many cases and lead to arbitrary results. For the same reason, a facility may not prevent an individual from gaining access to the facility in order to circumvent these requirements. If an individual is on a facility's property, which includes ambulances owned and operated by the facility, even if the ambulance is not on hospital property, and a request is made on the individual's behalf for examination or treatment for a medical condition, we believe the statute reasonably requires the facility to provide a screening examination and treatment or transfer in accordance with section 1867 of the statute. An individual in a nonhospital-owned ambulance on hospital property is considered to have come to the hospital's emergency department. However, an individual in a nonhospital-owned ambulance located off hospital property is not considered to have come to the hospital's emergency department if someone staffing the ambulance contacts the hospital by telephone or telemetry communications and informs the hospital that they want to transport the individual to the hospital for examination and treatment. This is in accordance with the recent court decision that, for purposes of section 1867 of the Act, a hospital-operated telemetry system is distinct from the same hospital's emergency department. (See *Johnson* v. *University of Chicago Hospitals*, 1992 U.S. App. Lexis 25096 (7th Cir. 1992).) Thus, the hospital may deny such access when it is in "diversionary" status because it does not have the staff or facilities to accept any additional emergency patients at that time. However, if the ambulance disregards the hospital's instructions and does bring the individual on to hospital grounds the hospital cannot deny the individual access to hospital services whether or not the hospital is in "diversionary" status.

Comment: A number of commenters noted that these requirements could have a greater impact on some hospitals than on others. For example, rural hospitals would have a greater recordkeeping burden in documenting transfers because they have smaller emergency room (ER) staffs; hospitals with high ER rates for non-Medicare or Medicaid patients would have to provide care for which these programs will not directly compensate, and some hospitals will have to accept larger numbers of indigent patients presenting themselves for treatment.

Response: The law specifically applies to all hospitals that participate in Medicare and that offer emergency services. We have, therefore, inserted the following definition in § 489.24(b): "Hospital with an emergency department means a hospital that offers services for emergency medical conditions (as defined in this paragraph) within its capability to do so." It is also clear that the statute only requires hospitals that offer emergency services to provide screening and stabilizing treatment within the scope of their capabilities (sections 1867(a) and (b) of the Act). We acknowledge, however, that any participating hospital providing emergency services, regardless of size or patient mix, must provide screening and stabilizing treatment, as needed, to individuals who present themselves for

examination or treatment. We recognize that this could create uneven uncompensated care burdens on some hospitals because of larger than usual concentrations of indigent patients; however, we do not believe that this will often be the case. Since the requirements apply to all 6,700 Medicare participating hospitals, among 7,000 U.S. hospitals offering emergency services, we also believe that the statute will lighten the burden on some hospitals now subject to increased patient loads due to inappropriate transfers because patients are more likely to be treated and stabilized at the hospitals where they first present themselves for treatment.

Medical Screening Examination

Comment: Two commenters stated that a hospital should not be required to designate in its by-laws which personnel are qualified to perform the initial medical screening examination because it is unreasonable to require a hospital to amend its by-laws. A recommendation was made that those personnel qualified to perform screening examinations be approved by the medical director of the emergency department. Another recommendation was made that those personnel qualified to perform screening examinations be set forth in the rules and regulations governing the medical staff and not the by-laws.

Response: It is important to require the hospital to determine formally what type of personnel is qualified to perform the initial medical screening examinations because such a formal determination will insure that the hospital's governing body recognizes the "capability of the hospital" and is properly accountable for this function. For this reason, we believe that the delegation should be set forth in a document that is approved by the governing body of the hospital, rather than merely allowing the medical director of the emergency department to make what may be informal delegations that could frequently change. If the rules and regulations are approved by the board of trustees or other governing body, we agree that those personnel qualified to perform these examinations may be set forth in the rules and regulations, instead of placing this information in the hospital by-laws. We are amending § 489.24(a) to reflect this change. Although we are requiring the hospital to specify in its by-laws or its rules and regulations who is a "qualified medical person" for purposes of providing an appropriate medical screening examination, this does not mean that HHS must accept the hospital's specification when determining whether an appropriate medical screening examination was done. So, for example, if a hospital specifies that a nurse is always the "qualified medical person" who should do the medical screening examination, HHS may, in some instances, determine that there was not an appropriate medical screening examination because the condition of the individual required the expertise of a physician to determine whether that individual had an emergency medical condition.

Comment: Several commenters suggested that the regulations require hospitals to perform the medical screening examination without first inquiring about an individual's ability to pay because such inquiries may encourage patients to refuse treatment or request transfer, even when it is not in the best interests of the patient's health.

Response: We agree with the commenter, as did Congress as evidenced by the provisions added to section 1867(h) of the Act by section 6211(f) of OBRA 89:

> A participating hospital may not delay provision of an appropriate medical screening examination required under subsection (a) or further medical examination and treatment required under subsection (b) in order to inquire about the individual's method of payment or insurance status.

We have included this language in the regulations at § 489.24(c)(3). However, we note that we believe that it means hospitals may continue to follow reasonable registration processes for emergency room individuals, including requesting information about insurance, as long as these procedures do not impede provision of necessary treatment and as long as all individuals to whom the procedures apply are treated similarly. That is, all individuals who have an emergency medical condition are served regardless of the answers they may give to insurance questions asked during routine admissions screening. A hospital should not delay treatment to any individual while it verifies information provided.

Comment: Three commenters recommended that the regulations affirmatively state that every patient, regardless of ability to pay, should receive a medical screening examination performed by a physician.

Response: Section 1867(a) of the Act provides that a hospital must give an appropriate medical screening examination to all individuals who come to the emergency department and request examination or treatment. While it may be prudent for a hospital to require a physician to conduct this screening examination in every instance, there may be hospitals, especially rural primary care hospitals, in which a physician is not available to provide a medical screening examination. Even when physicians are present in the hospital, there may be circumstances that are so clearly not emergency medical conditions that other qualified medical personnel may conduct the initial screening examination. However, although it is up to the hospital to determine under what circumstances a physician is required to perform an appropriate medical screening examination, that does not mean that HHS must accept the hospital's determination of what circumstances require that the screening exam be performed by a physician.

Comment: Several commenters asked us to define "appropriate medical screening examination," so that hospitals and physicians are subject to unambiguous requirements for carrying out the statutory mandate.

Response: It is impossible to define in advance all of the circumstances in which an individual may come to a hospital emergency department. What constitutes an appropriate medical screening examination will vary according to the condition and past history of the individual and the capabilities of the hospital's emergency department—both its facilities and available personnel. Within those capabilities, the examination must be sufficient to permit the hospital to decide whether or not the individual has an emergency medical condition. Because the law does not require hospitals, among which there are variations in staffing and procedures, to adopt standard procedures or use standard staffing to meet these requirements, determinations about whether a hospital is in compliance with these regulations must be based on the facts in each individual case.

Comment: One commenter stated that the regulations should permit other qualified medical personnel to perform an initial medical screening examination if a physician is not available in the emergency department. Another asked if hospitals could use labor and delivery nurses, in consultation by phone with an obstetrician, to examine emergency obstetric patients to determine whether they are in labor.

Response: The regulations presently allow a hospital to delegate its responsibility to perform initial medical screening examinations to qualified medical personnel if it does so in its by-laws or in its rules and regulations.

Such a delegation must also be consistent with the provisions of § 482.55 with respect to emergency services personnel. Obviously, the Department cannot anticipate every situation in which an individual with an emergency medical condition may come to an emergency department. Hence, we cannot state unequivocally that an examination by a nurse or other non-physician medical personnel will be appropriate under all circumstances.

Capability

Comment: One commenter suggested that we revise the regulation to permit a hospital to transfer an unstabilized patient when it does not have the personnel or equipment to stabilize the patient's condition within the meaning of the statute.

Response: No revision is necessary. A hospital is only required to treat individuals with the staff and facilities available at the hospital. Under § 482.55(b)(2), a hospital must have available "adequate medical and nursing personnel qualified in emergency care to meet the written emergency procedures and needs anticipated by the facility." Subject to the discussion below concerning on-call physicians, if the hospital does not have at its disposal the personnel or equipment necessary to stabilize a particular person's emergency medical condition, section 1867(c)(1) of the Act permits an unstabilized individual to be transferred if (a) the individual or the individual's representative has been informed of the risks and benefits of the transfer and requests the transfer in writing; or (b) the individual has not refused an appropriate transfer and the physician signs a written certification that the benefits of appropriate treatment at another facility outweigh the risks associated with the transfer.

Comment: One commenter recommended that the services of on-call physicians should be considered in determining the capabilities of the staff and facilities "available" to conduct a medical screening examination and further treatment that may be necessary to stabilize the emergency medical condition or treat the labor. Another asked that the regulations specify that a hospital is deemed to be capable of providing emergency services in all fields in which the hospital is normally engaged, regardless of the staff's reluctance to be available for emergency services.

Response: We agree that on-call physicians and ancillary services should be considered available to the hospital. This was further clarified in section 6018(a)(1) of OBRA 89, which amended section 1866(a)(1) of the Act to require hospitals to maintain a list of physicians who are on call and available to provide treatment needed to stabilize individuals with emergency medical conditions. Accordingly, we have amended § 489.20 to include a new paragraph (r)(2) requiring hospitals to comply with this OBRA 89 provision. The statute (as revised by COBRA, OBRA 89, and OBRA 90) and the current regulations state that the hospital must provide a medical screening examination, within the capability of the hospital's emergency department, including ancillary services routinely available to the emergency department, to determine if the patient has an emergency medical condition. If a hospital chooses to meet its responsibility under § 482.55 to provide adequate medical personnel to meet its anticipated emergency needs by using on-call physicians either to staff or to augment its emergency department, then the capability of its emergency department includes the services of its on-call physicians.

The statute (as revised by COBRA, OBRA 89, and OBRA 90) and current regulations also require the hospital to provide whatever further examination and treatment are necessary to stabilize the medical condition or to provide for treatment of the labor within the staff and facilities available at the hospital. If a staff physician is on call to provide emergency services or to consult with an emergency room physician in the areas of his or her expertise, that physician would be considered to be available at the hospital.

We also believe that when COBRA was enacted, Congress intended that the resources of the hospital and the staff generally available to patients at the hospital would be considered available for the examination and treatment of individuals coming to the hospital's emergency department, regardless of whether staff physicians had heretofore been obligated by the hospital to provide services to those coming to the hospital's emergency department. This was also clarified by section 6211(a) of OBRA 89, which specifies that the capability of hospital emergency departments must include "ancillary services routinely available to the emergency department." Therefore, if a hospital has a department of obstetrics and gynecology, the hospital is responsible for adopting procedures under which the staff and resources of that department are available to treat a woman in labor who comes to its emergency department.

Comment: One commenter expressed concern about the liability of small rural hospitals because many times they are not equipped to treat certain emergencies, in which case the patient must be transferred. Another commenter asked if each hospital's emergency room is required to treat emergency psychiatric disorders regardless of the hospital's capabilities.

Response: Neither the statute nor the regulations mandate that hospitals expand their resources or offer more services. Rather, they focus on a hospital's existing capabilities. The thrust of the statute is that a hospital that offers emergency services to some members of a community who need their emergency services (for example, those that can pay) cannot deny such services to other members of the community with a similar need.

As previously indicated, the statute and the regulations specifically state that the hospital must provide treatment that is within the capabilities of the staff and facilities it has available. If a hospital does not have the capability to treat psychiatric disorders or a small rural hospital lacks the staff or resources to treat certain emergencies, it must determine whether the benefits to an individual's medical condition outweigh the risks associated with transferring the individual. If a physician certifies that the benefits of transfer to a more suitable facility outweigh the risks, the hospital may transfer the individual to a facility that has the capability to treat that individual and agrees to accept transfer. The certification may be signed by a qualified medical person if a physician is not physically present in the emergency department and that qualified medical person first consults with a physician who later countersigns the certification. Also, a person seeking medical treatment may make an informed decision to request transfer to such a facility.

Comment: Several commenters asked whether the determination of liability and penalties will be the same for a hospital that has limited capabilities as that for a hospital that has a trauma center.

Response: Any participating hospital that offers emergency services is liable for violations of the statute regardless of whether it is a small rural hospital or a major metropolitan tertiary care facility with a trauma center. The statute requires any subject hospital to provide for treatment within the capabilities of the staff and facility it has available. However, hospitals with fewer than 100 State-licensed, Medicare-certified beds are subject to a maximum civil monetary penalty of $25,000, as compared to a maximum civil monetary

penalty of $50,000 for hospitals with 100 or more State-licensed, Medicare-certified beds.

Comment: One commenter questioned the responsibility of a hospital that is a Medicare certified hospital but does not have an emergency department. Another wanted to exempt from the reach of the statute facilities, such as college infirmaries, that provide emergency services exclusively to students.

Response: The statute and these regulations apply only to hospitals that participate in the Medicare program and that offer emergency services. HHS considers any participating hospital that provides emergency services to have an emergency department and thus to be subject to the provisions of the statute and these regulations. However, even a Medicare participating hospital that does not provide emergency services must continue to meet the standard of § 482.12(f), which requires hospitals to have written policies and procedures for appraisal of emergencies, initial treatment, and referral where appropriate. Also, to our knowledge, college infirmaries are not hospitals having Medicare provider agreements and are thus not subject to section 1867 of the Act.

Hospital

Comment: One commenter noted that in the proposed regulations and COBRA, the term "hospital" is defined as "a Medicare facility certified as a hospital with its own provider number." The commenter recommended that the definition be expanded to require that the transfer be made to the "nearest appropriate facility" that happens to be a Medicare provider, so that Medicare providers will be required to receive transfers from other hospitals.

Response: The intent of the statute is to provide equal treatment for all individuals who come to a hospital and request a medical screening examination or treatment for an emergency medical condition, as well as to provide for protected transfers of individuals who have unstabilized emergency medical conditions. Such individuals are at the greatest risk of severe physical impairment, dysfunction, or delivery of a baby in the absence of immediate medical attention. We believe that after assessing an individual's medical condition and weighing the risks versus benefits of effectuating an appropriate transfer to another facility, the amount of travel time required to transport the individual should be considered. Situations will occur where an individual's condition requires a hospital to effectuate a transfer to the nearest appropriate facility that has the capability and capacity to treat in order to minimize the risks to the individual by reducing the transportation time as much as possible. Transfer of an unstabilized patient to a hospital with which there is a prior transfer agreement can be justified when the condition of the unstabilized individual is such that the additional travel time would not increase the danger to the patient.

Emergency Department

Comment: Two commenters believe that we should define emergency department to include the provision of emergency services, as not all hospitals have a formal "emergency department."

Response: We believe that section 1867 of the Act applies to all Medicare participating facilities that offer emergency services. It was not Congress' intent to limit the scope of the provision to only those facilities that have organized areas specifically labelled as emergency departments or emergency rooms. If so, a facility could easily circumvent its responsibilities under the Act simply by renaming the department to something other than "emergency department" or by using an approach other than departmentalization in providing hospital services. This would clearly contravene the underlying principle of the statute that obligates hospitals to render emergency care within their capacity when they normally undertake to render such care in individual cases.

For example, many psychiatric hospitals do not have organized emergency departments. However, many of these facilities offer 24-hour psychiatric services on a walk-in basis for persons who are not patients of the hospital. Although these hospitals do not have organized emergency departments, they are presenting themselves to the public as providing care for psychiatric emergencies. We believe this type of facility must comply with the requirements of section 1867 of the Act and render emergency care within their capability to do so (or provide for a transfer in accordance with section 1867(c) of the Act).

In order to clarify this issue, we believe it is helpful if the regulations define the term "hospital with an emergency department" to clarify which hospitals are subject to the requirements of section 1867. Therefore, as we previously indicated, we have inserted in § 489.24(b) the definition of a hospital with an emergency department.

Patient Consent

Comment: One commenter noted that the first sentence of proposed § 489.24(a) contains a conflict in language as it appears to refer to individuals coming in alone and then refers to a request made on the individual's behalf.

Response: The statute and the regulations focus on the individual coming to an emergency department who may need treatment, whether or not that individual is alone or with his or her entire family. However, we are clarifying the language to state that the request for treatment may be made by the individual or on the individual's behalf.

Comment: Eleven commenters questioned the hospital's responsibility to a patient who refuses treatment or refuses a medically appropriate transfer.

Response: The statute deems a hospital as having met its statutory obligations under this provision if an individual refuses treatment or a medically appropriate transfer. We are adding requirements, discussed below, to ensure that the individual's refusal is informed and not obtained under duress.

Comment: One commenter stated that proposed § 489.24(c) (2) and (3) are inconsistent in that an individual's refusal to consent to treatment must be in writing, but a refusal to consent to transfer does not. Other commenters urged HCFA to require that refusals to consent to treatment be in writing and that they reflect that the individual, or a legally responsible person acting on his or her behalf, understands the hospital's obligations under the statute and is aware of the risks of refusing treatment.

Response: We agree that the decision to refuse or consent to treatment must be an informed one, and we believe that the hospital is obliged to inform the individual (or the person requesting examination or treatment on his or her behalf) of the reasonably foreseeable risks and benefits of refusing or consenting to treatment. Sections 6211(b) (1) and (2) of OBRA 89 amended section 1867(b) of the Act to require hospitals to inform individuals (or persons acting on their behalf) of the risks and benefits to the individual of examination and treatment and/or transfer, and to "take all reasonable steps to secure the individual's (or person's) written informed consent to refuse such examination and treatment," transfer, or both. We are therefore amending § 489.24(c) (2) and (4) to comply with these OBRA 89 requirements. Thus, the medical record should contain a description of the examination and treatment offered to the individual. We also believe that hospitals should not attempt to coerce

individuals into making judgments against their best interest by informing them that they will have to pay for their care if they remain, but that their care will be free or at low cost if they transfer to a charity hospital.

It should also be noted that hospitals generally require an individual's consent to treatment to be in writing. (See § 482.24(c)(2)(v) requiring properly executed informed consent forms for procedures and treatments specified by hospital medical staff or Federal or State law requirements.)

Comment: One commenter stated that HCFA should require a request for transfer to be in writing to ensure that it is not coerced. It should acknowledge the individual's awareness of his or her right to emergency treatment under the statute and outline the benefits and risks of transfer.

Response: We agree and, based upon this comment and section 6211(c)(1) of OBRA 89, are revising § 489.24(d)(1)(ii)(A) to provide that requests for transfer must be in writing and signed by the individual requesting the transfer or by a legally responsible person acting on the individual's behalf. The requests should contain a brief statement of the hospital's obligations under the statute and the benefits and risks that were outlined to the person signing the request. The request should be made a part of the patient's medical record, and a copy of it should be sent to the receiving facility along with the individual transferred. It is reasonable to conclude that, by permitting requests for transfer to be made only by the individual or a legally responsible person acting on the individual's behalf, Congress intended requests to be documented in the manner suggested by the commenter. Moreover, this requirement will reduce litigation about whether an individual requested the transfer.

Comment: Three commenters recommended that a person acting on the patient's behalf does not have to be "legally" responsible for the patient.

Response: We agree and are revising §§ 489.24(c)(2) and (c)(4) to reflect this change because section 9307 of OBRA 86 deleted the phrase "legally responsible" from sections 1867(b)(2) and (b)(3) of the Act. However, as section 1867(c) of the Act continues to contain the phrase "legally responsible", it is being retained in § 489.24(d).

Medical Records and Certification

Comment: Three commenters suggested we specify in the regulations what constitutes a certification that a transfer is in the patient's best interests. They asked if an entry in the patient's medical record would be sufficient certification.

Response: Before an unstabilized individual may be transferred in the absence of a request for transfer, the statute requires a physician to sign a certification that based upon the information available at the time, the medical benefits reasonably expected from appropriate medical treatment at another medical facility outweigh the increased risks to the individual and, in the case of labor, to the unborn child, from effecting the transfer. If a physician is not physically present in the emergency department at the time of transfer, a qualified medical person may sign the certification after consulting with a physician who later countersigns that certification. Section 1867(c)(1)(A)(ii) and (iii) of the Act, both as added by COBRA (section 9121(b)) and revised by OBRA 89 (section 6211(c)(4)), requires an express written certification by a physician or other qualified medical personnel attesting to the elements just delineated; the certification, while it may be written explicitly into the medical record, cannot simply be inferred from the findings in the medical record and the fact that the individual was transferred.

We agree with the Fifth Circuit, in *Burditt* v. *U.S. Dept. of Health and Human Services*, 934 F.2d 1362 (5th Cir. 1991) wherein the court, in addressing whether there had been a knowing violation of section 1867 of the Act, held that:

> A hospital may violate [the certification] provision in four ways. First, before transfer, the hospital might fail to secure the required signature from the appropriate medical personnel on a certification form. But the statute requires more than a signature; it requires a signed certification. Thus, the hospital also violates the statute if the signer has not actually deliberated and weighed the medical risks and the medical benefits of transfer before executing the certification. Likewise, the hospital fails to make the certification required by 42 U.S.C. 1395dd(c)(1)(A)(ii) if the signer makes an improper consideration a significant factor in the certification decision. Finally a hospital violates the statute if the signer actually concludes in the weighing process that the medical risks outweigh the medical benefits of transfer, yet signs a certification that the opposite is true.

Section 1867(d)(1)(B)(i) of the Act, as amended by section 6211(e) of OBRA 89, now allows imposition of civil monetary penalties if the physician "knew or should have known that the benefits did not outweigh the risks." We are therefore revising § 489.24(d)(1)(ii)(B) to require that a certification state the reasons for the transfer and include a summary of the risks and benefits upon which it is based. As the statute requires that a physician or other qualified medical personnel in consultation with a physician weigh the benefits and risks associated with the transfer before an unstabilized individual may be transferred, it should not be unduly burdensome for the physician or other medical personnel to state the risks and benefits that have been weighed. It should be noted, however, that, under the statute, the physician, not the qualified medical personnel, makes the transfer determination in all cases. The narrative rationale need not be a lengthy discussion of the individual's medical condition reiterating facts already contained in the medical record, but it should give a complete picture of the benefits to be expected from appropriate care at the receiving facility and the risks associated with the transfer, including the time away from an acute care setting necessary to effect the transfer.

Revised § 489.24(d)(2)(iii) (formerly a part of paragraph (d)(2)(ii)) requires that the certification be included in the individual's medical record and that it be sent to the receiving hospital along with the transferred individual. We believe that this will assist the receiving hospitals in determining whether the individual was transferred appropriately under the statute.

Comment: Three commenters believe it is unreasonable and burdensome to require physicians to sign for every patient transferred and that it is unduly harsh to assess a criminal penalty for a decision that could be a mistake.

Response: Section 1867(c)(1)(A)(ii) of the Act requires a physician to certify patient transfers because it was the intent of Congress to protect emergency patients and women in labor against erroneous transfers. However, the statute and the regulations do allow other qualified medical personnel, in consultation with a physician, to certify patient transfers when a physician is not physically present in the emergency department so long as the physician later countersigns. Penalties, however, are civil in nature, not criminal.

Comment: One commenter wants the regulations revised to require that medical records accompany not only unstabilized but stabilized patients being transferred.

Response: We see no need to revise these medical record requirements of the regulation. Records must accompany an individual whether or not his or her condition is stabilized. Under § 489.24(d)(2)(iii) (formerly paragraph (d)(2)(ii)), hospitals transferring

unstabilized individuals must provide the receiving facility with all medical records related to the emergency condition for which the individual has presented in addition to other information required by the statute and regulations. Under the current conditions of participation for hospitals (§ 482.21(b)(2)), all patients, including stabilized patients being discharged from hospitals to other facilities and agencies, must be accompanied by necessary medical information. This is a routine requirement that was in place before the dumping statute was enacted.

Comment: One commenter stated that in order for a receiving hospital to make an informed assessment about whether a transferring hospital has inappropriately transferred an individual, the transferring hospital should be required to send a memorandum of transfer, any consent or refusal forms signed by the patient, and reports by the doctors.

Response: We agree that it would be helpful for many reasons for the receiving hospital to have the individual's medical record at the time the individual is actually transferred. The medical record usually includes doctors' reports, consent or refusal forms and transfer certifications. We are therefore amending proposed § 489.24(d)(2)(ii) (now paragraph (d)(2)(iii)) to require a transferring hospital to send with the transferred individual whatever records are available at the time and place of the transfer.

Comment: Four commenters wanted the regulations to specify what information is to be in the "appropriate medical records" and listed what they thought should be in them, including, in one case, records of previous admissions.

Response: We agree with this comment, and section 6211(d)(2) of OBRA 89 amended section 1867(c)(2)(C) of the Act to address this issue. The statute now directs transferring hospitals to send receiving hospitals all medical records related to the individual's emergency condition "available at the time of transfer" (note next Comment and Response) and specifically lists some of the information that should be included in these records. We have, therefore, amended proposed § 489.24(d)(2)(ii) (now paragraph (d)(2)(iii)) to reflect the new legislative requirements. The conditions of participation in § 482.24(c) contain other Federal requirements relating to medical records. To the extent that services are performed before transfer we expect them to be reflected in the records transferred, consistent with the conditions of participation. Although it may be desirable, depending on the patient's condition, to send along records of previous admissions, the patient's transfer should not be delayed.

Comment: Several commenters recommended that "timely" medical records be defined as those available at the time the patient is transferred. Those commenters also recommended that records, such as test results, that were not available at the time of transfer should be sent to the receiving hospital as soon as possible.

Response: We agree with both points, and we have amended proposed § 489.24(d)(2)(ii) (now paragraph (d)(2)(iii)) accordingly to require that a transferring hospital send with the transferred individual whatever records (including copies of results of diagnostic studies or telephone reports of the studies) are available at the time and place of the transfer. If a transfer is in an individual's best interests, it should not be delayed until records are retrieved or test results come back from the laboratory. Whatever documents are available at the time the individual is transferred should be sent to the receiving hospital with the individual. Test results that become available after the individual is transferred should be telephoned to the receiving hospital. Records that become available after the patient is transferred, such as hard copies of test results or relevant records of earlier admissions, for example, should be sent to the receiving hospital as expeditiously as possible.

Comment: Two commenters wanted us to define what medical personnel may be qualified, in addition to the physician, to certify that a transfer is appropriate.

Response: The regulations require hospitals to determine which of their personnel are qualified to certify, in consultation with a physician who later countersigns, that a transfer is appropriate. This decision will vary among hospitals and States as availability, qualifications, and practice limitations of a particular category of staff differ. HCFA holds the governing body of a hospital responsible for assuring that its staff functions within the bounds of State law and this and other federal health and safety regulations. Based upon these comments and section 6211(c)(2)(D) of OBRA 89, we are amending § 489.24(d)(1)(ii)(C) to specify that, if a physician is not physically present in the emergency department at the time an individual is transferred, a qualified medical person may sign a certification stating that the transfer is in the individual's best interest. However, the qualified medical person may sign a transfer certification only after a physician, in consultation with the qualified medical person, has made the determination to transfer. The physician must subsequently countersign the certification. The regulation also provides that the hospital must determine who are "other qualified medical personnel."

Transportation

Comment: One commenter wanted us to recognize that requiring trained emergency medical technicians to accompany a patient being transferred will meet the requirements that a transfer be effected through "qualified personnel" as required under proposed § 489.24(d)(2)(iii) (now paragraph (d)(2)(iv)) because, in many communities, transfers are made by volunteer rescue squads with trained emergency medical technicians.

Response: We cannot state unequivocally that emergency medical technicians are "qualified personnel" for purposes of transferring an individual under these regulations. Depending on the individual's condition, there may be situations in which a physician's presence, or some other specialist's presence, might be mandatory.

Comment: One commenter proposed that we amend the regulations to clarify that the hospital is responsible for providing transportation services, either directly or indirectly, stating that the proposed regulations did not address the need for the hospital to provide transportation services to carry out the physician's orders.

Response: We disagree. The statute (section 1867(c)(2)(C) of the Act) imposes a duty on the hospital to ensure that the transfer is effected through qualified personnel and transportation equipment. Frequently the determination of what equipment and personnel will be required will be a medical decision. The hospital by-laws, rules and regulations, or State law may dictate that the decision be made by the transferring physician. If the hospital delegates its duty under the statute to the transferring physician, both the hospital and physician would be obligated to ensure that the transfer is effected through qualified personnel and necessary equipment. To say that the hospital is ultimately responsible for ensuring that the transfer is appropriately effected is not, however, to dictate the means by which it meets that responsibility. Neither the statute nor the regulations requires a hospital to operate an emergency medical transport

service. To this extent, the hospital may meet its obligations as it sees fit; however, that does not mean HHS must accept the hospital's determination.

We also note that with regard to the general area of transportation, although no specific comments were received concerning "transportation equipment", the term has now been interpreted to include all physical objects reasonably medically necessary for safe patient transfer. *Burditt* v. *U.S. Dept. of Health and Human Services*, 934 F.2d 1362, 1373 (5th Cir. 1991). We agree with this interpretation. To limit the appropriate transfer requirement to just that equipment that is necessary and medically appropriate for life support measures is too narrow an interpretation.

Other Requirements

Comment: Five commenters wrote in response to our request for comments concerning the "other requirements" the Secretary may find necessary in the best interests of transferred patients' health and safety. They recommended that we require the use of a standardized memorandum of transfer to be sent with every transferred patient to be signed by both transferring and receiving physicians and to include information regarding the patient's medical condition, treatment received and reasons for transfer. One of the commenters also recommended that calls between hospitals requesting transfers be tape recorded.

Another commenter suggested that the certification requirement in proposed § 489.24(d)(1)(i)(B) (now § 489.24(d)(1)(ii)(B)) be made a part of a standard transfer form. The commenters believed these suggestions would educate hospital personnel, provide a record for enforcement of the statute, help assure that the receiving physicians receive appropriate medical information for each patient, and deter patient dumping.

Response: We believe that the requirements for requests for transfer, certification, and the sending of medical records are sufficient to provide the information necessary for the receiving hospital to treat the individual and to detect inappropriate transfers in order to fulfill its reporting requirement. While a memorandum of transfer might provide a useful summary, we do not believe it is necessary in light of our other requirements. Also note the earlier Comment and Response concerning another recommendation for the use of memoranda of transfer. Hospitals that frequently receive inappropriate transfers may choose to document their transfers by tape recording telephone requests in accordance with applicable State laws; however, we believe it both costly and impractical to require all hospitals to invest in technology to document transfer circumstances verbatim in this way. In addition, since these additional requirements would need to be adopted through the rulemaking process and the Secretary has not elected to establish further requirements in this regulation, we are not including in this final rule the language in proposed § 489.24(d)(2)(iv) concerning other requirements to avoid the implication that there may be additional requirements not included in this regulation.

"Appropriate" Transfer

Comment: One commenter raised the issue of whether all transfers must be appropriately made (that is, effectuated) or whether the rules governing appropriateness applied only to a physician-directed transfer.

Response: All transfers must be effectuated appropriately and the statute and regulations already make this point. It is true that an individual may demand a transfer that the physician does not believe is appropriate, but once the decision to transfer has been made—by the physician or the individual—the regulations and the law require that it be done appropriately.

Also with regard to appropriate transfers, we note that the Secretary has taken the position that in proving that a hospital or physician violated section 1867 of the Act, there is no requirement to prove that the transfer was effected due to some "impermissible motive." This position has been upheld in *Burditt* v. *U.S. Dept. of Health and Human Services*, 934 F.2d 1362, 1373 (5th Cir. 1991), wherein the court rejected Dr. Burditt's argument that the statute requires proof that the transfer was motivated by an improper or nonmedical reason.

Comment: One commenter thought that the phrase "without prior arrangement" in § 489.20(g) may imply that a hospital may transfer a patient in violation of § 489.24 if it is done with prior arrangement.

Response: We agree and are removing the phrase "without prior arrangement."

Comment: Two commenters believed that we should make the requirements for appropriate transfer more specific. Another raised a series of hypothetical questions and asked how the regulations would apply.

Response: We decline the invitation to attempt to define in advance all circumstances making the transfer of an unstabilized individual "appropriate." There will be many medical emergencies arising in a variety of settings. The proper handling of those emergencies will depend upon the resources available and the exercise of medical judgment focused on the best interest of the individual's health and safety. We find the broad guidelines offered by Congress in section 1867(c)(2)(C) of the Act sufficiently specific to guide the exercise of that discretion and our evaluation of cases in which dumping is alleged. For the present we do not believe that any additional elaboration is required or desirable.

Comment: One commenter suggested that the regulations prevent any transfers, including those of stable patients, unless that patient requires services or facilities not available at the hospital when the patient first arrived. Another commenter wanted "stable" patients to be subject to the same "appropriate transfer" criteria as patients in unstable condition because the regulatory definition of "stabilized" does not require the emergency medical condition to be alleviated; it only requires that no material deterioration be likely.

Response: To accept these comments would go beyond the scope of the statute, which does not regulate the transfer of stabilized individuals. The statute allows hospitals to transfer an individual, without meeting the requirements of an appropriate transfer, after his or her emergency medical condition is stabilized. The statute does require, however, that the transferring hospital provide whatever medical treatment it can, within its capacity, to minimize the risks to the individual with an unstabilized medical condition, and, in the case of a woman in labor, to the unborn child.

Comment: One commenter wanted the regulations to define the situations in which obstetrical transfers are appropriate because in the commenter's State, hospitals that do not offer obstetrical services must always transfer pregnant patients in active labor, especially high risk patients.

Response: It is not necessary to revise the regulations to be this specific. Regardless of practices within the State, COBRA and OBRA 89 permit a woman in labor or with an unstabilized emergency medical condition to be transferred only if she (or someone acting on her behalf) requests the transfer or if a physician signs a certification that the benefits outweigh the risks. If the hospital does not provide obstetrical services, the benefits may outweigh the risks of transfer or the woman or her representative may request a transfer. However, we cannot

say categorically and in all cases that this will be true. (Note also Response to next Comment.) Regardless of State law or practice, a hospital must fulfill the requirements of the statute and cannot simply cite State law or practice as the basis for a transfer under the statute. We note that OBRA 89 removed the term "active labor" from section 1867 of the Act and included the full range of symptoms that term was intended to include within the scope of the term "emergency medical condition," which it redefined.

Comment: A number of commenters suggested that we require a hospital to accept a transfer when it has the capacity to treat the patient and the requesting hospital does not. One suggested that we require, as JCAHO does, that hospitals help to develop and promote community-based plans for providing emergency services.

Response: If an individual is to be transferred, section 1867(c)(2)(B)(ii) of the Act requires that the hospital obtain agreement from the receiving hospital before a transfer is made. The changes made to title XVIII of the Act by COBRA did not require hospitals to accept all transfers, even when the transfer would be in the individual's best interest. However, under the nondiscrimination provision of section 1867(g) of the Act, as added by section 6211(f) of OBRA 89, hospitals with specialized capabilities or facilities (including, but not limited to, facilities such as burn units, shock-trauma units, neonatal intensive care units, or (with respect to rural areas) regional referral centers as defined in § 412.96), cannot refuse to accept an appropriate transfer of an individual who requires such specialized capabilities or facilities if the hospital has the capacity to treat the individual. Accordingly, we have added the nondiscrimination provision to § 489.24 as new paragraph (e).

In determining whether new § 489.24(e) applies, we will assess whether the individual required the recipient hospital's specialized capabilities or facilities and if the hospital had the capacity to treat the individual. The recipient hospital with specialized capabilities or facilities has an obligation under section 1867(g) of the Act to accept a transfer if the individual has an unstabilized emergency medical condition and if the hospital has the capacity to treat the individual. If a hospital desires to transfer an individual to another hospital and the individual does not require any treatment beyond the capabilities or facilities available at the transferring hospital, the intended receiving hospital may refuse to accept the transfer of the individual in accordance with section 1867(c)(2)(B)(ii) of the Act.

The purpose of this requirement is to prevent hospitals with emergency departments from automatically transferring patients before screening simply because the hospital does not offer a particular service. For example, a hospital with an obstetrical department is not required to accept a transfer of a woman in labor just because the transferring hospital does not have an obstetrical department. If the woman in labor is having a normal, uncomplicated delivery, and the first hospital has the capacity to handle a normal, uncomplicated delivery, despite the fact that it does not have an obstetrical department, the first hospital is required under section 1867(b) of the Act to provide the necessary stabilizing treatment, that is to deliver the baby and the placenta, or to effect an appropriate transfer to another hospital willing to accept the patient. Similarly, for an individual with a simple, closed fractured arm, a hospital with an orthopedic department and orthopedic physicians on call would not be required to accept a transfer of the individual just because the transferring hospital does not have an orthopedic service. The first hospital is required under section 1867(b) of the Act to provide the necessary stabilizing treatment or to effect an appropriate transfer to another hospital willing to accept the patient.

If a transferring hospital does not have the specialized capabilities necessary to stabilize the patient's condition, the intended receiving hospital with the specialized capabilities and facilities must accept the patient under 1867(g) of the Act if it has the capacity to treat the individual. The number of patients that may be occupying a specialized unit, the number of staff on duty, or the amount of equipment on the hospital's premises do not in and of themselves reflect the capacity of the hospital to care for additional patients. If a hospital generally has accommodated additional patients by whatever means (for example, moving patients to other units, calling in additional staff, borrowing equipment from other facilities) it has demonstrated the ability to provide services to patients in excess of its occupancy limit. For example, a hospital may be able to care for one or more severe burn patients (a common example of specialized service) without opening up a "burn unit." In this example, if the hospital has the capacity, the hospital would have a duty to accept an appropriate transfer of an individual requiring the hospital's capabilities, provided the transferring hospital lacked the specialized services required to stabilize the individual.

Situations may arise where a hospital in another country desires to transfer an individual to a United States hospital because of the United States hospital's specialized capabilities or facilities. However, we note that the provisions of section 1867 of the Act are applicable only when the transferring hospital is located within the boundaries of the United States. Accordingly, Medicare participating hospitals are not obligated to accept transfers from hospitals located outside of the boundaries of the United States. This does not change the requirement that a Medicare participating hospital that offers emergency services, must provide, upon request and within its capabilities, an appropriate medical screening examination, stabilizing treatment, and/or an appropriate transfer to another medical facility to any individual with an emergency medical condition, even if the individual is not a United States citizen.

Concerning community plans, the use of cooperative agreements to facilitate appropriate transfers would be a positive step, and we recognize that a suggestion for using the JCAHO approach is constructive; however, we do not believe that this regulation is an appropriate vehicle to mandate community-based plans for the delivery of emergency services.

Comment: One commenter suggested that after a patient is stabilized we require hospitals to undertake either medically indicated treatment or transfer the patient, rather than discharge him or her. The commenter stated that a person in stable condition could be seriously ill and, if discharged, the condition could worsen.

Response: Section 1867 of the Act does not impose any requirements on hospitals with respect to the treatment or transfer of individuals whose emergency condition has been stabilized.

Comment: One commenter suggested that we revise the definition of "appropriate transfer" to state that the receiving hospital "has indicated that it has available space and qualified personnel for the treatment of the patient." This would clarify the responsibility for determining the capability of the receiving hospital.

Response: We do not believe it is necessary to add any further specificity to this requirement because, as indicated above, it is understood that the records will have to verify that the receiving hospital has indicated to the transferring hospital that it has agreed to

treat the individual, which implies that it had the available space and qualified personnel to treat that individual.

Comment: Two commenters recommended that the regulations specify which person(s) at the receiving hospital may consent to receive the patient.

Response: We believe it is properly the receiving hospital's decision as to who may consent to receive patients and how to implement this policy among its staff.

Comment: One commenter suggested that the regulations specifically state that the transferring physician is legally responsible for the patient's care until the patient is admitted to the receiving hospital.

Response: We do not believe it is appropriate to make this an explicit requirement of the regulations. The statute makes clear that the transferring hospital is responsible for ensuring that when the individual is transferred, the transfer is "appropriate." The hospital, in ensuring that the individual is appropriately transferred, may, for example, delegate to the transferring physician the duty to ensure that the transfer is made through the use of appropriate personnel or equipment. Further, section 1867 of the Act and the regulations require that the hospital must provide medical care within its capabilities to minimize the risks associated with transfer; this too may be delegated to a physician. In this way, the physician may be responsible for the patient's care during the transfer.

Reporting Violations

Comment: One commenter suggested that we allow transferring and receiving hospitals an opportunity to work out an agreement for handling transfers before we mandate formal reporting procedures, which might have the unintended result of pitting one hospital against another.

Response: We encourage local hospitals, municipalities, and States to develop cooperative transfer agreements; however, the formal reporting procedures are an integral part of the Department's enforcement scheme to ensure that hospitals are complying with the statute. To the extent that hospitals do have agreements for handling transfers in accordance with the statute, and act in accordance with that agreement, then the statute will not be violated and the necessity for reporting violations will be diminished.

Comment: Four commenters believe that the requirement that hospitals report suspected violations of section 1867 of the Act within 72 hours of their occurrence is too rigid and should be changed to "with reasonable promptness" to deter excessive reporting and to allow for investigation by the hospital to assure that reporting is warranted.

Response: If transfers occur that needlessly jeopardize people's lives, HCFA must have that information immediately to meet its responsibility to assure that these inappropriate transfers cease quickly. Therefore, we have made no changes.

Comment: One commenter recommended that the 72-hour reporting requirement for receiving hospitals suspecting improper transfers should begin from the time a problem is first identified rather than from the date of the transfer.

Response: The time of the receipt of an improperly transferred patient is the time of the occurrence. We do not see any substantive time difference between the time of receipt and the time of identification that a patient had been improperly transferred. However, to make reporting less onerous, we are revising § 489.20(m) and § 489.53(a)(10) to require a hospital to report to either HCFA or the State agency, rather than both as proposed.

Comment: One commenter suggested that the regulation be amended to permit HCFA to terminate a receiving hospital only for a "knowing" failure to report suspected violations.

Response: We see no reason to require that HCFA prove that a hospital "knowingly" violated its obligation to report instances of suspected dumping before it may take action against a non-complying hospital. As with other conditions of participation imposed on providers for the protection of the health and safety of those benefitted by title XVIII, including those protected by section 1867 of the Act, whether a hospital fails to meet its obligations knowingly is of little concern to those the requirement is designed to benefit. We believe this is especially true since section 4008(b)(3) of OBRA 90 deleted the provision under which HCFA had to show first that the hospital's actions were either knowing and willful or negligent before terminating the hospital's provider agreement. We do not believe the enhanced enforcement and, hence, deterrence, behind requiring receiving hospitals to report instances of suspected dumping, would be advanced by adding any requirement that the violation be knowing before a hospital's failure to report could result in its termination. We expect hospitals to have and enforce policies and procedures to require its employees and staff physicians to report to the administration instances where an individual has been inappropriately transferred under this statute.

Comment: Two commenters believe that HCFA and State survey agencies should protect the receiving hospitals and their personnel from legal actions for reporting alleged cases of improper transfer.

Response: We do not have the authority to confer immunity on a provider that identifies an alleged improper transfer under these regulations. However, HCFA has a history of protecting the identity and confidentiality of entities who report program violations and this protection will be extended to hospitals and individuals reporting improper transfers. Additionally, we also note that section 4027(k)(3) of OBRA 90 amended section 1867(i) of the Act (Whistleblower Protections), which was enacted under OBRA 89, to prevent a hospital from penalizing or taking adverse action against any hospital employee because the employee reported a violation of this requirement. We have revised § 489.24(d)(3) of the regulations to reflect this statutory amendment.

Comment: Eight commenters claimed that the statute does not support the obligation to report suspected dumping or provide for the termination of a provider that does not report suspected violations. Five commenters suggested that we extend the responsibility to report suspected dumping violations to all Medicare providers and suppliers; ambulance service suppliers, in particular, are in a position to suspect violations if the hospital to which the ambulance is transporting the patient refuses to accept that patient. Several commenters recommended that the reporting requirements be extended to physicians and that a failure to comply with these requirements would subject the physician to a civil monetary penalty.

Response: We believe our requirements relating to reporting instances of dumping are supported by current law. Section 1861(e)(9) of the Act permits the Secretary to impose on hospitals such other requirements as he finds necessary in the interest of the health and safety of individuals who are furnished services in the institution. It is under this authority that the Secretary has obligated hospitals that participate in Medicare to report when they receive patients that have been inappropriately transferred. Under section 1866(b)(2) (A) and (B) of the Act, the Secretary may terminate the provider agreement of a hospital that is not complying substantially with the statute and

regulations under title XVIII or that no longer substantially meets the provisions of section 1861 of the Act.

Application of the anti-dumping provisions to all Medicare providers and suppliers should occur through a statutory amendment. Section 1867 of the Act imposes duties directly only on hospitals that provide emergency services to which individuals come for screening or treatment. No similar statutory authority generally exists to regulate the conduct of non-providers, suppliers and practitioners.

Comment: Many commenters believe that we should not require receiving hospitals to report suspected cases of dumping, since it may lead to overreporting or malicious reporting in addition to unnecessary work and extra costs for HCFA and hospitals.

Response: We disagree. We are looking to those institutions in the best position to discern when an inappropriate transfer has taken place in violation of the statute, because Congress regards them also as victims of "dumping". (See section 1867(d)(2)(B) of the Act.) This reporting requirement is not, however, an impediment to negotiation among hospitals for the care of emergency patients. Indeed, it should encourage hospitals to cooperate in planning for appropriate emergency care by eliminating inappropriate transfers.

Comment: Several commenters wanted us to define "suspected," so hospitals will have further guidance concerning when they must report violations. These commenters also recommended that we define which individuals in the hospital must hold the suspicion.

Response: We agree that "suspected" is a vague term. As a result we are revising proposed § 489.53(a)(10) to require a hospital to report violations when a hospital has reason to believe that a violation has occurred. However, we see no need to define which individuals in a hospital must hold the suspicion since we do not want to narrow the source of reports.

Definitions

Active Labor

Comment: Several commenters recommended that we adopt the definition of active labor used by the Office for Civil Rights (OCR) in enforcing a hospital's Hill-Burton obligations contained in 42 CFR 124.603(b). One commenter stated that there are also written decisions and directives interpreting this issue and that using the OCR definition would relieve Hill-Burton facilities of the risk of being required to comply with inconsistent treatment standards for women in active labor.

Response: We have not adopted the commenters' suggestion, because section 6211(h)(1)(B) of OBRA 89 deletes the definition of "active labor" in section 1867(e)(2) of the Act. However, the concepts contained in that definition have now been clarified and included in the definition of "emergency medical condition" defined in section 1867(e)(1) of the Act.

Comment: One commenter asked us to make it clear that even though it may be difficult to state whether delivery is imminent, a woman would be in "active labor" as that term is defined in section 1867(e)(2) of the Act (as added by COBRA), if there was either inadequate time to effect safe transfer to another hospital before delivery or if a transfer might pose a threat to the health and safety of the woman or the unborn child.

Response: We agree. The proposed regulation restated the statutory definition, and, hence, reiterated that the transfer of a woman in labor is subject to the provisions of section 1867 of the Act if any of the following three conditions pertain: (a) delivery is imminent; (b) there is inadequate time to effect safe transfer to another hospital prior to delivery; or (c) a transfer may pose a threat to the health and safety of the woman or the unborn child. Section 6211(h)(2) of OBRA 89 amended section 1867(e) of the Act by deleting both the term "active labor" and the part of the definition that covers women in labor where delivery is imminent. The definition of "emergency medical condition", however, was expanded to include a woman who is having contractions when there is inadequate time to effect safe transfer to another hospital before delivery or a woman who is having contractions where the transfer may impose a threat to the health or safety of the woman or the unborn child. The OBRA 89 amendments clarified the scope of the statutory protections. We have amended § 489.24(b) accordingly. In addition, the statute also refers to women in labor. We have defined the term "labor" in § 489.24(b).

Comment: Two commenters wanted the regulations to emphasize that the "active labor" definition applies only in prenatal situations in which no other prenatal emergency is present and that a pregnant woman with an emergency medical condition should be admitted even if not yet in active labor.

Response: The regulations that apply to emergency medical conditions apply equally to a pregnant woman whose emergency condition does not involve active labor. As noted above, OBRA 89 changes eliminated the term "active labor" and included pregnant women within the meaning of the term "emergency medical condition."

Emergency Medical Condition

Comment: Many commenters recommended that we adopt the definition of "emergency" used by the American College of Emergency Physicians (ACEP), standards that are already widely applied in the profession.

Response: We believe that the ACEP definition is not suitable for purposes of requirements under section 1867 of the Act because it is designed to assure that cases in which the patient believes that an emergency medical condition exists are, in fact, emergencies. We believe that section 1867 of the Act only applies to actual emergencies as determined by appropriate medical screening. Therefore, we have not adopted this recommendation.

Comment: One commenter asked us to cite the court cases from which the phrases "serious impairment to bodily function" and "serious dysfunction of any bodily organ or part" emanated.

Response: These phrases are taken directly from the definitions in section 1867(e)(1) of the statute. There is no legislative history that indicates that Congress took them from reported court decisions.

Comment: One commenter wanted the phrase "placing the patient's health in serious jeopardy" removed from the definition of emergency medical condition because it is not a result or an outcome from not providing emergency medical treatment but rather is only speculation.

Response: We do not agree to delete the phrase "placing the patient's health in serious jeopardy." The definition parallels the statute and as such reflects Congressional intent. All of the phrases contained in the definition of emergency medical condition describe outcomes that are likely to result from the denial of immediate attention upon the exercise of medical judgment to predict what would happen to the individual if appropriate medical attention was not provided immediately.

Comment: Nine commenters wanted the definition to include psychiatric emergency; one commenter wanted the definition to include acute alcohol or drug intoxication.

Response: We believe that the statutory definition already encompasses these types of cases. However, for clarification purposes, we have revised § 489.24(b) to add acute

alcohol or drug intoxication (substance abuse) and psychiatric manifestations as sufficiently severe medical symptoms to warrant the label "emergency medical condition."

Stabilized

Comment: Nine commenters stated that the definitions of "stabilized" or "stabilization" are too vague or ambiguous to be useful in determining whether a patient was appropriately transferred. Some commenters suggested alternative definitions while others suggested we prohibit transfers not based solely on explicit medical reasons.

Response: The statutory and regulatory definitions of "to stabilize" and "stabilized" are necessarily broad to apply to all types of emergency medical conditions. The basic precept of these definitions is to ensure that no material deterioration occurs to a patient's condition either as a result of the transfer or because the patient is outside a hospital, and thus without the facilities and services available in a hospital. We do believe, however, that at least one clarifying revision should be incorporated into the regulations to ensure that a patient with an emergency medical condition will not be transferred unless, within reasonable medical probability, no material deterioration of the condition is likely to result from, or occur during, the transfer. This revision is also consistent with section 6211(h)(1)(C)(ii) of OBRA 89. The regulations are being revised accordingly. The regulations do prohibit hospital-initiated transfers that are not based solely on explicit medical reasons. This does not imply, however, in proving that a hospital or physician violated section 1867 of the Act, that the Secretary must prove the transfer was effected due to an impermissible or nonmedical motive. (See *Burditt* v. *U.S. Department of Health and Human Services*, 934 F.2d 1362, 1373 (5th Cir. 1991).) It should be noted that the regulations also allow an individual to request and receive a transfer for any reason as long as the individual is aware of the risks and benefits of the transfer.

Comment: One commenter stated that a woman in active labor should never be considered stabilized until after the baby is born.

Response: COBRA and the proposed regulations require emergency medical conditions to be stabilized. We agree with the commenter and pursuant to sections 6211(c)(3)(A), 6211(c)(5)(B) and 6211(h)(1) of OBRA 89 we are revising § 489.24(b), (d)(1)(ii)(B) and (d)(2)(i) to indicate that a woman falling within the scope of section 1867(e)(1)(B) of the Act is not stabilized at least until the child and the woman's placenta are delivered.

Comment: One commenter suggested that the regulations mandate that if an individual is going through alcohol detoxification, 5 to 7 days is necessary to stabilize the condition.

Response: We cannot specify the length of time that it will take to stabilize a specific condition, as a specific time period would rarely be applicable in all cases. The statutory definition, as applied, prevents a hospital from transferring an individual who is going through alcohol detoxification if that condition constitutes an emergency medical condition, until that individual can make the transfer without a material deterioration of the condition occurring during, or resulting from, the transfer. Therefore, we are not adopting this suggestion.

Screening Examination

Comment: Several commenters asked us to define the term "appropriate medical screening examination" so that hospitals and physicians are not subject to ambiguous requirements.

Response: It is impossible to define in advance all of the circumstances in which an individual may come to a hospital emergency department. What will constitute an appropriate medical screening examination will vary according to the condition of the individual and the capabilities of the hospital's emergency department—both its facilities and available personnel, including on-call physicians. Within those capabilities, the examination must be sufficient to detect whether or not the individual has an emergency medical condition or is in labor because the law only requires hospitals to provide screening and stabilizing treatment within their existing capabilities. Our current condition of participation for emergency departments contains basic requirements, the specificity of which were subject to public comment in connection with the revision of the hospital conditions of participation.

Investigations

Comment: Six commenters recommended that HCFA should notify the involved hospital or physician of a decision to investigate.

Response: HCFA ordinarily conducts only unannounced surveys in response to complaints, as to do otherwise could compromise the investigation.

Comment: One commenter stated that we have not been informing complainants of the outcome of investigations; another recommended that we consult with complainants during the course of investigations, especially when there is conflicting evidence or the hospital raises mitigating circumstances.

Response: On June 4, 1987, HCFA issued interim implementing procedures requiring HCFA regional offices to notify complainants of the outcome of investigations. This is HCFA practice; complainants may address their specific inquiries to their respective HCFA regional offices. Complainants are consulted when there are conflicts.

Comment: Two commenters recommended that the OIG seek the maximum civil monetary penalty for every violation of the statute. One commenter believes that there should be a presumption in favor of imposing the statutory maximum and that a lack of prior offenses should not be considered a mitigating circumstance unless the hospital can produce a log of prior transfers showing its history of compliance.

Response: Congress did not specify a fixed monetary penalty for every violation. Instead, it provided for hospitals and responsible physicians to be subject to a civil monetary penalty "of not more than" $25,000 for violations occurring before December 22, 1987 and "of not more than" $50,000 for violations occurring on or after that date. The civil monetary penalty section was amended in OBRA 90 to provide a maximum penalty of $25,000 for hospitals with fewer than 100 state-licensed, Medicare-certified beds. By setting a maximum amount, Congress implied that the Secretary was to exercise her discretion in selecting an appropriate amount up to that maximum.

The OIG will not consider the lack of a prior history of offenses to be a mitigating circumstance, but it may consider a history of inappropriate transfers to be a factor that would warrant imposition of a penalty at or near the statutory maximum. Only if a hospital or physician could offer positive evidence of a history of statutory compliance (for example, by producing logs of its disposition of individuals who had come to the emergency department) would the OIG be inclined to regard the violation as an isolated aberration.

Comment: One commenter suggested that if the hospital has identified, evaluated, and taken action or determined that action need not be taken to correct a transfer or emergency care problem, a penalty should not be imposed against the hospital or responsible physician.

Response: We disagree. To deter future violations of the statute, Congress intended that violations be sanctioned regardless of whether a violating hospital took remedial action. Such remedial action may prevent the hospital from suffering the consequences of a termination of its provider agreement and the resulting loss of Medicare payment, but it does not shield it from liability for civil monetary penalties if the violations were negligent. Congress enacted section 1867 of the Act because it perceived that hospitals were not policing themselves sufficiently to prevent inappropriate transfers.

Comment: One commenter questioned how the regulations can impose a civil monetary penalty of up to $50,000 when the statute only allows a penalty of up to $25,000.

Response: Section 4009(a)(1) of OBRA 87 amended section 1867(d) of the Act to increase the maximum civil monetary penalty from $25,000 to $50,000, effective December 22, 1987. Any violation occurring after December 22, 1987 is therefore subject to a maximum fine of up to $50,000 while violations occurring prior to December 22, 1987 are only subject to a maximum fine of up to $25,000. We are amending 42 CFR 1003.103 accordingly. However, section 4008(b)(2) of OBRA 90 again amended the statute by reducing the maximum penalty against hospitals with fewer than 100 state-licensed, Medicare-certified beds of $25,000.

Comment: One commenter stated that civil monetary penalties of up to $50,000 constituted a criminal sanction that will place physicians in the position of balancing responsible medical judgment against the fear of fines for an unanticipated event that may occur during transfer; this will have negative effect on emergency care.

Response: The maximum amount of the penalty is determined by the statute and cannot be changed in these regulations. The statute expressly provides for a civil monetary penalty of not more than $50,000 if a hospital or physician who is responsible for the examination, treatment or transfer of an individual in a participating hospital violates a provision of section 1867 of the Act. This penalty is civil in nature and does not constitute a criminal sanction.

Civil Enforcement

Comment: One commenter stated that there is no statutory authority or Congressional intent allowing citizens to bring suit in the Federal courts for personal harm.

Response: Section 1867(d)(2)(A) of the Act specifies that an individual who suffers personal harm as a direct result of a hospital's violation may bring a civil action against the participating hospital, thus creating a Federal private right of action by such an individual. See *Bryant* v. *Riddle Memorial Hospital*, 689 F. Supp. 490 (E.D. Pa. 1988).

Preemption of State and Local Laws

Comment: Three commenters expressed concerns about the statutory provision that states that section 1867 of the Act does not preempt State or local law except where they conflict. One of these commenters thought that Federal law should not supersede State and local law except where the State is not fulfilling its obligation under the law; another commenter believed we should grant immunity to hospitals following Federal statute in conflict with State law. The third commenter said this provision would result in more State regulation where States have similar laws.

Response: Section 1867(f) of the Act explicitly states that the provisions of section 1867 do not preempt any State or local law requirement except in cases of a direct conflict. This statutory statement cannot be removed based on negative public comment. We believe, however, that the second commenter misunderstood the provision: when Federal law conflicts with State law, Federal law prevails.

Disclosure

Comment: One commenter believes that the investigative file on an alleged violation should not be subject to public disclosure.

Response: The Freedom of Information Act (5 U.S.C. 552) permits public access to agency records except to the extent that such records or parts thereof fall within specified exemptions under 5 U.S.C. 552(b). A statutory amendment would be required to adopt the commenter's suggestion, since there is no blanket exemption under the Freedom of Information Act for documents compiled in investigating complaints of violations of section 1867 of the Act.

Comment: Twelve commenters believe that it is not appropriate for HCFA to notify other components of the Department about alleged violations as each will then conduct its own investigations. The commenters recommended that HCFA notify the OIG and the Office for Civil Rights only when it determines that there was a violation.

Response: The authority for enforcing the requirements of this provision was delegated by law to the Secretary of Health and Human Services. All of the components of the Department mentioned by the commenters have responsibilities in connection with the enforcement of this provision and/or other provisions, such as the civil rights and rehabilitation acts. We believe it is entirely appropriate that these components be notified early in the process and begin to carry out their functions.

Comment: One commenter expressed concern that a provider may be subject to double jeopardy if HCFA is allowed to terminate the provider agreement for violating section 1867 of the Act and then, for the same violation, the OIG is authorized to suspend the provider. Several commenters expressed concern that a provider is subject to double jeopardy since, for an alleged single inappropriate transfer, OIG may suspend a provider and subject the provider to civil monetary penalties even if HCFA determines there is no violation.

Response: A provider agreement can no longer be suspended for a violation of section 1867 of the Act since, as we previously indicated, section 4008(b)(3) of OBRA 90 deleted the suspension provisions contained in the original legislation. If, however, HCFA begins a termination action based on a violation of the statute, but the hospital avoids termination by demonstrating to HCFA's satisfaction that it has in place effective policies and procedures to prevent a recurrence, the OIG remains free to seek civil monetary penalties against the hospital and physician for the violation of the statute on which the termination action was originally based.

Comment: Seven commenters believe that when HCFA notifies a complainant and other entities about the receipt of alleged violations, this implies guilt and may result in frivolous lawsuits.

Response: HCFA notifies organizations of complaints before investigating expressly to make the point that no decision has been made about the complaint but that an investigation is being conducted. We do not believe that the subject of a complaint should be unaware of the complaint, and we certainly do not believe that receipt of a complaint establishes or even implies that there is a violation.

Comment: One commenter stated that, in order to avoid duplication of effort, the regulations should limit OIG investigation to those cases where it finds a pattern of noncompliance, with willful violation of the provisions, or where there is some indication of fraud or abuse against the Medicare program.

Response: The law does not require a pattern of violations or willful noncompliance for the Department to invoke sanctions. The OIG may impose a civil monetary penalty for a single violation of the statute. The statute was amended in OBRA 90, however, to allow the OIG to exclude physicians from participation in the Medicare and State health care programs only if the violation is "gross and flagrant or repeated."

The term "gross and flagrant" is also used in section 1156 of the Act, 42 U.S.C. 1320c–5, and has been defined in regulations at 42 CFR 1004.1(b). This definition has been challenged for being unconstitutionally vague and the courts have disagreed, upholding the Department's interpretation of the term. See, for example, *Lavapies* v. *Bowen*, 883 F.2d 465 (6th Cir. 1989); *Doyle* v. *Secretary of Health and Human Services*, 848 F.2d 296 (1st Cir. 1988); *Varandani* v. *Bowen*, 824 F.2d 307 (4th Cir. 1987). It is against this background that Congress amended section 1867 of the Act to allow a physician to be excluded only if the violation is "gross and flagrant or repeated." ("The legislature is presumed to know the prior construction of the original act or code and if previously construed terms in the unamended sections are used in the amendment, it is indicated that the legislature intended to adopt the prior construction of those terms." Sutherland Stat. Const. § 22.35 (4th Ed.).) As a result, we have defined this term in § 1003.105 to be consistent with the definition contained in § 1004.1(b). The regulation now states:

> For purposes of this section, a gross and flagrant violation is one that presents an imminent danger to the health, safety, or well-being of the individual who seeks emergency examination and treatment or places that individual unnecessarily in a high-risk situation.

Comment: One commenter believes that HCFA and the OIG should coordinate enforcement activities to avoid duplication of effort and unnecessary administrative costs. In addition, the commenter suggested there be a central review to prevent components from taking multiple enforcement measures against a hospital or physician for the same violation.

Response: We agree that every effort should be made to coordinate enforcement actions. However, some of the issues relating to multiple enforcement measures have been mitigated by the amendments in OBRA 90 that deleted the suspension authority. HCFA's authority is to determine compliance with the requirements of section 1867 of the Act. The OIG has the authority for civil monetary penalties and physician exclusion from the Medicare program.

Comment: One commenter objected to the OIG, rather than the Secretary, having the discretion to waive an exclusion under § 1003.105.

Response: The Secretary has delegated the discretion to waive an exclusion under § 1003.105 to the OIG, and the regulations were amended in 1986 (51 FR 34777) to reflect this.

Comment: One commenter objected to suspending a provider from the Medicare program for a single instance of an inappropriate transfer.

Response: Section 4008(b)(3) of OBRA 90 deleted the suspension authority from section 1867(d) of the Act.

Comment: One commenter believes that the statute and the regulation will unduly penalize hospitals that are making good faith efforts to comply with the provisions.

Response: We disagree. As long as a hospital complies with the provisions it will not be subject to penalty.

Comment: Two commenters believe that active enforcement of these provisions will force many hospitals to close their emergency departments to avoid potential liabilities.

Response: We disagree. The impact of discontinuing an emergency services department, which is among the top income producers in a hospital, will outweigh the risk of potential losses due to violations of this regulation, especially since improved management of emergency departments can avoid the risk of violation.

Comment: One commenter stated that these regulations would give the government carte blanche authority to investigate any and all records for suspected violations. He felt that this ability would enable one hospital to slow down another with unnecessary, costly, and time-consuming investigations if it makes frivolous complaints about it.

Response: Congress has mandated that the Secretary enforce section 1867 of the Act. All credible alleged violations require a thorough investigation. Rather than overzealousness, the OIG has to date found and reported a marked reluctance on the part of hospitals to report suspected inappropriate transfers. (Office of Inspector General, "Patient Dumping After COBRA: Assessing the Incidences and the Perspectives of Health Care Professionals" (Aug. 1988).)

Comment: One commenter believes that the HCFA Administrator should retain the termination authority, rather than delegate it to the regional offices, as these termination decisions are best administered on a national level.

Response: All terminations are authorized by the respective HCFA regional office as part of its general responsibility for operating the survey and certification function for HCFA. This authority is delegated to the regional office because of its knowledge of State and local matters and its proximity to the providers it is overseeing and to the beneficiaries within its region.

Comment: Nineteen commenters objected that 2 days was too short a period to correct a problem or deficiency before a termination. One commenter agreed that the termination should occur within 2 days.

Response: Violations of section 1867 of the Act have the potential to be immediate and serious threats to patient health and safety. Therefore, we believe that it is essential that a violation that poses an immediate and serious threat be corrected as rapidly as possible.

In cases where it has been determined that the violation poses an immediate and serious threat to patient health and safety, a hospital will be placed on a 23-day termination track. On day 1, the hospital will receive a preliminary notice of termination from the regional office stating that a violation has been identified and that the projected date of termination will be on day 23. The preliminary notice of termination will also inform the hospital that the HCFA regional office will issue a final notice of termination and inform the public of the date of termination at least 2 days, but not more than 4 days, before the projected date of termination. Thus, the final notice to the hospital and the public concerning the termination of the hospital's provider agreement for a violation that poses an immediate and serious threat to patient health and safety will be issued between day 19 and day 21 of the 23-day termination track.

The preliminary notice of termination will also inform the hospital that it may avoid the termination action by either providing credible evidence of correction of the deficiencies or by successfully showing that the deficiencies did not exist. The hospital will have an opportunity to make such a showing to the regional office between day 1 and day 19 of the termination process. If the hospital is successful, the regional office will stop the termination process, and there will not be a public notice of termination. If verification of correction does not occur before the 19th day of the termination track, the hospital receives a final notice of termination, and the public is

concurrently notified by publication of the effective date of the termination in the newspaper.

In cases that do not involve an immediate and serious threat to patient health and safety, a hospital will be placed on a 90-day termination track. The hospital will receive a preliminary notice of termination on day 1, and will be notified that the projected termination date will be on day 90. We will continue our current practice, set forth in § 489.53(c)(1), of issuing a final notice of termination to the hospital and the public 15 days prior to the effective date of termination. Thus, in situations where the violation does not constitute an immediate and serious threat to patient health and safety, public notice of the effective date of the termination will be given on approximately day 75 of the 90-day termination process unless the hospital successfully shows that correction has occurred.

Comment: One commenter requested that a hospital be given an opportunity to meet informally with the State agency, HCFA and possibly a third party (such as a PRO) before HCFA makes a determination that there is a violation. Problems could be resolved without resorting to a termination.

Response: With regard to possible civil monetary penalties or physician exclusion, OBRA 90 responds to the commenter's suggestion. Under section 1154(a)(16) of the Act, as added by section 4027(a)(1)(B) of OBRA 90, PRO must provide reasonable notice of the review to the physician and hospital involved and a reasonable opportunity for discussion and submission of additional information prior to providing their report to HCFA. Thus, we believe that the commenter's concerns are mitigated by this new statutory language.

With regard to termination, HCFA regional office staff may meet with the hospital's representatives before determining compliance or noncompliance if they decide they need additional information to make a compliance determination. If, after reviewing the State agency finding and medical review findings (if requested), the regional office staff has sufficient information to make a determination, they may decide not to meet informally with the hospital's representatives. Options for resolving the deficiencies do not affect the compliance determination.

Comment: One commenter stated that mandatory termination is not consistent with the statute. Seven commenters recommended that the regulations not state that any violation will result in termination; termination should be imposed only for particularly egregious violations or a pattern of repeated violations. Several commenters questioned the basis for considering a violation to pose an immediate and serious threat, especially when there is only one violation. Five of these commenters thought single violations should be sanctioned with civil monetary penalties.

Response: Section 1866(b)(2) of the Act permits HCFA to terminate but does not require HCFA to do so. There are cases in which a violation has occurred but in which HCFA has not chosen to terminate. For example, if a routine recertification survey shows that a hospital's internal quality assurance identified a violation that occurred 6 months ago, and since then the hospital has been functioning effectively under a corrective action plan, and the hospital is in compliance with all other conditions of participation, HCFA may determine that although the hospital did violate the statute 6 months earlier, a termination is not warranted at the time of the survey.

The statute does not limit termination action to hospitals that have a pattern of violations. A single violation may result in the initiation of termination procedures. However, HCFA is more interested in hospitals correcting their deficiencies and remaining available to serve patients than in terminating them from Medicare participation. As a result, HCFA regional office staff have generally exercised their authority to permit correction before the effective date of termination as justification for rescinding the termination. On the other hand, hospitals that do not correct the deficiencies that permitted a violation to occur may represent an immediate and serious threat to people seeking emergency care. In such a case, HCFA will move quickly to either assure that the deficiencies that led to the violation are corrected or to terminate the hospital's provider agreement. It should be noted that section 4008(b)(3) of OBRA 90 deleted the termination and suspension language from section 1867(d) of the Act. Terminations due to violations of section 1867 of the Act are now subject to the regular provider agreement rules in section 1866 of the Act.

We believe that the immediate and serious threat concept applies to a provider's potential for causing harm as a result of lax policies and procedures as well as the danger posed by patently unsafe physical conditions or staffing shortages. Thus, we believe that operating in a manner that potentially subjects individuals to the threat of summary transfer without treatment may pose an immediate and serious threat to individuals who present themselves to the hospital for treatment. As noted above, if the provider is able to demonstrate that this is not the case, the termination is withdrawn and the provider's participation in the program is uninterrupted.

Hence, while a single violation may very well be sanctioned with civil monetary penalties, nothing in the statutory scheme suggests that the authority to terminate a hospital's provider agreement should be limited by the number of violations.

Comment: One commenter objected to the application of "fraud and abuse" concepts to quality of care issues; for example, degree of culpability of the hospital or responsible physician.

Response: The factors to be considered in determining the amount of civil monetary penalty that are set forth in § 1003.106(a)(4) are adapted from those mandated by section 1128A(d) of the Act. Section 1867(d)(1) of the Act requires that the provisions of section 1128A of the Act other than subsection (a) and subsection (b) apply to the imposition of a civil monetary penalty against a participating hospital and physician.

As thus incorporated by reference, section 1128A(d) of the Act requires that the OIG consider the nature of claims and circumstances under which they were presented, the degree of culpability, history of prior offenses, and financial condition of the person presenting the claims, and such other matters as justice may require.

We are revising proposed § 1003.106(a)(4) to reflect the essence of these statutory considerations as modified to fit violations of section 1867 of the Act. Section 1003.106(a)(4) also now includes among the factors "financial condition" and "nature and circumstances of the violation." These were omitted from the notice of proposed rulemaking but are required under section 1128A(d) of the Act.

Comment: One commenter stated that, before termination, HCFA should consider all circumstances of the case including such mitigating factors as: the previous sanction record of the hospital; the hospital's willingness and ability to comply with its obligations to emergency room patients; prior history of transfer; and the impact the termination may have on the community.

Response: Congress has provided that any hospital that has failed to comply with the requirements of section 1867 of the Act is subject to termination of its provider agreement. It did not provide, or suggest in legislative history, that the Secretary should create a system of

lesser measures to account for the factors mentioned by the commenter. Rather, it intended the gravity of the sanction to cause hospitals to comply with their obligations. When a hospital does violate its duties under section 1867 of the Act, we must take immediate action to prevent that hospital from jeopardizing the health and safety of the next person who may seek help in an emergency situation. Vigorous enforcement of these provisions is essential to remedy the problem that prompted Congress to legislate against the denial of screening and/or treatment and the inappropriate transfer of individuals with emergency medical conditions. A hospital will not suffer the loss of Medicare funding if it can demonstrate to HCFA's satisfaction that it has taken the steps necessary to ensure that the mandates of the statute are observed by its employees, contractors, and staff. If a hospital demonstrates its unwillingness or inability to meet that commitment within the time provided, it will be terminated. When a hospital has had a history of violations, the situation may make the regional office skeptical about the hospital's willingness and ability to enforce its own policies to guarantee that emergency services are available to all.

We recognize that the termination of a hospital's provider agreement would have a serious impact on the community. This is the remedy the law provides. We believe that this remedy provides the hospital (and its community) with the incentive to assure compliance.

Comment: One commenter wanted us to notify a hospital that it is under investigation and will be observed for a specific period of time to see if there is a pattern of inappropriate care and, if one is found, will be given a period of time to correct the problem before termination.

Response: In view of the nature of the problems that this provision addresses, it is not appropriate to take a general approach that permits a provided to avoid immediate inspection in all cases. The HCFA regional office will determine whether there is an advantage to conducting an unscheduled survey. We note, however, that when continued monitoring is appropriate to assure that corrective action has been taken, we will inform the provider of the period for which monitoring will continue.

Comment: One commenter believes that all violations, whether or not "knowing and willful, or negligent", should be subject to penalty. Another thought termination should only apply to knowing violations, as with civil monetary penalties.

Response: As we previously indicated, section 4008(b)(3) of OBRA 90 deleted section 1867(d)(1) of the Act, which provided for termination or suspension of a hospital's Medicare provider agreement for "knowingly and willfully, or negligently" failing to meet these statutory requirements. However, section 1866(a)(1)(I)(i) of the Act was also amended to require hospitals to meet the provisions of section 1867 in order to participate in the Medicare program. We have, therefore, revised § 489.24(f) of this regulation to delete the requirement that a hospital must knowingly and willfully, or negligently, fail to meet the regulation's requirements to be subject to termination. It should also be noted that because of the deletion of section 1867(d)(1) of the Act, hospitals are no longer subject to suspension of their provider agreement based upon violation of these provisions. By requiring that all hospitals comply with the provisions of section 1867 of the Act, Congress indicated that section 1867 violations by hospitals could result in termination of a hospital's Medicare provider agreement and civil monetary penalties. In addition, as discussed below, civil monetary penalties may now be imposed for a negligent, rather than a knowing, violation.

Comment: Two commenters suggested that the term "knowingly" be defined to include "should have known" to prevent physicians from escaping liability because the physician did not know of the law or the physician failed to inquire thoroughly about the patient's condition.

Response: The language of the statute does not permit us to adopt the commenter's suggestion. "Knowingly" is a legal term with a well-developed history. The accepted meaning of the term does not include "should have known." Indeed, the latter term denotes a lack of knowledge and is used in those contexts where a person is held liable for not knowing what he or she would have known had he or she exercised due care. A person need not know the terms of the statute in order to commit a knowing violation of the statute. A knowing violation of the statute requires only that the person do a proscribed act, knowing the character of the proscribed act. In this context, for example, a physician would knowingly violate the statute if he or she certified that the transfer of an individual with an emergency medical condition that had not been stabilized was in the best interests of the patient if the physician knew that the patient had an emergency condition that had not been stabilized and that the risks of transfer outweighed the benefits the physician could reasonably expect by the delivery of appropriate care in the receiving hospital. The physician would not need to know that section 1867 of the Act prohibited such transfer.

Although the term "knowingly" does not encompass "should have known," it does embrace the concepts of "reckless disregard" and "deliberate ignorance." That is, it includes a form of constructive knowledge in which an individual is deemed to have actual knowledge of the facts and circumstances about which he or she would have had knowledge if the individual had not deliberately or recklessly disregarded facts that were readily available. We are amending § 1003.102(c) to make it clear that the term "knowingly" encompasses these two concepts.

The statute was amended in OBRA 90, however, changing the standard for imposing civil monetary penalties from "knowingly" to "negligently" for violations on or after May 1, 1991. The term "negligently" encompasses the concept of "should have known."

Comment: One commenter suggested that § 1003.114 be amended to read: "The Inspector General must prove by a preponderance of evidence that the hospital and responsible physician or physicians knowingly failed to provide emergency care as described in § 1003.102(c)."

Response: Section 1003.114 was substantially rewritten in the OIG final regulations issued on January 29, 1992 (57 FR 3298) to essentially reflect the substance of this comment.

Comment: One commenter contended that we should not find any hospital or physician in violation of section 1867 of the Act until we have issued final regulations.

Response: We do not agree with this comment. The detailed language of the statute contains sufficient guidance to provide a legal basis for implementing its provisions before regulations are issued.

Comment: One commenter contended that the penalties in the proposed rule are too harsh because there are too many emergency department personnel to control all the time.

Response: The penalties in the proposed rule are statutory requirements and must be enforced by the Secretary.

Additionally, a hospital has always been responsible for the actions of all personnel it allows to provide services on site.

Comment: Two commenters believe we should include in the regulations the standards for determining what is a violation that will lead to termination and the procedures to be followed; otherwise, reviewing courts may find termination arbitrary.

Response: Hospitals in violation of the statute are subject to termination and civil monetary penalties. Thus, any substantiated violation may result in termination. Once these regulations are published, specific guidelines for assessing whether a case represents a violation will be included in the State Operations and Regional Office Medicare Certification Manuals. While the manuals in no way purport to be exhaustive in their description of potential section 1867 violations, they do provide a sense as to how HCFA intends to interpret this provision. The manuals are sent to HCFA's regional offices and each State agency. They are also available on a subscription basis from the Department of Commerce's National Technical Information Service, 5825 Port Royal Road, Springfield, Virginia, 22161. These manuals are continually updated to reflect new regulations.

Comment: Twenty commenters stated that we should not be able to terminate a provider without providing due process such as a hearing before an administrative law judge or some type of summary hearing; nine of the commenters asserted that the final decision should be appealable before a Federal court.

Response: This is an issue that has been litigated extensively in the past. The courts have widely held that due process for providers of health services under the Medicare program does not require a formal hearing before adverse action is taken. Our regulations at § 498.5(b) have long provided for a post-termination hearing before an administrative law judge for providers that have been terminated. Also, in accordance with § 498.5(c), any provider dissatisfied with a hearing decision may request Appeals Council review and has a right to seek judicial review of the Council's decision.

In addition, of course, providers that have been terminated always have the right to reapply for Medicare certification after correcting the deficiencies that led to the termination.

Comment: Two commenters believe that we should impose a timeframe on hospitals to obtain reinstatement.

Response: The statute at section 1866(c)(1) of the Act provides that a hospital that has been terminated from the Medicare program may not file another agreement unless the Secretary finds that the reason for the termination has been removed and that there is reasonable assurance that it will not recur. Thus, terminated hospitals may reapply for Medicare certification whenever they have corrected the deficiencies that caused the termination. We reserve the right to determine an appropriate reasonable assurance period before reinstatement on a case-by-case basis.

Comment: Four commenters stated that we should clarify how HCFA will monitor and enforce compliance with the regulations. They recommended that the regulations more specifically explain what constitutes a violation of these provisions and how HCFA will investigate violations and make negligence determinations.

Response: We will publish in our State Operations and Regional Office Manuals our investigation and enforcement procedures.

Comment: One commenter suggested that HCFA disclose the names of violators to the public and include them in the Medicare Data Base for adverse decisions. Another recommended that we also notify intermediaries and carriers.

Response: We agree. This information is published and is included in the Medicare Data Base and is passed on to intermediaries and carriers.

Comment: Two commenters suggested that we negotiate with PROs to provide case-by-case monitoring of patient dumping cases, since State survey agencies are not staffed or organized to do this. Another commenter recommended that we require PROs to report suspected violations and that we consider PRO information before concluding an investigation.

Response: Section 1867(d)(3) of the Act, as added by section 4027(a)(1) of OBRA 90, sets forth the role of PROs in patient dumping cases. Specifically, for sanctions imposed on or after February 1, 1991, section 1867(d)(3) of the Act requires the appropriate PRO to review the case prior to the imposition of a civil monetary penalty or physician exclusion sanction, except when a delay would jeopardize the health and safety of individuals or when an individual is denied a screening examination. Given this statutory direction, we do not believe it would be appropriate to place additional requirements on PROs in this regard.

Comment: One commenter recommended that HCFA require hospitals to maintain a record of the disposition of all individiuals seeking emergency care. If the individual were transferred, such a log would bear the initials of the physician authorizing the transfer and identify the reasons for the transfer, the receiving hospital, and the person accepting transfer for that hospital. Such records would educate hospital personnel about the statutory requirements, deter violations, and provide an audit trail to assist HHS in performing its monitoring and enforcement duties.

Another commenter suggested that we require each hospital to maintain a record of all patients it transfers and of those it receives, as recommended by Report No. 100–531 of the House Committee on Government Operations on March 25, 1988. Another commenter believes HCFA should periodically review a random sample of transfer files from every transferring and receiving hospital.

Response: We agree that the hospital must maintain a central log or record of how it handles every individual that comes to its emergency department for HHS and its agents to monitor compliance with the statute. The OIG has reported that a lack of a central record on the disposition of persons seeking emergency services hampers HHS' ability to monitor compliance (Office of Inspector General, "Patient Dumping After COBRA: Assessing the Incidences and the Perspectives of Health Care Professionals" (August 1988)). Hence, we are amending the regulations at § 489.20(r)(3) to require a hospital to maintain a central log of all individuals who come to its emergency room seeking assistance and the disposition of such individuals, whether they were or are refused treatment, transferred, admitted and treated, stabilized and transferred, or discharged. Such a record will permit HHS and the State survey and certification agencies to select and gain access to individual medical records for further inquiry. However, we are not prescribing a standard form at this time. Our condition of participation for medical record services, at § 482.24(b), requires hospitals to maintain a medical record for each inpatient and outpatient. Additionally, our enforcement procedures include a review of a simple of patient records. The sampling technique takes into account emergency room triage and unreimbursed care.

Approximately 80 percent of the 6600 hospitals participating in the Medicare program are accredited by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO). JCAHO-accredited hospitals are required to maintain a control register and initiate a medical record every time an individual visits the emergency service (Standard ES.6). The JCAHO-mandated control register must contain

at least the names of all persons (including the names of individuals dead on arrival) seeking care, as well as their age and sex; date, time, and means of arrival; nature of the complaint; disposition; and time of departure. The regulation at § 489.20(r)(3) merely requires the name of the individual and the disposition of his or her case. We believe maintaining a register of individuals seeking care is an industry standard and will not impose an additional burden on the 20 percent of hospitals that are not accredited. We have found a control register or control log to be invaluable in identifying records to be reviewed during our complaint investigations. We have not found any hospital that is not maintaining a log of some sort.

Comment: One commenter suggested that we clarify that hospitals and physicians investigated under these provisions be held to the standard of care based on accepted medical practice. Alternatively, they should be held to the standard of care utilized by the PROs under section 1154(a)(6)(A) of the Act.

Response: All physicians and hospitals are required to provide adequate medical care. PRO physician reviewers base their assessments on their education, training and experience, and assess the issues noted previously.

Comment: Two commenters recommended that we include provisions similar to the PRO quality assurance corrective action methods in section 1154 of the Act to allow for education and other actions to bring about positive improvement, instead of resorting to sanctions.

Response: This regulation emphasizes correction over sanctions. Hospitals that have violated these requirements are permitted the opportunity to correct the deficiencies and avoid termination. To date, 96 percent of violating hospitals have been able to avoid termination by correcting the deficiencies that led to the violations. However, the Department's primary responsibility is toward people who need health care, and in cases in which a hospital either cannot or does not correct its deficiencies, we believe it is appropriate to terminate the hospital from the Medicare program quickly. In addition, the law includes authority to exclude physicians and impose civil monetary penalties against hospitals and physicians. This serves as both a remedial function and a deterrent function. This may also motivate corrections and improvements to prevent future violations of the statute.

Comment: Three commenters indicated that hospitals should be involved in the investigation's fact finding process and should be advised of all evidence before HCFA receives the deficiency report. In addition, they recommended the hospital be permitted to submit documentation regarding the evidence and a response to the information submitted to HCFA, so that HCFA will have all the information before taking action.

Response: When the onsite investigation of a violation of section 1867 of the Act is completed, the hospital's representatives have an opportunity to be informed of the scope of the survey agency's investigation and findings at an exit conference. The survey agency, however, will inform the hospital that, unlike other surveys, an investigation of a violation of section 1867 of the Act usually does not end with its onsite investigation; it may require medical review. The HCFA regional office will make the final determination based on all of the relevant information, including the results of medical review, if needed.

When the regional office makes a determination of noncompliance, it will notify the hospital via a preliminary determination letter. The date the hospital receives the preliminary determination letter becomes the date for commencement of the termination process, which lasts approximately 23 days in situations where it has been determined that the violation resulted in an immediate and serious threat to patient health and safety, or approximately 90 days where the violation was not considered to pose an immediate and serious threat. If the regional office receives additional information that proves the hospital did not violate section 1867 of the Act, or regional office verification reveals that the hospital has taken remedial action to prevent further violations before the actual date of termination, the termination action will be rescinded. As noted in a previous response to a comment, if there was a violation of section 1867 of the Act and the hospital does not take corrective action, a final termination letter will be sent to the hospital and the public will be notified concurrently through a notice in the newspaper (at least 2 days, but no more than 4 days, before the actual termination date in immediate and serious threat situations, or at least 15 days before the actual termination date in situations that do not pose an immediate and serious threat). Therefore, the change in the notice requirement in immediate and serious threat situations offers the provider approximately 19 days to correct the deficiencies before termination becomes effective in immediate and serious threat cases and continues to offer the provider approximately 75 days to correct deficiencies before termination becomes effective for situations that do not pose an immediate and serious threat.

From the onset, the hospital is aware of the problem, HCFA's intended course of action, and that it must take corrective action or prove that the violation did not exist in order to halt the termination process. During and after this period, the hospital may submit documentation regarding the violation if it chooses; however, the termination process continues until proof is submitted to establish that a violation had not occurred, corrective action is verified, or the termination date is reached. HCFA's primary responsibility is to the people who come to the hospital in emergency situations. Their urgent need for proper medical care is a higher priority than providing for time-consuming historical re-review before action is taken against a hospital with improper practices.

Comment: One commenter believes the OIG should revise its policy of prohibiting the PRO from consulting with the physician under investigation during the investigatory stage in cases in which the OIG requests an evaluation from the local PRO.

Response: Section 4027(a) of OBRA 90 added section 1867(d)(3) to the Act to require the OIG, in considering whether to impose a civil monetary penalty or physician exclusion, to obtain and consider PRO review except when a delay would jeopardize the health or safety of individuals.

The PRO, in turn, is required to assess whether the individual involved had an emergency medical condition that had not been stabilized and to provide the physician and hospital involved with a reasonable opportunity for discussion and to submit additional information.

Comment: One commenter disagreed with HCFA's intention to rely on State survey agencies to investigate initial complaints of violation because in many States these agencies have an inherent conflict of interest. The commenter recommended that, to guarantee that there are no conflicts of interest, HCFA should at least apply certain minimum performance standards and investigatory guidelines in determining in which States the State survey agency can be entrusted with the role of investigating complaints.

Response: As provided for by section 1864(c) of the Act, HCFA contracts with the State survey agency to conduct

surveys to evaluate compliance with Federal health and safety requirements. We provide training, survey report forms and interpretive guidelines and perform Federal surveys and oversight to monitor the States' performances. Consequently, we are confident of the States' abilities to conduct compliant investigations.

Comment: One commenter believes that complainants should be asked but not required to give their names or other identifying information, as many anonymous complaints have proven reliable in other health care enforcement contexts.

These complaints are often made by hospital employees, who are in a position to know what constitutes an actual violation and who are fearful of losing their jobs if identified.

Response: We agree that requesting, rather than requiring, a complainant's name would protect an employee with anonymity. This will be reflected in HCFA's revised Medicare Survey and Certification, State Operations and Regional Office Manuals instructions. We also note, as previously indicated, under section 4027(k)(3) of OBRA 90 hospitals are not allowed to penalize or take action against any hospital employee because the employee reported a violation of these provisions.

State Agency Involvement

Comment: Two commenters believe that our regulations dealing with documentation of findings at § 405.1903(d) (recodified as § 488.18(d)) should be revised to require State survey agencies to forward all complaints to HCFA, not just those they deem "credible", in order to maintain the integrity of the enforcement process.

Response: We agree that HCFA should decide whether a complaint alleges a violation of these requirements and warrants an investigation. We are revising recodified § 488.18(d), accordingly.

Physician Role

Comment: Three commenters contended that the regulations should differentiate more between the roles and responsibilities of physicians and hospitals in determining whether a hospital has violated section 1867 of the Act, as hospitals do not have the legal authority to admit, transfer or discharge patients.

Response: The statute imposes duties on a hospital, many of which can only be effectively carried out by physicians in some way affiliated with the hospital. Neither the statute nor the regulations attempt to define the means by which the hospital meets its statutory obligations to provide emergency screening examination, treatment or transfer.

Comment: Three commenters raised a question concerning the hospital's responsibility in a case in which a physician who is not responsible for providing emergency care, but whose specialty is required to perform stabilizing care, refuses to treat or examine a patient.

Response: Although the term "responsible physician" is no longer used in the statute, the Department has maintained the term in these regulations, defining it to be consistent with the present statute. Hence, the definition of a "responsible physician" as drafted in these regulations includes any physician to whom the hospital has delegated responsibility to examine, treat, or transfer an individual that comes to the hospital emergency department seeking help. A hospital may use physicians on its medical staff to carry out its responsibilities under the statute. As indicated in the OBRA 89 amendments to section 1867, these physicians, including those who provide emergency services on-call as a condition of enjoying staff privileges, may be held liable for violating the statute and regulations.

Comment: One commenter recommended that "responsible physician" be defined to prevent a physician from being held liable for not providing treatment that is beyond his clinical area of competence or hospital privileges or for treatment decisions that are made in the physician's absence when the physician is available only by telephone.

Response: We do not believe that the comment requires a change in the definition. The commenter is concerned that a physician not be held responsible for aspects of an individual's care that are beyond his competence or hospital privileges. Consistent with the statute, the regulations use the term "responsible physician" to denote a physician with the responsibility to examine, treat, or transfer a patient. A hospital cannot require a physician to perform duties that are either beyond the physician's competence or the scope of the physician's hospital privileges.

On the other hand, where a responsible physician makes treatment or transfer decisions by telephone, the physician remains liable for such decisions.

Comment: Several commenters believe that the definition of "responsible physician" should include any physician on the hospital medical staff, including on-call physicians.

Response: We have amended the definition of "responsible physician" to comport with the OBRA 89 amendments to section 1867 of the Act. The definition encompasses any physician, including those physicians on-call, to whom the hospital has delegated responsibility to examine, treat, or transfer an individual that comes to the hospital emergency department seeking help. A hospital may use physicians on its medical staff to carry out its responsibilities under the statute. OBRA 89 amended section 1866(a)(1)(I) of the Act to require the hospital, as a condition of participation, to "maintain a list of physicians who are on-call for duty after the initial examination to provide treatment necessary to stabilize an individual with an emergency medical condition."

Comment: One commenter asked about the hospital's liability when the attending physician determines that the patient requires the skills of a specialist who has staff privileges, but the specialist has never agreed to provide emergency services.

Response: As previously indicated, pursuant to OBRA 89, the hospital has a duty to ensure that, within the capabilities of the hospital's staff and facility, the medical needs of an individual who comes to an emergency room can be met. The hospital's capabilities include the skills of a specialist who has staff privileges to the extent that the hospital can require the specialist to furnish these services. However, it is up to the hospital to determine how it will comply with its statutory obligations.

Comment: One commenter recommended that the regulations exempt from liability a physician who attempts to admit a patient if the hospital refuses admission.

Response: To be a responsible physician under the terms of the statute and regulations, a physician must be responsible for examining, treating, or transferring an individual whom the statute protects. If an emergency room physician, for example, is under contract with the hospital to provide emergency care and treatment, but does not have admitting privileges, that physician is still under an obligation to provide an appropriate medical screening examination and either stabilizing treatment within the capabilities of the staff and facilities of the hospital or an appropriate transfer under the statute. Section 1867(d)(1)(C) of the Act specifically states that if a physician determines that an "individual requires the services of a physician listed by the hospital on its list of on-call physicians . . . and

notifies the on-call physician and the on-call physician fails or refuses to appear within a reasonable period of time, and the physician orders the transfer of the individual because," without the on-call physician's services, the benefits of transfer outweigh the risks of transfer, the transferring physician will not be subject to penalties under section 1867 of the Act. However, this does not absolve the hospital and the on-call physician from liability under the statute.

Comment: One commenter believes that these regulations may cause emergency room physicians to hesitate to transfer patients when appropriate because their decisions might be reviewed through hindsight and without consideration of the pressure of the specific circumstances.

Response: We do not agree with the commenter's contention. In reviewing allegations of patient dumping, we will look at all the information available to the treating or transferring physician at the time the decision is made. We believe that the physician's concern should be for the patient rather than for possible consequences of this requirement. To further strengthen the protection of emergency room physicians with regard to their transfer decisions, section 6211(f) of OBRA 89 added paragraph (i) to section 1867 of the Act to prevent hospitals from penalizing physicians who refuse to authorize the transfer of an individual with an unstabilized emergency medical condition. In addition, section 4027(k)(3) of OBRA 90 amended section 1867(i) of the Act to provide similar protection to qualified medical emergency room staff with regard to their transfer decisions when a physician is not available in the emergency room. We are amending § 489.24(d)(3) to include these new provisions so that it conforms to the statute as amended.

Miscellaneous

Comment: One commenter suggested that the regulations include the requirement that the patient or a third party payer must pay for the patient's medical screening or examination.

Response: A patient's obligations to pay for services provided by a hospital is beyond the scope of these regulations. However, if an individual is unable to pay for services, the hospital, nonetheless, remains subject to the requirements of the statute and regulations with respect to that individual. Section 1867(h) of the Act, as added by section 6211(f) of OBRA 89, states expressly that the "hospital may not delay provision of an appropriate medical screening examination . . . or further medical examination and treatment . . . to inquire about the individual's method of payment or insurance status."

Comment: One commenter stated that many managed health care plans require hospital emergency departments to call the plan for permission to examine and treat the plan's patients; the commenter believed that this violates the law. He also stated that a plan can retroactively determine that an emergency condition did not exist.

Response: Managed health care plans cannot deny a hospital permission to examine or treat their enrollees. They may only state what they will and will not pay for. However, regardless of whether a hospital is to be reimbursed for the treatment, it is obligated to provide the services specified in the statute.

Comment: One commenter contended that hospitals should not be allowed to pass along the costs of any civil monetary penalties to the Medicare or Medicaid programs.

Response: We agree; these penalties are not reimbursed by the Medicare or Medicaid programs.

V. OBRA 90: Peer Review Organization Review

As stated above in section II.D. of this preamble, Responsibilities of Medicare Participating Hospitals in Emergency Cases, and in several responses to comments, before imposing civil monetary penalties and exclusions, section 1867(d)(3) of the Act requires that we request the appropriate PRO to assess whether the individual involved had an emergency medical condition that had not been stabilized and report on its findings before the OIG may impose a civil monetary penalty or exclusion. [Note: PRO review is not required in cases where a delay in effecting a sanction would jeopardize the health or safety of individuals or in situations where medical review is inappropriate, for example, in cases where an individual was denied a medical screening examination.] The Secretary must provide the PRO with at least 60 days for the review. The PRO is required to provide reasonable notice of the review to the hospital and physician involved. The PRO is also required to provide them with a reasonable opportunity for discussion and an opportunity to submit additional information. This provision is effective for sanctions imposed on or after February 1, 1991.

During the possible termination phase of a case's development, the HCFA regional office has the responsibility and authority to make a determination of compliance or noncompliance. Termination procedures provide for an opportunity for the provider to comment. During this phase, the HCFA regional office is not required to instruct the PRO to offer the affected hospital an opportunity for discussion and submission of additional information. Subsequent to this phase, the OIG has the responsibility and authority to direct that the PRO conduct an assessment. In conducting such as assessment, the PRO is required to offer the affected physician and/or hospital an opportunity for discussion and submission of additional information before the PRO issues its report.

We are adding a new paragraph (g) to proposed § 489.24 to implement the statutory provision that PROs have at least 60 days to make their assessments and to specify that PROs must provide affected physicians and hospitals reasonable notice of review and opportunity for discussion and submission of additional information.

In addition, we are adding a new § 489.24(h) to clarify that, upon request, HCFA may release a PRO assessment to the physician or hospital (or both where applicable), or the affected individual, or his or her representative. However, we specify that the PRO physician's identity is confidential unless he or she consents to release his or her identity, in accordance with the PRO disclosure regulations set forth at §§ 476.132 and 476.133. If the case goes to litigation, the PRO is required to provide expert testimony and it is preferable, but not required, that the testifying physician be the same physician who reviewed and reported on the case.

As stated earlier, the statutory change requiring PRO review applies only in situations involving civil monetary penalties and exclusions. Termination proceedings pursuant to section 1866 of the Act as a result of violations of the anti-dumping provisions of section 1866 and section 1867 do not require PRO review. We note that a facility could be the subject of a termination proceeding and also be assessed civil monetary penalties.

VI. Summary of Revisions

In this interim final rule with comment period, we are adopting as final the provisions of the June 16, 1988 proposed rule, as amended by the revisions discussed below and clarifications discussed elsewhere in this preamble. (To accommodate changes to the Code of Federal Regulations since the publication of the June 16, 1988 proposed rule, proposed paragraphs (k) through (q) of § 489.20

have been redesignated as paragraphs (l) through (r).) Unless otherwise noted, revisions are based on our evaluation of public comments.

1. CHAMPUS, CHAMPVA and VA: We made no revisions.

2. Hospital discharge rights notice.

We have revised this section to eliminate the requirement that the beneficiary or his or her representative acknowledge receipt of the "Message" by signing the acknowledgement statement on the "Message." We have also eliminated the requirement that an acknowledgement of the "Message" be retained by the hospital. Instead, we will rely on hospitals to determine how they can best comply with the requirement that each beneficiary be provided with a discharge rights notice.

3. Hospital responsibility for emergency care.

We are revising the proposed regulations as discussed below.

• Section 489.20(m): We have clarified § 489.20(m) to eliminate any implication that a hospital may improperly transfer a patient as long as it is done with prior arrangement. In addition, we are requiring that when a hospital has reason to believe that an individual was transferred in violation of the requirements of § 489.24, it will report the violation to either HCFA or the State survey agency, rather than to both, as required by the proposed regulation.

• Section 489.20(q): We are adding provisions based on section 6018(a)(2) of OBRA 89, requiring hospitals to post conspicuously in their emergency departments signs specifying rights of individuals under section 1867 of the Act with respect to examination and treatment and to post conspicuously information indicating whether or not the hospital participates in the Medicaid program under a State plan approved under title XIX. Some public commenters also wrote in support of the posting of signs.

• Section 489.20(r)(1): Pursuant to section 6018(a)(1) of OBRA 89 and in response to public comment, we are adding the requirement that both transferring and receiving hospitals maintain medical and other records related to individuals transferred for a period of 5 years.

• Section 489.20(r)(2): Also pursuant to section 6018(a)(1) of OBRA 89 and public comment, we are adding the requirement that a hospital maintain a list of physicians who are on call for duty after the initial examination to provide treatment.

• Section 489.20(r)(3): We are requiring each hospital (both transferring and receiving) to keep a log of each individual who came to the emergency department seeking assistance and whether he or she refused treatment or was refused treatment, transferred, admitted and treated, stabilized and transferred, or discharged.

• Section 489.24(b): We are expanding the definition of "emergency medical condition" to include psychiatric disturbances, symptoms of substance abuse, and situations with respect to pregnant women having contractions. We add definitions of "capacity", "comes to the emergency department", "hospital", "hospital with an emergency department", "labor", and "participating hospital." We clarify other definitions to make them consistent with other versions of the text. We have deleted the term "active labor" in accordance with section 6211(h)(1)(B) of OBRA 89.

• Section 489.24(c) (2) and (4) and (d) (1) and (2): We are adding provisions to require a written informed refusal from the patient or individual acting on his or her behalf when the patient refuses treatment or transfer. We specify that the medical record must contain a description of the examination and treatment, or transfer, or refusal. The refusal must indicate that the patient (or person acting on his or her behalf) is aware of the risks and benefits of the transfer, or the examination or treatment.

• Section 489.24(c)(3): We are adding the requirement that a hospital may not delay providing an appropriate medical screening examination in order to inquire about payment method or insurance status. This is the result of public comment and section 6211(h) of OBRA 89.

• Section 489.24(d)(1)(ii)(A): Based on section 6211(c)(1) of OBRA 89 and public comment, we are adding a requirement that an individual (or legally responsible person acting on the individual's behalf) who wants to be transferred must indicate in writing the reason for the request for transfer and that he or she is aware of its risks and benefits.

• Section 489.24(d)(3): Based on section 6211(i) of OBRA 89 and section 4027(k)(3) of OBRA 90, we are prohibiting a hospital from penalizing or taking adverse action against a physician or a qualified medical person who refuses to authorize the transfer of an individual with an emergency condition that has not been stabilized or against any hospital employee because the employee reports a violation of this regulation.

• Section 489.24(e): Based on section 6211(f) of OBRA 89 and public comment, we are requiring that a hospital with specialized capabilities or facilities accept transfer of any individual requiring those specialized capabilities or facilities if it has the capacity to treat the individual.

• Section 489.24(f): Because of section 4008(b)(3)(A) of OBRA 90, the standard for terminating a hospital has changed. HCFA is no longer required to prove that the hospital knowingly and willfully, or negligently, failed to meet the requirements of this regulation. We may now terminate such hospitals for failing to meet these requirements under section 1866 of the Act based upon section 4008(b)(3)(B) of OBRA 90, which requires hospitals to meet the requirements of section 1867 of the Act in order to participate in the Medicare program.

• Section 489.24(g): Based on section 4027(a)(1) of OBRA 90, we are requiring PRO review to assess whether the individual involved had an emergency medical condition that had not been stabilized, in addition to other medical issues, before imposing a civil monetary penalty or exclusion, unless obtaining such review would cause delay that would jeopardize the health or safety of individuals or if there is no medical issue to review (that is, no screening examination was conducted). In cases that do not present jeopardy, the PRO review and report to HCFA must be completed in 60 calendar days.

• Section 489.24(h): We are clarifying in new § 489.24(h) that, upon request, HCFA may release a PRO assessment to the physician or hospital, or the affected individual or his or her representative.

• Section 489.53(a): We are revising the proposed rule to require a receiving hospital to report incidents it has reason to believe may be violations.

• Section 489.53(b): We are adding to the reasons for termination—(a) a refusal of a hospital with specialized capabilities or facilities that has the capacity to accept an appropriate transfer; (b) failure to maintain an on-call duty roster, medical records for 5 years, and a log of individuals seeking emergency assistance; and (c) failure to post notices as required concerning participation in Medicaid and the rights of individuals under 42 CFR part 489, subpart B.

• Section 489.53(c)(2)(ii): We are specifying that a hospital found in violation of §§ 489.24(a) through (h) will receive a final notice of termination and the public will be concurrently notified at least 2 but no more than 4 days before the effective date of the termination. This allows a hospital approximately 19 to 21 days to correct or refute alleged deficiencies. We also clarify that we will

not terminate if the hospital has corrected or refuted the deficiencies that gave rise to the termination.

- We are adding "or rural primary care hospital" wherever "hospital" appears in § 489.24, as required by section 6003(g) of OBRA 89.
- We are also removing all references to suspension of the provider from the regulations at §§ 489.24 and 489.53, based on the deletion of the suspension authority by section 4008(b)(3) of OBRA 90.
- We are making none of the proposed revisions to part 1001, which all concerned suspension of providers.
- Section 1003.100: We are revising the proposed section to conform with several rulemaking documents that have been published since our proposed rule. The requirements contained in proposed § 1003.100(b)(1)(ii) are now set forth in § 1003.100(b)(1)(vi).
- Section 1003.101: We are adding or revising in this section the definitions for the terms "participating hospital" (to comport with the statute), "respondent", and "responsible physician".
- Section 1003.102: This section also has been revised by several rulemaking documents since the publication of our June 16, 1988, proposed rule. In this interim final rule, we are clarifying in paragraph (c)(2) that the term "knowingly" encompasses reckless disregard and deliberate ignorance of a material fact. We are also revising this section to comport with the OBRA 89 amendments that allow the Inspector General to impose civil monetary penalties when a physician signs a certification when he or she knew or should have known that the benefits did not outweigh the risks of transfer, or when the physician misrepresents an individual's condition or other information. We are also revising proposed § 1003.102(d) to eliminate the reference to a "knowing" standard (that is, a physician knowingly failed to provide care). This results in a clearer approach that sets forth our basis for imposing civil monetary penalties for violations of section 1867 of the Act and is consistent with the statutory amendments and with other revisions to the regulations.
- Section 1003.103: We are revising this section in accordance with section 1867(d) of the Act, as amended by section 4008 of OBRA 90, to clarify that the OIG may impose a penalty of not more than $50,000 against a participating hospital and a penalty of not more than $50,000 against each responsible physician (and not more than $25,000 against a participating hospital and each responsible physician for violations on or after August 1, 1986, but before December 22, 1987) for violations determined under § 1003.102(d). For penalties imposed on or after May 1, 1991, if the hospital has fewer than 100 State-licensed, Medicare-certified beds, the maximum penalty will be $25,000.
- Section 1003.105: We are revising this section to comport with the OBRA 90 amendments to section 1867 of the Act by specifying in § 1003.105(a)(1) that a physician who grossly and flagrantly or repeatedly violates the statute or § 489.24 may be excluded from Medicare and any State health care program. We are also revising § 1003.105(b) to clarify that, for determinations under §§ 1003.102 (b)(2) and (b)(3), and for violations under § 1003.102(c)(1)(ii) occurring on or after December 22, 1987 and before July 1, 1990, a physician may not be excluded if the OIG determines he or she is a sole community physician or the sole source of specialized services in that community. We are moving references to limitations in time periods of exclusion to § 1003.107.
- Section 1003.105: Effective December 22, 1987, the statute was amended to allow the Secretary, pursuant to section 1842(j)(2) of the Act, to exclude a physician who knowingly violated section 1867 of the Act. In OBRA 89 Congress amended section 1867, allowing the Secretary, pursuant to section 1128A (instead of section 1842(j)(2)), to exclude a physician who knowingly and willfully or negligently violated the statute. The statute was then amended in OBRA 90, changing the standard for exclusion from "knowing and willful or negligent" to "gross and flagrant or repeated", effective May 1, 1991. We are implementing this provision in § 1003.105(a)(1)(ii)(C). In addition, in accordance with section 1842(j)(3) of the Act, the physician may not be excluded if the physician is the sole community physician or sole source of essential specialized services in a community. We are revising § 1003.105(b) to include these exceptions.
- Section 1003.106: As indicated in a response to one of the comments, in accordance with the requirements of section 1128A(d) of the Act, the final regulation includes two additional factors for consideration in determining the amount of the penalty and the length of the exclusion under part 1003: (1) "The financial condition of the hospital and each responsible physician who have violated any requirement of section 1867 of the Act," and (2) "The nature and circumstances of the violation." We are adding § 1003.106(a)(4) to reflect these provisions.
- Section 1003.107: The regulations now reflect the requirement of section 1842(j)(3) of the Act that if an exclusion is based upon section 1842(j)(2) of the Act, then the access of beneficiaries to physician's services must be considered.
- Section 1003.108: We are revising this section to include the terms "assessment" and "exclusion."

4. Technical revisions.

We have revised the regulation to reflect the statutory amendments relating to the term "active labor." Section 6211(h)(1)(B) of OBRA 89 removed the term from the statutory definitions section (section 1867(e) of the Act) and the concept it applied to was incorporated into the definition of emergency medical condition. Hence, in many areas of the regulations, only the term "emergency medical condition" is included. However, the statute still uses the term "labor" in certain circumstances, and the regulations reflect this where appropriate.

Under sections 6211(g) (1) and (2) of OBRA 89, the words "patient," "patients" and "patient's" are replaced by the words "individual," "individuals" and "individual's", respectively, each place they appear in §§ 489.24 and 489.53 in reference to hospitals.

In addition, we have redesignated proposed § 405.1903 in this interim final rule as § 488.18(d).

VII. Impact Statement

Unless the Secretary certifies that an interim final rule will not have a significant economic impact on a substantial number of small entities, we generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612). For purposes of the RFA, we consider all hospitals to be small entities. Individuals and states are not included in the definition of a small entity.

In addition, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis for any final rule that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that has fewer than 100 beds and is located outside a Metropolitan Statistical Area.

The provisions of this rule merely conform the regulations to the legislative provisions of sections 912[illegible] and 9122 of COBRA (as amended by

section 4009 of OBRA 87), section 233 of the Veteran's Benefit Improvement and Health Care Authorization Act of 1986, sections 9305 (b)(1) and 9307 of OBRA 86, section 4009 of OBRA 87, sections 6003(g)(3)(d)(XIV), 6018 and 6211 of OBRA 89 and sections 4008(b), 4027(a) and 4027(k)(3) of OBRA 90.

The provisions of this rule will require Medicare participating hospitals to provide inpatient services to individuals with insurance coverage under CHAMPUS, CHAMPVA, and VA programs, provide each Medicare beneficiary a statement of his or her rights concerning discharge from the hospital and provide an appropriate medical screening examination to anyone who requests examination or treatment, and stabilizing treatment in the emergency room to any individual with an emergency medical condition.

As required by the statute these provisions are in effect and are being enforced. Although hospitals may incur incremental costs to ensure compliance with these provisions, we believe the costs are minimal and the benefits to individuals far outweigh those costs. These provisions will allow military personnel and their families to receive inpatient services in hospitals that may be closer to their homes as opposed to receiving services in military hospitals that may be some distance away. Another benefit will be that all individuals will receive medical screening and, if an emergency medical condition exists, will also receive stabilizing treatment and protections against inappropriate transfers regardless of the individual's eligibility for Medicare. We believe that these provisions will improve access to care and reduce patient complaints. The potential use of sanctions provides the incentive for hospitals to ensure continued compliance with these provisions.

We included a voluntary impact analysis in section VII of the preamble in the June 16, 1988 proposed rule (53 FR 22513). We received no comments on that analysis, and we believe that none of the changes incorporated into this interim final rule have any significant impact. Therefore, we are not preparing a similar analysis.

For the reasons discussed above, we have determined, and the Secretary certifies, that these final regulations will not have significant economic impact on a substantial number of small entities and will not have a significant impact on the operations of a substantial number of small rural hospitals. Therefore, we have not prepared a regulatory flexibility analysis or an analysis of effects on small rural hospitals.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

VIII. Paperwork Reduction Act

Sections 488.18(d), 489.20 (m) and (r), and 489.24 (c), (d) and (g) of this interim final rule contain information collection requirements that are subject to the Office of Management and Budget review under the Paperwork Reduction Act of 1980. The information collections in §§ 488.18, 489.20(m), and 489.24 require the State agencies to notify HCFA when hospitals are not in compliance with provisions contained in the Medicare provider agreement. Section 489.20(m) also requires that a hospital report to HCFA or a Medicare state survey agency when the hospital believes it has received an individual who has been transferred in an unstable emergency medical condition from another hospital in violation of the requirements of § 489.24(d). Section 489.20(r) now requires both transferring and receiving hospitals to develop and maintain lists of on-call physicians and central logs containing information about what services the individual did or did not receive and applicable patient records on admissions, discharges, and transfers.

In addition, under § 489.24 (c) and (d), transferring hospitals must send receiving hospitals an individual's medical records (or copies) available at the time of the transfer, and the individual's other medical records must be sent as soon as practicable after the transfer. The provisions also require hospitals to record certain information on individuals' medical records, require individuals to sign consent forms pertaining to examinations, treatments and transfers, and require physicians and other qualified medical personnel, when a physician is not present in the emergency department but in consultation with the physician, to sign transfer certifications containing specific information. Section 489.24(g) also requires PROs to prepare reports regarding individuals' medical conditions when requested by HCFA.

Section 489.27 of the proposed rule required that hospitals that participate in the Medicare program obtain from the beneficiary or his or her representative a signed acknowledgement of receipt of a notice of discharge rights. We also required these hospitals to retain both a copy of the inpatient notice of discharge rights ("Message") and of the signed acknowledgement for 1 year. As discussed in section IV.B. of this preamble, this interim final rule eliminates the requirement for an acknowledgement statement. Thus, the accompanying recordkeeping burden also is eliminated.

The annual reporting and recordkeeping burden imposed by these information collection requirements is estimated, based on past experience, to be as follows:

§ 488.18(d)—101.5 hours for Medicare State survey agencies
§ 489.20(m)—25.25 hours for all hospitals and 50.5 hours for Medicare State survey agencies
§ 489.20(r)(2)—7,000 hours for all hospitals
§ 489.20(r)(3)—7,665,400 hours for all hospitals
§ 489.24(c)(2) and § 489.24(c)(4)—373,900 hours for all hospitals and 46,700 hours for the public for each subsection
§ 489.24(d)(1)(ii)(A)—46,700 hours for the public
§ 489.24(d)(1)(ii)(B) and § 489.24(d)(1)(ii)(C)—373,900 hours for all hospitals for each subsection
§ 489.24(g)—336 hours for all PROs

The new information collection and recordkeeping requirements associated with §§ 488.18, 489.20, and 489.24 have been sent to OMB for approval in accordance with the Paperwork Reduction Act and will not be effective until OMB approval is received. A notice will be published in the **Federal Register** when approval is obtained. Organizations and individuals desiring to submit comments on the burden estimates, the usefulness of central logs for enforcement purposes, the possibility of any unintended effects in connection with the use of such logs, or other aspects of the information collection and recordkeeping requirements in §§ 488.18, 489.20, and 489.24 should direct them to the OMB official whose name appears in the **ADDRESSES** section of this preamble.

IX. Waiver of Proposed Rulemaking

The Administrative Procedure Act (5 U.S.C. 553) requires us to publish general notice of proposed rulemaking in the **Federal Register** and afford prior public comment on proposed rules. Such notice includes a statement of the time, place and nature of the rulemaking proceeding, reference to the legal authority under which the rule is proposed, and the terms or substance of the proposed rule or a description of the subjects and issues involved. However, this requirement does not apply when an agency finds good cause that prior notice and comment are impracticable, unnecessary, or contrary to the public

interest, and incorporates a statement of the finding and its reasons in the rules instead.

This interim final rule with comment period includes a number of revisions to our regulations that implement revisions to the Act under OBRA 89 and OBRA 90 and for which we did not propose rulemaking. These particular regulation revisions implement the statute without interpretation; the statutory changes are self-implementing. Most of the revisions are technical; some substantive ones (such as the notice hospitals are required to post concerning Medicaid) have already been implemented; others are changes that would respond to public comments we have already received. Affording a proposed rulemaking process under these circumstances is not in the public interest as it would delay the promulgation of regulations that correspond to the current statute; because the statutory revisions are self-implementing, we do not anticipate that public comment would substantively modify regulations. Therefore, we find good cause to waive proposed rulemaking for those regulatory provisions necessary to implement OBRA 89 and OBRA 90. However, we are providing a 60-day period for public comment, as indicated at the beginning of this rule, on changes to the regulations resulting from the provisions of OBRA 89 and OBRA 90. After considering comments that are received timely, we will respond to the comments, include any changes in the rule that might be necessitated in light of those comments, and publish a final rule in the **Federal Register.**

X. Response to Comments

Because of the large number of items of correspondence we receive on a rulemaking document, we are not able to acknowledge or respond to them individually. However, we will consider all comments that we receive by the date and time specified in the "Dates" section of this preamble, and, we will respond to the comments in the preamble of the final rule.

List of Subjects

42 CFR Part 488

Health facilities, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 489

Health facilities, Medicare.

42 CFR Part 1003

Administrative practice and procedure, Fraud, Grant programs—health, Health facilities, Health professions, Maternal and child health, Medicaid, Medicare, Penalties.

Title 42 of the Code of Federal Regulations is amended as follows:

A. Part 488, subpart A, is amended as follows:

PART 488—SURVEY AND CERTIFICATION PROCEDURES

1. The authority citation for part 488 continues to read as follows:

Authority: Secs. 1102, 1814, 1861, 1865, 1866, 1871, 1880, 1881, 1883, and 1913 of the Social Security Act (42 U.S.C. 1302, 1395f, 1395x, 1395bb, 1395cc, 1395hh, 1395qq, 1395rr, 1395tt, and 1396l).

Subpart A—General Provisions

2. Section 488.18 is amended by adding a new paragraph (d) to read as follows:

§ 488.18 Documentation of findings.

* * * * *

(d) If the State agency receives information to the effect that a hospital or a rural primary care hospital (as defined in section 1861(mm)(1) of the Act) has violated § 489.24 of this chapter, the State agency is to report the information to HCFA promptly.

B. Part 489 is amended as follows:

PART 489—PROVIDER AGREEMENTS UNDER MEDICARE

1. The authority citation for part 489 is revised to read as follows:

Authority: Secs. 1102, 1861, 1864, 1866, 1867, and 1871 of the Social Security Act (42 U.S.C. 1302, 1395x, 1395aa, 1395cc, 1395dd, and 1395hh), and sec. 602(k) of Pub. L. 98–21 (42 U.S.C. 1395ww note).

Subpart A—General Provisions

2. In § 489.20, the introductory text is republished, and paragraphs (l) through (r) are added to read as follows:

§ 489.20 Basic commitments.

The provider agrees to the following:

* * * * *

(l) In the case of a hospital as defined in § 489.24(b) to comply with § 489.24.

(m) In the case of a hospital as defined in § 489.24(b), to report to HCFA or the State survey agency any time it has reason to believe it may have received an individual who has been transferred in an unstable emergency medical condition from another hospital in violation of the requirements of § 489.24(d).

(n) In the case of inpatient hospital services, to participate in any health plan contracted for under 10 U.S.C. 1079 or 1086 or 38 U.S.C. 613, in accordance with § 489.25.

(o) In the case of inpatient hospital services, to admit veterans whose admission has been authorized under 38 U.S.C. 603, in accordance with § 489.26.

(p) In the case of a hospital that participates in the Medicare program, to comply with § 489.27 by giving each beneficiary a notice about his or her discharge rights at or about the time of the individual's admission.

(q) In the case of a hospital as defined in § 489.24(b)—

(1) To post conspicuously in any emergency department or in a place or places likely to be noticed by all individuals entering the emergency department, as well as those individuals waiting for examination and treatment in areas other than traditional emergency departments (that is, entrance, admitting area, waiting room, treatment area), a sign (in a form specified by the Secretary) specifying rights of individuals under Section 1867 of the Act with respect to examination and treatment for emergency medical conditions and women in labor; and

(2) To post conspicuously (in a form specified by the Secretary) information indicating whether or not the hospital or rural primary care hospital participates in the Medicaid program under a State plan approved under title XIX.

(r) In the case of a hospital as defined in § 489.24(b) (including both the transferring and receiving hospitals), to maintain—

(1) Medical and other records related to individuals transferred to or from the hospital for a period of 5 years from the date of the transfer;

(2) A list of physicians who are on call for duty after the initial examination to provide treatment necessary to stabilize an individual with an emergency medical condition; and

(3) A central log on each individual who comes to the emergency department, as defined in § 489.24(b), seeking assistance and whether he or she refused treatment, was refused treatment, or whether he or she was transferred, admitted and treated, stabilized and transferred, or discharged.

3. New §§ 489.24 through 489.27 are added to read as follows:

§ 489.24 Special responsibilities of Medicare hospitals in emergency cases.

(a) *General.* In the case of a hospital that has an emergency department, if any individual (whether or not eligible for Medicare benefits and regardless of ability to pay) comes by him or herself or with another person to the emergency department and a request is made on the individual's behalf for examination or treatment of a medical condition by

qualified medical personnel (as determined by the hospital in its rules and regulations), the hospital must provide for an appropriate medical screening examination within the capability of the hospital's emergency department, including ancillary services routinely available to the emergency department, to determine whether or not an emergency medical condition exists. The examinations must be conducted by individuals determined qualified by hospital by-laws or rules and regulations and who meet the requirements of § 482.55 concerning emergency services personnel and direction.

(b) *Definitions.* As used in this subpart—

Capacity means the ability of the hospital to accommodate the individual requesting examination or treatment of the transferred individual. Capacity encompasses such things as numbers and availability of qualified staff, beds and equipment and the hospital's past practices of accommodating additional patients in excess of its occupancy limits.

Comes to the emergency department means, with respect to an individual requesting examination or treatment, that the individual is on the hospital property (property includes ambulances owned and operated by the hospital, even if the ambulance is not on hospital grounds). An individual in a nonhospital-owned ambulance on hospital property is considered to have come to the hospital's emergency department. An individual in a nonhospital-owned ambulance off hospital property is not considered to have come to the hospital's emergency department, even if a member of the ambulance staff contacts the hospital by telephone or telemetry communications and informs the hospital that they want to transport the individual to the hospital for examination and treatment. In such situations, the hospital may deny access if it is in "diversionary status," that is, it does not have the staff or facilities to accept any additional emergency patients. If, however, the ambulance staff disregards the hospital's instructions and transports the individual on to hospital property, the individual is considered to have come to the emergency department.

Emergency medical condition means—

(i) A medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain, psychiatric disturbances and/or symptoms of substance abuse) such that the absence of immediate medical attention could reasonably be expected to result in—

(A) Placing the health of the individual (or, with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy;

(B) Serious impairment to bodily functions; or

(C) Serious dysfunction of any bodily organ or part; or

(ii) With respect to a pregnant woman who is having contractions—

(A) That there is inadequate time to effect a safe transfer to another hospital before delivery; or

(B) That transfer may pose a threat to the health or safety of the woman or the unborn child.

Hospital includes a rural primary care hospital as defined in section 1861(mm)(1) of the Act.

Hospital with an emergency department means a hospital that offers services for emergency medical conditions (as defined in this paragraph) within its capability to do so.

Labor means the process of childbirth beginning with the latent or early phase of labor and continuing through the delivery of the placenta. A woman experiencing contractions is in true labor unless a physician certifies that, after a reasonable time of observation, the woman is in false labor.

Participating hospital means (i) a hospital or (ii) a rural primary care hospital as defined in section 1861(mm)(1) of the Act that has entered into a Medicare provider agreement under section 1866 of the Act.

Stabilized means, with respect to an "emergency medical condition" as defined in this section under paragraph (i) of that definition, that no material deterioration of the condition is likely, within reasonable medical probability, to result from or occur during the transfer of the individual from a facility or, with respect to an "emergency medical condition" as defined in this section under paragraph (ii) of that definition, that the woman has delivered the child and the placenta.

To stabilize means, with respect to an "emergency medical condition" as defined in this section under paragraph (i) of that definition, to provide such medical treatment of the condition necessary to assure, within reasonable medical probability, that no material deterioration of the condition is likely to result from or occur during the transfer of the individual from a facility or that, with respect to an "emergency medical condition" as defined in this section under paragraph (ii) of that definition, the woman has delivered the child and the placenta.

Transfer means the movement (including the discharge) of an individual outside a hospital's facilities at the direction of any person employed by (or affiliated or associated, directly or indirectly, with) the hospital, but does not include such a movement of an individual who (i) has been declared dead, or (ii) leaves the facility without the permission of any such person.

(c) *Necessary stabilizing treatment for emergency medical conditions*—(1) *General.* If any individual (whether or not eligible for Medicare benefits) comes to a hospital and the hospital determines that the individual has an emergency medical condition, the hospital must provide either—

(i) Within the capabilities of the staff and facilities available at the hospital, for further medical examination and treatment as required to stabilize the medical condition; or

(ii) For transfer of the individual to another medical facility in accordance with paragraph (d) of this section.

(2) *Refusal to consent to treatment.* A hospital meets the requirements of paragraph (c)(1)(i) of this section with respect to an individual if the hospital offers the individual the further medical examination and treatment described in that paragraph and informs the individual (or a person acting on the individual's behalf) of the risks and benefits to the individual of the examination and treatment, but the individual (or a person acting on the individual's behalf) refuses to consent to the examination and treatment. The medical record must contain a description of the examination, treatment, or both if applicable, that was refused by or on behalf of the individual. The hospital must take all reasonable steps to secure the individual's written informed refusal (or that of the person acting on his or her behalf). The written document should indicate that the person has been informed of the risks and benefits of the examination or treatment, or both.

(3) *Delay in examination or treatment.* A participating hospital may not delay providing an appropriate medical screening examination required under paragraph (a) of this section or further medical examination and treatment required under paragraph (c) in order to inquire about the individual's method of payment or insurance status.

(4) *Refusal to consent to transfer.* A hospital meets the requirements of paragraph (c)(1)(ii) of this section with respect to an individual if the hospital offers to transfer the individual to another medical facility in accordance with paragraph (d) of this section and informs the individual (or a person

acting on his or her behalf) of the risks and benefits to the individual of the transfer, but the individual (or a person acting on the individual's behalf) refuses to consent to the transfer. The hospital must take all reasonable steps to secure the individual's written informed refusal (or that of a person acting on his or her behalf). The written document must indicate the person has been informed of the risks and benefits of the transfer and state the reasons for the individual's refusal. The medical record must contain a description of the proposed transfer that was refused by or on behalf of the individual.

(d) *Restricting transfer until the individual is stabilized*—(1) *General.* If an individual at a hospital has an emergency medical condition that has not been stabilized (as defined in paragraph (b) of this section), the hospital may not transfer the individual unless—

(i) The transfer is an appropriate transfer (within the meaning of paragraph (d)(2) of this section); and

(ii)(A) The individual (or a legally responsible person acting on the individual's behalf) requests the transfer, after being informed of the hospital's obligations under this section and of the risk of transfer. The request must be in writing and indicate the reasons for the request as well as indicate that he or she is aware of the risks and benefits of the transfer;

(B) A physician (within the meaning of section 1861(r)(1) of the Act) has signed a certification that, based upon the information available at the time of transfer, the medical benefits reasonably expected from the provision of appropriate medical treatment at another medical facility outweigh the increased risks to the individual or, in the case of a woman in labor, to the woman or the unborn child, from being transferred. The certification must contain a summary of the risks and benefits upon which it is based; or

(C) If a physician is not physically present in the emergency department at the time an individual is transferred, a qualified medical person (as determined by the hospital in its by-laws or rules and regulations) has signed a certification described in paragraph (d)(1)(ii)(B) of this section after a physician (as defined in section 1861(r)(1) of the Act) in consultation with the qualified medical person, agrees with the certification and subsequently countersigns the certification. The certification must contain a summary of the risks and benefits upon which it is based.

(2) A transfer to another medical facility will be appropriate only in those cases in which—

(i) The transferring hospital provides medical treatment within its capacity that minimizes the risks to the individual's health and, in the case of a woman in labor, the health of the unborn child;

(ii) The receiving facility—

(A) Has available space and qualified personnel for the treatment of the individual; and

(B) Has agreed to accept transfer of the individual and to provide appropriate medical treatment;

(iii) The transferring hospital sends to the receiving facility all medical records (or copies thereof) related to the emergency condition which the individual has presented that are available at the time of the transfer, including available history, records related to the individual's emergency medical condition, observations of signs or symptoms, preliminary diagnosis, results of diagnostic studies or telephone reports of the studies, treatment provided, results of any tests and the informed written consent or certification (or copy thereof) required under paragraph (d)(1)(ii) of this section, and the name and address of any on-call physician (described in paragraph (f) of this section) who has refused or failed to appear within a reasonable time to provide necessary stabilizing treatment. Other records (e.g., test results not yet available or historical records not readily available from the hospital's files) must be sent as soon as practicable after transfer; and

(iv) The transfer is effected through qualified personnel and transportation equipment, as required, including the use of necessary and medically appropriate life support measures during the transfer.

(3) A participating hospital may not penalize or take adverse action against a physician or a qualified medical person described in paragraph (d)(1)(ii)(C) of this section because the physician or qualified medical person refuses to authorize the transfer of an individual with an emergency medical condition that has not been stabilized, or against any hospital employee because the employee reports a violation of a requirement of this section.

(e) *Recipient hospital responsibilities.* A participating hospital that has specialized capabilities or facilities (including, but not limited to, facilities such as burn units, shock-trauma units, neonatal intensive care units, or (with respect to rural areas) regional referral centers) may not refuse to accept from a referring hospital within the boundaries of the United States an appropriate transfer of an individual who requires such specialized capabilities or facilities if the receiving hospital has the capacity to treat the individual.

(f) *Termination of provider agreement.* If a hospital fails to meet the requirements of paragraph (a) through (e) of this section, HCFA may terminate the provider agreement in accordance with § 489.53.

(g) *Consultation with Peer Review Organizations (PROs)*—(1) *General.* Except as provided in paragraph (g)(3) of this section, in cases where a medical opinion is necessary to determine a physician's or hospital's liability under section 1867(d)(1) of the Act, HCFA requests the appropriate PRO (with a contract under Part B of title XI of the Act) to review the alleged section 1867(d) violation and provide a report on its findings in accordance with paragraph (g)(2)(iv) and (v) of this section. HCFA provides to the PRO all information relevant to the case and within its possession or control. HCFA, in consultation with the OIG, also provides to the PRO a list of relevant questions to which the PRO must respond in its report.

(2) *Notice of review and opportunity for discussion and additional information.* The PRO shall provide the physician and hospital reasonable notice of its review, a reasonable opportunity for discussion, and an opportunity for the physician and hospital to submit additional information before issuing its report. When a PRO receives a request for consultation under paragraph (g)(1) of this section, the following provisions apply—

(i) The PRO reviews the case before the 15th calendar day and makes its tentative findings.

(ii) Within 15 calendar days of receiving the case, the PRO gives written notice, sent by certified mail, return receipt requested, to the physician or the hospital (or both if applicable).

(iii) (A) The written notice must contain the following information:

(*1*) The name of each individual who may have been the subject of the alleged violation.

(*2*) The date on which each alleged violation occurred.

(*3*) An invitation to meet, either by telephone or in person, to discuss the case with the PRO, and to submit additional information to the PRO within 30 calendar days of receipt of the notice, and a statement that these rights will be waived if the invitation is not

accepted. The PRO must receive the information and hold the meeting within the 30-day period.

(4) A copy of the regulations at 42 CFR 489.24.

(B) For purposes of paragraph (g)(2)(iii)(A) of this section, the date of receipt is presumed to be 5 days after the certified mail date on the notice, unless there is a reasonable showing to the contrary.

(iv) The physician or hospital (or both where applicable) may request a meeting with the PRO. This meeting is not designed to be a formal adversarial hearing or a mechanism for discovery by the physician or hospital. The meeting is intended to afford the physician and/or the hospital a full and fair opportunity to present the views of the physician and/or hospital regarding the case. The following provisions apply to that meeting:

(A) The physician and/or hospital has the right to have legal counsel present during that meeting. However, the PRO may control the scope, extent, and manner of any questioning or any other presentation by the attorney. The PRO may also have legal counsel present.

(B) The PRO makes arrangements so that, if requested by HCFA or the OIG, a verbatim transcript of the meeting may be generated. If HCFA or OIG requests a transcript, the affected physician and/or the affected hospital may request that HCFA provide a copy of the transcript.

(C) The PRO affords the physician and/or the hospital an opportunity to present, with the assistance of counsel, expert testimony in either oral or written form on the medical issues presented. However, the PRO may reasonably limit the number of witnesses and length of such testimony if such testimony is irrelevant or repetitive. The physician and/or hospital, directly or through counsel, may disclose patient records to potential expert witnesses without violating any non-disclosure requirements set forth in part 476 of this chapter.

(D) The PRO is not obligated to consider any additional information provided by the physician and/or the hospital after the meeting, unless, before the end of the meeting, the PRO requests that the physician and/or hospital submit additional information to support the claims. The PRO then allows the physician and/or the hospital an additional period of time, not to exceed 5 calendar days from the meeting, to submit the relevant information to the PRO.

(v) Within 60 calendar days of receiving the case, the PRO must submit to HCFA a report on the PRO's findings. HCFA provides copies to the OIG and to the affected physician and/or the affected hospital. The report must contain the name of the physician and/or the hospital, the name of the individual, and the dates and times the individual arrived at and was transferred (or discharged) from the hospital. The report provides expert medical opinion regarding whether the individual involved had an emergency medical condition, whether the individual's emergency medical condition was stabilized, whether the individual was transferred appropriately, and whether there were any medical utilization or quality of care issues involved in the case.

(vi) The report required under paragraph (g)(2)(v) of this section should not state an opinion or conclusion as to whether section 1867 of the Act or § 489.24 has been violated.

(3) If a delay would jeopardize the health or safety of individuals or when there was no screening examination, the PRO review described in this section is not required before the OIG may impose civil monetary penalties or an exclusion in accordance with section 1867(d)(1) of the Act and 42 CFR part 1003 of this title.

(4) If the PRO determines after a preliminary review that there was an appropriate medical screening examination and the individual did not have an emergency medical condition, as defined by paragraph (b) of this section, then the PRO may, at its discretion, return the case to HCFA and not meet the requirements of paragraph (g) except for those in paragraph (g)(2)(v).

(h) *Release of PRO assessments.* Upon request, HCFA may release a PRO assessment to the physician and/or hospital, or the affected individual, or his or her representative. The PRO physician's identity is confidential unless he or she consents to its release. (See §§ 476.132 and 476.133 of this chapter.)

§ 489.25 Special requirements concerning CHAMPUS and CHAMPVA programs.

For inpatient services, a hospital that participates in the Medicare program must participate in any health plan contracted under 10 U.S.C. 1079 or 1086 (Civilian Health and Medical Program of the Uniformed Services) and under 38 U.S.C. 613 (Civilian Health and Medical Program of the Veterans Administration) and accept the CHAMPUS/CHAMPVA-determined allowable amount as payment in full, less applicable deductible, patient cost-share, and noncovered items. Hospitals must meet the requirements of 32 CFR part 199 concerning program benefits under the Department of Defense. This section applies to inpatient services furnished to beneficiaries admitted on or after January 1, 1987.

§ 489.26 Special requirements concerning veterans.

For inpatient services, a hospital that participates in the Medicare program must admit any veteran whose admission is authorized by the Department of Veterans Affairs under 38 U.S.C. 603 and must meet the requirements of 38 CFR part 17 concerning admissions practices and payment methodology and amounts. This section applies to services furnished to veterans admitted on and after July 1, 1987.

§ 489.27 Beneficiary notice of discharge rights.

A hospital that participates in the Medicare program must furnish each Medicare beneficiary, or an individual acting on his or her behalf, the notice of discharge rights HCFA supplies to the hospital to implement section 1886(a)(1)(M) of the Act. The hospital must furnish the statement at or about the time of admission. The hospital must be able to demonstrate compliance with this requirement. This provision is effective with admissions beginning on or after July 22, 1994.

Subpart E—Termination of Agreement and Reinstatement After Termination

4. In § 489.53, the introductory text of paragraph (a) is republished, paragraphs (a) (10), (11), and (12) are added, and paragraphs (b) and (c)(2) are revised to read as follows:

§ 489.53 Termination by HCFA.

(a) *Basis for termination of agreement with any provider.* HCFA may terminate the agreement with any provider if HCFA finds that any of the following failings is attributable to that provider:

* * * * *

(10) In the case of a hospital or a rural primary care hospital as defined in section 1861(mm)(1) of the Act that has reason to believe it may have received an individual transferred by another hospital in violation of § 489.24(d), the hospital failed to report the incident to HCFA or the State survey agency.

(11) In the case of a hospital requested to furnish inpatient services to CHAMPUS or CHAMPVA beneficiaries or to veterans, it failed to comply with § 489.25 or § 489.26, respectively.

(12) It failed to furnish the notice of discharge rights as required by § 489.27.

(b) *Termination of provider agreement.* (1) In the case of a hospital or rural primary care hospital that has

an emergency department as defined in § 489.24(b), HCFA may terminate the provider agreement if—

(i) The hospital fails to comply with the requirements of § 489.24 (a) through (e), which require the hospital to examine, treat or transfer emergency medical condition cases appropriately, and require that hospitals with specialized capabilities or facilities accept an appropriate transfer; or

(ii) The hospital fails to comply with § 489.20 (m), (q), and (r), which require the hospital to report suspected violations of § 489.24(d), to post conspicuously in emergency departments or in a place or places likely to be noticed by all individuals entering the emergency departments, as well as those individuals waiting for examination and treatment in areas other than traditional emergency departments, (that is, entrance, admitting area, waiting room, treatment area), signs specifying rights of individuals under this subpart, to post conspicuously information indicating whether or not the hospital participates in the Medicaid program, and to maintain medical and other records related to transferred individuals for a period of 5 years, a list of on-call physicians for individuals with emergency medical conditions, and a central log on each individual who comes to the emergency department seeking assistance.

(2) In the case of a SNF, HCFA terminates a SNF's provider agreement if it determines that—

(i) The SNF no longer meets the requirements for long term care facilities specified in part 483, subpart B of this chapter; and

(ii) The SNF's deficiencies pose immediate jeopardy to patients' health and safety.

(c) *Notice of termination.*

* * * * *

(2) *Exception.*

(i) For a SNF with deficiencies that pose immediate jeopardy to patients' health and safety, HCFA gives notice of termination at least 2 days before the effective date of termination of the provider agreement.

(ii) If HCFA finds that a hospital is in violation of § 489.24 (a) through (e), and HCFA determines that the violation poses immediate and serious jeopardy to the health and safety of the individuals presenting themselves to the hospital for emergency services, HCFA:

(A) Gives a preliminary notice of termination notifying the hospital that it will be terminated in 23 days if it does not correct or refute the identified deficiencies;

(B) Gives a final notice of termination and concurrent notice to the public at least 2 and not more than 4 days before the effective date of termination of the provider agreement.

* * * * *

C. Part 1003 is amended as follows:

PART 1003—CIVIL MONEY PENALTIES AND ASSESSMENTS

1. The authority citation for part 1003 is revised to read as follows:

Authority: 42 U.S.C. 1302, 1320a–7, 1320a–7a, 1320b–10, 1395u(j), 1395u(k), 1395dd(d)(1), 11131(c) and 11137(b)(2).

2. In § 1003.100, the introductory language in paragraph (b) is republished, paragraphs (b)(1) introductory text, (b)(1)(iv) and (b)(1)(v) are revised, and a new paragraph (b)(1)(vi) is added to read as follows:

§ 1003.100 Basis and purpose.

* * * * *

(b) *Purpose.* This part—

(1) Provides for the imposition of civil monetary penalties and, as applicable, assessments against persons who—

* * * * *

(iv) Fail to report information concerning medical malpractice payments or who improperly disclose, use or permit access to information reported under part B of title IV of Public Law 99–660, and regulations specified in 45 CFR part 60;

(v) Misuse certain Medicare and Social Security program words, letters, symbols and emblems; or

(vi) Violate a requirement of section 1867 of the Act or § 489.24 of this title;

* * * * *

3. Section 1003.101 is amended by adding definitions for the terms "participating hospital" and "responsible physician," and by revising the definition of "respondent" to read as follows:

§ 1003.101 Definitions.

For purposes of this part:

* * * * *

Participating hospital means (1) a hospital or (2) a rural primary care hospital as defined in section 1861(mm)(1) of the Act that has entered into a Medicare provider agreement under section 1866 of the Act.

* * * * *

Respondent means the person upon whom the Department has imposed, or proposes to impose, a penalty, assessment or exclusion.

Responsible physician means a physician who is responsible for the examination, treatment, or transfer of an individual who comes to a participating hospital's emergency department seeking assistance and includes a physician on call for the care of such individual.

* * * * *

4. Section 1003.102 is amended by redesignating paragraph (c) as paragraph (d), adding a new paragraph (c), and revising redesignated paragraph (d) to read as follows:

§ 1003.102 Basis for civil money penalties and assessment.

* * * * *

(c) (1) The Office of the Inspector General (OIG) may impose a penalty for violations of section 1867 of the Act or § 489.24 of this title against—

(i) Any participating hospital with an emergency department that—

(A) Knowingly violates the statute on or after August 1, 1986 or;

(B) Negligently violates the statute on or after May 1, 1991; and

(ii) Any responsible physician who—

(A) Knowingly violates the statute on or after August 1, 1986;

(B) Negligently violates the statute on or after May 1, 1991;

(C) Signs a certification under section 1867(c)(1)(A) of the Act if the physician knew or should have known that the benefits of transfer to another facility did not outweigh the risks of such a transfer; or

(D) Misrepresents an individual's condition or other information, including a hospital's obligations under this section.

(2) For purposes of this section, a responsible physician or hospital "knowingly" violates section 1867 of the Act if the responsible physician or hospital recklessly disregards, or deliberately ignores a material fact.

(d) (1) In any case in which it is determined that more than one person was responsible for presenting or causing to be presented a claim as described in paragraph (a) of this section, each such person may be held liable for the penalty prescribed by this part, and an assessment may be imposed against any one such person or jointly and severally against two or more such persons, but the aggregate amount of the assessments collected may not exceed the amount that could be assessed if only one person was responsible.

(2) In any case in which it is determined that more than one person was responsible for presenting or causing to be presented a request for payment or for giving false or misleading information as described in paragraph (b) of this section, each such person may be held liable for the penalty prescribed by this part.

(3) In any case in which it is determined that more than one person was responsible for failing to report information that is required to be reported on a medical malpractice payment, or for improperly disclosing, using, or permitting access to information, as described in paragraphs (b)(5) and (b)(6) of this section, each such person may be held liable for the penalty prescribed by this part.

(4) In any case in which it is determined that more than one responsible physician violated the provisions of section 1867 of the Act or of § 489.24 of this title, a penalty may be imposed against each responsible physician.

(5) Under this section, a principal is liable for penalties and assessments for the actions of his or her agent acting within the scope of the agency.

5. Section 1003.103 is amended by revising paragraph (a), and adding a new paragraph (e) to read as follows:

§ 1003.103 Amount of penalty.

(a) Except as provided in paragraphs (b), (c), (d), and (e) of this section, the OIG may impose a penalty of not more than $2,000 for each item or service that is subject to a determination under § 1003.102.

* * * * *

(e) For violations of section 1867 of the Act or § 489.24 of this title, the OIG may impose—

(1) Against each participating hospital with an emergency department, a penalty of not more than—

(i) $25,000 for each knowing violation occurring on or after August 1, 1986 and before December 22, 1987;

(ii) $50,000 for each knowing violation occurring on or after December 22, 1987; and

(iii) $50,000 for each negligent violation occurring on or after May 1, 1991, except that if the participating hospital has fewer than 100 State-licensed, Medicare-certified beds on the date the penalty is imposed, the penalty will not exceed $25,000; and

(2) Against each responsible physician, a penalty of not more than—

(i) $25,000 for each knowing violation occurring on or after August 1, 1986 and before December 22, 1987;

(ii) $50,000 for each knowing violation occurring on or after December 22, 1987; and

(iii) $50,000 for each negligent violation occurring on or after May 1, 1991.

6. Section 1003.105 is revised to read as follows:

§ 1003.105 Exclusion from participation in Medicare and State health care programs.

(a) (1) Except as set forth in paragraph (b) of this section, the following persons may be subject, in lieu of or in addition to any penalty or assessment, to an exclusion from participation in Medicare for a period of time determined under § 1003.107. The OIG will also direct each appropriate State agency to exclude the person from each health care program for the same period of time—

(i) Any person who is subject to a penalty or assessment under § 1003.102 (a) or (b)(1) through (b)(4).

(ii) Any responsible physician who—

(A) Knowingly violates section 1867 of the Act or § 489.24 of this title on or after December 22, 1987, but before July 1, 1990;

(B) Knowingly and willfully, or negligently, violates section 1867 of the Act or § 489.24 of this title on or after July 1, 1990 but before May 1, 1991; or

(C) Commits a gross and flagrant, or repeated, violation of section 1867 of the Act or § 489.24 of this title on or after May 1, 1991. For purposes of this section, a gross and flagrant violation is one that presents an imminent danger to the health, safety or well-being of the individual who seeks emergency examination and treatment or places that individual unnecessarily in a high-risk situation.

(2) Nothing in this section will be construed to limit the Department's authority to impose an exclusion without imposing a penalty.

(b)(1) With respect to determinations under § 1003.102 (b)(2) or (b)(3), or with respect to violations occurring on or after December 22, 1987 and before July 1, 1990 under § 1003.105(a)(1)(ii), a physician may not be excluded if the OIG determines that he or she is the sole community physician or the sole source of essential specialized services in a community.

(2)(i) With respect to any exclusion based on liability for a penalty or assessment under § 1003.102 (a), (b)(1), or (b)(4), the OIG will consider an application from a State agency for a waiver if the person is the sole community physician or the sole source of essential specialized services in a community. With respect to any exclusion imposed under § 1003.105(a)(1)(ii), the OIG will consider an application from a State agency for a waiver if the physician's exclusion from the State health care program would deny beneficiaries access to medical care or would otherwise cause hardship to beneficiaries.

(ii) If a waiver is granted, it is applicable only to the State health care program for which the State requested the waiver.

(iii) If the OIG subsequently obtains information that the basis for a waiver no longer exists, or the State agency submits evidence that the basis for the waiver no longer exists, the waiver will cease and the person will be excluded from the State health care program for the remainder of the period that the person is excluded from Medicare.

(iv) The OIG notifies the State agency whether its request for a waiver has been granted or denied.

(v) The decision to deny a waiver is not subject to administrative or judicial review.

(3) For purposes of this section, the definitions contained in § 1001.2 of this chapter for "sole community physician" and "sole source of essential specialized services in a community" apply.

(c) When the Inspector General proposes to exclude a nursing facility from the Medicare and Medicaid programs, he or she will, at the same time he or she notifies the respondent, notify the appropriate State licensing authority, the State Office of Aging, the long-term care ombudsman, and the State Medicaid agency of the Inspector General's intention to exclude the facility.

7. Section 1003.106 is amended by adding a heading to paragraph (a), adding paragraph (a)(4), and revising the introductory text of paragraph (b) to read as follows:

§ 1003.106 Determinations regarding the amount of the penalty and assessment.

(a) Amount of penalty.

* * * * *

(4) In determining the amount of any penalty in accordance with § 1003.102(c), the OIG takes into account—

(i) The degree of culpability of the respondent;

(ii) The seriousness of the condition of the individual seeking emergency medical treatment;

(iii) The prior history of offenses of the respondent in failing to provide appropriate emergency medical screening, stabilization and treatment of individuals coming to a hospital's emergency department or to effect an appropriate transfer;

(iv) The respondent's financial condition;

(v) The nature and circumstances of the violation; and

(vi) Such other matters as justice may require.

(b) *Determining the amount of the penalty or assessment.* As guidelines for

taking into account the factors listed in paragraph (a)(1) of this section, the following circumstances are to be considered—

* * * * *

8. Section 1003.107 is revised to read as follows:

§ 1003.107 Determinations regarding exclusion.

(a) In determining whether to exclude a person under this part and the duration of any exclusion, the Department considers the circumstances described in § 1003.106(a).

(b) With respect to determinations to exclude a person under §§ 1003.102(a) or (b)(1) through (b)(4), the Department considers those circumstances described in § 1003.106(b). Where there are aggravating circumstances with respect to such determinations, the person should be excluded.

(c) In determining whether to exclude a physician under §§ 1003.102(b)(2) or (b)(3) or, with respect to a violation occurring on or after December 22, 1987 and before July 1, 1990, under § 1003.105(a)(1)(ii), the Department also considers the access of beneficiaries to physicians' services.

(d) Except as set forth in paragraph (e), the guidelines set forth in this section are not binding. Nothing in this section limits the authority of the Department to settle any issue or case as provided by § 1003.126.

(e) An exclusion based on a determination under §§ 1003.102(b)(2) or (b)(3) or, with respect to a violation occurring on or after December 22, 1987 and before July 1, 1990, under § 1003.105(a)(1)(ii), may not exceed 5 years.

9. Section 1003.108 is revised to read as follows:

§ 1003.108 Penalty, assessment, and exclusion not exclusive.

Penalties, assessments, and exclusions imposed under this part are in addition to any other penalties prescribed by law.

10. Section 1003.109 is amended by revising paragraphs (a) introductory text and (a)(4) through (6), and by adding paragraphs (a)(7) and (c) to read as follows:

§ 1003.109 Notice of proposed determination.

(a) If the Inspector General proposes a penalty and, when applicable, assessment, or proposes to exclude a respondent from participation in Medicare or any State health care program, as applicable, in accordance with this part, he or she must deliver or send by certified mail, return receipt requested, to the respondent, written notice of his or her intent to impose a penalty, assessment and exclusion, as applicable. The notice includes—

* * * * *

(4) The amount of the proposed penalty, assessment and the period of proposed exclusion (where applicable);

(5) Any circumstances described in § 1003.106 that were considered when determining the amount of the proposed penalty and assessment and the period of exclusion;

(6) Instructions for responding to the notice, including—

(i) A specific statement of respondent's right to a hearing, and

(ii) A statement that failure to request a hearing within 60 days permits the imposition of the proposed penalty, assessment and exclusion without right of appeal; and

(7) In the case of a notice sent to a respondent who has an agreement under section 1866 of the Act, the notice also indicates that the imposition of an exclusion may result in the termination of the provider's agreement in accordance with section 1866(b)(2)(C) of the Act.

* * * * *

(c) If the respondent fails, within the time permitted, to exercise his or her right to a hearing under this section, any exclusion, penalty, or assessment becomes final.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance)

Dated: May 27, 1994.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Dated: May 27, 1994.

June G. Brown,

Inspector General, Department of Health and Human Services.

Dated: June 13,1994.

Donna E. Shalala,

Secretary.

Appendix I—An Important Message From Medicare; Your Rights While You Are a Medicare Hospital Patient

• You have the right to receive all the hospital care that is necessary for the proper diagnosis and treatment of your illness or injury. According to Federal law, your discharge date must be determined solely by your medical needs, not by "Diagnosis Related Groups" (DRGs) or Medicare payments.

• You have the right to be fully informed about decisions affecting your Medicare coverage and payment for your hospital stay and for any post-hospital services.

• You have the right to request a review by a Peer Review Organization (PRO) of any written Notice of Noncoverage that you receive from the hospital stating that Medicare will no longer pay for your hospital care. PROs are groups of doctors who are paid by the Federal Government to review medical necessity, appropriateness and quality of hospital treatment furnished to Medicare patients. The phone number and address of the PRO for your area are:

Talk to Your Doctor About Your Stay in the Hospital

You and your doctor know more about your condition and your health needs than anyone else. Decisions about your medical treatment should be made between you and your doctor. If you have any questions about your medical treatment, your need for continued hospital care, your discharge, or your need for possible post-hospital care, don't hesitate to ask your doctor. The hospital's patient representative or social worker will also help you with your questions and concerns about hospital services.

If You Think You Are Being Asked To Leave the Hospital Too Soon

• Ask a hospital representative for a written notice of explanation immediately, if you have not already received one. This notice is called a Notice of Noncoverage. You must have this Notice of Noncoverage if you wish to exercise your right to request a review by the PRO.

• The Notice of Noncoverage will state either that your doctor or the PRO agrees with the hospital's decision that Medicare will no longer pay for your hospital care.

—If the hospital and your doctor agree, the PRO does not review your case before a Notice of Noncoverage is issued. But the PRO will respond to your request for a review of your Notice of Noncoverage and seek your opinion. You cannot be made to pay for your hospital care until the PRO makes its decision, if you request the review by noon of the first work day after you receive the Notice of Noncoverage.

—If the hospital and your doctor disagree, the hospital may request the PRO to review your case. If it does make such a request, the hospital is required to send you a notice to that effect. In this situation the PRO must agree with the hospital or the hospital cannot issue a Notice of Noncoverage. You may request that the PRO reconsider your case after you receive a Notice of Noncoverage, but since the PRO has already reviewed your case once, you may have to pay for at least one day of hospital care before the PRO completes this reconsideration.

If you do not request a review, the hospital may bill you for all the costs of your stay beginning with the third day after you receive the Notice of Noncoverage. The hospital, however, cannot charge you for care unless it provides you with a Notice of Noncoverage.

How To Request a Review of the Notice of Noncoverage

• If the *Notice of Noncoverage* states that your physician agrees with the hospital's decision.

—You must make your request for review to the PRO by noon of the first work day after

you receive the *Notice of Noncoverage* by contacting the PRO by phone or in writing.

—The PRO must ask for your views about your case before making its decision. The PRO will inform you by phone or in writing of its decision on the review.

—If the PRO agrees with the *Notice of Noncoverage*, you may be billed for all costs of your stay beginning at noon of the day you receive the PRO's decision.

—Thus, you will not be responsible for the cost of hospital care before you receive the PRO's decision.

• If the *Notice of Noncoverage* states that the PRO agrees with the hospital's decision:

—You should make your request for reconsideration to the PRO immediately upon receipt of the *Notice of Noncoverage* by contacting the PRO by phone or in writing.

—The PRO can take up to three working days from receipt of your request to complete the review. The PRO will inform you in writing of its decision on the review.

—Since the PRO has already reviewed your case once, prior to the issuance of the *Notice of Noncoverage*, the hospital is permitted to begin billing you the cost of your stay beginning with the third calendar day after you receive your *Notice of Noncoverage* even if the PRO has not completed its review.

—Thus, if the PRO continues to agree with the *Notice of Noncoverage*, you may have to pay for at least one day of hospital care.

Note: The process described above is called "immediate review." If you miss the deadline for this immediate review while you are in the hospital, you may still request a review of Medicare's decision to no longer pay for your care at any point during your hospital stay or after you have left the hospital. The *Notice of Noncoverage* will tell you how to request this review.

Post-Hospital Care

When your doctor determines that you no longer need all the specialized services provided in a hospital, but you still require medical care, he or she may discharge you to a skilled nursing facility or home care. The discharge planner at the hospital will help arrange for the services you may need after your discharge. Medicare and supplemental insurance policies have limited coverage for skilled nursing facility care and home health care. Therefore, you should find out which services will or will not be covered and how payment will be made. Consult with your doctor, hospital discharge planner, patient representative, and your family in making preparations for care after you leave the hospital. Don't hesitate to ask questions.

Acknowledge of Receipt—My signature only acknowledges my receipt of this Message from (name of hospital) on (date) and does not waive any of my rights to request a review or make me liable for any payment.

Signature of beneficiary or person acting on behalf of beneficiary

---

Date of receipt

Appendix II—Posting of Signs

Section 6018(a)(2) of the Omnibus Budget Reconciliation Act of 1989 (OBRA '89), effective July 1, 1990, requires hospitals and rural primary care hospitals with emergency departments to post signs which specify the rights (under section 1867 of the Social Security Act) of women in labor and individuals with emergency medical conditions to examination and treatment.

To comply with these requirements:

• At a minimum, the signs must specify the rights of unstable individuals with emergency conditions and women in labor who come to the emergency department for health care services;

• It must indicate whether the facility participates in the Medicaid program;

• The wording of the sign must be clear and in simple terms understandable by the population serviced;

• Print the signs in English and other major languages that are common to the population of the area serviced;

• The letters within the signs must be clearly readable at a distance of at least 20 feet or the expected vantage point of the emergency department patrons; and

• Post signs in a place or places likely to be noticed by all individuals entering the emergency department, as well as those individuals waiting for examination and treatment (e.g., entrance, admitting area, waiting room, treatment area).

The sample on the following page, which may be adapted for your use, contains sufficient information to satisfy these requirements. It does not, however, satisfy the visibility requirement.

Appendix III—It's the Law! If You Have a Medical Emergency or Are in Labor

You have the right to receive, within the capabilities of this hospital's staff and facilities:

• An appropriate medical Screening Examination.

• Necessary Stabilizing Treatment (including treatment for an unborn child) and if necessary.

• An appropriate Transfer to another facility even if you cannot pay or do not have medical insurance or you are not entitled to Medicare or Medicaid.

This hospital (does/does not) participate in the Medicaid program.

[FR Doc. 94–14926 Filed 6–16–94; 1:43 pm]

BILLING CODE 4120–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA–7096]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the base (100-year) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base (100-year) flood elevations for new buildings and their contents.

DATES: These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Associate Director, Mitigation Directorate, reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base (100-year) flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street, SW., Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The modified base (100-year) flood elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base (100-year) flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to Section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 et seq., and with 44 CFR Part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria

required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base (100-year) flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Iowa: Story	City of Ames	April 22, 1994, April 29, 1994, The Daily Tribune.	The Honorable Larry Curtis, Mayor, City of Ames, P.O. Box 811, Ames, Iowa 50010.	March 3, 1994.	190254
Louisiana: St. Tammany Parish.	Unincorporated areas.	April 7, 1994, April 14, 1994, Farmer Newspaper.	The Honorable Kevin Davis, President, St. Tammany Parish, Police Jury, P.O. Box 628, Covington, Louisiana 70434.	February 22, 1994.	225205
North Dakota: Cass	City of Fargo	April 19, 1994, April 26, 1994, The Forum.	The Honorable Jon G. Lindgren, Mayor, City of Fargo, City Hall, 200 North Third Street, Fargo, North Dakota 28102.	April 12, 1994.	385364
Texas: Bexar	Unincorporated areas.	April 14, 1994, April 21, 1994, San Antonio Express News.	The Honorable Cyndi Krier, Bexar County Judge, Bexar County Courthouse, 100 Dolorosa, San Antonio, Texas 78205.	February 2, 1994.	480035
Texas: Dallas and Denton.	City of Carrollton	April 21, 1994, April 28, 1994, The Metrocrest News.	The Honorable Milburn Gravley, Mayor, City of Carrollton, P.O. Box 110535, Carrollton, Texas 75011–0535.	March 9, 1994.	480167
Texas: Dallas	City of Dallas	April 12, 1994, April 19, 1994, Daily Commercial Record.	The Honorable Steve Bartlett, Mayor, City of Dallas, Office of the Mayor and City Council, 1500 Madrilla, 5E North, Dallas, Texas 75201.	February 17, 1994.	480171
Texas: Williamson	City of Georgetown	April 20, 1994, April 27, 1994, Williamson County Sun.	Mr. David Hall, Floodplain Administrator, City of Georgetown, P.O. Box 409, Georgetown, Texas 78627.	January 24, 1994.	480668
Texas: Harris	Unincorporated areas.	April 1, 1994, April 8, 1994, Houston Chronicle.	The Honorable Jon Lindsay, Harris County Judge, Ninth Floor Courtroom, 1001 Preston, Houston, Texas 77002.	March 11, 1994.	480287
Texas: Tarrant	City of Keller	April 19, 1994, April 26, 1994, The Keller Citizen.	The Honorable John Buchanan, Mayor, City of Keller, P.O. Box 770, Keller, Texas 76244.	March 11, 1994.	480602

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: June 16, 1994.

Richard T. Moore,

Associate Director for Mitigation.

[FR Doc. 94–15156 Filed 6–21–94; 8:45 am]

BILLING CODE 6718–03–M

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Modified base (100-year) flood elevations are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents

EFFECTIVE DATE: The effective dates for these modified base (100-year) flood elevations are indicated on the following table and revise the Flood Insurance Rate Map(s) in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes the final determinations listed below of the final determinations of modified base (100-year) flood elevations for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Associate Director has resolved any appeals resulting from this notification.

The modified base (100-year) flood elevations are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified base (100-year) flood elevation determinations are available for inspection.

The modifications are made pursuant to Section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 et seq., and with 44 CFR Part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

These modified elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

The changes in base (100-year) elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base (100-year) flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Oklahoma: Oklahoma (FEMA docket No. 7087).	City of Oklahoma	December 10, 1993, December 17, 1993, The Daily Oklahoman.	The Honorable Ronald J. Norick, Mayor, City of Oklahoma City, 200 North Walker, Suite 302, Oklahoma City, Oklahoma 73102.	November 18, 1993.	405378
Texas: Tarrant (FEMA docket No. 7087).	City of North Richland Hills.	December 2, 1993, December 9, 1993, Mid-Cities News.	The Honorable Tommy Brown, Mayor, City of North Richland Hills, P.O. Box 820609, North Richland Hills, Texas 76182.	November 19, 1993.	480607
Texas: Collin (FEMA docket No. 7087).	City of Plano	December 24, 1993, December 31, 1993, The Dallas Morning News.	The Honorable James N. Muns, Mayor, City of Plano, P.O. Box 860358, Plano, Texas 75086–0358.	December 13, 1993.	480140
Texas: Wichita (FEMA docket No. 7087).	City of Wichita Falls	January 19, 1994, January 26, 1994, Wichita Falls Times Record News.	The Honorable Mike Lam, Mayor, City of Wichita Falls, P.O. Box 1431, Wichita Falls, Texas 76307.	December 20, 1993.	480662

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: June 16, 1994.

Richard T. Moore,

Associate Director for Mitigation.

[FR Doc. 94–15157 Filed 6–21–94; 8:45 am]

BILLING CODE 6718–03–M

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Base (100-year) flood elevations and modified base (100-year) flood elevations are made final for the communities listed below. The base (100-year) flood elevations and modified base flood elevations are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the FIRM is available for inspection as indicated on the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes final determinations listed below of base flood elevations and modified base flood elevations for each community listed. The proposed base flood elevations and proposed modified base flood elevations were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed base flood elevations and proposed modified base flood elevations were also published in the **Federal Register**.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR Part 67.

FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR Part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is amended to read as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
ARKANSAS	
Maumelle (city), Pulaski County (FEMA Docket No. 7088)	
Arkansas River:	
Approximately 0.9 mile upstream of the I–430 bridge and approximately 1,300 feet east and 400 feet south of the intersection of Crystal Hill Road and Counts Massie Road	*263
Approximately 4,900 feet west of the intersection of Orchid Drive and Masters Place Cove	*266
Approximately 4,200 feet west of the intersection of Odom Boulevard (south) and Naylor Drive	*268
White Oak Bayou:	
Approximately 2,700 feet east of the intersection of Maumelle Boulevard and Palmer Drive	*262
Approximately 2,000 feet east of the intersection of Murphy Drive and Hyman Drive	*262
Maps are available for review at City Hall, 550 Edgewood Drive, Maumelle, Arkansas.	
IOWA	
Fairfield (city), Jefferson County (FEMA Docket No. 7088)	
Crow Creek:	
Approximately 900 feet upstream of the confluence of Kaghaghee Creek	*693
Approximately 1,950 feet upstream of the confluence of Kaghaghee Creek	*695
Maps are available for review at the City Hall, City of Fairfield, 118 South Main Street, Fairfield, Iowa.	
TEXAS	
Carrollton (City), Dallas, Denton, and Collin Counties (FEMA Docket No. 7082)	
Stream 6D–5:	
Approximately 300 feet upstream of the confluence with Hutton Branch	*494
Approximately 0.6 mile upstream of Carmel Drive	*546
Elm Fork of Trinity River:	
Just downstream of Beltline Road	*440
Approximately 200 feet upstream of the confluence of Denton Creek	*446
Maps are available for inspection at the City of Engineering Department, 1945 Jackson Road, Carrollton, Texas.	
Jacksonville (city), Cherokee County (FEMA Docket No. 7088)	
Keys Creek:	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Approximately 350 feet downstream of U.S. Highway 79	*364
Approximately 175 feet downstream of U.S. Highway 79	*367
Maps are available for review at Jacksonville Development Center, 307 East Commerce Street, Jacksonville, Texas.	
North Lake (town), Denton County (FEMA Docket No. 7088)	
Denton Creek	
Approximately 3,800 feet downstream of Cleveland Gibbs Road	*570
Just upstream of Interstate Highway 35	*582
At the confluence of Trail Creek	*596
Just upstream of FM 407	*610
Approximately 100 feet downstream of Atchison, Topeka, and Santa Fe Railroad	*682
Maps are available for review at City Hall, 105 West 4th Street, Justin, Texas.	
Van Horn (city), Culberson County (FEMA Docket No. 7088)	
Drain 1:	
Approximately 2,750 feet downstream of U.S. Route 90	*4,009
Approximately 80 feet upstream of U.S. Route 90	*4,032
Approximately 350 feet upstream of Elm Street	*4,060
Drain 2:	
Approximately 200 feet downstream of Jones Street	*4,021
Approximately 1,100 feet downstream of Jones Street	*4,029
Drain 3:	
Approximately 700 feet downstream of U.S. Route 90	*4,015
Approximately 900 feet upstream of U.S. Route 90	*4,032
Maps are available for review at City Hall, 1801 West Broadway, Van Horn, Texas.	
UTAH	
West Jordan (city), Salt Lake County (FEMA Docket No. 7088)	
Jordan River:	
At 6400 South Street	*4,273
At 7800 South Street	*4,286
At 9000 South Street	*4,297
At confluence of Dry Creek	*4,300
Maps are available for review at the City Engineer's Office, City of West Jordan, 8000 South Redwood Road, West Jordan, Utah.	
West Valley City (city), Salt Lake County (FEMA Docket No. 7088)	
Jordan River:	
At 2100 South Street	*4,232
At confluence of Mill Creek	*4,233
AT 3300 South Street	*4,236
At 3900 South Street	*4,240

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Maps are available for review at the City of West Valley City, Public Works Department, Engineering Division, 3600 Constitution Boulevard, West Valley City, Utah.	
WASHINGTON	
Burien (city), Kings County (FEMA Docket No. 7088)	
Miller Creek:	
Approximately 1,770 feet downstream of First Avenue South	*137
Just upstream of First Avenue South	*187
Just upstream of Ambaum Boulevard	*192
At the culvert outlet, approximately 400 feet downstream of Des Moines Way	*200
Maps are available for review at City Hall, City of Burien, 13838 First Avenue South, Burien, Washington.	
King County (unincorporated areas) (FEMA Docket No. 7088)	
Richards Creek:	
South of Southeast Allen Road at intersection of 138th Avenue SE	*329
Maps are available for review at Building and Land Development Division, 3600 136th Place, Bellevue, Washington.	

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: June 16, 1994.

Richard T. Moore,

Associate Director for Mitigation.

[FR Doc. 94–15158 Filed 6–21–94; 8:45 am]

BILLING CODE 6718–03–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 0

[FCC 94–74]

Reorganization Establishing the Cable Services Bureau

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission is amending its Rules pertaining to organization in order to incorporate a reorganization establishing the Cable Services Bureau. The reorganization was necessary in order to promote a more efficient and effective organizational structure.

EFFECTIVE DATE: January 3, 1994.

FOR FURTHER INFORMATION CONTACT: William Johnson, Deputy Chief, Cable Services Division, Federal Communications Commission at (202) 416–0856.

SUPPLEMENTARY INFORMATION:

FCC 94–74

Before the Federal Communications Commission, Washington, DC 20554.

In the matter of Amendment of Part 0 of the Commission's Rules to Reflect a Reorganization Establishing the Cable Services Bureau.

Order

Adopted: March 25, 1994

Released: April 7, 1994

By the Commission:

1. The Commission has before it for consideration changes in the organizations of the Mass Media and Cable Services Bureaus. Implementation of these changes requires amendments to Parts 0 and 1 [1] of the Commission's Rules and Regulations.

2. In order to create an effective organization to administer the Commission's regulatory program for cable television, the Commission has established a new Cable Services Bureau. The rules adopted herein reflect the creation of this new Bureau in the rules and set forth the delegations of authority to the Chief of the Bureau.

3. The amendments adopted pertain to agency organization. The prior notice procedure and effective date provisions of Section 553 of the Administrative Procedure Act are therefore inapplicable. Authority for the amendments adopted herein is contained in Sections 4(i), 5(b), 5(c)(1), and 303(r) of the Communications Act of 1934, as amended.

4. It Is Ordered, effective upon release that Part 0 of the Rules and Regulations are amended as set forth below.

List of Subjects in 47 CFR Part 0

Authority delegated, Inspection of records, Location of commission offices, Organization and functions (Government agencies).

[1] The amendments to Part 1 pertain to fees and have been incorporated in the Commission's Report and Order Implementing Section 9 of the Communications Act—Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year (*see Report and Order in the Implementation of Section 9 of the Communications Act*, FCC 94–140, released June 8, 1994), as well as in the Commission's Report and Order Amending the Schedule of Application Fees Set Forth in Sections 1.1102 through 1.1105 of the Commission's Rules (*see Report and Order in the Amendment of the Schedule of Application Fees Set Forth in Sections 1.1102 through 1.1105 of the Commission's Rules*, FCC 94–141, released June 8, 1994).

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Final Rules

Part 0 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 0—COMMISSION ORGANIZATION

1. The authority citation for Part 0 continues to read as follows:

Authority: Secs. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155.

2. Section 0.5 is amended by adding a new paragraph (a)(14) to read as follows:

§ 0.5 General description of Commission organization and operations.

(a) * * *

(14) Cable Services Bureau.

* * * * *

3. Section 0.61 is amended by revising paragraph (a); removing paragraph (h) and paragraphs (j) through (n); and redesignating paragraph (i) as paragraph (h) to read as follows:

§ 0.61 Functions of the Bureau.

* * * * *

(a) Process applications for authorizations in radio and television services, including conventional and auxiliary broadcast services, and direct broadcast satellite services.

* * * * *

4. Section 0.101 is added to Subpart A to read as follows:

Cable Services Bureau

§ 0.101 Functions of the Bureau.

The Cable Services Bureau develops, recommends and administers policies and programs with respect to the regulation of services, facilities, rates and practices of cable television systems and with respect to the creation of competition to cable systems. The Bureau has the following duties and responsibilities:

(a) Administer and enforce cable television related rules and policies including those relating to rates, technical standards, customer service, ownership, competition to cable systems, broadcast station signal retransmission and carriage, program access, wiring, equipment, channel leasing, and federal-state/local regulatory relationships.

(b) Plan and develop proposed rulemakings and conduct studies and analyses (legal, engineering, social and economic) of various petitions for policy or rule changes submitted by industry or the public.

(c) Conduct studies and compile data relating to cable television operation necessary for the Commission to develop and maintain an adequate regulatory program.

(d) Advise and assist the public, other government agencies and industry groups on cable television regulation and related matters.

(e) Administer financial and other reporting systems.

(f) Investigate complaints and answer general inquiries from the public regarding cable television service.

(g) Participate in hearings before the Administrative Law Judges, the Review Board and the Commission.

(h) Process applications for authorizations in the Cable Television Relay Service.

5. Section 0.284 is amended by removing and reserving paragraph (a)(10).

6. Section 0.321, including heading "CABLE SERVICES BUREAU" is added to Subpart B to read as follows:

Cable Services Bureau

§ 0.321 Authority delegated.

The Chief, Cable Services Bureau is delegated authority to perform all functions of the Bureau, described in § 0.101, including the authority but subject to the limitations set forth below:

(a) The Chief, Cable Services Bureau shall have authority to:

(1) Act on all applications for authorization, petitions for special relief, petitions to deny, waiver requests, objections, complaints, and requests for declaratory rulings and stays in the cable television services, that do not involve novel questions of fact, law or policy that cannot be resolved under existing precedents and guidelines;

(2) Act, after Commission assumption of jurisdiction to regulate cable television rates for basic service and associated equipment, on cable operator requests for approval of existing or increased rates;

(3) Review appeals of local franchising authorities' rate making decisions involving rates for the basic service tier and associated equipment, except when such appeals raise novel or unusual issues;

(4) Act upon complaints involving cable programming service rates except for final action on complaints raising novel or unusual issues;

(5) Evaluate basic rate regulation certification requests filed by cable system franchising authorities;

(6) Periodically review and, when appropriate, revise standard forms used in administering:

(i) The Commission's complaint process regarding cable programming service rates;

(ii) The certification process for local franchising authorities wishing to regulate rates, and

(iii) The substantive rate regulation standards prescribed by the Commission.

(b) The Chief, Cable Services Bureau shall not have authority to:

(1) Designate for hearing any formal complaints that present novel questions of fact, law or policy that cannot be resolved under existing precedents or guidelines;

(2) Impose, reduce, or cancel forfeitures pursuant to section 503(b) of the Communications Act of 1934, as amended, in amounts of more than $20,000;

(3) Act upon any applications for review of actions taken by the Chief, Cable Services Bureau pursuant to any delegated authority which comply with § 1.115 of this chapter;

(4) Issue notices of proposed rulemaking, notices of inquiry or to issue report and orders arising from either of the foregoing, except that the Chief, Cable Services Bureau shall have authority to issue notices of rulemaking and report and orders redesignating market areas in accordance with section 614(f) of the Communications Act of 1934, as amended;

(5) Act on any applications in the Cable Television Relay Service that present novel questions of fact, law, or policy that cannot be resolved under existing precedents and guidelines.

7. Section 0.325 is added to Subpart B to read as follows:

§ 0.325 Record of actions taken.

The original file, the station file, and other appropriate files are designated to be the official record of the action taken by the Chief of the Cable Services Bureau.

8. Section 0.453 is amended by revising paragraph (a) introductory text, (a)(1) and (a)(4); and adding new paragraphs (a)(5) through (a)(7) to read as follows:

§ 0.453 Public reference rooms.

* * * * *

(a) *The FCC Reference Center.* The following documents, files and records are available for inspection at this location.

(1) Files containing the record of all docketed cases. A file is maintained for each docketed hearing case and for each docketed rule making proceeding. Cards summarizing the history of such cases are available for inspection.

* * * * *

(4) All complaints regarding cable programming rates, all documents filed in connection therewith, and all communications related thereto, unless the cable operator has submitted a request pursuant to § 0.459 that such information not to be made routinely available for public inspection.

(5) All cable operators requests for approval of existing or increased cable television rates for basic service and associated equipment over which the Commission has assumed jurisdiction, all documents filed in connection therewith, and all communications related thereto, unless the cable operator has submitted a request pursuant to § 0.459 that such information not be made routinely available for public inspection.

(6) Special relief petitions and files pertaining to cable television operations.

(7) Cable television system reports filed by operators pursuant to § 76.403 of this chapter.

* * * * *

9. Section 0.455 is amended by revising paragraphs (a) introductory text, (a)(1) and (a)(5); removing paragraphs (a)(6), (a)(11) and (a)(12); redesignating paragraphs (a)(7) through (a)(10) as paragraphs (a)(6) through (a)(9); and adding new paragraph (d) to read as follows:

§ 0.455 Other locations at which records may be inspected.

* * * * *

(a) *Mass Media Bureau.*

(1) Applications for broadcast authorizations and related files are available for public inspection in the FCC Reference Center. See § 0.453(a)(2). Certain broadcast applications, reports and records are also available for inspection in the community in which the station is located or is proposed to be located. See § 73.3526 and 73.3527 of this chapter.

* * * * *

(5) Annual employment reports filed by licensees and permittees of broadcast stations pursuant to § 73.3612 of this chapter and cable television systems pursuant to § 76.77 of this chapter.

* * * * *

(d) *Cable Services Bureau.* Correspondence and other actions and decisions relating to cable television services that are not filed in the FCC Reference Center.

* * * * *

[FR Doc. 94–15128 Filed 6–21–94; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 93–310; RM–8395]

Radio Broadcasting Services; Chester, VA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Hoffman Communications, Inc., licensee of Station WDYL–FM, Channel 226A, Chester, Virginia, substitutes Channel 289A for Channel 226A at Chester and modifies Station WDYL–FM's authorization to specify operation on Channel 289A. Channel 289A can be allotted to Chester in compliance with the Commission's minimum distance separation requirements with a site restriction of 4.2 kilometers (2.6 miles) northwest to accommodate Hoffman's desired site. The coordinates for Channel 289A are 37–23–11 and 77–28–26. With this action, this proceeding is terminated.

EFFECTIVE DATE: August 1, 1994.

FOR FURTHER INFORMATION CONTACT: Pamela Blumenthal, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 93–310, adopted June 6, 1994, and released June 16, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Virginia, is amended by removing Channel 226A and adding Channel 289A at Chester.

Federal Communications Commission.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–15097 Filed 6–21–94; 8:45 am]

BILLING CODE 6712–01–M

ENVIRONMENTAL PROTECTION AGENCY

48 CFR Part 1501

[FRL–5002–1]

OMB Approval Numbers Under the Paperwork Reduction Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; Technical amendment.

SUMMARY: The Environmental Protection Agency is amending a table to display Office of Management and Budget (OMB) control numbers issued under the Paperwork Reduction Act (PRA).

EFFECTIVE DATE: This final rule is effective July 22, 1994.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer on (202) 260–2740.

SUPPLEMENTARY INFORMATION: EPA is today amending the table of currently approved information collection request (ICR) control numbers issued by OMB for EPA Acquisition Regulations (EPAAR). Today's amendment updates the table to accurately display those information requirements promulgated under the EPAAR which implement and supplement the Federal Acquisition Regulations (FAR). The affected regulations are codified at 48 CFR part 1532. EPA will continue to present OMB control numbers in a consolidated table format to be codified in 48 CFR part 1501 of the EPAAR, in 40 CFR part 9 of the Agency's regulations, and in each 40 CFR volume containing EPA regulations. The table lists the part and section numbers with reporting and recordkeeping requirements, and the current OMB control numbers. This display of the OMB control numbers and their subsequent codification in the Code of Federal Regulations satisfies the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and OMB's implementing regulations at 5 CFR part 1320.

The ICR(s) were previously subject to public notice and comment prior to OMB approval. As a result, EPA finds that there is "good cause" under section 553(b)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(B)) to amend this table without prior notice and comment. Due to the technical nature of the table, further notice and comment would be unnecessary.

List of Subjects in 48 CFR Part 1501

Reporting and recordkeeping requirements.

Dated: June 14, 1994.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble 48 CFR Part 1501 is amended as follows:

1. In part 1501:

a. The authority citation for part 1501 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

b. Section 1501.370 is amended by revising the heading and adding the new entry and heading to the table in numerical order to read as follows:

§ 1501.370 OMB approvals under the Paperwork Reduction Act.

* * * * *

48 CFR citation	OMB control No.
* * * * *	
Contract financing:	
1532.170(a)	2030–0016
* * * * *	

[FR Doc. 94–15072 Filed 6–21–94; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[OST Docket No. 1; Amdt. 1-262]

Organization and Delegation of Powers and Duties Delegations to General Counsel

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: The Secretary of Transportation has delegated to the General Counsel the authority to deny petitions for rulemaking or petitions for exemptions and to notify petitioners of denials. This rule is necessary to reflect the delegation in the Code of Federal Regulations.

EFFECTIVE DATE: This rule becomes effective June 22, 1994.

FOR FURTHER INFORMATION CONTACT: Steven B. Farbman, Office of the Assistant General Counsel for Regulation and Enforcement (202) 366–9306, Department of Transportation, 400 7th Street SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: Under 49 CFR 5.11, any person may petition the Secretary of Transportation to issue, amend, or repeal a rule, or for a permanent or temporary exemption from any rule. Under 49 CFR 5.13, if the Secretary determines that the petition contains adequate justification, he is authorized to initiate rulemaking action or grant the exemption. If the Secretary determines that the petition does not contain adequate justification, he is authorized to deny the petition. The Secretary is also authorized to notify the petitioner of the decision. This rule delegates to the General Counsel the Secretary of Transportation's authority to deny a petition for rulemaking or a petition for exemption and to notify the petitioner of the denial.

Since this rule relates to departmental management, organization, procedure, and practice, notice and public comment are unnecessary. For the same reason, good cause exists for not publishing this rule at least 30 days before its effective date, as is ordinarily required by 5 U.S.C. 553(d). Therefore, this rule is effective on the date of its publication.

List of Subjects in 49 CFR Part 1

Authority delegations (Government agencies), Organizations and functions (Government agencies).

In consideration of the foregoing, Part 1 of Title 49, Code of Federal Regulations, is amended as follows:

PART 1—[AMENDED]

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

Authority: 49 U.S.C. 322; Pub. L. 101–552, 28 U.S.C. 2672, 31 U.S.C. 3711(a)(2).

2. Section 1.57 is amended by adding paragraph (q) to read as follows:

§ 1.57 Delegations to General Counsel.

* * * * *

(q) Deny petitions for rulemaking or petitions for exemptions in accordance with § 5.13(c) of this title, and notify petitioners of denials in accordance with § 5.13(d) of this title.

* * * * *

Issued at Washington, DC this 8th day of June 1994.

Federico Peña,

Secretary of Transportation.

[FR Doc. 94–15139 Filed 6–21–94; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 651

[Docket No. 940380–4164; I.D. 020194A]

RIN 0648–AG18

Northeast Multispecies Fishery

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

ACTION: Final rule.

SUMMARY: NMFS announces the approval of Amendment 6 to the Fishery Management Plan for the Northeast Multispecies Fishery (FMP) and issues final regulations to implement it. This rule continues on a permanent basis three measures originally imposed by a temporary emergency rule: A 500-lb (226.8-kg) possession limit for haddock year-round for all vessels permitted under the FMP and for all vessels in possession of haddock from or in the Exclusive Economic Zone (EEZ); a prohibition on scallop dredge vessels from possessing or landing haddock from January through June; and an extension of the time period of the closure of Closed Area II to 6 months (from January through June), rather than 4 months (February through May), in 1995. The intended effect of this rule is to protect depleted haddock stocks.

EFFECTIVE DATE: June 30, 1994.

ADDRESSES: Copies of the Environmental Assessment (EA) and Regulatory Impact Review (RIR) supporting this action may be obtained from Allen E. Peterson, Jr., Acting Regional Director, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Susan A. Murphy, Fishery Policy Analyst, 508–281–9252.

SUPPLEMENTARY INFORMATION: Supplementary and background information on Amendment 6 and the proposed implementing regulations (which were initiated by NMFS rather than the New England Fishery Management Council (Council)) was published in the preamble to the proposed rule to implement Amendment 6 (59 FR 18092, on April 15, 1994), and is not repeated here. All three of the measures contained in this final rule are also contained in the emergency rule that is effective through June 30, 1994 (59 FR 15656, April 4, 1994).

The Council voted on February 17 to begin the resubmission process for the disapproved 5,000-lb (2,268-kg) haddock possession limit in Amendment 5 to the FMP by submitting a 750-pound (340-kg) possession limit. The 750-pound (340-kg) limit was recommended by the Council on the basis of Plan Development Team and Council staff analysis of the haddock fishery. The 750-pound (340-kg) limit and a proposed implementing rule were submitted to NMFS on March 31, 1994.

On April 28, 1994, NMFS disapproved the Council's 750-pound (340-kg) limit because it was determined to be inconsistent with National Standard 1 of the Magnuson Act, which requires that management measures prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the U.S. fishing industry.

This determination was based, in part, on data from the Northeast Fisheries Science Center (NEFSC) that indicate that current haddock catches are generally less than 500 pounds (226.8 kg). The Council's argument that a 750-pound (340-kg) limit would allow vessels to keep what would be discarded anyway, therefore, was no longer relevant to this segment of the multispecies fishery. This additional information which was available to NMFS at the time the resubmission was disapproved, but not available to the Council at the time of its analysis, underscores the appropriateness of a 500-pound (226.8-kg) possession limit in order to ensure maximum protection to this severely depleted resource. Accordingly, the 500-pound (226.8-kg) possession limit is included in Amendment 6 and is implemented by this final rule.

NMFS also determined that, because scallop vessels fish in Closed Area II during the period when haddock are congregated to spawn, all scallop dredge vessels should be prohibited from landing or possessing haddock during the closed period to ensure that such vessels do not target these concentrations of haddock. While the Council requested that the Regional Director consider whether scallop dredges should be prohibited from being in the area during the closure, instead of being prohibited from possessing or landing haddock, the information provided by the NEFSC of NMFS did not support precluding scallopers from the closed area. Accordingly the prohibition from possessing or landing haddock is included in Amendment 6 and is implemented by this final rule.

In addition, the resubmission package did not propose the extension of the time closure of Closed Area II. The data acquired by the NEFSC since the Council's analysis supports an extension of the time closure in 1995, rather than beginning in 1996, as stipulated in Amendment 5. The expansion of Closed Area II in time for 1995 will provide additional protection to the concentrations of haddock that occur in the area. The closure of Area II beginning in January rather than February, and ending at the end of June rather than at the end of May, should ensure that haddock beginning to concentrate in the area are provided the fullest protection. Accordingly, an extension of the time period of the closure is included in Amendment 6 and is implemented by this final rule.

NMFS has approved Amendment 6 and hereby issues final implementing regulations.

Comments and Responses

Written comments on the proposed rule to Amendment 6 to the FMP were received by the NMFS from the Center for Marine Conservation (CMC) and from the Council. The Council had no specific comment on the proposed rule but went on record at its May 11–12, 1994, meeting and again in writing on May 13, as supporting Amendment 6. In addition, on March 8, 1994, prior to the beginning of the comment period for the proposed rule to implement Amendment 6, the Council submitted comments on proposed Amendment 6 and its EA/RIR.

Comment: The Council commented that proposed Amendment 6 and its EA/RIR had several deficiencies in content and format including: The need for a "Purpose and need" section, a clear statement of objectives of the Amendment, a description of the consistency of the Amendment with the national standards of Magnuson Act, evidence that the Amendment's possession limit for haddock promotes efficiency in the utilization of the resource, a section describing the Amendment's relationship to other applicable law, better evidence that the 500-pound possession limit is the proper preferred alternative compared to several incremental amounts higher than 500 pounds, and a convincing argument justifying preparation of an EA rather than an EIS.

Response: The final EA/RIR of Amendment 6 has been revised to contain a "Purpose and Need" section (page 4), an improved objectives statement (page 5), consistency of the Amendment with national standards (page 75), evidence that the 500-pound haddock possession limit promotes efficiency of the resource, and effects of the preferred possession limit on the resource (pages 19–27), a discussion of compliance of the Amendment with other applicable law (pages 72–76), a comparison of the effects of the preferred alternative versus several different haddock possession limit amounts (pages 19–37), and a convincing argument for preparation of an EA rather than an EIS (pages 38, 72, and 73).

Comment: The CMC supported the protective measures contained in Amendment 6 and suggested the possession limit on haddock be reflected in three standard totes, consistent with the Council's recommendation from its May (1994) meeting.

Response: The Council and the NMFS are aware of the need to ensure that the haddock possession limit is adhered to strictly. The standard tote, or box, measure is currently under review to determine whether the number of totes allowed is sufficiently equivalent to 500 lb (226.8 kg).

Changes from the Proposed Rule

In § 651.9(a)(12) and (e)(34), the phrase "or the equivalent in totes or boxes" is added to reflect the language in the amendment and to clarify the requirement.

Section 651.27(b)(1)(iii) is added to clarify who is subject to the haddock possession limit and provisions specified in § 651.27(b)(2).

Classification

The General Counsel of the Department of Commerce, when this rule was proposed, certified to the Small Business Administration that this action would not have a significant economic impact on a substantial number of small entities. Fishing vessels that will be subject to this rule rarely take more than 500-lb (226.8-kg) of haddock per trip because of the severely depleted status of the stock. Based on the most recent catch statistics, 68 percent of the fishing trips landing groundfish landed no haddock, 84 percent involved less than 500 lb (226.8 kg). The allowable bycatch of 500 pounds (226.8 kg) is expected to discourage vessels from targeting haddock, promoting rebuilding of the stock that will result in long term benefits to the groundfish fleet. The measures in this rule will not result in a reduction of annual gross revenues of more than 5 percent. Annual compliance costs are not expected to increase total costs by more than 5 percent and are not expected to be substantially higher for small, as compared to large, business entities. The measures will not force more than

2 percent of small business entities to cease business operations. As a result, an initial regulatory flexibility analysis was not prepared.

This final rule has been determined to be not significant for purposes of E.O. 12866.

The Assistant Administrator for Fisheries, NOAA, finds that under section 553(d)(3) of the Administrative Procedure Act, there is good cause to waive part of the 30-day delay in effectiveness and make this rule effective on June 30, 1994. This effective date will avoid a one or two-week hiatus between the effective date of this rule with a 30-day delay in effective date and the expiration of the emergency rule on June 30, 1994, that imposes the three management measures contained in this final rule. This will avoid confusion in the fishery, continue protection of badly depleted stocks of haddock from further overfishing; and enhance the likelihood that abundance of those stocks begin replenishment.

List of Subjects in 50 CFR Part 651

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: June 16, 1994.

Charles Karnella,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 651 is amended as follows:

PART 651—NORTHEAST MULTISPECIES FISHERY

1. The authority citation for part 651 continues to read as follows:

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

2. Section 651.9, paragraphs (a)(11), (a)(12), (e)(33), and (e)(34) are revised to read as follows:

§ 651.9 Prohibitions.

(a) * * *

(11) Land haddock from, or possess haddock on board, a sea scallop dredge vessel during the time specified in § 651.27(b)(1).

(12) Land, or possess on board a vessel, more than 500 lb (226.8 kg) of haddock, or the equivalent in totes or boxes, as specified in § 651.27(b)(2), or violate any of the other provisions specified in § 651.27(b)(2).

* * * * *

(e) * * *

(33) Land haddock from, or possess haddock on board, a sea scallop dredge vessel as specified in § 651.27(b)(1).

(34) Land, or possess on board a vessel, more than 500 lb (226.8 kg) of haddock, or the equivalent in totes or boxes, as specified in § 651.27(b)(2), or violate any of the other provisions specified in § 651.27(b)(2).

* * * * *

3. Section 651.21, paragraph (b)(3) is revised to read as follows:

§ 651.21 Closed areas.

* * * * *

(b) * * *

(3) *Duration.* No fishing vessel or person on a fishing vessel may fish or be in Closed Area II from January through June, except as specified in paragraph (b)(4) of this section.

* * * * *

4. Section 651.27, paragraph (b) is revised to read as follows:

§ 651.27 Possession limits.

* * * * *

(b) *Haddock possession limits.*—(1) *Scallop dredge vessels.*

(i) No person owning or operating a scallop dredge vessel issued a permit under this part may land haddock from, or possess haddock on board, a scallop dredge vessel, from January 1 through June 30.

(ii) No person owning or operating a scallop dredge vessel may possess haddock in, or harvested from, the EEZ, from January 1 through June 30.

(iii) From July 1 through December 31, scallop dredge vessels and persons owning or operating scallop dredge vessels, are subject to the haddock possession limitations and provisions specified in § 651.27(b)(2).

(2) *Other vessels.* (i) No person owning or operating a vessel issued a permit under this part may land, or possess on board a vessel, more than 500 lb (226.8 kg) of haddock.

(ii) No person may land or possess on board a vessel more than 500 lb (226.8 kg) of haddock in, or harvested from, the EEZ.

(iii) Vessels subject to the haddock possession limit shall have on board the vessel at least one standard box or one standard tote.

(iv) The haddock stored on board the vessel shall be retained separately from the rest of the catch and shall be readily available for inspection and for measurement by placement of the haddock in a standard box or standard tote if requested by an authorized officer.

(v) The haddock possession limit is equal to 500 lb (226.8 kg) or its equivalent as measured by the volume of four standard boxes or five standard totes.

[FR Doc. 94–15160 Filed 6–17–94; 2:00 pm]

BILLING CODE 3510–22–W

50 CFR Part 630

[I.D. 061794A]

Atlantic Swordfish Fishery

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

ACTION: Closure of the Atlantic swordfish drift gillnet fishery.

SUMMARY: NMFS closes the drift gillnet fishery for swordfish in the North Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, north of 5° N. lat. NMFS has determined that the first semiannual quota for swordfish that may be harvested by drift gillnet will be reached on or before June 25, 1994. This closure is necessary to prevent the catch of swordfish by drift gillnet vessels from exceeding the quota.

EFFECTIVE DATE: Closure is effective 0001 hours, local time, June 25, 1994, through June 30, 1994.

FOR FURTHER INFORMATION CONTACT: Richard B. Stone, 301-713- 2347.

SUPPLEMENTARY INFORMATION: The Atlantic swordfish fishery is managed under the authority of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) and the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*).

The implementing regulations at 50 CFR 630.24(b)(1)(i)(A) establish a quota of 69,286 lbs (31,428 kg) of swordfish that may be harvested by drift gillnet during the period January 1 through June 30, each year. Under 50 CFR 630.25(a), NMFS is required to close the drift gillnet fishery for swordfish when its quota is reached, or is projected to be reached, by filing a notice with the Office of the Federal Register at least 8 days before the closure is to become effective.

Based on the current level of swordfish catch by drift gillnets, historic data on average catch per set for June, and the number of vessels fishing or expected to fish, NMFS has determined that the drift gillnet quota for the January 1 through June 30 period will be reached on or before June 25, 1994. Hence, the drift gillnet fishery for Atlantic swordfish is closed effective 0001 hours, local time, June 25, 1994, through June 30, 1994, when a new semiannual quota becomes available. NMFS may adjust the July 1 through December 31, 1994, drift gillnet quota to reflect actual catches made in the January 1 through June 30, 1994, semiannual period as specified in 50 CFR 630.24.

During this closure of the drift gillnet fishery: (1) A person aboard a vessel

using or having aboard a drift gillnet may not fish for swordfish from the North Atlantic swordfish stock; (2) no more than two swordfish per trip may be possessed in the North Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, north of 5° N. lat.; and (3) no more than two swordfish per trip may be landed in an Atlantic, Gulf of Mexico, or Caribbean coastal state.

Classification

This action is required by 50 CFR 630.25(a) and is exempt from OMB review under E.O. 12866.

Dated: June 17, 1994.

David S. Crestin,

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

[FR Doc. 94–15161 Filed 6–17–94; 12:59 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 59, No. 119
Wednesday, June 22, 1994

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Parts 0 and 1

Agricultural Marketing Service

7 CFR Parts 7, 47, 50, 51, 52, 53, 54, and 180

Packers and Stockyards Administration

9 CFR Part 202

Rules of Practice

AGENCY: Office of the Secretary of Agriculture, USDA.

ACTION: Proposed Rule; reopening and extension of comment period.

SUMMARY: We are reopening and extending the comment period for the public comment on a proposed rule to amend the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes, the Rules of Practice Governing Cease and Desist Proceedings Under Section 2 of the Capper-Volstead Act, the Rules of Practice Under the Perishable Agricultural Commodities Act, and the Rules of Practice Applicable to Reparation Proceedings Under the Packers and Stockyards Act. The proposed rule would provide that conferences shall be conducted by telephone or correspondence, and hearings and depositions be conducted by telephone, unless the person conducting the proceeding orders that the conference, hearing, or deposition be conducted by audio-visual telecommunications or personal attendance. The proposal would also provide for the use of recordings of hearings and depositions, and would require each party to exchange, in writing, with all other parties in the proceeding, the direct testimony of each witness the party intends to call. Reopening and extending the comment period will give interested persons additional time to prepare and submit comments.

DATES: Consideration will be given only to comments received on or before July 22, 1994.

ADDRESSES: Please send an original and three copies of your comments to William Jenson, Senior Counsel, Office of the General Counsel, USDA, room 2422, South Building, 14th Street and Independence Avenue SW., Washington, DC 20250. Comments received may be inspected at USDA, Room 2422, South Building, 14th Street and Independence Avenue SW., Washington, DC 20250, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are encouraged to call ahead (202) 720–2453 to facilitate entry.

FOR FURTHER INFORMATION CONTACT: Mary Hobbie, Deputy Assistant General Counsel, Trade Practices Division, Office of the General Counsel, USDA, Room 2446, South Building, 14th Street and Independence Avenue, SW., Washington, DC 20250, (202) 720–5293.

SUPPLEMENTARY INFORMATION:

Background

On February 25, 1994, we published in the **Federal Register** (59 FR 9114–9136) a proposed rule to amend the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 CFR 1.130 through 1.151), the Rules of Practice Governing Cease and Desist Proceedings Under Section 2 of the Capper-Volstead Act (7 CFR 1.160 through 1.175), the Rules of Practice Under the Perishable Agricultural Commodities Act Applicable to Reparation Proceedings (7 CFR 47.1 through 47.25 and 47.46), the Rules of Practice Under the Perishable Agricultural Commodities Act Applicable to Determinations as to Whether a Person is Responsibly Connected With a Licensee Under the Perishable Agricultural Commodities Act (7 CFR 47.1, 47.2(a) through 47.2(h), and 47.47 through 47.68), and the Rules of Practice Applicable to Reparation Proceedings Under the Packers and Stockyards Act (9 CFR 202.101 through 202.123), to specifically provide that conferences may be conducted by telephone, correspondence, audio-visual telecommunication, or personal attendance of the participants.

We also proposed to amend these rules of practice to allow the use of recordings of depositions and hearings instead of requiring the transcription of depositions and hearings and to require that each party exchange, in writing, with all other parties, the direct testimony of each witness the party will call. In addition, we proposed a number of minor and nunsubstantive amendments to the regulations.

Comments on the proposed rule were required to be received on or before April 26, 1994.

We received a request for an extension of the comment period to allow interested persons additional time to prepare and submit comments regarding the proposal. In response to this request, we are ropening and extending the comment period for an additional 30 days. We will consider all comments that are received on or before July 22, 1994.

Done in Washington, DC, this 12th day of June, 1994.

Mike Espy,

Secretary of Agriculture.

[FR Doc. 94–15102 Filed 6–21–94; 8:45 am]

BILLING CODE 3410–01–M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 30, 40, 70, and 72

RIN 3150–AE95

Clarification of Decommissioning Funding Requirements

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission is proposing to amend its regulations for nonreactor licensees on decommissioning financial assurance, and expiration and termination of licenses. These amendments are intended to clarify that financial assurance must be in place during operations and updated when the licensee decides to cease operations and begin decommissioning. These amendments would explicitly describe the financial assurance certification requirements for licensees during operation, the implementation and timing requirements for licensees whose licenses have been in timely renewal

since the promulgation of the 1988 decommissioning funding rules, and for licensees who cease operations without adequate funding arrangements in place.

DATES: The comment period expires September 20, 1994. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Submit comments to: The Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dr. Carl Feldman, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–6194.

SUPPLEMENTARY INFORMATION:

Background

In 1983, the Commission amended 10 CFR Parts 30, 40, and 70 to add requirements addressing "Expiration and Termination of Licenses" (10 CFR 30.36, 40.42, and 70.38 (48 FR 32324; July 15,1983)). Similar provisions were added to 10 CFR Part 72 in 1988 (10 CFR 72.54 (53 FR 24018)). These requirements set out the procedures to be followed by a licensee who decides to decommission a facility and seek termination of the applicable license. Under certain circumstances (which apply when a Part 30, 40, 70, or 72 licensee has more than a modest amount of radioactive contamination to remediate), the licensee is required to submit a decommissioning plan that lays out the methods and measures for decontamination of the property and equipment.

In 1988, the Commission promulgated rules addressing "Financial Assurance and Recordkeeping for Decommissioning" (10 CFR 30.35, 40.36, 70.25 and 72.30 (53 FR 24018; June 27,1988)). These rules established a graded structure for financial assurance that relates the amount of the financial assurance required of a licensee to the possession limits in his or her license. The graded structure is based on the reasonable assumption that the kinds and quantities of radioactive materials authorized in the license provide a reasonably good correlation to the amount of contamination that has to be remediated. Further, Part 30, 40, or 70 applicants or licensees whose possession limits exceed or would exceed a certain level, and all Part 72 licensees and license applicants must provide an estimate of the actual expected decommissioning cost as part of their application for a license or for license renewal. The estimated costs are reviewed and approved by the Commission. Before the license is issued or renewed, the applicant must provide financial assurance in one or more of the forms required by the rule (prepayment, surety, insurance or other guarantee, or external sinking fund with a backup surety).

The same June 27, 1988, final rule also added a requirement that decommissioning plans include an updated detailed cost estimate for decommissioning, a comparison of that estimate with present funds set aside for decommissioning, and a plan for assuring the availability of adequate funds for the completion of decommissioning. The intent in promulgating these rules was to ensure that adequate funds would be available to cover the costs of decommissioning NRC licensed facilities. At the time the decommissioning funding rules were promulgated, it was not anticipated that a licensee would move to decommissioning without having complied earlier with the financial assurance requirements. Since that time a number of licensees who were in timely renewal (*i.e.*, licensees who had timely filed an application for renewal of their licenses and whose licenses, therefore, continued in effect while the renewal applications were being acted upon) when the June 27, 1988, rule became effective have decided to terminate their activities and begin decommissioning. Other licensees that only provided certification for the minimum amounts of financial assurance have also decided to terminate activities and begin decommissioning. In both situations, insufficient funding was in place when the licensee ceased operations and began decommissioning. These amendments are intended to clarify that financial assurances must be in place and updated when the licensee decides to cease operations and begin decommissioning.

The amendments proposed here would amend those sections in 10 CFR Parts 30, 40, 70, and 72 dealing with assurance of adequate funding for decommissioning. These changes would more explicitly describe the implementation and timing requirements for licensee financial assurance instruments and clarify that:

(1) Licensees who have applied for license renewal must provide financial assurance for decommissioning during the period that they remain in timely renewal. This is addressed through the addition of Paragraph (c)(4) to §§ 30.35, 40.36, and 70.25. Licensees currently in timely renewal would need to have the required financial assurance instrument when this rule if adopted as a final rule, becomes effective, 90 days after publication of the final rule in the **Federal Register**. Specific comments are solicited on the adequacy of the 90 day time period for licensees currently in timely renewal to obtain the required financial assurance instrument;

(2) Each decommissioning funding plan must include a certification by the licensee that financial assurance for decommissioning has been provided in the amount of the cost estimate. This is addressed through a modification to Paragraph (e) of §§ 30.35, 40.36, and 70.25;

(3) The decommissioning financial assurances provided by the licensee in conjunction with a license renewal or issuance must remain in effect during the period of decommissioning and must be increased or may be decreased, as appropriate, within 90 days of the licensee notice of termination of activities and request to terminate the license. This is necessary to cover the detailed estimated decommissioning costs developed as part of the decommissioning plan. This is addressed through the addition of Paragraph (b)(2) to §§ 30.36, 40.42, and 70.38, and Paragraph (a)(2) to § 72.54;

(4) Any licensee who submits a notice of termination of activities and request to terminate the license, and has not provided appropriate financial assurance for decommissioning, shall do so within 90 days of the notice. This is addressed through the addition of a new Paragraph (b)(2)(i) to §§ 30.36, 40.42, and 70.38, and Paragraph (a)(2)(i) to § 72.54. Any licensee who has already submitted a notice of termination of activities and request to terminate the license would need to have the required financial assurance instrument when this rule, if adopted as a final rule, becomes effective, 90 days after publication of the final rule in the **Federal Register**; and

(5) Licensees may reduce the amount of financial assurance semiannually as decommissioning proceeds and radiological contamination is reduced at the site, with the approval of the Commission. This is addressed through the addition of a new Paragraph (b)(2)(ii) to §§ 30.36, 40.42, and 70.38, and Paragraph (a)(2)(ii) to § 72.54. The semiannual interval is proposed as a balance between the financial incentive that this provision gives to licensees to proceed promptly with the decommissioning work after approval of

the decommissioning plan and the burden imposed on both the licensee and staff in implementing a reduction. Specific comments are solicited on the interval proposed.

Environmental Impact: Categorical Exclusion

The NRC has determined that this proposed rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(2). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this proposed rule.

Paperwork Reduction Act Statement

This proposed rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et seq.*). This rule has been submitted to the Office of Management and Budget for review and approval of the information collection requirements.

The public reporting burden for this collection of information is estimated to average 6 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Information and Records Management Branch (T–6–F33), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–3019, (3150–0017, 3150–0020, 3150 0009, and 3150–0132), Office of Management and Budget, Washington, DC 20503.

Regulatory Analysis

The Commission has prepared this proposed regulation to clarify its decommissioning funding requirements for persons licensed under Parts 30, 40, 70, and 72. Although it does alter existing requirements, regulatory analyses developed in support of prior decommissioning regulations remain valid and appropriate for this rulemaking because these analyses assumed that all licensees would submit a certification of financial assurance to the NRC of a rule prescribed amount, or licensee estimated and NRC approved amount, necessary to provide adequate funds to decommission the licensed facility and that licensees would have complied with the decommissioning funding requirements prior to ceasing operations and commencing decommissioning. These prior analyses, developed for the rules on expiration and termination licenses and financial assurances for decommissioning, remain available for inspection in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC. This discussion constitutes the regulatory analysis for this proposed rule.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the NRC carefully considered the effect on small entities in developing the final rule on decommissioning funding and scaled the requirements to reduce the impact on small entities to the extent possible while adequately protecting health and safety. Therefore, it is not expected to have an impact on licensees not already analyzed in the regulatory flexibility analysis for the decommissioning funding rule as published in the **Federal Register** on June 27, 1988 (53 FR 24018).

Accordingly, the Commission certifies that this proposed rule, if adopted, will not have any additional significant economic impact upon a substantial number of small entities.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this rule, and therefore, a backfit analysis is not required for this rule because these amendments do not involve any provisions which would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects

10 CFR Part 30

Byproduct material, Criminal penalties, Government contracts, Intergovernmental relations, Isotopes, Nuclear materials, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 40

Criminal penalties, Government contracts, Hazardous materials—transportation, Nuclear materials, Reporting and recordkeeping requirements, Source material, Uranium.

10 CFR Part 70

Criminal penalties, Hazardous materials—transportation, Material control and accounting, Nuclear materials, Packaging and containers. Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material.

10 CFR Part 72

Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Reporting and recordkeeping requirements, Security measures, Spent fuel.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR Parts 30, 40, 70, and 72.

PART 30—RULES OF GENERAL APPLICABILITY TO DOMESTIC LICENSING OF BYPRODUCT MATERIAL

1. The authority citation for part 30 continues to read as follows:

Authority: Secs. 81, 82, 161, 182, 183, 186, 68 Stat. 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2111, 2112, 2201, 2232, 2233, 2236, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 30.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 30.34(b) also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 30.61 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

2. Section 30.35 is amended by revising paragraphs (b)(2), (c)(2), (c)(3), and (e) and by adding a new paragraph (c)(4) to read as follows:

§ 30.35 Financial assurance and recordkeeping for decommissioning.

* * * * *

(b) * * *

(2) Submit a certification that financial assurance for decommissioning has been provided in the amount prescribed by paragraph (d) of this section using one of the methods described in paragraph (f) of this section. For an applicant, this certification may state that the appropriate assurance will be obtained after the application has been approved and the license issued but before the receipt of licensed material. If the applicant defers execution of the financial instrument until after the license has been issued, the executed original copy of the financial instrument obtained to satisfy the requirements of paragraph (f) of this section must be submitted to NRC before receipt of licensed material. If the applicant does not defer execution of the financial instrument, the applicant shall submit to NRC, as part of the certification, an executed original copy of the financial

instrument obtained to satisfy the requirements of paragraph (f) of this section.

(c) * * *

(2) Each holder of a specific license issued before July 27, 1990, and of a type described in paragraph (a) of this section shall submit, on or before July 27, 1990, a decommissioning funding plan as described in paragraph (e) of this section or a certification of financial assurance for decommissioning in an amount at least equal to $750,000 in accordance with the criteria set forth in this section. If the licensee submits the certification of financial assurance rather than a decommissioning funding plan, the licensee shall include a decommissioning funding plan in any application for license renewal.

(3) Each holder of a specific license issued before July 27, 1990, and of a type described in paragraph (b) of this section shall submit, on or before July 27, 1990, a decommissioning funding plan as described, in paragraph (e) of this section, or a certification of financial assurance for decommissioning in accordance with the criteria set forth in this section.

(4) Any licensee who has submitted an application before July 27, 1990, for renewal of license in accordance with § 30.37 shall provide financial assurance for decommissioning in accordance with paragraphs (a) and (b) of this section.

* * * * *

(e) Each decommissioning funding plan must contain a cost estimate for decommissioning and a description of the method of assuring funds for decommissioning from paragraph (f) of this section, including means for adjusting cost estimates and associated funding levels periodically over the life of the facility. The decommissioning funding plan must also contain a certification by the licensee that financial assurance for decommissioning has been provided in the amount of the cost estimate for decommissioning and an executed original copy of the financial instrument obtained to satisfy the requirements of paragraph (f) of this section.

* * * * *

3. Section 30.36 is amended by redesignating paragraph (b) as (b)(1) and adding a new paragraph (b)(2) to read as follows:

§ 30.36 Expiration and termination of licenses.

* * * * *

(b) * * *

(2) Upon licensee notice of termination of activities and request to terminate the license as required by paragraph (b)(1) of this section, the licensee must maintain in effect all decommissioning financial assurances established by the licensee pursuant to § 30.35 in conjunction with a license issuance or renewal or as required by this section. The amount of the financial assurance must be increased, or may be decreased, as appropriate, within 90 days of the notice, to cover the detailed cost estimate for decommissioning established pursuant to paragraph (c)(2)(iii)(D) of this section.

(i) A licensee who has not provided financial assurance for decommissioning at the time of submittal of the notice of termination of activities and request to terminate the license as required by paragraph (b)(1) of this section shall provide (by 90 days after publication of the final rule) financial assurance for decommissioning in an amount and form that complies with the requirements of § 30.35 according to the possession limits in the license.

(ii) Following approval of the decommissioning plan, a licensee may reduce the amount of the financial assurance semiannually, as decommissioning proceeds and radiological contamination is reduced at the site, with the approval of the Commission.

* * * * *

PART 40—DOMESTIC LICENSING OF SOURCE MATERIAL

4. The authority citation for Part 40 continues to read as follows:

Authority: Secs. 62, 63, 64, 65, 81, 161, 182, 183, 186, 68 Stat. 932, 933, 935, 948, 953, 954, 955, as amended, secs. 11e2, 83, 84, Pub. L. 95–604, 92 Stat. 3033, as amended, 3039, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2014(e)(2), 2092, 2093, 2094, 2095, 2111, 2113, 2114, 2201, 2232, 2233, 2236, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688 (42 U.S.C. 2021); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 275, 92 Stat. 3021, as amended by Pub. L. 97–415, 96 Stat. 2067 (42 U.S.C. 2022).

Section 40.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 40.31(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 40.46 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 40.71 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

5. Section 40.36 is amended by revising paragraphs (b)(2), (c)(2), (c)(3), and (d) and by adding a new paragraph (c)(4) to read as follows:

§ 40.36 Financial assurance and recordkeeping for decommissioning.

* * * * *

(b) * * *

(2) Submit a certification that financial assurance for decommissioning has been provided in the amount of $150,000 using one of the methods described in paragraph (e) of this section. For an applicant, this certification may state that the appropriate assurance will be obtained after the application has been approved and the license issued but before the receipt of licensed material. If the applicant defers execution of the financial instrument until after the license has been issued, the executed original copy of the financial instrument obtained to satisfy the requirements of paragraph (e) of this section shall be submitted to NRC prior to receipt of licensed material. If the applicant does not defer execution of the financial instrument, the applicant shall submit to NRC, as part of the certification, an executed original copy of the financial instrument obtained to satisfy the requirements of paragraph (e) of this section.

(c) * * *

(2) Each holder of a specific license issued before July 27, 1990, and of a type described in paragraph (a) of this section shall submit, on or before July 27, 1990, a decommissioning funding plan as described in paragraph (d) of this section or a certification of financial assurance for decommissioning in an amount at least equal to $750,000 in accordance with the criteria set forth in this section. If the licensee submits the certification of financial assurance rather than a decommissioning funding plan, the licensee shall include a decommissioning funding plan in any application for license renewal.

(3) Each holder of a specific license issued before July 27, 1990, and of a type described in paragraph (b) of this section shall submit, on or before July 27, 1990, a decommissioning funding plan, as described in paragraph (d) of this section, or a certification of financial assurance for decommissioning in accordance with the criteria set forth in this section.

(4) Any licensee who has submitted an application before July 27, 1990, for renewal of license in accordance with § 40.43 shall provide financial assurance for decommissioning in accordance with paragraphs (a) and (b) of this section.

(d) Each decommissioning funding plan must contain a cost estimate for decommissioning and a description of the method of assuring funds for decommissioning from paragraph (e) of this section, including means for adjusting cost estimates and associated funding levels periodically over the life of the facility. The decommissioning

funding plan shall also contain a certification by the licensee that financial assurance for decommissioning has been provided in the amount of the cost estimate for decommissioning and an executed original copy of the financial instrument obtained to satisfy the requirements of paragraph (e) of this section.

* * * * *

6. Section 40.42 is amended by redesignating paragraph (b) as (b)(1) and adding a new paragraph (b)(2) to read as follows:

§ 40.42 Expiration and termination of licenses.

* * * * *

(b) * * *

(2) Upon licensee notice of termination of activities and request to terminate the license as required by paragraph (b)(1) of this section, the licensee must maintain in effect all decommissioning financial assurances established by the licensee pursuant to § 40.36 in conjunction with a license issuance or renewal or as required by this section. The amount of the financial assurance must be increased, or may be decreased, as appropriate, within 90 days of the notice, to cover the detailed cost estimate for decommissioning established pursuant to paragraph (c)(2)(iii)(D) of this section.

(i) A licensee who has not provided financial assurance for decommissioning at the time of submittal of the notice of termination of activities and request to terminate the license as required by paragraph (b)(1) of this section shall provide (by 90 days after publication of the final rule) financial assurance for decommissioning in an amount and form that complies with the requirements of § 40.36 according to the possession limits in the license.

(ii) Following approval of the decommissioning plan, a licensee may reduce the amount of the financial assurance semiannually, as decommissioning proceeds and radiological contamination is reduced at the site, with the approval of the Commission.

* * * * *

PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

7. The authority citation for Part 70 continues to read as follows:

Authority: Secs. 51, 53, 161, 182, 183, 68 Stat. 929, 930, 948, 953, 954, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2201, 2232, 2233, 2282); Secs. 201, as amended, 202, 204, 206, 88 Stat. 1242, as amended, 1244, 1245, 1246 (42 U.S.C. 5841), 5942, 5845, 5846).

Sections 70.1(c) and 70.20(b) also issued under secs. 135, 141 Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 70.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 70.21(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 70.31 also issued under sec. 57d, Pub. L. 93–377, 86 Stat. 475 (42 U.S.C. 2077). Sections 70.36 and 70.44 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 70.61 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237). Section 70.62 also issued under sec. 106, 68 Stat. 939, as amended (42 U.S.C. 2138).

8. Section 70.25 is amended by revising paragraphs (b)(2), (c)(2), (c)(3), and (e) and by adding a new paragraph (c)(4) to read as follows:

§ 70.25 Financial assurance and recordkeeping for decommissioning.

* * * * *

(b) * * *

(2) Submit a certification that financial assurance for decommissioning has been provided in the amount prescribed by paragraph (d) of this section using one of the methods described in paragraph (f) of this section. For an applicant, this certification may state that the appropriate assurance will be obtained after the application has been approved and the license issued but before the receipt of licensed material. If the applicant defers execution of the financial instrument until after the license has been issued, the executed original copy of the financial instrument obtained to satisfy the requirements of paragraph (f) of this section shall be submitted to NRC before receipt of licensed material. If the applicant does not defer execution of the financial instrument, the applicant shall submit to NRC, as part of the certification, an executed original copy of the financial instrument obtained to satisfy the requirements of paragraph (f) of this section.

(c) * * *

(2) Each holder of a specific license issued before July 27, 1990, and of a type described in paragraph (a) of this section shall submit, on or before July 27, 1990, a decommissioning funding plan as described in paragraph (e) of this section or a certification of financial assurance for decommissioning in an amount at least equal to $750,000 in accordance with the criteria set forth in this section. If the licensee submits the certification of financial assurance rather than a decommissioning funding plan at this time, the licensee shall include a decommissioning funding plan in any application for license renewal.

(3) Each holder of a specific license issued before July 27, 1990, and of a type described in paragraph (b) of this section shall submit, on or before July 27, 1990, a decommissioning funding plan, described in paragraph (e) of this section, or a certification of financial assurance for decommissioning in accordance with the criteria set forth in this section.

(4) Any licensee who has submitted an application before July 27, 1990, for renewal of license in accordance with § 70.33 shall provide financial assurance for decommissioning in accordance with paragraphs (a) and (b) of this section.

* * * * *

(e) Each decommissioning funding plan must contain a cost estimate for decommissioning and a description of the method of assuring funds for decommissioning from paragraph (f) of this section, including means for adjusting cost estimates and associated funding levels periodically over the life of the facility. The decommissioning funding plan must also contain a certification by the licensee that financial assurance for decommissioning has been provided in the amount of the cost estimate for decommissioning and an executed original copy of the financial instrument obtained to satisfy the requirements of paragraph (f) of this section.

* * * * *

9. Section 70.38 is amended by redesignating paragraph (b) as (b)(1) and adding a new paragraph (b)(2) to read as follows:

§ 70.38 Expiration and termination of licenses.

* * * * *

(b) * * *

(2) Upon licensee notice of termination of activities and request to terminate the license as required by paragraph (b)(1) of this section, the licensee shall maintain in effect all decommissioning financial assurances established by the licensee pursuant to § 70.25 in conjunction with a license issuance or renewal or as required by this section. The amount of the financial assurance must be increased, or may be decreased, as appropriate, within 90 days of the notice, to cover the detailed cost estimate for decommissioning established pursuant to paragraph (c)(2)(iii)(E) of this section.

(i) A licensee who has not provided financial assurance for decommissioning at the time of submittal of the notice of termination of activities and request to terminate the license as required by paragraph (b)(1) of this section, shall provide (by 90 days

after publication of the final rule) financial assurance for decommissioning in an amount and form that complies with the requirements of § 70.25 according to the possession limits in the license.

(ii) Following approval of the decommissioning plan, a licensee may reduce the amount of the financial assurance semiannually as decommissioning proceeds and radiological contamination is reduced at the site, with the approval of the Commission.

* * * * *

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

10. The authority citation for Part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended, (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274 Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853) (42 U.S.C. 4332); Secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c), (d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134 Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244 (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

11. Section 72.54 is amended by redesignating paragraph (a) as (a)(1) and adding a new paragraph (a)(2) to read as follows:

§ 72.54 Application for termination of license.

* * * * *

(a) * * *

(2) Upon licensee notice of termination of activities and request to terminate the license as required by paragraph (a)(1) of this section, the licensee shall maintain in effect all decommissioning financial assurances established by the licensee pursuant to § 72.30 in conjunction with a license issuance or renewal or as required by this section. The amount of the financial assurance shall be increased, or may be decreased, as appropriate, within 90 days of the notice, to cover the detailed cost estimate for decommissioning established pursuant to paragraph (b)(6) of this section.

(i) A licensee who has not provided financial assurance for decommissioning at the time of submittal of the notice of termination of activities and request to terminate the license required by paragraph (a)(1) of this section, must provide, within 90 days, financial assurance for decommissioning in an amount and form that complies with the requirements of § 72.30.

(ii) Following approval of the decommissioning plan, a licensee may reduce the amount of the financial assurance semiannually as decommissioning proceeds and radiological contamination is reduced at the site, with the approval of the Commission.

* * * * *

Dated at Rockville, Maryland, this 15th day of June 1994.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Acting Secretary of the Commission.

[FR Doc. 94–15022 Filed 6–21–94; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 567

[No. 93–239]

RIN 1550–AA71

Regulatory Capital: Common Stockholders' Equity

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of Thrift Supervision (OFS) proposes to amend its minimum regulatory capital regulations by revising the definition of the term "common stockholders' equity." This proposed amendment will revise OTS's definition of common stockholders' equity in order to incorporate a recent change in generally accepted accounting principles (GAAP), made by Statement of Financial Accounting Standards No. 115, *Accounting for Certain Investments in Debt and Equity Securities* (SFAS No. 115).

DATES: Comments must be received on or before July 22, 1994.

ADDRESSES: Send comments to Director, Information Services Division, Public Affairs, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552. Attention Docket No. [93–239). These submissions may be hand delivered to 1700 G Street, NW., from 9:00 A.M. to 5:00 P.M. on business days; they may be sent by facsimile transmission to FAX number (202) 906–7755. Submissions must be received by 5:00 P.M. on the day they are due in order to be considered by the OTS. Late-filed, misaddressed, or misidentified submissions will not be considered in this rulemaking. Comments will be available for public inspection at 1700 G Street, NW., from 1.00 P.M. until 4:00 P.M. on business days. Visitors will be escorted to and from the Public Reading Room at established intervals.

FOR FURTHER INFORMATION CONTACT: Arthur W. Lindo, Senior Account, (202) 906–5642, Accounting Policy; John F. Connolly, Senior Program Manager for Capital Policy, (202) 906–6465; Lorraine E. Waller, Counsel, Regulations and Legislation Division, Chief Counsel's Office, (202) 906–6458, Office of Thrift Supervision, 1700 G St., NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Background

Under OTS's capital rule, 12 CFR 567.1, common stockholders' equity, the primary component of core capital for most savings associations, includes items that are generally the same as the items that comprised GAAP equity, when the capital rule was adopted. Today's proposal would revise the OTS's definition of common stockholders' equity in order to incorporate a change in GAAP made by the Financial Accounting Standards Board, in May 1993, when it issued SAFAS No. 115.

SFAS No. 115 requires that most debt and equity securities be reported at fair value, rather than at amortized cost. It supersedes SFAS No. 12, *Accounting for Certain Marketable Securities.* When SFAS No. 115 becomes effective,[1] unrealized gains and losses on available-for-sale securities will be included in GAAP equity. On August 10, 1993, the Federal Financial

[1] SFAS No. 115 will be effective for fiscal years beginning after December 15, 1993. SFAS No. 115, however, includes early adoption provisions, under which savings associations may adopt its standards as early as June 30, 1993, depending on when their fiscal years end.

Institutions Examination Council announced that it will adopt SFAS No. 115, and that it will require all federally supervised banks and savings associations to adopt SFAS No. 115. The OTS and the Federal banking regulatory agencies announced their intention to proposed amendments to their respective capital rules to make the rules reflect the accounting and reporting standards contained in SFAS No. 115.

Section 4(b)(2) of the Home Owners' Loan Act of 1933 (HOLA), 12 U.S.C. 1463(b)(2), requires the OTS to prescribe accounting standards that "incorporate [GAAP] to the same degree that such principles are used to determine compliance with regulations prescribed by the Federal banking agencies." The proposal revises the OTS definition of common stockholders' equity so that it will be consistent with the change in GAAP made by SFAS No. 115. It is similar to amendments the other Federal banking agencies have proposed to their respective capital rules in order to incorporate the modification of GAAP made by SFAS No. 115.

II. Comment Solicitation

The OTS solicits comment on all aspects of the proposal, but is particularly interested in comments on the following specific questions:

1. If the SFAS No. 115 unrealized gains and losses are included in regulatory capital, how should OTS include these adjustments in its calculations?

a. Should SFAS No. 115 unrealized gains and losses be included in core capital for purposes of the leverage ratio requirement?

b. Should SFAS No. 115 unrealized gains and losses be included in core capital for purposes of the risk-based capital requirement?

c. Should SFAS No. 115 unrealized gains and losses be included in supplementary capital for purposes of the risk-based capital requirement?

2. Should SFAS No. 115 unrealized gains and losses be included in capital for purposes of Prompt Corrective Action (PCA)? If so, should the OTS initiate a rulemaking to amend the PCA capital definitions (i.e., tangible equity) or capital categories to ameliorate the statutory effects resulting from the potential volatility due to SFAS No. 115 adjustments?

3. What changes, if any, in asset-liability management, or risk management, would likely result from the inclusion of SFAS No. 115 unrealized gains and losses in capital? Would such changes increase or decrease the risk to the Savings Association Insurance Fund?

III. 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 regulation will not have a significant economic impact on a substantial number of small savings associations. This proposed regulation simply revises the definition of common stockholders' equity included in the OTS capital rule so that it will include a new component of GAAP equity that was added to GAAP equity by SFAS No. 115. Section 4(b)(2) of HOLA requires the OTS to promulgate accounting standards that incorporate GAAP standards to the same degree that those standards are used by the Federal banking agencies.

IV. Executive Order 12866

The Director of the OTS has determined that this proposed rule is not a "significant regulatory action" for purposes of Executive Order 12866. The OTS proposes to revise its capital definition, in order to bring it into conformity with SFAS No. 115, and to ensure that its definition of common stockholders' equity is consistent with those of the other Federal banking agencies.

List of Subjects in 12 CFR Part 567

Capital, Savings associations.

Accordingly, the Office of Thrift Supervision hereby proposes to amend part 567, chapter V, title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER D—REGULATIONS APPLICABLE TO ALL SAVINGS ASSOCIATIONS

PART 567—[AMENDED]

1. The authority for part 567 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1828 (note).

2. Section 567.1 is amended by revising paragraph (d) to read as follows:

§ 567.1 Definitions.

* * * * *

(d) *Common stockholders' equity.* The term *common stockholders' equity* includes common stock, common stock surplus, retained earnings, adjustments for the cumulative effect of foreign currency translation and unrealized gains and losses on available-for-sale securities.

* * * * *

Dated: December 15, 1993.

By the Office of Thrift Supervision.

Jonathan L. Fiechter,

Acting Director.

Editorial Note: This document was received at the Office of the Federal Register on June 17, 1994.

[FR Doc. 94-15137 Filed 6-21-94; 8:45 am]

BILLING CODE 6720-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93-SW-18-AD]

Airworthiness Directives: Sikorsky Aircraft Model S-58 and S-58T Series Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to Sikorsky Aircraft Model S-58 and S-58T series helicopters. This proposal would require the removal and replacement of the transmission main gear box ring gear (ring gear) within certain time intervals and would establish a retirement life for the ring gear. This proposal is prompted by reports of failures of the ring gear due to slow-growth fatigue cracks. The actions specified by the proposed AD are intended to prevent failure of the ring gear, failure of the main transmission, and subsequent loss of control of the helicopter.

DATES: Comments must be received by August 22, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93-SW-18-AD, 2601 Meacham Boulevard, Room 663, Fort Worth, Texas 76137. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Sikorsky Aircraft, Commercial Customer Support, 6900 Main Street, Stratford, Connecticut 06601-1381. This information may be examined at the FAA, Office of the Assistant Chief Counsel, 2601 Meacham Boulevard, Room 663, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. Francis X. Walsh, Aerospace Engineer, Boston Aircraft Certification Office,

FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803–5299, telephone (617) 238–7158, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–SW–18–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–SW–18–AD, 2601 Meacham Boulevard, Room 663, Fort Worth, Texas 76137.

Discussion

This document proposes the adoption of a new airworthiness directive (AD) that is applicable to Sikorsky Aircraft Model S–58 and S–58T series helicopters. There have been four failures of the transmission main gear box ring gear (ring gear), part number (P/N) S1635–20058–2, reported by the manufacturer. The failures were caused by a slow-growth fatigue crack in a single tooth on the drive side of the ring gear. The ring gear is a critical part in the main transmission. Therefore, any cracks in the teeth of the ring gear create an unsafe condition. This condition, if not corrected, could result in failure of the ring gear, failure of the main transmission, and subsequent loss of control of the helicopter.

The FAA has reviewed and approved Sikorsky Aircraft Alert Service Bulletin No. 58B35–32, dated July 6, 1993, that describes procedures for removal and replacement of the ring gear, provides a new mandatory retirement life for the ring gear, provides for originating a component time-in-service record, and provides for marking a permanent serial number on zero-time and replacement ring gears as well as ring gears removed for servicing.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require removing and replacing the ring gear within certain time intervals, establishing a mandatory retirement life of 2,500 hours' total time-in-service, originating a component service record, and marking a serial number on the ring gear, P/N S1635–20058–2. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 125 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 31.5 work hours per helicopter to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $2,000 per ring gear. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $466,562.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Sikorsky Aircraft: Docket No. 93–SW–18–AD.

Applicability: Model S–58 and S–58T series helicopters, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the transmission main gear box ring gear (ring gear), failure of the main transmission, and subsequent loss of control of the helicopter, accomplish the following:

(a) Within the next 25 hours' time-in-service (TIS) after the effective date of this AD, accomplish the following:

(1) From component records, determine the TIS for the ring gear, part number (P/N) S1635–20058–2,

(i) If the TIS on the ring gear is 2,400 or more hours' on the effective date of this AD, replace it with an airworthy serialized ring gear within the next 100 hours' TIS.

(ii) If the TIS on the ring gear is less than 2,400 hours' on the effective date of this AD, replace it with an airworthy serialized ring gear at or before reaching 2,500 hours' TIS.

(2) If the TIS on the ring gear cannot be determined, replace it in accordance with the time since last overhaul (TSO) as follows:

(i) If the TSO on the ring gear is 1,150 or more hours' on the effective date of this AD, replace it with an airworthy serialized ring gear within the next 100 hours' TIS.

(ii) If the TSO on the ring gear is less than 1,150 hours' on the effective date of this AD, replace with an airworthy serialized ring gear at or before reaching 1,250 hours' TSO.

(3) Create a component log and a serial number and apply the serial number to the ring gear between the ring gear flanges in accordance with Paragraph B of the Accomplishment Instructions of Sikorsky Aircraft Alert Service No. 58B35–32 (ASB 58B35–32), dated July 6, 1993.

(b) Create a component log and a serial number for replacement ring gears and apply the serial number to the ring gear between the ring gear flanges in accordance with Paragraph B of the Accomplishment Instructions of the ASB 58B35–32, dated July 6, 1993, prior to installing a replacement ring gear on the helicopter.

(c) This AD establishes a retirement life of 2,500 hours' TIS for the ring gear. However, ring gears with 2,400 or more hours' TIS or, if the TIS cannot be determined, 1,150 or more hours' TSO on the effective date of this AD, need not be retired until on or before the accumulation of an additional 100 hours' TIS.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used when approved by the Manager, Boston Aircraft Certification Office, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Boston Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Boston Aircraft Certification Office.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

Issued in Fort Worth, Texas, on June 14, 1994.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 94–15148 Filed 6–21–94; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 71

[Airspace Docket No. 94–AGL–11]

Proposed Class D Airspace Modification; Traverse City, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking; withdrawal.

SUMMARY: This action withdraws the Notice of proposed rulemaking (NPRM) which proposed to modify Class D airspace near Traverse City, Michigan to change the operating times of the controlled airspace from continuous to parttime. The NPRM is being withdrawn because the modification is contained in another regulatory airspace action, Docket No. 94–AGL–16.

DATES: This withdrawal is effective upon publication.

FOR FURTHER INFORMATION CONTACT: Robert J. Woodford, Air Traffic Division, System Management Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (708) 294–7568.

SUPPLEMENTARY INFORMATION:

The Proposed Rule

On May 6, 1994, an NPRM was published in the **Federal Register** to modify the official description of the Class D airspace associated with the Cherry Capital Airport, Traverse City, Michigan. The modification was to allow a variation to the class D airspace effective times to coincide with the operating hours of the Traverse City ATCT (99 FR 23642). The NPRM is being withdrawn since this section is contained in Airspace Docket No. 94–AGL–16, which was published in the **Federal Register** on May 12, 1994 (59 FR 24906).

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Withdrawal of Proposed Rule

Accordingly, pursuant to the authority delegated to me, Airspace Docket No. 94–AFL–11, as published in the **Federal Register** on May 6, 1994 (59 FR 23642), is hereby withdrawn.

Authority: 49 U.S.C. app. 1348(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.

Issued in Des Plaines, Illinois, on June 1, 1994.

Roger Wall,

Manager, Air Traffic Division.

[FR Doc. 94–15153 Filed 6–21–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 94-AGL–13]

Proposed Class E Airspace Modification; Newark, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking; withdrawal.

SUMMARY: This action withdraws the Notice of Proposed Rulemaking (NPRM) which proposed to modify Class E airspace near Newark, Ohio to accommodate a new Simplified Directional Facility (SDF) Runway 9 Standard Instrument Approach Procedure (SIAP) to Newark-Heath Airport. The NPRM is being withdrawn because the modification is not required. The existing controlled airspace is adequate to accommodate the new SDF SIAP.

DATES: This withdrawal is effective June 22, 1994.

FOR FURTHER INFORMATION CONTACT: Robert J. Woodford, Air Traffic Division, System Management Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (708) 294–7568.

SUPPLEMENTARY INFORMATION:

The Proposed Rule

On May 2, 1994, a Notice of Proposed Rulemaking was published in the **Federal Register** to modify Class E airspace near Newark, Ohio to accommodate a new Simplified Directional Facility (SDF) Runway 9 Standard Instrument Approach Procedure (SIAP) to Newark-Heath Airport (59 FR 22569). No comments were received. However, the NPRM is being withdrawn because the modification is not required. The airspace requirements for the new SDF SIAP already exist within the present controlled airspace designation.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Withdrawal of Proposed Rule

Accordingly, pursuant to the authority delegated to me, Airspace Docket No. 94–AGL–13, as published in the **Federal Register** on May 2, 1994 (59 FR 22569), is hereby withdrawn.

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.

Issued in Des Plaines, Illinois, on June 1, 1994.

Roger Wall,

Manger, Air Traffic Division.

[FR Doc. 94–15155 Filed 6–21–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 94–AGL–20]

Establishment of Class E Airspace; St. James, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at St. James Municipal Airport, St. James, MN, to accommodate a Nondirectional Beacon (NDB), Runway 32. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed for aircraft executing the approach. The intended effect of this proposal is to

provide segregation of aircraft using instrument approach procedures from other aircraft operating in visual weather conditions.

DATES: Comments must be received on or before July 20, 1994.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 94–AGL–20, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, System Management Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Robert J. Woodford, Air Traffic Division, System Management Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois, 60018, telephone (708) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 94–AGL–20." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, 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 the 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, S.W., Washington, DC 20591, or by calling (202) 267–3485. Commune cations must identify the notice number of this NPRM. Persons interested in being place don a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedures.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at St. James Municipal Airport, St. James, MN, to accommodate a Nondirectional Beacon (NDB), Runway 32. Controlled airspace extending from 700 to 1200 feet AGL is needed for aircraft executing the approach. The intended effect of this action is to provide segregation of aircraft using instrument approach procedures from other aircraft operating in visual weather conditions. Aeronautical maps and charts would reflect the defined area which would enable pilots to circumnavigate the area in order to comply with applicable visual flight rules requirements.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designation listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

PART 71—[AMENDED]

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

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

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

Paragraph 6005 Class E airspace areas listed below extend upward from 700 feet or more above the surface.

* * * * *

AGL MN E5 St. James, MN [New]

St. James Municipal Airport, MN
(Lat. 43°59'04" N., long. 94°33'12" W.)

That airspace extending upward from 700 feet above the surface within a 6.2-mile radius of the St. James Municipal Airport and within 2.5 miles each side of the 164° bearing from the airport extending from the 6.2-mile radius to 7 miles southeast of the airport.

* * * * *

Issued in Des Plaines, Illinois, on June 1, 1994.

Roger Wall,

Manager, Air Traffic Division.

[FR Doc. 94–15151 Filed 6–21–94; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 990

RIN 0648–AE13

Natural Resource Damage Assessments

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; extension of comment period.

SUMMARY: Section 1006(e)(1) of the Oil Pollution Act of 1990 (OPA) requires the President, acting through the Under Secretary for Oceans and Atmosphere to promulgate regulations for the assessment of natural resource damages resulting from the discharge of oil. The National Oceanic and Atmospheric Administration (NOAA) proposed those regulations on January 7, 1994 (59 FR 1062). In response to comments and numerous requests NOAA extended the comment period from April 7, 1994 to July 7, 1994. (59 FR 9688) Today's Notice further extends the comment period on the proposed rule to October 7, 1994.

DATES: Written comments should be received no later than October 7, 1994.

ADDRESSES: Written inquiries are to be submitted to: Damage Assessment Regulations Team (DART), c/o NOAA/DAC, 1305 East-West Highway, SSMC #4, 10th Floor, Workstation #10218, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Linda Burlington or Karl Gleaves, Office of General Counsel, DART, telephone 202–606–8000; FAX: 202–606–4900.

SUPPLEMENTARY INFORMATION:

1. Background

On January 7, 1994 (59 FR 1062), NOAA published a notice of proposed rulemaking concerning the natural resource damage assessment and restoration regulations required by the Oil Pollution Act of 1990. NOAA requested comments, recommendations, and technical information concerning appropriate assessment procedures and the overall assessment process. NOAA also announced a series of regional meetings to discuss and solicit comments on the proposed rule (59 FR 1189). On March 1, 1994, NOAA extended the comment period to July 7, 1994 (59 FR 9688). Through today's Notice, NOAA announces a further extension of the comment period to October 7, 1994. A summary of information gathered at the previously announced regional meetings and specific issues on which NOAA seeks further comment will appear in a future Notice.

II. Comment Period for Proposed Rule

Since its first extension of time for public comment from April 7, 1994 to July 7, 1994, NOAA has received numerous requests from States and other interested parties to extend the comment period for the proposed rule. As in the previous extension requests, most requesters need more time to review the compensation formulas and its supporting documentation. In addition, some requesters need additional time to review the body of literature supporting NOAA's proposal for the use of contingent valuation.

NOAA is dedicated to encouraging a thorough and thoughtful review of all components of the proposed rule, and in particular review and comment on the proposed compensation formulas and the economic methodology for estimating lost nonuse values known as contingent valuation. Therefore, the comment period for the proposed rule on natural resource damage assessment under the OPA is extended for ninety days. Comments on the proposed rule are now due on or before October 7, 1994.

NOAA is coordinating its rulemaking with a rulemaking being conducted by the Department of the Interior (DOI). DOI has published a proposed natural resource damage assessment rule under the Comprehensive Environmental Response, Compensation and Liability Act, as amended (42 U.S.C. 9601 et seq.) and the Clean Water Act, as amended (33 U.S.C. 1251 et seq.). (59 FR 23097) In a separate Notice in today's **Federal Register**, DOI is announcing the extension of the comment period on its proposed rule. The standards proposed for the assessment of lost nonuse values contained in DOI's proposed rule are identical to those proposed by NOAA. Commenters on NOAA's proposed standards for use of the economic methodology known as contingent valuation are encouraged to submit copies of their comments both to NOAA, at the address provided at the beginning of this Notice, and to DOI at the address specified in its notice appearing elsewhere in today's **Federal Register**.

Authority: Sec. 1006(e), Pub. L. 101–380, 33 U.S.C. 2701 et seq.

Dated: June 17, 1994.

Douglas K. Hall,

Assistant Secretary for Oceans and Atmosphere, National Oceanic and Atmospheric Administration.

[FR Doc. 94–15191 Filed 6–21–94; 8:45 am]

BILLING CODE 3510–12–P

15 CFR Part 990

RIN 0648–AE13

Natural Resource Damage Assessments

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Summary of Public Comment; Notice of Specific Issues for Comment; Notice of Availability of Summary of Cooperative Damage Assessment Workshops.

SUMMARY: Section 1006(e)(1) of the Oil Pollution Act of 1990 requires the President, acting through the Under Secretary of Commerce for Oceans and Atmosphere, to promulgate regulations for the assessments of natural resource damages resulting from the discharge of oil. The National Oceanic and Atmospheric Administration (NOAA) proposed those regulations on January 7, 1994. (59 FR 1062) Since its rule was proposed, NOAA has held six regional workshops and a public meeting in Washington, D.C. It was requested, and NOAA agreed, to publish a summary of the public comments received at the workshops and Washington, D.C. meeting. In light of the extension of the comment period until October 7, 1994, this Notice requests the public address some of the issues and questions raised during the workshops.

In addition to the workshops, NOAA in cooperation with the American Petroleum Institute and the Coastal States Organization, held six regional workshops on cooperative natural resource damage assessment. This Notice informs the public of the availability of the "Summary Report of Six Cooperative Natural Resource Damage Assessment Workshops."

DATES: Written comments should be received no later than October 7, 1994.

ADDRESSES: Written inquiries are to be submitted to: Damage Assessment Regulations Team (DART), c/o NOAA/DAC, 1305 East-West Highway, SSMC #4, 10th Floor, Workstation #10218, Silver Spring, MD 20910–3281.

FOR FURTHER INFORMATION CONTACT: Linda Burlington or Eli Reinharz, Office of General Counsel, DART, telephone (202) 606–8000, FAX (202) 606–4900.

SUPPLEMENTARY INFORMATION: The Oil Pollution Act of 1990 (OPA), 33 U.S.C. 2701 *et seq.*, provides for the prevention of, liability for, removal of, and compensation for the discharge, or substantial threat of discharge, of oil into or upon the navigable waters of the United States, adjoining shorelines, or the Exclusive Economic Zone. Section 1006(e) requires the President, acting through the Under Secretary of Commerce for Oceans and Atmosphere, to develop regulations establishing procedures for natural resource trustees to use in the assessment of damages for injury to, destruction of, loss of, or loss of use of natural resources covered by OPA. Section 1006(b) provides for the designation of federal, state, Indian tribe and foreign natural resource trustees to determine resource injuries, assess natural resource damages (including the reasonable costs of assessing damages), present a claim, recover damages, and develop and implement a plan for the restoration, rehabilitation, replacement, or acquisition of the equivalent of the injured natural resources under their trusteeship.

NOAA has published eight Federal Register Notices, 55 FR 53478 (December 28, 1990), 56 FR 8307 (February 28, 1991), 57 FR 8964 (March 13, 1992), 57 FR 14524 (April 21, 1992), 57 FR 23067 (June 1, 1992), 57 FR 44347 (September 25, 1992), 57 FR 56292 (November 27, 1992), and 58 FR 4601 (January 15, 1993) requesting information and comments on approaches to developing damage assessment procedures prior to issuing its proposed rule on January 7, 1994 (59 FR 1062).

The proposed rule summarizes the written comments received by the agency and issues raised during the public meetings and workshops, responds to those comments, and contains proposed regulatory language on the various issues raised. Many of the specific comments summarized in the proposed rule refer to the status report published by NOAA in the March 13, 1992, Federal Register Notice. Within the preamble to the proposed rule, NOAA specifically listed a series of issues that were raised during the various meetings and comments (at 59 FR 1071–1074). The goal of this statement of issues of interest was to stimulate discussions on some of the more intriguing suggestions considered in developing the proposed rule.

After publication of the proposed rule, NOAA held six regional meetings in January and February of 1994 in New Orleans, Chicago, Atlanta, Boston, San Francisco, and Seattle. These meetings began with a discussion of the issues identified in the preamble to the proposed rule, but were open to discussion of other issues. There was a diverse turnout, interest, and response at those meetings. In response to requests from many interested parties, on March 1, 1994, NOAA extended the comment period on the proposed rule to July 7, 1994. (59 Fed Reg 9688) A final workshop on March 25, 1994, was held in Washington, D.C. A set of discussion papers was distributed at the Washington meeting. These discussion papers reflected issues and questions raised during the regional meetings. The discussion papers were not intended to reflect final agency position on any issue. Instead, they were intended to focus on some relevant questions raised by the rulemaking to date. Although the Washington, D.C. meeting emphasized the issues presented in those papers, discussions on other concerns were encouraged. These discussion papers have been incorporated into this Notice.

The 6 regional workshops of January and February 1994, were sponsored by the National Oceanic and Atmospheric Administration (NOAA), the American Petroleum Institute (API), and the Coastal States Organization (CSO). Attendance at the workshops included federal, state, Indian, and foreign trustees, industry, protection and indemnity (P&I) clubs, environmental groups, and private citizens. Information disseminated for the workshops included NOAA's proposed rule, an outline of the proposed rule, a draft memorandum of agreement, and an agenda for the workshops. The purpose of the agenda was to reach agreement on many of the issues of cooperative NRDA through open discussion among participants.

This Notice provides a summary of information, concerns and recommendations received by NOAA at the workshops and requests further comment on specific issues raised by NOAA and members of the public at the workshops. In addition, this Notice makes available to the public a document summarizing the proceedings at the six workshops on cooperative damage assessment. The document entitled "Summary Report of Six Cooperative Natural Resource Damage Assessment Workshops" is available upon request to the address provided above.

Issues on Injury and Related Concepts

Sections 1002(a) and (b)(2) of OPA establish the elements for a natural resource damage claim. Under OPA, a party responsible for a vessel or facility is liable if there is (1) a discharge or a substantial threat of discharge (2) of oil (3) from the vessel or facility (4) into or upon navigable waters, adjoining shorelines, or the Exclusive Economic Zone. Damages are measured in terms of the injury to natural resources resulting from such an incident.

Damages resulting from an incident include those associated with injury to, destruction of, loss of, and loss of use of natural resources. OPA adds the phrase "loss of use of" which is not explicit under CERCLA. The proposed rule defines "injury" to incorporate these concepts. The damage assessment process as under the proposed rule is designed to: determine if there is an injury to a natural resource (Injury Determination), and subsequently quantify the extent of those injuries (Injury Quantification).

The OPA proposed rule defines "injury" as "any adverse change in a natural resource or impairment of a service provided by a resource." While measurement is not required for Injury Determination, it is usually needed for Injury Quantification. It is necessary to quantify the injury to provide the basis for restoration and determine the extent or amount of damages. Injury Quantification also may be relevant in establishing that the natural resource injuries resulted from or were caused by the incident.

In contrast to the definition under the proposed rule, "injury" under the CERCLA regulations is generally defined as "a measurable adverse change, either long- or short-term, in the chemical or physical quality or the viability of a natural resource resulting either directly or indirectly from exposure to a discharge of oil or release of a hazardous substance, or exposure to a product of reactions resulting from the discharge of oil or release of a hazardous substance." The CERCLA regulations provide specific injury definitions for various categories of natural resources in the Injury Determination Phase.

The OPA proposed rule specifies that an injury resulting from the incident is demonstrated in the case of direct exposure, if: (a) the natural resource was exposed, (b) there is a pathway between the discharge and exposed natural resource, and (c) the exposure of oil, its components, or by-products have been shown by rigorous and appropriate scientific methodology to have an adverse effect on the natural resource in laboratory experiments or the field. In the absence of direct exposure, an injury resulting from the incident is demonstrated if: (a) the adverse effect on or impaired/diminished use of a natural resource has been shown by rigorous and appropriate scientific methodology;

and (b) the adverse effect on or impaired/diminished use of the natural resource would not have occurred but for the discharge or threat of a discharge. This definition differs from the corresponding definition under the CERCLA rule (43 CFR 11.62(b)-(f)), but this difference should not produce inconsistencies.

NOAA is developing guidance on the types of adverse effects that are associated with discharges of oil in a technical support document for Injury Determination and Quantification. Generally, when attempting to determine whether there is an injury, quantify that injury, and evaluate whether the injury is a type of injury associated with the discharge of oil, the trustee should identify those adverse effects that meet certain "acceptance criteria." Factors that are relevant in choosing a methodology to use to demonstrate adverse effect include the extent to which that methodology has been able to demonstrate adverse effect in the laboratory or field, and the scientific appropriateness of that methodology.

Summary of Comments

The discussions at the regional workshops and the Washington, D.C. meeting focused on whether trustees should be required to "measure" an adverse change in order to show injury under OPA. NOAA presenters discussed the distinction between establishing "liability" under OPA and proving "damages." Participants indicated that the proposed rule should explain the distinction better than it does now.

Another issue of concern to many participants was the perception that some biological effects or responses to exposure to oil are produced in the laboratory but are not reflected in field studies. There was some criticism that the proposed rule allowed unobserved biological responses to be characterized as "injury" to natural resources and that this amounted to assessing damages for a "risk of injury" rather than actual injury.

One commenter stated that OPA required the injury to be of the type that required restoration or be relevant to restoration before damages would be owed a trustee. This commenter suggested that adverse effects on natural resources were not enough by themselves, that the adverse effects had to require restoration in order to constitute injury under OPA.

One participant argued that OPA is a civil damages statute imposing tort liability and therefore requires a demonstration of injury-in-fact on-site to result in damages. It was also suggested that the proposed rule presumed injury if a discharge of oil occurs and that NOAA has no statutory authority for such a presumption.

Specific questions on which NOAA is seeking comment:

1. Does NOAA's proposed definition of "injury" reflect the general understanding of the term in the scientific and legal community? Should NOAA define "adverse change?" If yes, how?

2. Does NOAA's proposed definition of "injury" presume injury or must the trustee present evidence of "injury" for purposes of establishing damages under OPA?

3. NOAA's proposed rule includes a definition of the phrase "injury resulting from a discharge of oil" (see 59 Fed. Reg. 1169). OPA section 1002 provides that liability is for removal costs and damages "that result from such incident."

a. Does NOAA's proposed definition of "injury resulting from a discharge" mingle the concepts of "injury" with "causation?"

b. Does the proposed definition mingle concepts of legal causation with scientific premises for establishing cause-in-fact?

c. Should NOAA provide a regulatory definition of "injury resulting from...such incident..."?

d. Should NOAA limit its regulatory approach to describing acceptable ways trustee and responsible parties may develop evidence of injury "resulting from" an incident; i.e."acceptance criteria?"

4. NOAA has suggested that where multiple factors may have contributed to the injury, the injury be viewed as "resulting from" the discharge or incident if the discharge, or incident was a factor contributing to the injury. Should this view of the "contributing factor" test be included in either "acceptance criteria" or a definition of "injury" or some other appropriate place in the regulations?

Compensation Formulas

The proposed rule is designed to provide a new simple and cost-effective damage assessment procedure for small discharges—compensation formulas for both estuarine/marine and inland waters. The proposed compensation formulas would be applicable to the vast majority of oil discharges and for a wide range of the most commonly discharged oil products. An analysis of reported coastal discharges of oil shows that 99.8% of the discharges were less than 50,000 gallons and 99% were less than 10,000 gallons. Compensation formulas would be used for most of these relatively small discharges. These formulas provide an estimate of damages per gallon taking into account average restoration costs, plus average lost direct use values pending restoration. For various reasons, passive use values are not included in these formulas at this time. The damages calculated with the formulas vary with the amount and type of oil discharged and region and habitat type in which the discharge occurs. This approach allows both national consistency and regional specificity. By comparing the habitat of the actual discharge with the geographical province and specific habitat used to estimate the damages in the formula, the trustee should, in most cases, find the most applicable scenario.

The simplified damage assessment procedures produce calculations based on statistical averages and are designed to reasonably reflect the damages of the actual injury in a timely and economical manner. However, any time a simplified assessment is used, it is unlikely that the exact circumstances of an actual discharge will be represented. Although the damage calculation is designed to be correct on average, in some cases, the formula will over-state or under-state the damages. In cases where the circumstances of an actual discharge are determined to be well beyond the parameters of the compensation formula, the trustee should consider the use of another assessment procedure.

Summary of Comment

There was a wide range of comment on NOAA's proposed use of the compensation formulas for spills of less than 50,000 gallons. The comments ranged from NOAA's lack of statutory authority to use such formulas to the notion that the compensation formulas are a "black box used to club the RP" into settlement. Other participants focused on the predictability the compensation formulas will bring to the process of assessing smaller spills and the cost effectiveness of using the formulas for locations where access is difficult. One participant noted that it was unreasonable for NOAA to rely on formulaic averages when the state of science is insufficient to develop predictive models.

Several suggestions were made at the workshops. It was recommended that NOAA provide guidance or criteria for proceeding from pre-assessment to the assessment phase, as well as guidance for the use of the compensation formulas. In particular, it was suggested that NOAA provide guidance on when the formula should be used and when the Type A model should be used, as

sometimes the Type A model resulted in lower damages than the formulas. It was also suggested that NOAA develop a set of appropriate, "off-the-shelf" studies for the trustees to use in small spills to confirm actual injury. One commenter stated that the formulas resulted in extraordinarily high per gallon damage figures for certain hypothetical spills. It was suggested that these worst case scenarios were damaging NOAA's credibility and would affect industry's view of the simplified procedures generally. To address this problem, the commenter recommended NOAA develop a ceiling or cap for dollars per gallon spilled.

Questions were received as to how the various state formulas and NOAA's proposed formulas would compare or work together, and what to do when a complex assessment results in lower damages than the formulas or the Type A model. Lastly, some comments and questions were posed as to when and how the compensation formulas could be attacked in litigation.

Specific questions on which NOAA is seeking comment:

1. The proposed compensation formulas are based upon various representative province/habitat combinations. Since the compensation formulas are based upon averages, it is impossible to include all known coastal habitats and every combination of discharges. By comparing the habitat of the actual discharge with the province and specific habitat used to estimate the damages in the formula, the trustee should, in most cases, find the most applicable scenario. However, any time a simplified assessment is used, the exact circumstances of an actual discharge will only be approximated.

Although there is no direct statutory language calling for this form of assessment procedure, NOAA recognized the need for such a procedure. NOAA emphasizes that the primary advantages of a compensation formula are simplicity and cost-effectiveness. Are the values of simplicity and cost-effectiveness in the compensation formulas outweighed by their inherent technical limitations?

2. The compensation formulas were developed after extensive review of the scientific and economic literature, with particular emphasis on restoration of various habitat types. This information was then compiled to be used with both the current Type A model for Coastal and Marine Environments and a draft version of the Type A model under development for the Great Lakes Environments, which provide the basis for the compensation formulas. Was this procedure for developing the formulas appropriate and reasonable?

3. Because NOAA's proposed rule may be published as a final rule before the Department of the Interior (DOI) publishes the two Type A models as final rules, NOAA is seeking comment on three options: (1) Publish the formulas as final rules, with the option to revise once the DOI Type A models are promulgated as final rules; (2) publish the formulas as interim final rules, pending revision based upon the completion of the Type A models; or (3) reserve the formulas as proposed rules pending the completion of the Type A models, with the rest of the NOAA rule being published as a final rule; or (4) repropose each formula after the model upon which it is based is published as a proposed rule.

4. NOAA is proposing that the damages generated by the compensation formulas be conclusive in nature for those resources and/or services covered by the formulas. That is, once the rule becomes final and survives any judicial review, parties may challenge the information used in applying the formulas in a particular assessment or the appropriateness of using the formula for a specific incident, but may not challenge the underlying algorithms and data used in developing the formulas. NOAA is specifically seeking comment on this approach.

5. Passive use (nonuse) values are not included in the formulas at this time, since NOAA determined that sufficient information does not currently exist concerning average passive use values applicable to the compensation formula approach. NOAA decided to propose the formulas without passive use values so that they would be available for trustee use rather than delay proposing to a future date. The trustee, of course, may use some other assessment method to estimate lost passive values. NOAA specifically requests comments on how such passive values might be included in the compensation formulas.

6. Several simplified natural resource damage assessment schemes have been developed by State trustees over the last few years to estimate damages to natural resources resulting from discharges of oil. How may any inconsistencies among the various State assessment methods and NOAA's proposed rule be addressed through NOAA's rulemaking?

Regional Restoration Plans

Section 1006(f) of OPA requires that sums recovered as damages be used to develop and implement a plan for the restoration, rehabilitation, replacement, or acquisition of the injured natural resources. The proposed rule allows the trustees either to develop an Incident-Specific Restoration Plan to address the effects of the incident of concern, or to pool recoveries to apply them to a Regional Restoration Plan.

These regional plans could be developed on a geographical or ecosystem basis to allow the recovery of the system covered by the plan. Where such a plan already exists (i.e., National Estuary Program (NEP), established by Congress in 1987; includes 21 estuaries), whether developed through prespill planning efforts or under regular management efforts, that plan may be used if it is developed through a public review and comment process that considers the major factors contained in the restoration planning guidance in the rule. The restoration action must address similar or comparable resource injuries as those identified in the assessment procedure.

In NOAA's view, there are a number of benefits to aggregating recovered monies in a regional restoration plan. First, it is not cost-effective for trustees to attempt to restore natural resources affected by oil if those restored resources are still going to be at risk from other pollutant sources that trustees have no authority to address. This problem is less likely to arise when a regional restoration plan is used because regional plans are more likely to include a wide range of federal, state, and local enforcement authorities to address pollutant sources (i.e., point and nonpoint sources) affecting the region in question. Second, the trustees could also benefit from information gathered by the regional planning process conducted by other agencies (i.e., EPA's Comprehensive Conservation and Management Plans developed under the NEP) in efficiently and effectively addressing injured resources. Third, where a coordinated structure involving both public and private parties already exists, it is prudent to take advantage of that structure for public review of trustee restoration plans.

Comment Summary

Comments centered on the accountability of trustees for monies in a regional restoration pool and protections necessary to prevent monies intended for restoration from being used for other purposes. In general, there was suspicion that the regional restoration funds would be siphoned off for non-restoration-related purposes or for research projects related to natural resource damage assessment. One commenter stated that NOAA has no statutory authority for pooling recoveries and that each recovery must

be spent for the restoration of resources injured by a particular incident. One suggestion received was that pooled recoveries be permitted only on a consensual basis with each responsible party. Another suggestion was that a time limit be imposed on trustees for the expenditure of pooled restoration monies.

Specific questions on which NOAA is seeking comment:

1. Is it likely that these regional plans would be useful in areas with long-term pollution effects, where damages from a single incident would be too small to "restore" the injured natural resources or where the planning costs for the restoration after a single incident would be quite high compared to the damage figure?

2. Is pooling of funds contrary to the principles of restitution or compensatory damages?

3. Does the use of such regional plans contradict section 1006(f) that "there be a nexus between monies recovered resulting from a particular spill and their use to restore or enhance the specific resources 'affected by a discharge.' "?

4. May some percentage of the "pooled" funds be used to pay for the planning costs to develop such plans, since the estimated restoration costs from the underlying incidents do include planning costs?

5. If pooled recoveries are intended to fund an existing multi-year plan, how are individual amounts to be earmarked and set aside for funding a particular component of that multi-year plan? What kind of accounting or reporting requirements should be used?

Obligation of Trustee to Plan for Restoration

Section 1006(c) of OPA requires federal, state, tribal and foreign trustees to "develop and implement a plan for the restoration, rehabilitation, replacement or acquisition of the equivalent, of the natural resources under their trusteeship." 33 U.S.C. 1006 (c)(1),(2),(3), and (4). In addition, OPA provides that such "[p]lans shall be developed and implemented under this section *only after* adequate public notice, opportunity for a hearing and consideration of all public comment." *Id.* (emphasis added). In NOAA's view, OPA requires restoration planning to proceed like any other federal statutorily-mandated planning activity—in the sunshine, subject to review under the Administrative Procedures Act (APA), and in compliance with the National Environmental Policy Act (NEPA), the Endangered Species Act (ESA), and other applicable federal laws.

To fulfill the trustee obligations for restoration planning NOAA has proposed a process for the development of an administrative record documenting all aspects of an incident relevant to the trustee obligation to restore, rehabilitate, replace, or acquire the equivalent natural resources. In NOAA's view an administrative record for injury assessment and selection of restoration alternatives achieves four important objectives: (1) It provides a central repository, open to the public, for all scientific data relevant to the incident; (2) it facilitates public participation; (3) it documents trustee decisionmaking and selection among alternatives to restore, replace or acquire the equivalent; and (4) it minimizes transaction costs by encouraging an open, participatory process for the ultimate resolution (i.e. restoration of natural resources) of an incident rather than resolution through litigation.

NOAA's attempt to minimize transaction costs and discourage complex litigation and other activities not leading to restoration of natural resources is born of the unsatisfactory experience of the *Exxon Valdez* oil spill. In that incident all parties were criticized by the public for maintaining the confidentiality of scientific studies, conducting science for purpose of litigation, and then settling the case without providing for the release of the scientific data gathered. It is generally accepted that such a process does not serve the resources, the public, or the responsible party well.

NOAA's proposed rule seeks to address these problems by providing for a contemporaneous public repository of scientific data for injury assessment and restoration activities. As presently proposed, the administrative record documents trustee decisionmaking processes for injury assessment, selection of restoration activities, the trustee costs, and anticipated costs of restoration, and may include the economic valuation of injury resulting from the incident.

As an open record process, subject to the opportunity for public hearing and comment, NOAA intends the trustee's selection of restoration activities, and their costs, to be available for judicial review under the Administrative Procedure Act. The standard for judicial review under the APA in an informal rulemaking context is whether the actions of the trustee were "arbitrary, capricious, or otherwise not in accordance with law."

NOAA has taken the position that NEPA should be implemented during the restoration planning process and integrated into the development of the Draft Assessment Restoration Plan (DARP). It is NOAA's view that those procedures normally contemplated as part of the DARP can be framed and addressed as NEPA analysis and full NEPA compliance achieved without additional paperwork or data collection. A concise analysis of available restoration alternatives and the consequences of their implementation in the post-spill environment should form the heart of the DARP document as well as any NEPA document with which it may be combined.

Comment Summary

Public comment on the proposed DARP was varied. Some commenters suggested NOAA prepare a guidance document with a standardized format and criteria for information to be included in the record. Another participant suggested that NOAA refer to the EPA guidance for preparation of an administrative record. Commenters felt that organization and cross-referencing mechanisms were important if the record was to be useful to people in the field.

Several commenters discussed the importance of including all available data and the QA/QC criteria in the record. It was often stated that from the scientist's point of view, there is no reason not to put all data in the record as long as it is accompanied by sound study design, appropriate sampling and QA/QC protocols and a description of the level of review. Another commenter suggested that a standing peer review committee should review data before it is entered in the record. One participant asked whether or how the record could contain useful information or documents that do not meet pure chain of custody requirements. There was some concern raised about parties "stuffing" or "dumping" material in the record to force the other party to respond or overwhelm the other party. Another concern raised was that the proposed rule does not require the trustee to invite responsible party participation.

Some participants stated that the proposed administrative record process would promote litigation rather than reduce transaction costs. There was a strong feeling on the part of some commenters that NOAA's position that the administrative record would receive judicial review under the Administrative Procedure Act using the standard of "arbitrary and capricious" was fundamentally unfair to the responsible party and a violation of due process. Several commenters felt the

trustees had too much flexibility and too much control over the contents of the record. Some commenters felt the responsible party was entitled to challenge the trustee's decisions on a "preponderance of the evidence" before a jury. Another commenter suggested NOAA set up an adjudicative process where an administrative law judge would preside and apply the "substantial evidence" standard to the trustee's record and allow extra-record evidence to be produced at an administrative trial.

Finally it was suggested that federal trustees need not comply with NEPA because the DARP would qualify under the "functional equivalency" doctrine. Another commenter queried whether the responsible party would have to bear the costs of NEPA compliance.

Specific questions on which NOAA is seeking comment:

1. Should trustee decisionmaking on the record include all aspects of injury assessment and restoration/replacement activities including financial costs and economic valuation or should the trustee decisions on the record include only the injury assessment and restoration/replacement activities excluding a determination of costs and economic values as aspects of money damages suitable for de novo trial along with liability?

2. Is a "bifurcated" review process practical, i.e. will an administrative record review for injury assessment and restoration selection and a separate litigation-driven process for determination of liability and money damages prove workable or raise significant timing issues and evidentiary problems?

3. Is a trial appropriate for determination of liability and/or money damages under OPA? Is a trial appropriate for review or litigation of trustee's decisions during injury assessment and selection of restoration activities? If yes, should such a trial be to the court or to the jury?

4. Is the administrative record process for developing the trustee's assessment and/or restoration alternatives "informal rulemaking" or "quasi-adjudicative" under the APA? How would an administrative record prepared by a state trustee be reviewed by a state court?

5. Should there be a means for preventing any one party from "stuffing" the administrative record to achieve a preponderance of evidence or strain the ability of other parties to respond on the record? If so, what should it be? Should there be designated times for the submission of materials to the record? Should the rule define the types of data, analysis and other documents submitted to the record?

6. How should the trustee comply with section 1006(c)(5) of OPA [restoration plans developed and implemented only after adequate public notice, opportunity for hearing and comment] in the context of settlement? Specifically, what type of process would satisfy the potential desire to settle an OPA claim with specific performance of a restoration activity as well as comply with section 1006(c)(5) and NEPA?

7. The rule as currently proposed requires public review only when the trustee releases the Draft Assessment and Restoration Plan. Should there be additional requirements for public review or participation? Should the requirements vary according to the type of assessment chosen by the trustee?

8. Does NEPA apply to the trustee's selection of restoration alternatives? At what point is restoration planning a "major federal action" or "irretrievable commitment of resources" for purposes of NEPA compliance? Is it appropriate to postpone NEPA compliance until the trustee has received the money damages? Is it practical to combine NEPA compliance with the development of the DARP?

9. If an administrative adjudication process conducted by an administrative law judge were set up for the review of the administrative record and the trustee's demand for damages, would transaction costs be reduced from the present system? Would the trustees be forced into a disadvantage by providing all of their data and basis for decisionmaking on the record while the responsible party waited until the administrative trial to attack the record with expert witnesses and extra-record evidence? Who would bear the costs of setting up and operating administrative adjudication system? Would state or tribal trustees be required to use such a system?

Compensable Values Issues

Much attention has been given to valuing damages to natural resources. This attention has been directed, for the most part, at the controversial economic valuation method of contingent valuation. However, given the expense and time associated with designing and implementing site-specific studies, such as contingent valuation, natural resource trustees have turned to alternative methods for the majority of oil spill damage assessments. Two alternative methods have been included in the natural resource damage assessment regulations promulgated pursuant to the OPA: 1) the benefits transfer method and 2) the habitat or species replacement cost method. These alternatives allow the trustee to estimate compensable values or estimate damages for interim lost services at a lower cost than with site-specific studies. A third alternative may also be considered that would involve government expenditures on a resource as a lower bound for the "value" of that resource.

Benefits Transfer: The benefits transfer method uses existing estimates of use values or of valuation functions that were developed in one context to address a similar resource valuation question in a different context. Where resource values exist that have been developed through an administrative or legislative process, or where other values are appropriate, use of these values may allow a less time-consuming and less expensive damage estimation than original valuation analysis.

Habitat or Species Replacement Cost: The habitat or species replacement cost method may be used to estimate damages for lost services from the injured habitats and/or biological resources, when human services provided by the habitat or species are difficult to quantify. This method involves estimating damages in terms of the cost of obtaining from alternative services the equivalent of the resource and/or services. In order to ensure that the scale of the compensatory restoration or replacement project(s) on which the cost calculation is based does not over- or under-compensate the public for injuries incurred, the proposed OPA rule suggests that the trustee must establish an equivalency between the present discounted value (PDV) of the quantity of lost services and the PDV of the quantity of services provided by the replacement project(s) over time.

Contingent Valuation: NOAA's proposed rule allows the use of contingent valuation (CV) to produce assessments of interim lost value, including lost passive use value, based on its preliminary finding that such methodology is reliable enough for use in a judicial or administrative determination of natural resource damages. To achieve the reliability necessary for this purpose, however, NOAA has proposed a set of requirements to which the studies must adhere. This proposal was based on the guidance provided by the report of the NOAA Blue Ribbon Panel on Contingent Valuation (chaired by Professors Kenneth Arrow and Robert Solow) as well as other comments submitted to NOAA.

NOAA worked closely with The U.S. Department of the Interior (DOI) in drafting and refining the contingent valuation (CV) language for the rule and in outlining the scope of a possible CV guidance document. DOI and NOAA agreed to propose similar language for both the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and Oil Pollution Act (OPA) rules, thereby providing consistent approaches to CV in the two regulatory schemes.

Comment Summary

Comments on the economic methods for computing compensable values generally took the form of question or dialogue. There was some dialogue among members of the public and NOAA presenters concerning the appropriateness of including contingent valuation as a method for estimating nonuse or "passive" values. One commenter queried whether trustees could do inexpensive contingent valuation surveys for smaller spills. Another participant wondered how the trustees would respond to a situation where a contingent valuation study used to measure total compensable value resulted in damages less than necessary for restoration. Conversely, the commenter queried how the rule would guide the trustee for whom a contingent valuation survey resulted in total compensable values of 100 million dollars when habitat replacement would result in damages of 100 thousand dollars.

Habitat replacement was the subject of significant interest as commenters inquired whether it was a compensable values methodology or a restoration methodology. One commenter recommended NOAA provide a more clear explanation of the habitat replacement method in the rule and distinguish between habitat replacement and acquisition of the equivalent. In addition, it was suggested that NOAA clearly identify the possible double counting issues.

One commenter suggested better guidance be made available on the "benefits transfer" methodology. Of particular concern was the situation where baseline studies failed to be reliable.

Lastly, the question of whether trustees should apply "offsets" when calculating damages was a topic of extensive discussion. Several commenters felt that in some circumstances a discharge of oil will cause an improvement in conditions for some natural resources or increase the services of other natural resources. These commenters felt that the responsible party should receive a positive offset against the injury to other natural resources or loss of their services. The "offset" concept was viewed by some commenters as particularly appropriate for direct uses vis a vis passive uses.

Specific questions on which NOAA is seeking comment:

1. What should be the role, if any, of the requirements for site-specific CV studies measuring passive use value in determining whether the quality of a CV study is adequate for use in benefits transfer? How would the extent of the market be determined for benefits transfer using CV studies? Should the conditions be different for valuing direct use losses and for valuing passive use losses?

2. Government expenditures (per unit of services injured) have been suggested as a proxy for the value of those services lost as a result of an incident. Should the OPA rule suggest that government expenditures may be used as a proxy for the value of a resource? Under what circumstances would use of this method be appropriate? For example, should the trustee be directed to consider whether the following two conditions be met in determining appropriateness of the method: changes in the quality/quantity of the injured resources can be related to the (change in) level of government expenditures; the government programs for which expenditures have been accounted are the major cause of the changes in the quality/quantity of the affected resource?

3. The proposed OPA rule specifies that the trustee is to use the U.S. Treasury rate to discount for all three categories of damages: restoration costs, interim lost value, and damage assessment costs. Following the guidance in OMB Circular A–94 (for cost-effectiveness analysis and for federal leasing), nominal interest rates are to be used with damages in nominal terms (for example, past costs) and real rates (with an adjustment based on the Administration's prediction for future inflation published in the President's budget) are to be used for damages in real terms. "Nominal terms" refers to calculations expressed in the dollars of the year in which the damages accrued; "real terms" refers to damages expressed in dollars of a base year (such as the year in which the claim is presented).

For restoration costs, what if the return on accounts available to the trustee(s) for placement of recovered funds is lower than the U.S. Treasury rate, so that the present discounted value of future restoration costs will not support the full restoration project?

4. The proposed OPA rule provides that the trustee must document the method used to calibrate hypothetical willingness to pay to actual willingness to pay. In the absence of such documentation, the trustee must divide by two. This calibration procedure is to "correct" for the combined effects of two countervailing potential biases: the mandated elicitation of willingness to pay (WTP) measures may understate the correct measure of damages [willingness to accept], whereas the elicitation of hypothetical WTP in contingent valuation studies may overstate "true" WTP.

a. Is calibration appropriate? If so, is the proposed default calibration factor appropriate?

b. On what basis could "calibration" factors be developed for individual cases?

c. If reliable calibration of hypothetical to actual WTP is not feasible, would it be reasonable to rely on unadjusted WTP results of CV studies as a valid measure of nonuse values/use values?

5. The proposed OPA rule states that two independent "scope" tests are to be conducted, showing significant changes in respondents' WTP in response to variations in the scope of injuries (from the injury scenario to be proved in the case), unless the trustee(s) can show creation of two alternate scenarios to the base case is infeasible due to considerations of cost or lack of plausibility of scenarios. The tests are to be conducted with an additional sample for each additional scenario, (a "split sample" test). Procedures are outlined for limiting the differences in scope between the base case and alternative scenarios.

a. How many sensitivity to "scope of injury" tests are appropriate to require? Are restrictions on differences between scenarios appropriate or feasible?

b. Is it appropriate to allow the trustee(s) to conduct the scope test with the base survey instrument, by constructing a valuation function to examine whether variations in belief about injuries predict variations in WTP, controlling for demographic and attitudinal factors? Are there additional/alternative internal validity test(s) that NOAA should consider?

6. 70% is the minimum allowable response rate contained in the proposed OPA rule. In order to minimize non-response bias, should a minimum response rate be specified? If so, is 70% the appropriate level? If 70% is not the appropriate rate, what rationale is there for a different rate?

7. In the proposed OPA rule, the trustee(s) is directed to use a choice mechanism that is credible and incentive-compatible, i.e., one that does not provide respondents with incentives to understate or overstate their true value. The reasons are outlined in the preamble for recommending the use of a referendum as the choice mechanism in a survey. Are these requirements appropriate?

8. Should respondents with no knowledge of the resources and/or injuries prior to survey be assigned a zero value? What is the appropriate use of data on respondents' prior information?

9. Should there be thresholds for damages, below which CV could not be used in a damage assessment, e.g., an expected $5/household times the number of households expected to hold passive values; and/or twice the cost of a contingent valuation survey following these regulations. What threshold, if any, is appropriate? How would the threshold be implemented (without performing a CV study?

10. In the proposed rule, the trustee(s) has the option of choosing the mode of administration of a survey, but the choice must be justified. Is one mode, e.g., in-person, telephone, or mail, preferable to another? If so, or if not, what rationale supports it?

11. Should the rule or preamble provide guidance as to criteria to be employed in determining the extent of the market?

12. What requirements, if any, should be imposed on CV studies for valuing direct use only?

13. What requirements, if any, should be imposed on contingent behavior studies?

Dated: June 17, 1994.

Douglas K. Hall,

Assistant Secretary for Oceans and Atmosphere.

[FR Doc. 94–15192 Filed 6–21–94; 8:45 am]

BILLING CODE 3510–12–P

DEPARTMENT OF THE TREASURY

Office of the Under Secretary for Domestic Finance

17 CFR Parts 402 and 404

RIN 1505–AA44

Amendments to Regulations for the Government Securities Act of 1986

AGENCY: Office of the Under Secretary for Domestic Finance, Treasury.

ACTION: Proposed rule.

SUMMARY: The Department of the Treasury ("Department") is publishing for comment proposed amendments to the financial responsibility rules in Part 402 and a conforming amendment to a recordkeeping requirement in Part 404 of the regulations issued under the Government Securities Act of 1986 ("GSA"). The proposed amendments would raise the minimum capital requirements for all government securities brokers and dealers subject to the requirements of Section 402.2 and establish a written notification requirement for certain withdrawals of capital. The proposed amendments parallel the Securities and Exchange Commission's ("SEC") final and proposed amendments to the minimum net capital requirements for brokers and dealers subject to the requirements of 17 CFR 240.15c3–1 (Rule 15c3–1) and final rules regarding the withdrawal of capital.

DATES: Comments must be submitted on or before August 22, 1994.

ADDRESSES: Comments should be sent to: Government Securities Regulations Staff, Bureau of the Public Debt, Department of the Treasury, 999 E Street N.W., Room 515, Washington, D.C. 20239–0001. Comments received will be available for public inspection and copying at the Treasury Department Library, Room 5030, Main Treasury Building, 1500 Pennsylvania Avenue N.W., Washington, D.C. 20220.

FOR FURTHER INFORMATION CONTACT: Don Hammond (Acting Director) or Kerry Lanham (Government Securities Specialist) at 202–219–3632. (TDD for hearing impaired: 202–219–9274.)

SUPPLEMENTARY INFORMATION:

I. Background

The Department is proposing amendments to its financial responsibility rules in Part 402 that would raise the minimum capital requirements and establish written notification requirements for certain capital withdrawals for those government securities brokers and dealers subject to the provisions of § 402.2. Additionally, the Department is proposing a conforming change to the recordkeeping requirements of Part 404 which is necessitated by the proposals to revise the minimum capital levels. The Department believes that these proposed amendments will enhance the capital adequacy of government securities brokers and dealers and provide for more effective regulatory oversight. These proposed amendments parallel rule amendments adopted or proposed by the SEC. The Department's amendments, if adopted, will increase investor confidence in the financial responsibility of government securities brokers and dealers without creating any substantial new barriers to entry into the government securities market.

The SEC published proposed revisions to its minimum capital levels in October 1989[1] and December 1992[2] and to its capital withdrawal rules in August 1990.[3] The SEC published its final capital withdrawal regulations on March 5, 1991,[4] finalized its first change in minimum capital levels on November 24, 1992,[5] but has not yet finalized its second proposal on minimum capital levels for certain introducing firms. The Treasury capital rule[6] uses the SEC capital standard (Rule 15c3–1)[7] as a foundation and, accordingly, it is useful to strive to minimize the differences between the two rules. Additionally, it is Treasury's objective to maintain consistency with the SEC rule and, ultimately, have a uniform capital rule for all government securities brokers and dealers registered with the SEC. The Treasury would have acted sooner to propose these amendments but its rulemaking authority under the GSA expired on October 1, 1991, and was not reauthorized until December 17, 1993. (107 Stat. 2344, Pub. L. 103–202).

Having reviewed the SEC's actions, the Department has determined to propose changes to its capital rule, which, for the most part, parallel the SEC's modifications. The following text explains the Department's rationale supporting its amendments, with particular emphasis on the differences between the Department's and the SEC's changes.[8]

II. Analysis

A. Minimum Capital Requirements

The SEC has either increased or proposed increasing the minimum net capital requirements for most brokers and dealers subject to Rule 15c3–1 to an amount ranging up to $250,000, depending on the type of business

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[1] Securities Exchange Act Release No. 27249 (September 15, 1989), 54 FR 40395 (October 2, 1989).

[2] Securities Exchange Act Release No. 31512 (November 24, 1992), 57 FR 57027 (December 2, 1992).

[3] Securities Exchange Act Release No. 28347 (August 15, 1990), 55 FR 34027 (August 21, 1990).

[4] Securities Exchange Act Release No. 28927 (February 20, 1991), 56 FR 9124 (March 5, 1991).

[5] Securities Exchange Act Release No. 31511 (November 24, 1992), 57 FR 56973 (December 2, 1992).

[6] 17 CFR § 402.2.

[7] § 240.15c3–1.

[8] Explanations of the SEC's reasons for the changes to its capital rule are found in the releases accompanying their proposed and final rules. *See Supra* notes 1, 2, 3, 4 and 5.

conducted by the broker or dealer. The previous minimum requirements had been unchanged for at least 16 years, and, in the case of the $5,000 level applicable to introducing brokers, for 26 years.[9] Inflation over this period has reduced the level of protection that the current minimum standards provide.

The Department, in developing its existing capital rule, modified the SEC minimum capital levels prior to incorporating them into the Treasury rule. The modifications reflected the different structure of the Treasury capital requirement whereby securities haircuts are not deducted but instead act as a benchmark with which liquid capital is compared in determining capital adequacy. Nonetheless, the minimum dollar capital levels are based on liquid capital after deducting haircuts, which is comparable to the SEC's calculation of net capital. The Treasury rule currently has a $5,000 minimum liquid capital requirement for introducing brokers[10] and a $25,000 minimum liquid capital requirement for all other government securities brokers and dealers[11] subject to the rule.[12] These levels are equivalent to SEC requirements applicable to brokers and dealers operating under the aggregate indebtedness capital computation prior to the amendments. The Department believes that increasing the minimum levels is appropriate in order to provide better protection to investors in the event of a government securities broker's or dealer's insolvency and to reflect the current realities of the government securities market. Accordingly, the Department is proposing to increase the minimum capital requirements for all government securities brokers and dealers subject to the provisions of § 402.2. The other capital requirement—that liquid capital be at least equal to 120% of haircuts—would be unaffected by this proposal.

The increases would be effected by creating four minimum capital standards from the two current requirements, reflecting a better differentiation of the risks related to a government securities broker's or dealer's operations based on the type of government securities business it conducts. The four proposed minimum capital requirements would be as follows: (1) government securities brokers and dealers that carry customer or broker-dealer accounts would be subject to a minimum level of $250,000; (2) government securities brokers and dealers that carry customer accounts but that operate under the exemption provided by Rule 15c3–3(k)(2)(i)[13] would have a minimum requirement of $100,000; (3) government securities brokers that introduce accounts on a fully disclosed basis and receive but do not hold customer securities would be subject to a minimum requirement of $50,000; and (4) introducing firms that never handle customer funds or securities would be subject to a minimum requirement of $25,000.

These changes represent increases from the current minimum levels of between $20,000 and $225,000, depending on the type of business conducted by the government securities broker or dealer. The Department is proposing fewer levels than the SEC has proposed since the operations of government securities brokers and dealers do not encompass all the activities available to diversified brokers or dealers. The proposed Treasury minimum capital requirements adequately reflect the different levels of custodial risk found in the various types of government securities operations without creating significant barriers to entry into the government securities market.

Any increase of capital requirements represents a potential burden on regulated entities and on the market; this potential effect must be weighed against the resulting benefits. Minimum capital levels provide a cushion which is available to ease the liquidation or resolution of troubled government securities brokers and dealers. This is a fundamental element of customer protection. The increases that the Department is proposing are modest relative to the size and complexity of the government securities market and the operations of government securities brokers and dealers.

When the SEC first proposed increasing broker's and dealer's minimum capital levels, the SEC received comments opposing the increased requirements. The SEC has also received additional negative comments from introducing firms that would be affected by the outstanding proposal to increase the minimum net capital level of such brokers. However, the Department believes that its proposed increases will have a very small impact on the firms, including introducing brokers, subject to § 402.2. An analysis of the government securities brokers and dealers subject to the provisions of § 402.2 indicates that, as of June 30, 1993, only seven, out of a total of 39, would not be in compliance with the proposed, fully phased-in minimum capital levels. Four of these firms would not be in compliance with the new requirements for introducing firms, two would be out of compliance with the $100,000 requirement and one would not meet the $250,000 level. The aggregate capital shortfall of these seven firms is less than $200,000, with the largest individual deficit being less than $50,000. To ease the compliance burden and to provide a period for the affected government securities brokers and dealers to adjust, the Department is proposing to add an Appendix E to § 402.2 which would phase in the increases over an 18-month time frame from the effective date. This corresponds to the phase in time frames that were adopted and proposed by the SEC.

B. Capital Withdrawal Requirements

The SEC promulgated final rules regarding the withdrawal of capital by brokers and dealers.[14] These rules require written notification to the SEC and the broker's or dealer's designated examining authority of certain capital withdrawals; add a restriction on the withdrawal of capital based on the ratio of net capital to securities haircuts; provide additional definitions; and permit the SEC, by order, to prohibit the withdrawal of capital in certain described circumstances. The Department is proposing to amend its capital withdrawal provisions[15] to include the notification requirements and certain definitions but has determined not to propose the other two requirements (as explained below).

The notification provisions would require post-withdrawal notification of certain significant capital withdrawals as well as prior notification for larger withdrawals. Whether the notification would be required prior to the withdrawal[16] would be determined by the aggregate size of total withdrawals relative to the government securities broker's or dealer's excess liquid capital[17] over a 30 calendar day period. Once aggregate withdrawals have exceeded 20 percent of a government securities broker's or dealer's excess liquid capital in a 30 calendar day

[9] 54 FR 40395, 40396 n. 14 (October 2, 1989).

[10] 17 CFR § 402.2(c).

[11] 17 CFR § 402.2(b).

[12] The Treasury capital rule requires that a government securities broker or dealer maintain a capital level of the greater of (i) 120% of total haircuts; or (ii) the minimum dollar capital amounts, computed by deducting total haircuts from liquid capital, applicable to its business.

[13] 17 CFR § 240.15c3–3(k)(2)(i).

[14] *See Supra* note 4.

[15] 17 CFR 202.2(i).

[16] If prior notification is required, the post-withdrawal notification must also be filed.

[17] Excess liquid capital is that amount of liquid capital which exceeds the greater of the amount of capital required under (i) § 402.2(a); or § 402.2(b) or (c) as applicable.

period, the government securities broker or dealer will have two business days thereafter in which to file notification of the withdrawals. Aggregate withdrawals in excess of 30 percent of excess liquid capital in any 30 calendar day period would require notification two business days prior to such withdrawal. A government securities broker or dealer may use the level of excess liquid capital calculated in its most recent Form G–405, "Report on Finances and Operations of Government Securities Brokers and Dealers (FOGS)" filing,[18] provided the firm assures itself that this amount has not materially changed since that time. A government securities broker or dealer is not required under the proposed rule to provide notice to the Department, but instead notice would be sent to the SEC and to the broker's or dealer's designated examining authority.

The proposed rule would exclude the reporting of net withdrawals that, in the aggregate, are less than $500,000 in any 30 calendar day period or those that represent securities or commodities transactions between affiliates. The exclusion for securities and commodities transactions requires that the transactions be conducted in the ordinary course of business and settled no later than two business days after the date of the transaction. Discussions with SEC staff have indicated that forward settling transactions between affiliates would not be eligible for this exclusion.

Therefore, net losses on forward contracts or net payments on swap agreements, if due an affiliate, could trigger the notice requirement. The Department specifically requests comment as to whether this exclusion should be broadened and if so how.

The only material difference between the notification rules as promulgated by the SEC and as proposed by the Department is that the SEC's rules use excess net capital, whereas the Department's rule uses excess liquid capital. This variance conforms to the different measurement standards used under each rule.

The Department believes that knowledge of significant capital movements is an essential part of ensuring capital adequacy and financial responsibility. The SEC's experience with the Drexel Burnham Lambert Group, Inc.[19] and the National Association of Securities Dealer's experience with Drexel Burnham Lambert GSI making substantial amounts of inadequately secured loans to its holding company indicate the importance of prompt and accurate knowledge of the movement of capital.

The Department does not plan to amend the current restrictions on the withdrawal of capital to reflect the SEC's adoption of a new early warning threshold derived from securities haircuts. It has been the Department's belief, in establishing its capital standard, that a capital cushion related to a firm's securities position risk is a prudent approach to determining capital adequacy. The Treasury rule currently places a restriction on any capital withdrawals that would cause a government securities broker's or dealer's liquid capital to fall below a level of 150% of haircuts. This standard is analogous to the recently-adopted SEC requirement[20] and, therefore, no further action is required in order for the two rules to conform in this area.

The third element of the SEC's capital withdrawal rule is a provision giving the SEC authority to prohibit a withdrawal of capital by a broker or dealer, for up to 20 business days, if the withdrawal would exceed 30% of excess net capital and is deemed detrimental to the financial integrity of the broker or dealer or may unduly jeopardize the broker's or dealer's ability to repay its creditors.[21] The SEC intends that this provision be used in emergency situations and the rule provides for an expeditious review of the SEC's action. For the reasons that follow, the Department has determined that a similar provision should not be incorporated in the Treasury capital rule.

First, while the SEC has an existing process for holding hearings, the Department has no comparable structure and therefore the implementation of the post-order process would require the Department to develop additional administrative regulations and procedures.

In addition, the Department's decision not to enact a corresponding order provision is based on the fact that the SEC has existing temporary cease and desist authority. The SEC was granted this authority prusuant to the Securities Enforcement Remedies and Penny Stock Reform Act of 1990 (Pub. L. 101–429), Section 203 of which added Section 21C to the Securities Exchange Act of 1934.[22] Paragraph (c) of Section 21C provides the SEC with authority to issue a temporary cease and desist order in the event "that the alleged violation or threatened violation specified in the notice * * * is likely to result in significant dissipation or conversion of assets, significant harm to investors, or substantial harm to the public interest,* * *."[23] A temporary cease and desist order, while different from a capital withdrawal order, serves a similar purpose. Both are emergency remedies that can be expeditiously applied. Prior to issuing a temporary cease and desist order, the SEC must provide notice and opportunity for a hearing unless the SEC "* * * determines that notice and hearing prior to entry would be impracticable or contrary to the public interest."[24]

The more limited scope of the temporary cease and desist order is not problematic to the Department because the authority provides the SEC with the ability to issue such an order not only if a rule violation has occurred but also if one is threatened. Since the SEC is the appropriate regulatory agency for government securities brokers or dealers subject to § 402.2, an impending violation of a § 402.2 requirement would be cause for the issuance of a temporary cease and desist order. The SEC would still be able to anticipate sizeable capital withdrawals that might result in violations of § 402.2, since it would receive the notifications required by the proposed rule, as described earlier. The SEC would only be prevented from issuing a temporary cease and desist order in the circumstance where a government securities broker or dealer would remain in capital compliance and would not breach the rule's early warning levels as a result of the withdrawal. Assuming the adequacy of the current capital standards and withdrawal restrictions, it is difficult to foresee a circumstance in which issuance of a capital withdrawal order would be desirable when a government securities broker or dealer would continue to remain in capital compliance. For these reasons, the Department believes that, in lieu of developing a separate capital withdrawal order provision, it should rely on the SEC's existing cease and desist order authority.

Consistent with this approach, the Department also is excluding this provision of Rule 15c3–1 from the compliance requirements for those government securities brokers and dealers registered under Section 15C of the Securities Exchange Act of 1934 (15 U.S.C. 78o–5) that are subject to the SEC capital rule (i.e., interdealer brokers

[18] 17 CFR 405.2 requires certain government securities brokers and dealers to file monthly and quarterly financial reports.

[19] See 56 FR 9124, 9125 (March 5, 1991).

[20] 17 CFR § 240.15c3–1(e)(2)(iii).

[21] 17 CFR § 240.15c3–1(e)(3).

[22] 15 U.S.C. 78u–3.

[23] 15 U.S.C. 78u–3(c)(1).

[24] Id.

operating under § 402.1(e) and futures commission merchants).

In amending the withdrawal provisions, the Department has restructured certain related definitions of terms into a Miscellaneous Provisions paragraph (i)(3) and has added a description of what constitutes an advance or loan of liquid capital, which is one component of the restricted activities.

C. Conforming Change

Due to the revisions of the minimum capital requirements under both the SEC and Treasury capital rules, a conforming change is required in the recordkeeping provisions of Part 404. Specifically, paragraph 404.2(a)(4) contains references to the minimum dollar capital amounts required of government securities clearing brokers and dealers. The Department is proposing to revise these references in accordance with the proposed fully phased-in minimum capital level of $250,000 required of clearing firms.

III. Special Analyses

Based on the very limited impact of the proposed amendments, it is the Department's view that the proposed regulations are not a "significant regulatory action" for the purposes of Executive Order 12866.

In addition, pursuant to the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), it is hereby certified that the proposed regulations, if adopted, will not have a significant economic impact on a substantial number of small entities. As of June 30, 1993, only 39 government securities brokers and dealers were subject to the capital requirements of § 402.2. Of these, only 11 firms would be considered small entities. Accordingly, the relatively low dollar value of the proposed capital increase and the small number of firms affected indicates that there is not a significant impact. As a result, a regulatory flexibility analysis is not required.

The Paperwork Reduction Act (44 U.S.C. 3504(h)) requires that collections of information prescribed in proposed rules be submitted to the Office of Management and Budget for review and approval. In accordance with this requirement, the Department has submitted the collection of information contained in this notice of proposed rulemaking for review. Comments on the collection of information should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Department of the Treasury, Washington, D.C. 20503; and to the Government Securities Regulations Staff, Bureau of the Public Debt, at the address specified at the beginning of this document.

The collections of information in this proposed rule are contained in proposed § 402.2(i)(1). This paragraph would require a government securities broker or dealer, subject to the requirements of § 402.2, to provide written notification of certain specified withdrawals of capital. This collection of information is intended to allow the SEC and the designated examining authority of the firm to better monitor the government securities broker's or dealer's operations and financial condition. The rule applies primarily to larger government securities brokers and dealers since aggregate withdrawals of less than $500,000 are excluded from the requirement.

Estimated total annual reporting burden: 5 hours

Estimated average annual burden per respondent: 1 hour

Estimated number of respondents: 5

Estimated annual frequency of response: Twice

List of Subjects

17 CFR Part 402

Brokers, Government securities.

17 CFR Part 404

Banks, banking, Brokers, Government securities, Reporting and recordkeeping requirements.

For the reasons set out in the Preamble, it is proposed to amend 17 CFR Parts 402 and 404 as follows:

PART 402—FINANCIAL RESPONSIBILITY

1. The authority citation for Part 402 is amended to read as follows:

Authority: Sec. 101, Pub. L. 99–571, 100 Stat. 3209; Sec. 4(b), Pub. L. 101–432, 104 Stat. 963; Sec. 102, Sec. 106, Pub. L. 103–202, 107 Stat. 2344 (15 U.S.C. 78o–5(b)(1)(A), (b)(4)).

2. Section 402.1 is amended by revising paragraphs (d) and (e)(1) to read as follows:

§ 402.1 Application of part to registered brokers and dealers and financial institutions; special rules for futures commission merchants and government securities interdealer brokers; effective date.

* * * * *

(d) *Futures commission merchants.* A futures commission merchant subject to § 1.17 of this title that is a government securities broker or dealer but is not a registered broker or dealer shall not be subject to the limitations of § 402.2 but rather to the capital requirement of § 1.17 or § 240.15c3–1, except paragraph (e)(3) thereof, of this title, whichever is greater.

(e) *Government securities interdealer broker.* (1) A government securities interdealer broker, as defined in paragraph (e)(2) of this section, may, with the prior written consent of the Secretary, elect not to be subject to the limitations of § 402.2 but rather to be subject to the requirements of § 240.15c3–1 of this title (SEC Rule 15c3–1), except paragraphs (c)(2)(ix) and (e)(3) thereof, and paragraphs (e) (3) through (8) of this section by filing such election in writing with its designated examining authority. A government securities interdealer broker may not revoke such election without the written consent of its designated examining authority.

* * * * *

3. Section 402.2 is amended by revising paragraphs (b), (c) and (i) to read as follows:

§ 402.2 Capital requirements for registered government securities brokers or dealers.

* * * * *

(b)(1) *Minimum liquid capital for brokers or dealers that carry customer accounts.* Notwithstanding the provisions of paragraph (a) of this section, a government securities broker or dealer that carries customer or broker or dealer accounts and receives or holds funds or securities for those persons within the meaning of § 240.15c3–1(a)(2)(i) of this title, shall have and maintain liquid capital in an amount not less than $250,000 (see paragraph (a) of Appendix E for temporary minimum requirements), after deducting total haircuts as defined in paragraph (g) of this section.

(2) *Minimum liquid capital for brokers or dealers that carry customer accounts, but do not generally hold customer funds or securities.* Notwithstanding the provisions of paragraphs (a) and (b)(1) of this section, a government securities broker or dealer that carries customer or broker or dealer accounts and is exempt from the provisions of § 240.15c3–3 of this title, as made applicable to government securities brokers and dealers by § 403.4 of this chapter, pursuant to paragraph (k)(2)(i) thereof (17 CFR 240.15c3–3(k)(2)(i)), shall have and maintain liquid capital in an amount not less than $100,000 (see paragraph (b) of Appendix E for temporary minimum requirements), after deducting total haircuts as defined in paragraph (g) of this section.

(c)(1) *Minimum liquid capital for introducing brokers that receive*

securities. Notwithstanding the provisions of paragraphs (a) and (b) of this section, a government securities broker or dealer that introduces on a fully disclosed basis transactions and accounts of customers to another registered or noticed government securities broker or dealer but does not receive, directly or indirectly, funds from or for, or owe funds to, customers, and does not carry the accounts of, or for, customers shall have and maintain liquid capital in an amount not less than $50,000 (see paragraph (c) of Appendix E for temporary minimum requirements), after deducting total haircuts as defined in paragraph (g) of this section. A government securities broker or dealer operating pursuant to this paragraph (c)(1) may receive, but shall not hold customer or other broker or dealer securities.

(2) *Minimum liquid capital for introducing brokers that do not receive or handle customer funds or securities.* Notwithstanding the provisions of paragraphs (a), (b) and (c)(1) of this section, a government securities broker or dealer that does not receive, directly or indirectly, or hold funds or securities for, or owe funds or securities to, customers, and does not carry accounts of, or for, customers and that effects ten or fewer transactions in securities in any one calendar year for its own investment account shall have and maintain liquid capital in an amount not less than $25,000 (see paragraph (d) of Appendix E for temporary minimum requirements), after deducting total haircuts as defined in paragraph (g) of this section.

* * * * *

(i) *Provisions relating to the withdrawal of equity capital.*

(1) *Notice Provisions.* No equity capital of the government securities broker or dealer or a subsidiary or affiliate consolidated pursuant to Appendix C to this section, § 402.2c, may be withdrawn by action of a stockholder or partner, or by redemption or repurchase of shares of stock by any of the consolidated entities or through the payment of dividends or any similar distribution, nor may any unsecured advance or loan be made to a stockholder, partner, sole proprietor, employee or affiliate without providing written notice, given in accordance with paragraph (i)(1)(iv) of this section, when specified in paragraphs (i)(1) (i) and (ii) of this section:

(i) Two business days prior to any withdrawals, advances or loans if those withdrawals, advances or loans on a net basis exceed in the aggregate in any 30 calendar day period, 30 percent of the government securities broker's or dealer's excess liquid capital. A government securities broker or dealer, in an emergency situation, may make withdrawals, advances or loans that on a net basis exceed 30 percent of the government securities broker's or dealer's excess liquid capital in any 30 calendar day period without giving the advance notice required by this paragraph, with the prior approval of its designated examining authority. When a government securities broker or dealer makes a withdrawal with the consent of its designated examining authority, it shall in any event comply with paragraph (i)(1)(ii) of this section; and

(ii) Two business days after any withdrawals, advances or loans if those withdrawals, advances or loans on a net basis exceed in the aggregate in any 30 calendar day period, 20 percent of the government securities broker's or dealer's excess liquid capital.

(iii) This paragraph (i)(1) of this section does not apply to:

(A) Securities or commodities transactions in the ordinary course of business between a government securities broker or dealer and an affiliate where the government securities broker or dealer makes payment to or on behalf of such affiliate for such transaction and then receives payment from such affiliate for the securities or commodities transaction within two business days from the date of the transaction; or

(B) Withdrawals, advances or loans which in the aggregate in any such 30 calendar day period, on a net basis, equal $500,000 or less.

(iv) Each required notice shall be effective when received by the Commission in Washington, D.C., the regional or district office of the Commission for the area in which the government securities broker or dealer has its principal place of business, and the government securities broker's or dealer's designated examining authority.

(2) *Withdrawal Limitations.* No equity capital of the government securities broker or dealer or a subsidiary or affiliate consolidated pursuant to Appendix C to this section, § 402.2c, may be withdrawn by action of a stockholder or a partner, or by redemption or repurchase of shares of stock by any of the consolidated entities or through the payment of dividends or any similar distribution, nor may any unsecured advance or loan be made to a stockholder, partner, sole proprietor, employee or affiliate if, after giving effect thereto and to any other such withdrawals, advances or loans and any Payments of Payment Obligations (as defined in § 240.15c3–1d of this title, Appendix D to SEC Rule 15c3–1, modified as provided in Appendix D to this section, § 402.2d) under satisfactory subordination agreements which are scheduled to occur within 180 calendar days following such withdrawal, advance or loan, either:

(i) The ratio of liquid capital to total haircuts, determined as provided in § 402.2, would be less than 150 percent; or

(ii) Liquid capital minus total haircuts would be less than 120 percent of the minimum capital required by § 402.2(b) or § 402.2(c) as applicable; or

(iii) In the case of any government securities broker or dealer included in such consolidation, the total outstanding principal amounts of satisfactory subordination agreements of the government securities broker or dealer (other than such agreements which qualify as equity under § 240.15c3–1(d) of this title) would exceed 70% of the debt-equity total as defined in such § 240.15c3–1(d).

(3) *Miscellaneous Provisions.* (i) Excess liquid capital is that amount in excess of the amount required by the greater of § 402.2(a) or, §§ 402.2 (b) or (c), as applicable. For the purposes of paragraphs (i)(1) and (i)(2) of this section, a government securities broker or dealer may use the amount of excess liquid capital, liquid capital and total haircuts reported in its most recently required filed Form G–405 for the purposes of calculating the effect of a projected withdrawal, advance or loan relative to excess liquid capital or total haircuts. The government securities broker or dealer must assure itself that the excess liquid capital, liquid capital or the total haircuts reported on the most recently required filed Form G–405 have not materially changed since the time such report was filed.

(ii) The term equity capital includes capital contributions by partners, par or stated value of capital stock, paid-in capital in excess of par, retained earnings or other capital accounts. The term equity capital does not include securities in the securities accounts of partners and balances in limited partners' capital accounts in excess of their stated capital contributions.

(iii) Paragraphs (i)(1) and (i)(2) of this section shall not preclude a government securities broker or dealer from making required tax payments or preclude the payment to partners of reasonable compensation, and such payments shall not be included in the calculation of withdrawals, advances or loans for purposes of paragraphs (i)(1) and (i)(2) of this section.

(iv) For the purposes of this subsection (i), any transaction between

a government securities broker or dealer and a stockholder, partner, sole proprietor, employee or affiliate that results in a diminution of the government securities broker's or dealer's liquid capital shall be deemed to be an advance or loan of liquid capital.

* * * * *

4. By adding §402.2e (Appendix E) as follows:

§ 402.2e Appendix E—Temporary Minimum Requirements.

(a) A government securities broker or dealer that falls within the provisions of paragraph (b)(1) of § 402.2 shall maintain not less than the greater of: (i) The amount of liquid capital required under paragraph 402.2(a); or (ii) liquid capital, after deducting total haircuts, of:

(1) $25,000 through June 30, 1994;

(2) $100,000 from July 1, 1994 through December 31, 1994;

(3) $175,000 from January 1, 1995 through June 30, 1995; and

(4) $250,000 from July 1, 1995 and thereafter.

(b) A government securities broker or dealer that falls within the provisions of paragraph (b)(2) of § 402.2 shall maintain not less than the greater of: (i) The amount of liquid capital required under paragraph 402.2(a); or (ii) liquid capital, after deducting total haircuts, of:

(1) $25,000 through June 30, 1994;

(2) $50,000 from July 1, 1994 through December 31, 1994;

(3) $75,000 from January 1, 1995 through June 30, 1995; and

(4) $100,000 from July 1, 1995 and thereafter.

(c) A government securities broker or dealer that falls within the provisions of paragraph (c)(1) of § 402.2 shall maintain not less than the greater of: (i) The amount of liquid capital required under paragraph 402.2(a); or (ii) liquid capital, after deducting total haircuts, of:

(1) $5,000 through June 30, 1994;

(2) $20,000 from July 1, 1994 through December 31, 1994;

(3) $35,000 from January 1, 1995 through June 30, 1995; and

(4) $50,000 from July 1, 1995 and thereafter.

(d) A government securities broker or dealer that falls within the provisions of paragraph (c)(2) of § 402.2 shall maintain not less than the greater of: (i) The amount of liquid capital required under paragraph 402.2(a); or (ii) liquid capital, after deducting total haircuts, of:

(1) $5,000 through June 30, 1994;

(2) $11,666 from July 1, 1994 through December 31, 1994;

(3) $18,333 from January 1, 1995 through June 30, 1995; and

(4) $25,000 from July 1, 1995 and thereafter.

PART 404—RECORDKEEPING AND PRESERVATION OF RECORDS

5. The authority citation for Part 404 is revised to read as follows:

Authority: Sec. 101, Pub. L. 99–571, 100 Stat. 3209; Sec. 4(b), Pub. L. 101–432, 104 Stat. 963; Sec. 102, Sec. 106, Pub. L. 103–202, 107 Stat. 2344 (15 U.S.C. 78o–5 (b)(1)(B), (b)(1)(C), (b)(4)).

6. Section 404.2 is amended by revising paragraph (a)(4) to read as follows:

§ 404.2 Records to be made and kept current by registered government securities brokers and dealers; records of non-resident registered government securities brokers and dealers.

(a) * * *

(4) Paragraph 240.17a–3(b)(1) is modified to read as follows:

"(1) This section shall not be deemed to require a government securities broker or dealer registered pursuant to Section 15C(a)(1)(A) of the Act (15 U.S.C. 78o–5(a)(1)(A)) to make or keep such records of transactions cleared for such government securities broker or dealer as are customarily made and kept by a clearing broker or dealer pursuant to the requirements of §§ 240.17a–3 and 240.17a–4: *Provided*, that the clearing broker or dealer has and maintains net capital of not less than $250,000 (or, in the case of a clearing broker or dealer that is a registered government securities broker or dealer, liquid capital less total haircuts, determined as provided in § 402.2 of this title, of not less than $250,000) and is otherwise in compliance with § 240.15c3–1, § 402.2 of this title, or the capital rules of the exchange of which such clearing broker or dealer is a member if the members of such exchange are exempt from § 240.15c3–1 by paragraph (b)(2) thereof.".

* * * * *

Dated: May 27, 1994.

Frank N. Newman,

Under Secretary for Domestic Finance.

[FR Doc. 94–15099 Filed 6–21–94; 8:45 am]

BILLING CODE 4810–39–W

Internal Revenue Service

26 CFR Part 1

[CO–8–91]

RIN 1545–AQ42

Distributions of Stock and Stock Rights

AGENCY: Internal Revenue Service (IRS), Treasury.

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

SUMMARY: This document proposes amendments to regulations relating to constructive distributions on preferred stock. The proposed regulations concern the treatment of stock redeemable at a premium by the issuer. Under the proposed regulations, a call premium is generally treated as giving rise to a constructive distribution only if redemption pursuant to the call provision is more likely than not to occur. The proposed amendments to the regulations also reflect 1990 amendments to section 305(c) of the Internal Revenue Code.

DATES: Written comments must be received by October 24, 1994. Outlines of oral comments to be presented at the public hearing scheduled for November 14, 1994, must be received by October 24, 1994.

ADDRESSES: Send submissions to: CC:DOM:CORP:T:R (CO–8–91), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:T:R (CO–8–91), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. The hearing will be held in the IRS auditorium, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Kirsten L. Simpson, (202) 622–7790 (not a toll- free number); concerning submissions and the hearing, Carol Savage, (202) 622–8452 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, PC:FP, Washington, DC 20224.

The collection of information is in § 1.305–5(b)(5). This information is required to notify the IRS that the issuer and holder of stock subject to section 305 have made inconsistent determinations as to whether there is a constructive distribution under § 1.305–5(b). The likely respondents are individuals or households and business or other for-profit institutions.

The estimated total annual reporting burden: 333 hours. The estimated annual burden per respondent varies from 5 minutes to 15 minutes, depending on individual circumstances, with an estimated average of 10 minutes. The estimated number of respondents: 2000. Estimated annual frequency of responses: one.

Background

This document proposes amendments to the Income Tax Regulations (26 CFR part 1) under section 305 of the Internal Revenue Code of 1986. Section 305(a) provides that gross income generally does not include stock dividends. Section 305(b)(4) provides an exception for certain distributions with respect to preferred stock.

Section 305(c) provides that, under regulations, a difference between redemption price and issue price, or any transaction having a similar effect, shall be treated as a distribution. This provision addresses methods "devised to give preferred stockholders the equivalent of dividends on preferred stock which are not taxable as such under present law." S. Rep. No. 552, 91st Cong., 1st Sess. 151 (1969). For example, "a corporation may issue preferred stock for $100 per share which pays no dividends, but which may be redeemed in 20 years for $200. The effect is the same as if the corporation distributed preferred stock equal to 5 percent of the original stock each year during the 20-year period in lieu of cash dividends." Id.

Current § 1.305–5(b)(1) provides that if a corporation issues preferred stock which may be redeemed after a specified period of time at a price higher than the issue price, the difference is considered a distribution of additional stock on preferred stock which is constructively received by the shareholder over the period of time during which the preferred stock cannot be called for redemption.

Current § 1.305–5(b)(2) provides that this rule does not apply to the extent that the higher redemption price represents a reasonable redemption premium. A safe harbor is provided under which a redemption premium is considered reasonable if it is not in excess of 10 percent of the issue price on stock not redeemable for five years from the date of issuance. A redemption premium that does not meet this safe harbor is considered reasonable if it is in the nature of a penalty for premature redemption and is not larger than the premiums being paid for this purpose by other issuers of similar stock at the time of issuance.

Current § 1.305–5(b)(1) can apply to preferred stock that is redeemable solely at the option of the issuer. The holder generally must treat a call premium as a constructive distribution under § 1.305–5(b) to the extent that the premium is unreasonable.

Section 305(c) was amended by the Revenue Reconciliation Act of 1990 (the 1990 Act), Pub. L. 101–508, which changed the treatment of stock redeemable at a premium. The amendments provide that: (a) If the issuer is required to redeem stock at a specified time, or the holder has the option to require the issuer to redeem stock, at a premium, the redemption premium will result in a constructive distribution if it exceeds a de minimis amount computed under the principles of section 1273(a)(3); (b) a redemption premium will not fail to be treated as a distribution (or series of distributions) merely because the stock is callable; and (c) in any case where a redemption premium is treated as a distribution (or series of distributions), the premium will be taken into account under principles similar to those of section 1272(a).

The amendments to section 305(c) did not alter the requirement that constructive distributions resulting from a redemption premium be treated as distributions to which section 301 applies only if they have the effect described in section 305(b), including section 305(b)(4). Rather, the amendments were adopted because Congress believed that "the economic accrual rules applicable to debt instruments issued with [original issue discount (OID)] also should generally apply to certain preferred stock issued with a redemption premium if the stock will be redeemed, or if it can reasonably be assumed that the stock will be redeemed, on a fixed date." H.R. Rep. No. 881, 101st Cong., 2d Sess. 347 (1990). The legislative history to the 1990 amendments indicates that Congress did not intend to limit the authority of the Treasury and the IRS to determine the proper treatment of redemption premiums on callable preferred stock. Id. at 348–49.

Explanation of Proposed Regulations

1990 Act Amendments. Proposed § 1.305–5 (b)(1) and (b)(2) restate the basic rules concerning the treatment of mandatorily redeemable and puttable stock in conformity with the 1990 Act. The IRS and Treasury anticipate that other issues raised by the 1990 Act will be addressed in subsequent guidance.

Treatment of issuer call rights. The primary focus of the proposed regulations is on the treatment under section 305(c) of stock callable at a premium at the option of the issuer.

If stock is subject to an issuer call, the holder cannot control whether the stock will be redeemed at the premium amount. Moreover, if the payment of a call premium merely reflects increases in the value of the holder's stock resulting from market fluctuations after the date of issuance, the call premium is not the equivalent of a distribution and its payment is more appropriately taxable only upon realization.

If, on the date of issuance, however, it is more likely than not that an issuer will exercise its call option based on the economic terms of the stock, the holder's anticipated increase in the earnings and assets of the issuer through the call premium is equivalent to a periodic return on the stock that should be taxed over time as a distribution. Such a call has the effect of a mandatory redemption provision, and should produce comparable tax consequences.

Accordingly, proposed § 1.305–5(b)(3) requires constructive distribution treatment with respect to an issuer call only if, based on all of the facts and circumstances as of the issue date, redemption pursuant to the call right is more likely than not to occur. Even if redemption may be likely, however, constructive distribution treatment does not result if the redemption premium is solely in the nature of a penalty for premature redemption. A penalty for premature redemption is a premium paid as a result of changes in economic or market conditions over which neither the issuer nor the holder has control. Examples include changes in prevailing dividend rates or in the value of the common stock into which the stock is convertible. Calls in such cases reflect increases in the value of the holder's stock resulting from events that occur after the date of issuance, and the premiums paid thereon therefore represent a penalty for premature redemption rather than the equivalent of a periodic return on the stock.

Under a safe harbor, constructive distribution treatment does not result from an issuer call if the issuer and the holder are unrelated, there are no arrangements that effectively require the issuer to redeem the stock, and exercise of the option to redeem would not reduce the yield of the stock.

The standard in the proposed safe harbor is similar to the standard for taking into account call options in determining the yield of debt instruments potentially subject to the accrual of OID. See § 1.1272–1(c)(5). However, the determination of whether a redemption premium should be treated as a constructive distribution is

not based solely on the effect of an issuer call on yield.

Proposed § 1.305–5(b)(1) does not provide any exception from constructive distribution treatment for stock that is immediately callable by the issuer. Under proposed § 1.305–5(b)(3), a constructive distribution by reason of the issuer call would only occur in cases where a call is more likely than not to occur, based on the facts and circumstances as of the issue date. The holder is treated as constructively receiving the premium as a distribution over the period from the issue date to the date on or by which redemption is most likely to occur.

Under the proposed regulations, the tax consequences of callable preferred stock are intended to reflect the economic expectations of the parties and to afford issuers flexibility to issue stock on terms that reflect their business needs. The proposed regulations are also intended to foreclose corporations from attempting to use issuer calls to create constructive distributions solely for tax planning reasons. However, no inference is to be drawn from the proposed regulations as to the appropriate treatment of such call rights under current law. Such provisions are subject to scrutiny under general tax principles (e.g., substance over form).

De minimis exception. Proposed § 1.305–5(b)(1) would replace the "reasonable redemption premium" exception under current § 1.305–5(b)(2) with the statutory de minimis rule under section 305(c)(1) for mandatorily redeemable and puttable stock, and extend the statutory rule to issuer calls. Extending this rule to issuer calls differs from the treatment discussed in the legislative history of the 1990 Act, but is appropriate because the proposed regulations limit constructive distribution treatment with respect to issuer calls to circumstances in which the stock is economically similar to mandatorily redeemable stock. In those cases, the call premium cannot fairly be said to be "in the nature of a penalty for premature redemption." Since those cases are outside of the intended scope of the exception in the current regulations, there is no reason to retain current § 1.305–5(b)(2) for callable stock.

Conforming changes. The proposed regulations would conform the examples in §§ 1.305–3 and 1.305–5 to the proposed changes described above. In addition, the proposed regulations would conform language in § 1.305–7(a) to the proposed changes described above.

Effective dates. Proposed § 1.305–5(b)(6) contains the effective date rules. In general, the regulations are proposed to apply to stock issued on or after the date final regulations are filed with the **Federal Register**.

The committee reports to the 1990 Act indicate that Congress did not intend to limit the authority of the Secretary to promulgate regulations relating to the accrual of redemption premiums on callable preferred stock. However, the reports indicate that Congress anticipated any such regulations would be prospective. H.R. Conf. Rep. No. 964, 101st Cong., 2d Sess. 1095 (1990).

Although the proposed regulations do not apply to stock issued before the date final regulations are filed with the **Federal Register**, the rules of sections 305(c) (1), (2), and (3) apply to stock described therein issued on or after October 10, 1990, except as provided in section 11322(b)(2) of the 1990 Act. The committee reports to the 1990 Act express Congress' intention that the economic accrual and OID de minimis rules generally apply as of the effective date of the 1990 Act without regard to when regulations are amended to reflect such rules. H.R. Conf. Rep. No. 964, 101st Cong., 2d Sess. 1095 (1990).

The committee reports note that, in general, the OID de minimis rule will not apply to preferred stock that is callable solely at the option of the issuer (unless such stock is subject to a mandatory redemption or is puttable). However, the economic accrual rule will apply as of the effective date of the 1990 Act to the entire call premium on stock that is callable solely at the option of the issuer (but not mandatorily redeemable or puttable) if such premium is considered to be unreasonable under the current regulations. In such cases, except as provided in regulations, the entire call premium will be accrued over the period of time during which the preferred stock cannot be called for redemption. It should be noted that the committee reports also authorize the Secretary to treat stock that, in form, is merely callable as being subject to a mandatory redemption or a put if the existence of other arrangements effectively requires the issuer to redeem the stock. H.R. Conf. Rep. No. 964, 101st Cong., 2d Sess. 1095 (1990).

Comments invited. The IRS and Treasury invite public comment on the proposed regulations and on any issues involving the implementation of the 1990 Act amendments to section 305(c), including the extent to which OID principles should be adopted in the section 305(c) context and the appropriate treatment of unpaid cumulative dividends.

Special Analyses

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

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for November 14, 1994, at 10 a.m., in the auditorium. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue Building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons that wish to present oral comments at the hearing must submit written comments by October 24, 1994, and submit an outline of the topics (signed original and eight (8) copies) to be discussed and the time to be devoted to each topic by October 24, 1994.

A period of 10 minutes will be allotted to each person for making comments.

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

Drafting Information

The principal author of these proposed regulations is Kirsten L. Simpson of the Office of Assistant Chief Counsel (Corporate), IRS. However, other personnel of the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

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

PART 1—INCOME TAXES

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

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

Section 1.305–3 also issued under 26 U.S.C. 305.

Section 1.305–5 also issued under 26 U.S.C. 305.

Section 1.305–7 also issued under 26 U.S.C. 305. * * *

Par. 2. Section 1.305–3 is amended as follows:

1. In paragraph (e), remove the parentheses from the numbers in the headings for *Examples (1)* through *(15)*.

2. Paragraph (e), *Example 15* is revised to read as follows:

§ 1.305–3 Disproportionate distributions.

* * * * *

(e) * * *

Example 15. (i) *Facts.* Corporation V is organized with two classes of stock, class A common and class B convertible preferred. The class B stock is issued for $100 per share and is convertible into class A at a fixed ratio that is not subject to full adjustment in the event stock dividends or rights are distributed to the class A shareholders. The class B stock pays no dividends but it is mandatorily redeemable in 10 years for $200. Under sections 305(c) and 305(b)(4), the entire redemption premium (i.e., the excess of the redemption price over the issue price) is deemed to be a distribution of preferred stock on preferred stock which is taxable as a distribution of property under section 301. This amount is considered to be distributed over the 10-year period under principles similar to the principles of section 1272(a). During the year, the corporation declares a dividend on the class A stock payable in additional shares of class A stock.

(ii) *Analysis.* The distribution on the class A stock is a distribution to which sections 305(b)(2) and 301 apply since it increases the proportionate interests of the class A shareholders in the assets and earnings and profits of the corporation and the class B shareholders have received property (i.e., the constructive distribution described above). If, however, the conversion ratio of the class B stock were subject to full adjustment to reflect the distribution of stock to class A shareholders, the distribution of stock dividends on the class A stock would not increase the proportionate interest of the class A shareholders in the assets and earnings and profits of the corporation and such distribution would not be a distribution to which section 301 applies.

(iii) *Effective date.* This *Example 15* applies to stock issued on or after the date final regulations are filed with the **Federal Register**. For previously issued stock, see 26 CFR part 1 edition revised April 1, 1994, § 1.305–3(e) *Example (15)*.

Par. 3. Section 1.305–5 is amended as follows:

1. Paragraph (b) is revised.

2. In paragraph (d), remove the parentheses from the numbers in the headings for *Examples (1)* through *(9)*.

3. Paragraph (d), *Examples 4, 5,* and *7* are revised.

4. The revisions read as follows:

§ 1.305–5 Distributions on preferred stock.

* * * * *

(b) *Redemption premium*—(1) *In general.* If a corporation issues preferred stock that may be redeemed under the circumstances described in this paragraph (b) at a price higher than the issue price, the difference (the redemption premium) is treated under section 305(c) as a constructive distribution (or series of constructive distributions) of additional stock on preferred stock that is taken into account under principles similar to the principles of section 1272(a). However, constructive distribution treatment does not result under this paragraph if the redemption premium does not exceed a de minimis amount, as determined under the principles of section 1273(a)(3).

(2) *Mandatory redemption or holder put.* Paragraph (b)(1) of this section applies to stock if the issuer is required to redeem the stock at a specified time or the holder has the option to require the issuer to redeem the stock.

(3) *Issuer call*—(i) *In general.* Paragraph (b)(1) of this section applies to stock by reason of the issuer's right to redeem the stock (even if the right is immediately exercisable), but only if, based on all of the facts and circumstances as of the issue date, redemption pursuant to that right is more likely than not to occur. However, even if redemption is more likely than not to occur, paragraph (b)(1) of this section does not apply if the redemption premium is solely in the nature of a penalty for premature redemption. A penalty for premature redemption is a premium paid as a result of changes in economic or market conditions over which neither the issuer nor the holder has control.

(ii) *Safe harbor.* For purposes of this paragraph (b)(3), redemption pursuant to an issuer's right is not treated as more likely than not to occur if—

(A) The issuer and the holder are not related within the meaning of section 267(b) or 707(b);

(B) There are no arrangements that effectively require the issuer to redeem the stock; and

(C) Exercise of the right to redeem would not reduce the yield of the stock, as determined under principles similar to the principles of section 1272(a).

(iii) *Effect of not satisfying safe harbor.* The fact that a redemption right is not described in paragraph (b)(3)(ii) of this section does not affect the determination of whether the right to redeem is more likely than not to occur.

(4) *Coordination of multiple redemption provisions.* If the provisions of stock permit redemption at more than one time, the time and price at which redemption is most likely to occur must be determined based on all of the facts and circumstances as of the issue date. Any constructive distribution under paragraph (b)(1) of this section will be construed to result only with respect to the time and price identified in the preceding sentence. However, if redemption does not occur at that identified time, the amount of any additional premium payable on any later redemption date, to the extent not previously treated as distributed, is treated as a constructive distribution over the period from the missed call or put date to that later date, to the extent required under the principles of this paragraph (b).

(5) *Consistency.* The issuer's determination as to whether there is a constructive distribution under this paragraph (b) is binding on all holders of the stock, other than a holder that explicitly discloses that its determination as to whether there is a constructive distribution under this paragraph (b) differs from that of the issuer. Unless otherwise prescribed by the Commissioner, the disclosure must be made on a statement attached to the holder's timely filed Federal income tax return for the taxable year that includes the date the holder acquired the stock. The issuer must provide the relevant information to the holder in a reasonable manner. For example, the issuer may provide the name or title and either the address or telephone number of a representative of the issuer who will make available to holders upon request the information required for holders to comply with this provision of this paragraph (b).

(6) *Effective date.* This paragraph (b) (and *Examples 4, 5,* and *7* of paragraph (d) of this section) apply to stock issued on or after the date final regulations are filed with the **Federal Register**. For rules applicable to previously issued stock, see 26 CFR part 1 edition revised April 1, 1994, § 1.305–5(b) and (d) *Examples (4), (5),* and *(7)*. Although this paragraph (b) and the revised examples do not apply to stock issued before the date final regulations are filed with the

Federal Register, the rules of sections 305(c)(1), (2), and (3) apply to stock described therein issued on or after October 10, 1990, except as provided in section 11322(b)(2) of the Revenue Reconciliation Act of 1990 (Pub. L. 101–508).

* * * * *

(d) * * *

Example 4—(i) *Facts.* Corporation X is a domestic corporation with only common stock outstanding. In connection with its acquisition of Corporation T, X issues 100 shares of its 4% preferred stock to the shareholders of T, who are unrelated to X. The issue price of the preferred stock is $40 per share. Each share of preferred stock is convertible at the shareholder's election into three shares of X common stock. At the time the preferred stock is issued, the X common stock has a value of $10 per share. The preferred stock does not provide for its mandatory redemption or for redemption at the option of the holder. It is callable at the option of X at any time beginning three years from the date of issuance for $100 per share. There are no other arrangements that would affect X's decision to call the preferred stock.

(ii) *Analysis.* The preferred stock is described in the safe harbor rule of paragraph (b)(3)(ii) of this section because X and the former shareholders of T are unrelated, there are no arrangements that effectively require X to redeem the stock, and calling the stock for $100 per share would not reduce the yield of the preferred stock. Therefore, the $60 per share call premium is not treated as a constructive distribution to the shareholders of the preferred stock under paragraph (b) of this section.

Example 5—(i) *Facts*—(A) Corporation Y is a domestic corporation with only common stock outstanding. On January 1, 1995, Y issues 100 shares of its 10% preferred stock to an unrelated holder. The issue price of the preferred stock is $100 per share. The preferred stock is—

(*1*) Callable at the option of Y on or before January 1, 2000, at a price of $105 per share plus any accrued but unpaid dividends; and

(*2*) Mandatorily redeemable on January 1, 2005, at a price of $100 per share plus any accrued but unpaid dividends.

(B) The preferred stock provides that if Y fails to exercise its option to call the preferred stock on or before January 1, 2000, the holder will be entitled to appoint a majority of Y's directors. It is reasonably anticipated that Y will have available funds sufficient to exercise the right to redeem.

(ii) *Analysis.* Under paragraph (b)(3)(i) of this section, paragraph (b)(1) of this section applies because, by virtue of the change of control provision and the absence of any contrary facts, it is more likely than not that Y will exercise its option to call the preferred stock on or before January 1, 2000. The safe harbor rule of paragraph (b)(3)(ii) of this section does not apply because the provision that failure to call will cause the holder to gain control of the corporation is an arrangement that effectively requires Y to redeem the preferred stock. Under paragraph (b)(4) of this section, the constructive distribution occurs over the period ending on January 1, 2000. Redemption is most likely to occur on that date, because that is the date on which the corporation minimizes the rate of return to the holder but yet prevents the holder from gaining control. The de minimis exception of paragraph (b)(1) of this section does not apply because the $5 per share difference between the redemption price and the issue price exceeds the amount determined under the principles of section 1273(a)(3) ($5 \times .0025 \times \$105 = \$1.31$). Accordingly, $5 per share, the difference between the redemption price and the issue price, is treated as a constructive distribution received by the holder on an economic accrual basis over the five year period ending on January 1, 2000, under principles similar to the principles of section 1272(a).

* * * * *

Example 7—(i) *Facts*—(A) Corporation Z is a domestic corporation with only common stock outstanding. On January 1, 1995, Z issues 100 shares of its 10% preferred stock to C, an unrelated individual. The issue price of the preferred stock is $100 per share. The preferred stock is—

(*1*) Not callable for a period of 5 years from the issue date;

(*2*) Callable at the option of Z on January 1, 2000, at a price of $110 per share plus any accrued but unpaid dividends;

(*3*) Callable at the option of Z on July 1, 2001, at a price of $120 per share plus any accrued but unpaid dividends; and

(*4*) Mandatorily redeemable on January 1, 2003, at a price of $150 per share plus any accrued but unpaid dividends.

(B) There are no other arrangements between Z and C concerning redemption of the stock.

(ii) *Analysis.* Under paragraphs (b)(3)(i) and (b)(4) of this section, paragraph (b)(1) of this section applies because, absent any other facts indicating a contrary result, the fact that redemption on January 1, 2000, would reduce the yield of the stock and produce the lowest yield indicates that exercise of the option to call on that date is more likely than not to occur. The safe harbor rule of paragraph (b)(3)(ii) of this section does not apply to the option to call on January 1, 2000, because the call would reduce the yield of the stock. The de minimis exception of paragraph (b)(1) of this section does not apply because the $10 per share difference between the redemption price payable in 2000 and the issue price exceeds the amount determined under the principles of section 1273(a)(3) ($5 \times .0025 \times \$110 = \$1.38$). Accordingly, $10 per share, the difference between the redemption price and the issue price, is treated as a constructive distribution received by the holder on an economic accrual basis over the five year period ending January 1, 2000, under principles similar to the principles of section 1272(a).

(iii) *Coordination rules*—(A) If Z does not exercise its option to call the preferred stock on January 1, 2000, paragraph (b)(4) of this section provides that the principles of paragraph (b) of this section must be applied to determine if any remaining constructive distribution occurs. Under paragraphs (b)(3)(i) and (b)(4) of this section, paragraph (b)(1) of this section applies because, absent any other facts indicating a contrary result, the fact that redemption on July 1, 2001, would produce the lowest yield indicates that exercise of the option to call on that date is more likely than not to occur. The safe harbor rule of paragraph (b)(3)(ii) of this section does not apply to the option to call on July 1, 2001, because, as of the first call date, a call by Z on July 1, 2001, for $120 would reduce the yield of the stock. The de minimis exception of paragraph (b)(1) of this section does not apply because the $10 per share difference between the redemption price and the issue price (revised as of the missed call date) exceeds the amount determined under the principles of section 1273(a)(3) ($1 \times .0025 \times \$120 = \$.30$). Accordingly, the $10 per share of additional redemption premium that is payable on July 1, 2001, is treated as a constructive distribution received by the holder on an economic accrual basis over the period between January 1, 2000, and July 1, 2001, under principles similar to the principles of section 1272(a).

(B) If Z does not exercise its second option to call the preferred stock on July 1, 2001, then the $30 additional redemption premium that is payable on January 1, 2003, is treated as a constructive distribution under paragraphs (b)(2) and (b)(1) of this section. The de minimis exception of paragraph (b)(1) of this section does not apply because the $30 per share difference between the redemption price and the issue price (revised as of the second missed call date) exceeds the amount determined under the principles of section 1273(a)(3) ($1 \times .0025 \times \$150 = \$.38$). The holder is treated as receiving the constructive distribution on an economic accrual basis over the period between July 1, 2001, and January 1, 2003, under principles similar to the principles of section 1272(a).

Par. 4. Section 1.305–7 is amended by revising the fourth sentence in the concluding text of paragraph (a) to read as follows:

§ 1.305–7 Certain transactions treated as distributions.

(a) * * *

* * * For example, where a redemption premium exists with respect to a class of preferred stock under the circumstances described in § 1.305–5(b) and the other requirements of this section are also met, the distribution will be deemed made with respect to such preferred stock, in stock of the same class. * * *

* * * * *

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 94–14971 Filed 6–21–94; 8:45 am]

BILLING CODE 4830–01–U

POSTAL SERVICE

39 CFR Part 111

Revisions to Standards for Annual Fees and Use of Permit Imprints

AGENCY: Postal Service.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Postal Service published in the Federal Register (59 FR 23038–23041) on May 4, 1994, a proposal to amend the Domestic Mail Manual concerning bulk and presort mailing fees and the methods of paying postage. The Postal Service requested comments by June 20, 1994. Due to the needs of the mailing public, from whom several requests for additional time were received, the Postal Service is extending the comment period to July 20, 1994.

DATES: Comments on the proposed rule change must be received on or before July 20, 1994.

ADDRESSES: Mail or deliver written comments to the Manager, Mailing Standards, USPS Headquarters, 475 L'Enfant Plaza SW., Washington, DC 20260–2419. Copies of all written comments will be available for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, in Room 5610 at the above address.

FOR FURTHER INFORMATION CONTACT: Leo Raymond (202) 268–5199.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 94–15312 Filed 6–20–94; 2:22 pm]

BILLING CODE 7710–12–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD-FRL–5002–4]

National Emission Standards for Hazardous Air Pollutants for Source Categories: Early Reductions Program High Risk List Amendment

AGENCY: Environmental Protection Agency (EPA)

ACTION: Proposed rule and notice of public hearing.

SUMMARY: On December 29, 1992, the EPA promulgated final regulations implementing the Early Reductions Program under section 112(i)(5) of the Clean Air Act, as amended (CAA). As part of that rulemaking, EPA designated a list of high risk hazardous air pollutants and limited the use of offsetting reductions in other hazardous air pollutants as counting towards the required reductions in high-risk pollutants. The proposed standards would delete acrylic acid (CAS No. 79107) from the list of high-risk pollutants. This action would be in accordance with the terms of a settlement agreement reached in the following case: Basic Acrylic Monomer Manufacturers v EPA, No. 93–1179 (D.C. Cir.).

DATES: *Comments.* Comments must be received on or before August 8, 1994.

Public Hearing. If anyone contacts EPA requesting to speak at a public hearing by July 13, 1994, a public hearing will be held on July 22, 1994, beginning at 9 a.m. Persons interested in attending a hearing should call Ms. Linda Tilley at (919) 541–5648 to verify that a hearing will be held.

Request to Speak at Hearing. Persons wishing to present oral testimony must contact EPA by July 13, 1994. (Contact Ms. Linda Tilley at (919) 541–5648.)

ADDRESSES: *Comments.* Interested parties may submit written comments (in duplicate if possible) to Public Docket No. A–94–29, at the following address: U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center, Mail Code: 6102, 401 M Street, SW, Washington, DC 20460. The Agency requests that a separate copy also be sent to the contact person listed below.

Public Hearing. If anyone contacts EPA requesting a public hearing, it will be held at the North Carolina Mutual Life Insurance Building, 411 West Chapel Hill Street, Durham, North Carolina. Persons interested in attending the hearing or wishing to present oral testimony should contact Linda Tilley, Pollutant Assessment Branch (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5648.

Docket. Docket No. A–94–29, containing supporting information used in developing the proposed standards is available for public inspection and copying between 8:30 a.m. and 3:30 p.m., Monday through Friday, at EPA's Air Docket Section, Waterside Mall, Room 1500, 1st floor, 401 M Street, S.W., Washington D.C. 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Ms. Martha H. Keating, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina, 27711, (919) 541–5340.

SUPPLEMENTARY INFORMATION: The information presented in this preamble is organized as follows:

I. Background
II. Summary of and Rationale for Proposed Rule
III. Administrative Requirements

1. Background

On December 29, 1992, the EPA promulgated final regulations implementing the Early Reductions Program under section 112(i)(5) of the Clean Air Act, as amended (CAA), 42 U.S.C. 7412 (i)(5), 57 FR 61970 (December 29, 1992). As part of that rulemaking, EPA designated a list of 47 high risk hazardous air pollutants and limited the use of offsetting reductions in other hazardous air pollutants as counting towards the required reductions in high-risk pollutants by assigning these pollutants various weighting factors. Acrylic acid (CAS No. 79107) was designated as a high-risk pollutant and was assigned a weighting factor of 10.

The methodology for selecting the high-risk pollutants is documented in the Federal Register notices for the proposed Early Reduction Program rule (56 FR 27338) and the final regulations (as cited above). Additional detailed information on the selection criteria is also available in the Early Reduction Program docket (Docket No. A–90–47). In general, certain criteria were established to screen hazardous air pollutants for their potential for high risk of adverse public health effects associated with exposure to small quantities of emissions. The screening analysis considered health effects and potential exposure.

Based on EPA's analysis of data available in 1992, acrylic acid was included on the list of high-risk pollutants based in part on the inhalation reference concentration (RfC) for acrylic acid in EPA's Integrated Risk Information System (IRIS). A reference concentration is an estimate (with uncertainty spanning perhaps an order of magnitude or more) of the daily exposure to the human population (including sensitive subpopulations) that is likely to be without deleterious effects during a lifetime. On February 26, 1993, Basic Acrylic Monomer Manufacturers (BAMM) filed a petition for review of the final Early Reductions Program regulation in the United States Court of Appeals for the District of Columbia Circuit, *BAMM* v. *EPA*, No. 93–1179 (D.C. Cir.). On April 13, 1993, BAMM submitted an administrative petition to EPA to revise the RfC for acrylic acid and to delete acrylic acid from the list of high-risk pollutants.

BAMM submitted to EPA a new two-generation reproductive study of acrylic acid.

A review of the new data led EPA to revise the RfC for acrylic acid. As a result, acrylic acid no longer meets the criteria for inclusion on the high risk list.

II. Summary of and Rationale for the Proposed Rule

Noncarcinogens meet the criteria for the high risk list if they have a verified RfC less than 0.5 micrograms per cubic meter. The RfC for acrylic acid that was originally verified in August 1990 was 0.33 micrograms per cubic meter, based on lesions of the nasal epithelium in a subchronic mouse inhalation study (Miller *et al.*, 1981).[1] One of the uncertainty factors applied to the RfC for acrylic acid was a factor of three to account for the lack of a two-generation reproductive study.

In January, 1994, BAMM submitted additional data to EPA including a new two-generation reproductive study in rats, a developmental study in rabbits, and a bioavailability study in rats and mice. On February 15 and 16, 1994, the IRIS RfC/ RfD Work Group met and considered, among other things, the new two-generation reproductive study (BASF, 1993).[2] The Work Group found that the new study met the criteria for an adequate reproductive study and accordingly increased the RfC for acrylic acid by a factor of three. The increase in the RfC for acrylic acid by a factor of three resulted in a revised RfC of 1 microgram per cubic meter which was made publicly available on IRIS on April 1, 1994. The revised RfC is sufficiently high to exclude acrylic acid from the Early Reductions Program high-risk list. Consequently, today's action proposes to delete acrylic acid from the list of high-risk pollutants.

III. Administrative Requirements

A. Written Comments

EPA seeks full public participation in arriving at its final decisions, and strongly encourages comments on all aspects of this proposal from all interested parties. Whenever applicable, full supporting data and detailed analysis should be submitted to allow EPA to make maximum use of the comments. All comments should be directed to the EPA Air Docket, Docket No. A–94–29 (see **ADDRESSES**). Comments on this notice will be accepted until the date specified in **DATES**.

Commentors wishing to submit proprietary information for consideration should clearly distinguish such information from other comments, and clearly label it "Confidential Business Information". Submissions containing such proprietary information should be sent directly to the contact person listed above, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket. Information covered by such a claim of confidentiality will be disclosed by EPA only to the extent allowed and by the procedures set forth in 40 CFR Part 2. If no claim of confidentiality accompanies the submission when it is received by EPA, it may be made available to the public without further notice to the commentor.

B. Public Hearing

A public hearing will be held, if requested, to discuss the proposed rulemaking in accordance with section 307(d)(5) of the Act. Persons wishing to make an oral presentation on the proposed rule for deleting acrylic acid from the Early Reductions Program list of high-risk pollutants should contact the EPA (see **ADDRESSES**). Oral presentations will be limited to 15 minutes each. Any member of the public may file a written statement before, during, or within 30 days after the hearing. Written statements should be addressed to the Air Docket Section (see **ADDRESSES**), and refer to Docket No. A–94–29. A verbatim transcript of the hearing and written statements will be available for public inspection and copying, or mailed upon request, during normal working hours at the EPA's Air Docket Section (see **ADDRESSES**).

C. Docket

The docket is an organized and complete file of all the information submitted to or otherwise considered by EPA in the development of this proposed rulemaking. The principal purposes of the docket are: (1) to allow interested parties to readily identify and locate documents so they can intelligently and effectively participate in the rulemaking process and (2) to serve as the record in case of judicial review (except for interagency review materials [section 307(d)(7)(A)]).

D. Paperwork Reduction Act

There are no information collection requirements associated with this proposed rule. Therefore, an Information Collection Request document has not been prepared.

E. Executive Order 12866 Review

Under Executive Order 12866 (FR 51735 (October 4, 1993)), EPA must determine whether a regulation is "significant" and therefore subject to review by the Office of Management and Budget (OMB), 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 entitlement, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a "non significant regulatory action". Accordingly, a regulatory impact analysis has not been prepared and EPA has not submitted the action to OMB for review.

F. Compliance with Regulatory Flexibility Act

Under Section 605 of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.*, federal agencies are required to assess the economic impact of federal regulations on small entities. Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this rule, if promulgated, will not have a significant economic impact on a substantial number of small business entities because the impact of the proposed rule is not significant.

List of Subjects in 40 CFR Part 63

Air pollution control, Early emission reductions, Hazardous air pollutants, Compliance extensions, Sources.

Dated: June 15, 1994.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, 40 CFR part 63 is amended as follows:

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[1] Miller, R.R., J.A. Ayres, G.C. Jersey and M.J. McKenna. 1981. Inhalation toxicity of acrylic acid. Fund. Appl. Toxicol. 1(3):271–7.

[2] BASF. 1993. Reproduction toxicity study with acrylic acid in rats: continuous administration in the drinking water over 2 generation (1 litter in the first and 1 litter in the second generation). Project No. 71R0114/92011. BASF Aktiengesellschaft, Dept. of Toxicology, Rhein, FRG.

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

§ 63.74 [Amended]

2. In § 63.74 Table 1 entitled "List of High Risk Pollutants", the entry for "acrylic acid" (CAS No. 79107) is removed.

[FR Doc. 94–15176 Filed 6–21–94; 8:45 am]
BILLING CODE 6560–50–P

40 CFR Part 180

[PP 7F3546/P584; FRL–4869–1]

RIN 2070–AC18

Bifenthrin; Pesticide Tolerances and Extension of Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to establish time-limited tolerances (with an expiration date of November 15, 1997) for residues of the synthetic pyrethroid bifenthrin in or on the raw agricultural commodities (RACs) corn (field, seed, and pop) grain, silage (forage), stover (fodder), milk, milk fat, meat, fat, and meat byproducts of cattle, goats, hogs, horses, sheep, and poultry and eggs. The proposed regulation to establish maximum permissible levels for residues of the pesticide in or on these commodities was requested in a petition submitted by FMC Corp. EPA also proposes to extend tolerances for the residues of bifenthrin in or on cottonseed.

DATES: Comments, identified by the document control number, [PP 7F3546/P584] must be received on or before July 22, 1994.

ADDRESSES: By mail, submit written comments and hearing requests to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. In person, bring objections and hearing requests to: Rm. 1128, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: George T. LaRocca, Product Manager (PM) 13, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Second Floor, Crystal Mall #1, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6100.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of November 25, 1987 (52 FR 45237), which announced that FMC Corp., 1735 Market St., Philadelphia, PA 19103, had submitted pesticide petition (PP) 7F3546 requesting that the Administrator, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), amend 40 CFR part 180 by establishing tolerances for residues of the pesticide bifenthrin, (2-methyl [1,1'-biphenyl]-3-yl)methyl-3-(2-chloro-3,3,3,-trifluoro-1-propenyl)-2,2-dimethylcyclopropanecarboxylate, and its 4'-hydroxy metabolite in or on the raw agricultural commodities corn (field, seed, and pop) grain at 0.05 part per million (ppm), forage at 2.0 ppm, fodder at 4.0 ppm, milk at 0.02 ppm, milk fat at 0.20 ppm, meat at 0.10 ppm, fat at 0.30 ppm, and meat byproducts of goats, hogs, horses, and sheep at 0.10 ppm.

At the request of FMC Corp., EPA issued an amended notice published in the **Federal Register** of August 4, 1993 (58 FR 41473), proposing that tolerances be established as follows: Corn (field, seed, and pop) grain at 0.05 ppm (No detectable residues were found in grain at exaggerated rates, and the proposed tolerance is based on method sensitivity), silage (fodder) combined residue of bifenthrin plus 4'-OH bifenthrin at 2.0 ppm, stover (fodder) for the combined residue of bifenthrin plus 4'-OH bifenthrin at 5.0 ppm; milk, fat at 1.0 ppm (reflecting 0.1 ppm in whole milk); meat of cattle, goats, hogs, horses, and sheep at 0.05 ppm; fat of cattle, goats, hogs, horses, and sheep at 1.0 ppm; and meat byproducts of cattle, goats, hogs, horses, and sheep at 0.10 ppm.

On September 8, 1993, FMC Corp. requested that the pesticide petition be amended by proposing that tolerances be established in/on meat, fat, and meat byproducts of poultry and eggs at 0.05 ppm and by deleting the 4'-hydroxy metabolite from the tolerance expression. This amendment was submitted in response to EPA's conclusion that although residues in poultry from existing and proposed uses are expected to be nondetectable, tolerances should be set at the limit of quantitation and that the residue to be regulated is bifenthrin per se and not the 4'hydroxy metabolite.

The scientific data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of the proposed tolerances include:

1. Metabolism studies in rats with single doses of 4 and 35 mg/kg demonstrate that about 90 percent of parent compound and its hydroxylated metabolites are excreted. With doses of 0.5 mg/kg/day, significant bioaccumulation of the parent compound can occur in tissues with high fat content, with half-lives in these tissues of about 50 days.

2. A 12-month feeding study in dogs fed dose levels of 0, 0.75, 1.5, 3.0, or 5.0 milligrams(mg)/kilogram (kg)/day with a no-observed-effect level (NOEL) of 1.5 mg/kg/day. The lowest-effect level (LEL) for this study is established at 3.0 mg/kg/day based on the occurrence of intermittent tremors in the test animals.

3. A developmental toxicity study in rats given gavage doses of 0, 0.5, 1.0, or 2.0 mg/kg/day with maternal and fetal NOELs at 1.0 mg/kg/day. The maternal NOEL is based on the occurrence of tremors, and the fetal NOEL is based on an increased incidence of hydroureter without hydronephrosis at the 2.0-mg/kg/day dosage level.

4. A developmental toxicity study in rabbits given gavage doses of 0, 2.67, 4, or 8 mg/kg/day with no developmental toxicity observed under the conditions of the study. The maternal NOEL is established at 4 mg/kg/day based on the occurrence of twitching and tremors at the 8 mg/kg/day dosage level.

5. A two-generation reproduction study in rats fed diets containing 0, 30, 60, or 100 ppm with no reproductive effects or developmental toxicity observed under the conditions of the study. The maternal NOEL for the study is established at 30 ppm (equivalent to 5 mg/kg/day) based on lower body weight in females.

6. Mutagenicity tests, including gene mutation in Salmonella, chromosomal aberrations in Chinese hamster ovary and rat bone marrow cells, HGPRT locus

mutation in mouse lymphoma cells, and unscheduled DNA synthesis in rat hepatocytes, were all negative. Bifenthrin was marginally active in a forward mutation test involving the thymidine kinase locus in mouse lymphoma cells. These test results indicate a low mutegenic potential for bifenthrin.

7. A 24-month feeding/carcinogenicity study with rats fed diets containing 0, 12, 50, 100, or 200 ppm with a systemic NOEL of 50 ppm (equivalent to 2.5 mg/kg/day) based on tremors, elevated body weight, and higher liver and kidney organ-to-body weight ratios. There were no carcinogenic effects observed under the conditions of the study.

8. A carcinogenicity study with mice fed diets containing 0, 50, 200, 500, or 600 ppm (equivalent to 7.5, 30, 75, or 90 mg/kg/day) for 87 weeks (males) and 92 weeks (females) with a statistically significant trend for hemangiopericytomas of the urinary bladder of male mice. In this study, male mice in the high-dose group (600 ppm) showed an increase in the number of hemangiopericytomas of the urinary bladder as compared to the control group. Although the number of hemangiopericytomas was twice as high in male mice at the high dose level compared to the control animals, the difference in rate of tumors between the control group and the high-dose group was not statistically significant by pair-wise comparison. There were also significant dose-related trends in hepatocellular carcinomas and in the combined hepatocellular adenomas and/or carcinomas in male mice. Female mice had significantly higher incidences of combined lung adenomas and carcinomas in the 50, 200, and 600 ppm groups, although there was no significant dose-related trend.

Bifenthrin has been classified by the Office of Pesticide Programs' Health Effect's Division's Carcinogenicity Peer Review Committee (CPRC) as a Group C carcinogen, i.e., possible human carcinogen. The Agency has chosen to use the reference dose calculations to estimate human dietary risk from bifenthrin residues. The decision supporting classification of bifenthrin as a possible carcinogen (Group C) rather than a probable carcinogen (Group B) was primarily based on the following:

1. Evidence for carcinogenicity was only observed in mice; no compound-related increases in tumors were observed in the carcinogenicity study in rats.

2. It is unlikely that the hemangiopericytomas observed in the mouse study were malignant.

3. Mutagenicity studies do not support Group B classification for bifenthrin.

4. Feeding studies using structurally related pyrethroids, which were classified as Group C carcinogens by the CPRC, have resulted in increased incidences of lung tumors in female mice.

A dietary exposure/risk assessment was performed for bifenthrin using a Reference Dose (RfD) of 0.015 mg/kg of body weight/day. The RfD is based on an NOEL of 1.5 mg/kg/day from the 1-year feeding study in dogs, which demonstrated intermittent tremors in test animals at the lowest effect level, and an uncertainty factor of 100. The current estimated dietary exposure for the overall U.S. population resulting from established tolerances is 0.000385 mg/kg bwt/day, which represents 2.6 percent of the RfD. The current action will increase exposure to 0.001935 mg/kg bwt/day or 12.9 percent of the RfD. In the subgroup population exposed to the highest risk, nonnursing infants less than 1 year old, the current action would increase exposure to 0.007404 mg/kg bwt/day or 49.4 percent of the RfD. Generally speaking, EPA has no cause for concern if total residue contribution for published and proposed tolerances is less than the RfD.

EPA concludes that the chronic dietary risk of bifenthrin, as estimated by the dietary risk assessment, does not appear to be of concern. The cancer risk to humans is considered negligible, given the weight of evidence considerations, which only support the classification of bifenthrin as a possible carcinogen, and the low level of exposure to bifenthrin residues in the human diet.

The metabolism of the chemical in plants and animals for this use is adequately understood. Although a processing study shows some concentration of bifenthrin residues in corn oil, EPA has determined that a section 409 food additive regulation is unnecessary because it is unlikely that the bifenthrin residues in corn oil will exceed the limit of quantification tolerance that is being established for bifenthrin in corn grain. Analysis of the field trial data indicates that bifenthrin residue levels in corn grain will be lower than the grain tolerance by a factor greater than the concentration factor.

An adequate analytical method, gas-liquid chromatography, is available for enforcement purposes. The enforcement methodology has been submitted to the Food and Drug Administration for publication in the Pesticide Analytical Manual, Vol. II (PAM II). Because of the long lead time for publication of the method in PAM II, the analytical methodology is being made available in the interim to anyone interested in pesticide enforcement when requested from: Calvin Furlow, Public Response and Program Resources Branch, Field Operations Divisions (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., Washington, DC 20460. Office location and telephone number: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-5232.

On August 5, 1988, EPA issued a conditional registration and time-limited tolerance for bifenthrin for use on cottonseed with an expiration date of October 31, 1991 (see the **Federal Register** of August 15, 1988 (53 FR 30676)). On November 12, 1992, the conditional registration was amended and extended to November 15, 1993, and the tolerance on cottonseed extended to November 15, 1994 (see **Federal Registers** of October 20, 1993 (58 FR 54094) and February 22, 1994 (59 FR 9411)). On November 15, 1993, EPA amended the registration on cottonseed by extending the expiration date to November 15, 1996. The registration was amended and extended to allow time for submission and evaluation of additional environmental effects data. In order to evaluate the effects of bifenthrin on fish and aquatic organisms and its fate in the environment, additional data were required to be collected and submitted during the period of conditional registration. Such requirements included a sediment bioavailability and toxicity study and a small-plot runoff study that must be submitted to the Agency by July 1, 1996. To be consistent with the extension issued for the conditional registration, the Agency is proposing to extend the tolerance on cottonseed and other commodities, and establish a time-limited tolerance on corn (field, seed, and pop) with an expiration date of November 15, 1997, to cover residues expected to result from use during the period of conditional registration.

The pesticide is considered useful for the purposes for which it is sought. Based on the information and data considered, the Agency concludes that the proposed section 408 tolerances and extension will protect the public health. Therefore, it is proposed that the tolerances be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed

herein may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the FFDCA.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 0E3921/P584]. All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

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

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 2, 1994.

Stephen L. Johnson,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. By revising § 180.442, to read as follows:

§ 180.442 Bifentrhin; tolerances for residues.

Tolerances, to expire on November 15, 1997, are established for residues of the pyrethroid bifenthrin, (2-methyl [1,1'-biphenyl]-3-yl)methyl-3-(2-chloro-3,3,3-trifluoro-1-propenyl)-2,2-dimethylcyclopropanecarboxylate, in or on the following commodities:

Commodities	Parts per million
Cattle, fat	1.0
Cattle, meat	0.5
Cattle, mbyp	0.10
Corn, forage	2.0
Corn, fodder	5.0
Corn, grain (field, seed, and pop)	0.05
Cottonseed	0.5
Eggs	0.05
Goats, fat	1.0
Goats, meat	0.5
Goats, mbyp	0.10
Hogs, fat	1.0
Hogs, meat	0.5
Hogs, mbyp	0.10
Hops, dried	10.0
Horses, fat	1.0
Horses, meat	0.5
Horses, mbyp	0.10
Milk, fat (reflecting 0.1 ppm in whole milk)	1.0
Poultry, fat	0.05
Poultry, meat	0.05
Poultry, mbyp	0.05
Sheep, fat	1.0
Sheep, meat	0.5
Sheep, mbyp	0.10

[FR Doc. 94-15084 Filed 6-21-94; 8:45 am]

BILLING CODE 6560-50-F

40 CFR Part 180

[OPP-300345; FRL-4868-6]

RIN 2070-AC18

Ethyl Oleate; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that ethyl oleate (ethyl esters of fatty acids derived from edible fats and oils) be exempted from the requirement of a tolerance when used as an inert ingredient (solvent, cosolvent) in pesticide formulations applied to growing crops or raw agricultural commodities after harvest. This proposed regulation was requested by Victorian Chemicals.

DATES: Written comments, identified by the document control number [OPP-300345], must be received on or before July 22, 1994.

ADDRESSES: By mail, submit written comments to: Public Response Section, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1128, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1128 at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Tina Levine, Registration Support Branch, Registration Division (7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 2800 Crystal Drive, North Tower, Arlington, VA 22202, (703)-308-5971.

SUPPLEMENTARY INFORMATION: Victorian Chemical Co. Pty. Ltd., 37-49 Appleton St., P.O. Box 71, Richmond, Victoria, 3121 Australia, submitted pesticide petition (PP) 4E4303 to EPA requesting that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(e), propose to amend 40 CFR 180.1001(c) by establishing an exemption from the requirement of a tolerance for ethyl oleate (ethyl esters of fatty acids derived from edible fats and oils) when used as a solvent or cosolvent in pesticide formulations applied to growing crops or raw agricultural commodities after harvest.

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

The data submitted in the petition and other relevant material have been evaluated. As part of the EPA policy statment on inert ingredients published in the **Federal Register** of April 22, 1987 (52 FR 13305), the Agency set forth a list of studies which would generally be used to evaluate the risks posed by the presence of an inert ingredient in a pesticide formulation. However, where it can be determined without that data that the inert ingredient will present minimal or no risk, the Agency generally does not require some or all of the listed studies to rule on the proposed tolerance or exemption from the requirement of a tolerance for an inert ingredient. The Agency has decided that no data, in addition to that described below, for ethyl oleate will need to be submitted. The rationale for this decision is described below.

1. Ethyl oleate, as defined, is expected to be metabolized to ethyl alcohol and edible fatty acids, rendering it of minimal toxicological concern.

2. There is no significant difference between ethyl oleate and methyl oleate, which is approved under 40 CFR 180.1001(c). In fact, as noted by the FDA (57 FR 12709, Apr. 13, 1992), on an equal basis, methyl esters of fatty acids have more toxic potential than the ethyl esters because of the potential for the release of methyl alcohol.

3. The FDA has approved ethyl oleate as a direct food additive in aqueous emulsions for dehydrating grapes to produce raisins under 21 CFR 172.225.

Based upon the above information and review of its use, EPA has found that, when used in accordance with good agricultural practice, this ingredeint is useful and a tolerance is not necessary to protect the public health. Therefore, EPA proposes that the exemption from the requirement of a tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, which contains any of the ingredients listed herein may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [OPP-300345]. All written comments filed in response to this document will be available for public inspection in the Public Response and Program Resources Branch, at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of Executive Order 12866.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 7, 1994.

Stephen L. Johnson,

Acting Director, Registration Divison, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.1001(c) is amended in the table therein by adding and alphabetically inserting the inert ingredient, to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(c) * * *

Inert ingredients	Limits	Uses
* * *	* *	* *
Ethyl esters of fatty acids derived from edible fats and oils		Solvent, cosolvent
* * *	* *	* *

* * * * *

[FR Doc. 94-15078 Filed 6-21-94; 8:45 am]
BILLING CODE 6560-50-F

40 CFR Part 180

[OPP-300342; FRL-4866-1]

RIN 2070-AC18

Dimethyl Ether; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that dimethyl ether (CAS Reg. No. 115-10-6) be exempted from the requirement of a tolerance when used as an inert ingredient (aerosol propellant) in pesticide formulations applied to animals. This proposed regulation was requested by DuPont Chemicals.

DATES: Comments, identified by the document control number, [OPP-300342], must be received on or before July 22, 1994.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 1128, Crystal Mall, Building #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part of all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not

contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by the EPA without prior notice. The public docket is available for public inspection in Rm. 1128 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Tina Levine, Registration Support Branch, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 2800 Crystal Drive, North Tower, Arlington, VA 22202, (703)-308-8393.

SUPPLEMENTARY INFORMATION: Du Pont Chemicals, Chestnut Run Plaza, P.O. Box 80711, Wilmington, DE 19880-0711, submitted pesticide petition (PP) 1E3990 to EPA requesting that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(e), propose to amend 40 CFR 180.1001(e) by establishing an exemption from the requirement of a tolerance for dimethyl ether (DME) when used as an aerosol propellant in pesticide formulations applied to animals.

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125, and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

The data submitted in the petition and other relevant material have been evaluated. As part of the EPA policy statement on inert ingredients published in the **Federal Register** of April 22, 1987 (52 FR 13305), the Agency set forth a list of studies which would generally be used to evaluate the risks posed by the presence of an inert ingredient in a pesticide formulation. However, where it can be determined without that data that the inert ingredient will present minimal or no risk, the Agency generally does not require some or all of the listed studies to rule on the proposed tolerance or exemption from the requirement of a tolerance for an inert ingredient. The Agency has decided that no data, in addition to that described below, for dimethyl ether will need to be submitted. The rationale for this decision is described below:

1. A cardiac sensitization study in the dog with a no-observed-adverse- effect level (NOAEL) of 100,000 parts per million and a lowest-observed-adverse effect level (LOAEL) of 200,000 ppm.

2. A 4-hour acute inhalation toxicity study in the male rat with an LC_{50} of 164,000 ppm.

3. No evidence of mutagenicity with and without metabolic activation when exposed in a closed system to *Salmonella* strains at concentrations determined in a cytotoxicity test.

4. A 2-week inhalation study in rats with a NOAEL of less than 10,000 ppm.

5. A 4-week inhalation study in hamsters showing changes in red blood cell counts in females and decreased white blood cell counts in both males and females and decreased body weight and relative spleen weight in males with a NOAEL of 2,000 ppm.

6. A 13-week inhalation study in rats showing elevated neutrophil counts in all test groups with a NOAEL of less than 1,000 ppm.

7. A 13-week inhalation study in hamsters showing decreased red blood cell count and hemoglobin in males with a NOAEL of 5,000 ppm.

8. A 2-year rat inhalation study in rats showing female rats had a statistically significant increase in total mammary tumors at the highest concentration tested and a significant positive trend for total mammary tumors. The Cancer Peer Review Committee concluded that this was due to the less-than-usual incidence of total mammary tumors in the control group, compared to historical controls, and concluded that there was no convincing evidence of carcinogenicity in this study. The systemic LOEL in this study is 0.2% (2,000 ppm) based on a significant increase in the incidence of splenic congestion in males at 6 months, decreased red cell count in males and females at the mid and high doses at 6 months, increased absolute spleen weight in males at the high concentration at 6 and 12 months, and congestion of the spleen in males at the high dose at 6 months. The systemic NOEL is less than 0.2% (2,000 ppm).

9. Two rat developmental effects studies by inhalation with a NOEL for maternal toxicity of 2% DME and a NOEL for developmental toxicity of 0.125% DME.

Based upon the above information and review of its use, EPA has found that, when used in accordance with good agricultural practice, this ingredient is useful and a tolerance is not necessary to protect the public health. Therefore, EPA proposes that the exemption from the requirement of a tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [OPP-300342]. All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Recording and recordkeeping requirements.

Dated: May 26, 1994.

Stephanie R. Irene,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.1001(e) is amended in the table therein by adding and

alphabetically inserting the inert ingredient, to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(e) * * *

Inert ingredients	Limits	Uses
* * *	* *	* *
Dimethyl ether (CAS Registry No. 115-10-6).	.....	Propellant
* * *	* *	* *

[FR Doc. 94–15077 Filed 6–21–94; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Parts 180 and 185

[OPP–300336; FRL–4776–9]

RIN No. 2070–AC18

Proposed Revocation of Tolerances and Food Additive Regulations for Sulfur Dioxide and Tetradifon

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to revoke tolerances, exemptions from tolerance, and food additive regulations established for residues of sulfur dioxide and tetradifon in or on certain raw agricultural commodities (RACs) and processed foods. EPA is initiating this action because there are no current registrations associated with these food uses. The applicable registrations for these pesticide uses have been canceled by company request or because of nonpayment of maintenance fees.

DATES: Written comments, identified by the document control number [OPP-300336], must be received on or before August 22, 1994.

ADDRESSES: By mail, submit comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the Virginia address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Owen F. Beeder, Registration Division (7505W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 6th Floor, 2800 Crystal Drive, Arlington, VA, (703)-308-8351.

SUPPLEMENTARY INFORMATION: This document proposes the revocation of certain tolerances, exemptions from tolerances, and food additive regulations ("tolerances") established under sections 408 and 409 of the Federal Food, Drug, and Cosmetic Act (FFDCA) (21 U.S.C. 346a and 348) for residues of the insecticide/miticide tetradifon and the fungicide sulfur dioxide in or on raw agricultural commodities (RACs) and processed foods. EPA is initiating this action because all registered food uses associated with these tolerances, exemptions from tolerances, and food additive regulations have been canceled. The registrations for sulfur dioxide and tetradifon were canceled because the registrant failed to pay the required maintenance fee and/or the registrant voluntarily canceled all registered uses of the pesticide.

Based on the fact that there are no current food use registrations associated with these tolerances, exemptions from tolerance, and food additive regulations, EPA proposes to revoke them. A tolerance, an exemption from tolerance, or a food additive regulation is generally not necessary for a pesticide chemical that is not registered for a particular food use. The Agency is not recommending the establishment of action levels in place of these tolerance regulations. Since there are no food use registrations associated with these tolerances, exemptions from tolerance, and food additive regulations, and hence no legal use in the United States, and since these pesticides are either not persistent or sufficient time has elapsed since their prior use for residues to dissipate, residues should not appear in any domestically produced commodities.

EPA proposes to revoke the tolerances for residues of the insecticide/miticide tetradifon (2,4,5,4'-tetrachlorodiphenyl sulfone) as listed in 40 CFR 180.174 in or on the following raw agricultural commodities: peppermint and spearmint (100 ppm); fresh hops (30 ppm); figs (6 ppm); apples, apricots, cherries, crabapples, grapes, nectarines, peaches, pears, plums (fresh prunes), quinces, and strawberries (5 ppm); citrus citron, grapefruit, lemons, limes, oranges, and tangerines (2 ppm); cucumbers, melons, pumpkins, tomatoes, and winter squash (1 ppm); meat and milk (0 ppm). EPA proposes to revoke the exemption from tolerance for residues of the fungicide sulfur dioxide as listed in 40 CFR 180.1013: (1) liquid grain-fumigant formulations for marker or fire-retardant purposes at levels not exceeding 5 percent by weight of such formulations are exempted from the requirement of a tolerance in or on barley, buckwheat, corn, oats, popcorn, rice, rye, grain sorghum (milo), and wheat; (2) residues of sulfur dioxide resulting from postharvest fungicidal use are exempted from the requirement of a tolerance in or on corn for feed use only.

EPA also proposes to revoke the food additive regulations for residues of the pesticide tetradifon (2,4,5,4'-tetrachlorodiphenyl sulfone) as listed in 40 CFR 185.5475 in or on the following commodities: dried hops (120 ppm); dried figs (10 ppm); dried tea (8 ppm).

Any person who has registered or submitted an application for registration of a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, which contains sulfur dioxide or tetradifon may request, within 30 days after publication of this document in the **Federal Register**, that the proposal to revoke the RAC tolerances be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation, revoking the tolerances and exemption from the requirement of a tolerance for raw agricultural commodities, and food additive regulations for processed foods. Further, EPA is soliciting comments from any person adversely affected by revocation of the tolerances, exemptions from tolerance, and food additive regulations. EPA requests that anyone adversely affected by these revocations submit information providing the following specific information: (1) Are there any existing stocks of the chemical?; (2) If so, how much?; (3) When will the stocks be depleted?; (4)

How long would the commodities treated with these chemicals be in the channels of trade?

Comments must bear a notation indicating the document control number, [OPP-300336]. All written comments filed in response to this document will be available for public inspection in the Public Response Section, at the Virginia address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, except legal holidays.

The Agency has conducted an analysis in order to satisfy requirements as specified by Executive Order 12866 and the Regulatory Flexibility Act. This analysis is available for public inspection in Rm. 1132 at the Virginia address given above.

Executive Order 12866

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

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

Regulatory Flexibility Act

This proposed rule has been reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96-354; 94 Stat. 1164, 5 U.S.C. 601 et seq.), and it has been determined that it will not have an economic impact on small businesses, small organizations, or small governmental jurisdictions.

This regulatory action is intended to prevent the sale of food commodities containing pesticide residues where the subject pesticide has been used in an unregistered or illegal manner.

Since all domestic registrations for these uses of tetradifon and sulfur dioxide have been canceled, it is anticipated that no economic impact would occur at any level of business enterprises if these tolerances, exemptions from tolerance, and food additive regulations are revoked.

Accordingly, I certify that this regulatory action does not require a separate regulatory flexibility analysis under the Regulatory Flexibility Act.

List of Subjects in 40 CFR Parts 180 and 185

Environmental protection, Administrative practice and procedure, Agricultural commodities, Food additives, Pesticides and pests, Processed foods, Reporting and recordkeeping requirements.

Dated: June 7, 1994.

Daniel M. Barolo,

Acting Director, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR parts 180 and 185 be amended as follows:

PART 180—[AMENDED]

1. In part 180:

a. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

§ 180.174 [Removed]

b. By removing § 180.174 *Tetradifon; tolerances for residues.*

§ 180.1013 [Removed]

c. By removing § 180.1013 *Sulfur dioxide for use in fumigants for stored grains; exemption from the requirement of a tolerance.*

PART 185—[AMENDED]

2. In part 185:

a. The authority citation for part 185 continues to read as follows:

Authority: 21 U.S.C. 346a and 348.

§ 185.5475 [Removed]

b. By removing § 185.5475 *Tetradifon.*

[FR Doc. 94-15074 Filed 6-21-94; 8:45 am]
BILLING CODE 6560-50-F

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40 CFR Part 180

[OPP-300348; FRL-4871-3]

RIN 2070-AC18

Amended Tolerance Exemptions for Encapsulating Polymers

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that the tolerance exemptions for three encapsulating polymers, poly(vinylpyrrolidone-1-eicosene), poly(vinylpyrrolidone-1-hexadecene), and vinylpyrrolidone-vinyl acetate copolymer be amended to removed language not directly related to the inert ingredient exemption and to replace the specific tolerance exemption listings in 40 CFR part 180 for these polymers with general listings under 40 CFR 180.1001(c). This change was requested by International Specialty Products. On its own inititative, the Agency is also deleting similar language in the tolerance exemption for cross-linked polyurea-type encapsulating polymer.

DATES: Written comments, identified by the document control number [OPP-300348], must be received on or before July 22, 1994.

ADDRESSES: By mail, submit written comments to: Public Response Section, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1128, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1128 at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Tina Levine, Registration Support Branch, Registration Division (7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 2800 Crystal Drive, North Tower, Arlington, VA 22202, (703)-308-8393.

SUPPLEMENTARY INFORMATION: International Specialty Products (ISP), 1361 Alps Rd., Wayne, NJ 07470, has submitted petitions to amend the exemptions from tolerance for poly(vinylpyrrolidone-1-eicosene), pesticide petition (PP) 4E4307, poly(vinylpyrrolidone-1-hexadecene),

PP 4E4304, and vinylpyrrolidone-vinyl acetate copolymer, PP 4E4306, to remove the specific exemptions in 40 CFR part 180 for these polymeric encapsulating agents and list them in 40 CFR 180.1001(c). The changes would eliminate the following statement which was included in each separate exemption from tolerance: "Registration of each new pesticide formulation incorporating this dispersing agent must be supported by residue data for the active ingredient(s)." The petition notes that it is EPA's policy that the data requirements for registration are associated with registered pesticide products, not inert ingredients. Data may be required on a case-by-case basis for a registered product when substantial changes are made in the inert ingredients included in the product's formulation, but such data requirements are not triggered universally by the addition of a specific inert ingredient to the formulation.

The addition of this language to the tolerance exemption was triggered by concern that the nature of the inert encapsulating material may affect the residue levels of active ingredients and, therefore, the Agency needed a mechanism to ensure that each formulation of this type be evaluated for this possibility. However, the Agency agrees that including this language in the exemption from tolerance expression is an inappropriate way to obtain such assurance. In August 1993, the Agency issued to product managers internal guidance entitled, "Data Requirements for Formulations and Translation of Residue Data between Formulations." The document informed product managers that any new food-use pesticide product which is considered a microencapsulated or controlled-release formulation should be reviewed by residue chemists to determine "if there has been a change in the inert ingredients (especially the encapsulating polymer) that could affect residues of the active ingredient." This internal guidance should address the concerns which led to the inclusion of the objectionable language in these tolerance exemptions.

In addition to the three polymers of these petitions, the Agency has noted that there is a specific exemption for cross-linked polyurea-type encapsulating polymer (40 CFR 180.1039) that contains the same language as the three polymers for which petitions were submitted as well as additional language on quality control procedures to ensure predictable release characteristics and relatively uniform toxicity of various production lots. This language also refers to data requirements for the encapsulated pesticide product formulation and is not appropriate to the tolerance exemption for the inert ingredient. Therefore, the Agency has also decided to amend this exemption to delete the second sentence of the tolerance exemption.

Any person who has registered or submitted an application for registration of a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, which contains any of the ingredients listed herein may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [OPP-300348]. All written comments filed in response to this document will be available for public inspection in the Public Response and Program Resources Branch, at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12866.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 13, 1994.

Stephen L. Johnson,

Acting Director, Registration Divison, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.1001(c) is amended by adding and alphabetically inserting the inert ingredients, to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(c) * * *

Inert ingredients	Limits	Uses
* * * * *		
Poly(vinylpyrrolidone-1-eicosene) (CAS Reg. No. 28211-18-9)	Minimum average molecular weight 3,000	Dispersing agent
Poly(vinylpyrrolidone-1-hexadecene) (CAS Reg. No. 63231-81-2)	Minimum average molecular weight 4,700	Dispersing agent

Inert ingredients	Limits	Uses
* * * * *		
Vinylpyrrolidone-vinyl acetate copolymer (CAS Reg. No. 25086-89-9)	Minimum average molecular weight 6,700	Emulsion stabilizer, film-forming agent
* * * * *		

* * * * *

3. Section 180.1039 is revised to read as follows:

§ 180.1039 Cross-linked polyurea-type encapsulating polymer; exemption from the requirement of a tolerance.

The cross-linked polyurea-type polymer formed by the reduction of a mixture of toluene diisocyanate and polymethylene polyphenylisocyanate is exempted from the requirement of a tolerance when used as an inert encapsulating material for pesticide formulations applied prior to planting. The inert will constitute no more than 10 percent by weight of any pesticide formulation.

§ 180.1104 [Removed]

4. Section 180.1104 *Poly(vinylpyrrolidone/1-eicosene); exemption from the requirement of a tolerance* is removed.

§ 180.1105 [Removed]

5. Section 180.1105 *Poly(vinylpyrrolidone/1-hexadecene); exemption from the requirement of a tolerance* is removed.

§ 180.1106 [Removed]

6. Section 180.1106 *Vinylpyrrolidone-vinyl acetate copolymer; exemption from the requirement of a tolerance* is removed.

[FR Doc. 94–15080 Filed 6–21–94; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 11

RIN 1090–AA43

Natural Resource Damage Assessments

AGENCY: Department of the Interior.

ACTION: Proposed rule; extension of comment period.

SUMMARY: On May 4, 1994, the Department of the Interior issued a notice of proposed rulemaking (59 FR 23097) to revise the natural resource damage assessment regulations. The natural resource damage assessment regulations establish procedures for assessing damages for injury to natural resources resulting from a discharge of oil into navigable waters under the Clean Water Act, or a release of a hazardous substance under the Comprehensive Environmental Response, Compensation, and Liability Act. The Department is extending the period for comment on the proposed rule.

DATES: Comments will be accepted through October 7, 1994.

ADDRESSES: Comments should be sent in duplicate to the Office of Environmental Policy and Compliance, ATTN: NRDA Rule—Nonuse Values, room 2340, Department of the Interior, 1849 C Street NW., Washington, DC 20240 (regular business hours 7:45 a.m. to 4:15 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Mary C. Morton or David Rosenberger at (202) 208–3301, or MMORTON@IOS.DOI.GOV on Internet.

SUPPLEMENTARY INFORMATION: The natural resource damage assessment regulations establish procedures for calculating damages for natural resource injuries under the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (42 U.S.C. 9601 et seq.) and the Clean Water Act, as amended (33 U.S.C. 1251 et seq.). The regulations provide an administrative process for conducting assessments as well as two types of technical procedures for the actual determination of injuries and damages. "Type A" procedures are standard procedures for simplified assessments requiring minimal field observation in cases of minor discharges or releases in certain environments. "Type B" procedures are site-specific procedures for detailed assessments in other cases.

On May 4, 1994, the Department issued a notice of proposed rulemaking addressing the assessment of damages for lost nonuse values of injured natural resources using type B procedures. 59 FR 23097. Nonuse values are those economic values that are not dependent on use of a resource and include the value of knowing that the resource exists and knowing that a resource will be available for future generations. The only method currently available for the express purpose of estimating nonuse values is the contingent valuation (CV) methodology.

Two provisions of the original natural resource damage assessment regulations restricted the use of type B procedures to estimate lost nonuse values to cases in which lost use values could not be determined. 43 CFR 11.83(b)(2) and 11.83(d)(5)(ii) (1993). *State of Ohio* v. *United States Department of the Interior* (*Ohio* v. *Interior*) held that these restrictions were inconsistent with section 301 of CERCLA. 880 F.2d 432, 464 (D.C. Cir. 1989). The court remanded these provisions, along with several other issues, to the Department and ordered the Department to promulgate new rules on the remanded issues. On March 25, 1994, the Department published a final rule addressing all aspects of the court remand except the estimation of lost nonuse values. 59 FR 14262. The Department's March 25, 1994, final rule renumbered 43 CFR 11.83(b)(2) and 11.83(d)(5)(ii) (1993) as new §§ 11.83(c)(1)(iii) and 11.83(c)(2)(vii)(B), temporarily leaving the existing invalid rule language "on the books" without substantively addressing in any way that language or the use of CV for estimating nonuse values. The May 4, 1994, Federal Register notice proposed standards for the use of CV to estimate lost nonuse values. Pending the completion of this rulemaking, the existing restrictive rule language concerning the estimation of lost nonuse values, which was struck down in *Ohio* v. *Interior*, remains invalid and ineffective.

The comment period on the May 4, 1994, proposed rule was originally set to expire on July 7, 1994. The Department has received several requests from the public for additional time to comment on the proposed rule and has decided to extend the comment period to October 7, 1994.

The Department is coordinating this rulemaking with a rulemaking being conducted by the National Oceanic and Atmospheric Administration (NOAA). NOAA has published a proposed natural resource damage assessment rule under the Oil Pollution Act (33 U.S.C. 2701 et seq.). 59 FR 1061 (January 7, 1994). In a separate notice in today's **Federal Register**, NOAA is also announcing an extension of the comment period on its proposed rule. The proposed standards for the estimation of lost nonuse values contained in the Department's May 4, 1994, **Federal Register** notice are identical to those contained in NOAA's January 7, 1994, **Federal Register** notice. 59 FR 1182–83. Commenters on the Department's proposed rule are encouraged to submit copies of their comments both to the Department, at the address specified at the beginning of this notice, and to NOAA, at the address specified in its notice appearing elsewhere in today's **Federal Register**.

Dated: June 13, 1994.

Bonnie R. Cohen,

Assistant Secretary—Policy, Management, and Budget.

[FR Doc. 94–15190 Filed 6–21–94; 8:45 am]

BILLING CODE 4310–RG–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 94–52, RM–8473]

Television Broadcasting Services; Waimanalo, HI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Joyce Cathcart, proposing the allotment of Television Channel 56 to Waimanalo, Hawaii, as that community's first local television service. The allotment can be made consistent with the minimum distance separation requirements of Section 63.610 of the Commission's Rules. The coordinates for the proposed allotment of Channel 56 to Waimanalo are 21–21–00 and 157–43–12. This proposal is not affected by the freeze on television allotments or applications.

DATES: Comments must be filed on or before August 9, 1994, and reply comments on or before August 24, 1994.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Joyce Cathcart, 1508 Halekoa Drive, Ainakoa, Hawaii (Petitioner).

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 94–52, adopted June 2, 1994, and released June 16, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1919 M Street, NW., Room 246, or 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR § 1.204(b) for rules governing permissible *ex parte* contracts.

For information regarding proper filing procedures for comments, see 47 CFR §§ 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–15096 Filed 6–21–94; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 94–53, RM–8475]

Television Broadcasting Services; Kailua, HI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Paul Alfred Tennyson, proposing the allotment of Television Channel 50 to Kailua, Hawaii, a that community's first local television service. The allotment can be made consistent with the minimum distance separation requirements of Section 73.610 of the Commission's Rules. The coordinates for the proposed allotment of Channel 50 to Kailua are North Latitude 21–24–00 and West Longitude 157–44–30. This proposal is not affected by the freeze on television allotments or applications.

DATES: Comments must be filed on or before August 8, 1994, and reply comments on or before August 23, 1994.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Paul Alfred Tennyson, 305 Hahani Street, #118, Kailua, Hawaii 96734 ("Petitioner").

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 94–53, adopted June 2, 1994, and released June 15, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73:

Television broadcasting.

Federal Communications Commission.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–15093 Filed 6–21–94; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 93–284; RM–8375]

Radio Broadcasting Services; Woodville, MS, and Clayton, LA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; denial.

SUMMARY: This document denies the petition for rule making filed by PDB Broadcasting, permittee of a new FM station, Channel 299A, Woodville, Mississippi, requesting the substitution of Channel 299C3 for Channel 299A at Woodville and the deletion of vacant Channel 300A at Clayton, Louisiana. *See* 58 FR 63320, December 1, 1993. With this action, this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Pamela Blumenthal, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 93–284, adopted June 8, 1994, and released June 17, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–15092 Filed 6–21–94; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 94–51, RM–8466]

Radio Broadcasting Services; Mamou and Jonesville, LA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Simla B. Ellis d/b/a SoTo Broadcasting, permittee of a new FM station, Channel 266A, Mamou, Louisiana, proposing the substitution of Channel 266C3 for Channel 266A at Mamou and modification of SoTo's authorization to specify operation on the higher powered channel. In order to accommodate the upgrade at Mamou, we also propose to substitute Channel 286A for vacant Channel 266A at Jonesville, Louisiana. Channel 266C3 and Channel 286A can be allotted to Mamou and Jonesville, respectively, in compliance with the Commission's minimum distance separation requirements. Channel 266C3 can be allotted with a site restriction of 12.2 kilometers (7.6 miles) east to accommodate SoTo's desired site. The coordinates for Channel 266C3 are 30–39–42 and 92–17–52. The coordinates for Channel 286A at Jonesville are 31–35–38 and 91–45–23.

DATES: Comments must be filed on or before August 9, 1994, and reply comments on or before August 24, 1994.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Simla B. Ellis d/b/a SoTo Broadcasting, 1103 LaNeuville, Lafayette, Louisiana 70508 (petitioner).

FOR FURTHER INFORMATION CONTACT: Pamela Blumenthal, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 94–51, adopted June 3, 1994, and released June 16, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (room 239), 1919 M Street, NW., Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–15098 Filed 6–21–94; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 92–291; RM–8133]

Radio Broadcasting Services; Cambridge and St. Michaels, MD

AGENCY: Federal Communications Commission.

ACTION: Proposed Rule; dismissal.

SUMMARY: This document dismisses a proposal to reallot Channel 232A from Cambridge, Maryland, to St. Michaels, Maryland, and modify the construction permit for Station WFBR(FM) to specify St. Michaels as its community of license in response to a petition filed by C.W.A. Broadcasting. *See* 50 FR 60782, December 22, 1992. With this action this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 92–291, adopted June 8, 1994, and released June 17, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

List of Subject in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–15091 Filed 6–21–94; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 94–50, RM–8458]

Radio Broadcasting Services; Galatia, IL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Michael Scott Clem seeking the allotment of Channel 255A to Galatia, Illinois, as that community's first aural FM transmission service. Channel 255A can be allotted to Galatia in compliance with the Commission's minimum distance separation requirements with a site restriction of 0.8 kilometers (0.5 miles) northwest, in order to avoid a short-spacing to Station WKDQ(FM), Channel 258C, Henderson, Kentucky. The coordinates for Channel 255A at Galatia, Illinois, are North Latitude 37–50–53 and West Longitude 88–37–10.

DATES: Comments must be filed on or before August 8, 1994, and reply comments on or before August 23, 1994.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Michael Scott Clem, P.O. Box 14, Thompsonville, Illinois 62890–0014 (petitioner).

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 94–50, adopted June 2, 1994, and released June 15, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1919 M Street, NW., room 246, or 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–15090 Filed 6–21–94; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 194

[Docket PS–130B; Notice 3]

RIN 2137–AC34

Environmentally Sensitive Areas

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Supplemental notice of public meeting.

SUMMARY: On June 15, 1994, RSPA published a Notice of Public Meeting on environmentally sensitive areas (59 FR 30755). This notice serves to inform members of the public that the panel for that meeting will consist of RSPA and other Federal government agencies. Other interested agencies that may attend include the Environmental Protection Agency, the Department of Agriculture, the Department of Commerce, the Department of the Interior, and other agencies within the Department of Transportation. The panel will receive comments to the five questions posed in the June 15 notice.

FOR FURTHER INFORMATION CONTACT: Christina James, (202) 366–4561.

Issued in Washington, DC on June 17, 1994.

Cesar De Leon,

Acting Associate Administrator for Pipeline Safety.

[FR Doc. 94–15138 Filed 6–21–94; 8:45 am]

BILLING CODE 4910–60–P

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1023

[Ex Parte No. MC–100 (Sub# 6)]

Single State Insurance Registration [Petition of Lee's Permit Service, et al.]

AGENCY: Interstate Commerce Commission.

ACTION: Proposed rule; extension of comment due date.

SUMMARY: By decision served May 24, 1994 (59 FR 27002, May 25, 1994), the Commission sought public comment by June 14, 1994, on a proposal to revise its regulations pertaining to registration by motor carriers with States. The Commission now is extending the due date for comments to June 28, 1994. The National Conference of State Transportation Specialists (NCSTS) has advised the Commission that it is holding its annual conference between June 12 and 16, 1994, and that its membership will have the opportunity to discuss the Commission's proposed amendments at the conference. As the conference will not end until after the original due date for comments, the NCSTS requires an extension of the comment period. The Commission therefore is granting an extension to give the NCSTS the time it needs to formulate and submit its comments.

DATES: Comments must be submitted by June 28, 1994.

ADDRESSES: Send an original and 10 copies of comments identified as such and referring to Ex Parte No. MC–100 (Sub-No. 6) to: Interstate Commerce Commission, Office of the Secretary, Case Control Branch, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Kenneth H. Schwartz (202) 927–5316 or Joseph H. Dettmar (202) 927–5660; [TDD for hearing impaired: (202) 927–5721].

Decided: June 15, 1994.

By the Commission, Chairman McDonald, Vice Chairman Phillips, Commissioners Simmons and Morgan.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–15171 Filed 6–21–94; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Availability of a Draft Recovery Plan for the Railroad Valley Springfish (*Crenichthys nevadae*) for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for the threatened Railroad Valley springfish, *Crenichthys nevadae*. This species is endemic to six thermal springs in Railroad Valley, Nye County, Nevada, and has been introduced into four other springs in Nevada. The Service solicits review and

comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before August 22, 1994 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the State Supervisor, Nevada Ecological Services State Office, U.S. Fish and Wildlife Service, 4600 Kietzke Lane, Building C–125, Reno, Nevada, 89502 (telephone: 702–784–5227), or the Assistant Regional Director, Ecological Services, U.S. Fish and Wildlife Service, Eastside Federal Complex, 911 NE 11th Avenue, Portland, Oregon, 97232–4181 (telephone: 503–231–6131). Written comments and materials regarding the plan should be addressed to Mr. David L. Harlow, State Supervisor, at the above Reno, Nevada address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above Reno, Nevada address.

FOR FURTHER INFORMATION CONTACT: Ms. Donna Withers at the above Reno, Nevada address (telephone: 702–784–5227).

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the U.S. Fish and Wildlife Service's (Service) endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for reclassification or delisting, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

Railroad Valley springfish are endemic to two springs at Duckwater and four springs at Lockes, Railroad Valley, Nye County, Nevada. The species has been introduced into four additional springs in Nevada outside the species' historical range. Railroad Valley springfish are extant in all historical habitats and three introduction habitats. Populations vary from fewer than one hundred to several thousand individuals. The principle causes of decline for this species are habitat modification and nonnative fish introductions. All historical habitats are designated critical habitat for this species. Railroad Valley springfish occupy habitats on private, Federal, and Indian Reservation lands. Recovery of this species will require removal and/or control of nonnative fishes, restoration and protection of occupied habitats, and protection of ground water sources.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified will be considered prior to approval of the plan.

Author

The author of this notice is Donna Withers (see the Reno, Nevada address above).

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: June 15, 1994.

Don Weathers,

Acting Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 94–15123 Filed 6–21–94; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 59, No. 119
Wednesday, June 22, 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 COMMERCE

Foreign-Trade Zones Board

[Docket 20–94]

Proposed Foreign-Trade Subzone; Chevron U.S.A. Products Company (Oil Refinery), Philadelphia, PA; Correction

In notice document 94–12653 appearing on page 26784 in the issue of Tuesday, May 24, 1994, make the following correction:

On page 26784, in the first paragraph of the notice, the last sentence, the filing date should read: May 11, 1994.

Dated: June 14, 1994.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 94–15175 Filed 6–21–94; 8:45 am]

BILLING CODE 3510–DS–P

[Docket A(27f)–12–94]

Foreign-Trade Zone 137—Washington Dulles International Airport, Virginia; Request for Boundary Modification

The Washington Dulles Foreign-Trade Zone, Inc., grantee of FTZ 137, has made a request to the Foreign-Trade Zones (FTZ) Board for a minor modification of the boundary of FTZ 137 pursuant to § 400.27(f) of the FTZ Board regulations (15 CFR Part 400). The grantee is requesting authority to include within the zone project a privately owned public warehouse facility on a 3-acre parcel located at 110 Terminal Drive, Sterling, Virginia, within the Dulles Airport Corridor area, some 2 miles from the airport. In exchange, zone status would be relinquished on a parcel (3 acres) located within the boundary of the existing zone on the airport complex. The warehouse is operated by Victory Van Corporation, which would offer zone services as part of its public warehousing operation. No authority is requested for manufacturing or processing activity. The purpose of the change is to provide improved zone public warehousing services in the airport area while the grantee considers revisions to its longer-term zone plan.

Public comment on the request is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is July 8, 1994.

A copy of the request will be available for public inspection at the following location: Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th & Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: June 10, 1994.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 94–15174 Filed 6–21–94; 8:45 am]

BILLING CODE 3510–DS–P

INTERNATIONAL TRADE ADMINISTRATION

[A–427–801, A–428–801, A–475–801, A–588–804, A–485–801, A–559–801, A–401–801, A–549–801, A–412–801]

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Singapore, Sweden, Thailand, and the United Kingdom; Initiation of Antidumping Duty Administrative Reviews and Notice of Request for Revocation of an Order

AGENCY: Import Administration/ International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of antidumping duty administrative reviews and notice of request for revocation of order.

SUMMARY: The Department of Commerce has received requests to conduct administrative reviews of antidumping duty orders concerning Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Singapore, Sweden, Thailand, and the United Kingdom. In accordance with the Commerce regulations, we are initiating those administrative reviews for the period May 1, 1993, through April 30, 1994. We have also received a request to revoke the order covering ball bearings and parts thereof from Thailand with respect to NMB/Pelmec, the only known producer/exporter of this merchandise from Thailand.

EFFECTIVE DATE: June 22, 1994.

FOR FURTHER INFORMATION CONTACT: Holly A. Kuga, Director, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington D C. 20230: telephone (202) 482–2104.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce ("the Department") has received timely requests, in accordance with section 353.22(a) (1), (2), and (3) of the Department's regulations, for administrative reviews of antidumping duty orders covering antifriction bearings (other than tapered roller bearings) and parts thereof. The orders cover three classes or kinds of merchandise: ball bearings (ball), cylindrical roller bearings (cylindrical), and spherical plain bearings (spherical). Pursuant to section 353.25 of the Department's regulations, we have also received a request to revoke the order covering ball bearings and parts thereof from Thailand with respect to NMB/ Pelmec, the only known producer/ exporter of this merchandise from Thailand. This request is based on the firm's claim that there has been an absence of dumping on sales of the above subject merchandise for a period of three consecutive years.

Initiation of Reviews

In accordance with section 353.22(c) of the Department's regulations, we are initiating administrative reviews of the following antidumping duty orders. We intend to issue the final results of these reviews no later than May 31, 1995.

Proceedings and firms	Class or kind
France	
A–427–801:	
AVIAC	All.
ABG-SEMCA	All.
Franke & Heydrich	Ball
Hoesch Rothe Erde AG.	Ball
INA Roulements S.A.	All.
Rollix Defontaine, S.A.	Ball
SKF France (including all relevant affiliates).	All.

Proceedings and firms	Class or kind
SNFA	Ball & Cylindrical.
Societe Nouvelle de Roulements (SNR).	Ball & Cylindrical
TECNOFAN	All.
Germany	
A–428–801:	
Bayerische Motoren Werke AG.	All.
Cross-Trade GmbH.	All.
Delta Export GmbH.	All.
EXTA Aussenhandel GmbH.	All.
FAG Kugelfischer Georg Schaefer KGaA.	All.
Fichtel & Sachs AG.	Ball
Franke & Heydrich KG.	Ball
Hepa Walslager GmbH.	All.
Hoesch Rothe Erde AG.	Ball
INA Walzlager Schaeffler KG.	All.
NTN Kugellagerfabrik (Deutschland) GmbH.	Ball
Rollix & Defontaine, S.A.	Ball
Schaumloffel Technic GmbH.	All.
SKF GmbH. (including all relevant affiliates).	All.
SNR Roulements	Ball & Cylindrical.
Italy	
A–475–801:	
FAG Italia S.p.A.	Ball & Cylindrical.
Meter, S.p.A.	Ball.
SKF-Industrie S.p.A. (including all relevant affiliates).	Ball & Cylindrical.
Japan	
A–588–804:	
Asahi Seiko	All.
Godo Kogyo Co., Ltd.	All.
Fujino Iron Works Co., Ltd.	All.
I & OC of Japan Co., Ltd.	All.
ITOCHU	All.
Izumoto Seiko Co., Ltd.	All.
Kongo Colmet Mfg. Co., Ltd.	All.
Koyo Seiko Company, Ltd.	All.
Marubeni	All.
Matsuo Bearing Co., Ltd.	All.
Mihasi, Inc.	All.
Minimiguchi Bearing Mfg. Co.	All.
Mitsubishi	All.
Mitsui	All.
Nachi-Fujikoshi Corporation	Ball & Cylindrical.
Naniwa Kogyo Co., Ltd.	All.
Nankai Seiko Co., Ltd.	All.
Nichinan Sangyo Co., Ltd.	All.
Nichimen	All.
Nippon Pillow Block Sales Company, Ltd..	Ball.
Nippon Seiko K.K.	All.
Nippon Thompson Co., Ltd.	All.
Nissho-Iwai	All.
NTN Corp.	All.
Origin Electric Co., Ltd.	All.
Phoenix Int'l Corp.	All.
Sanken Trading Co., Ltd.	All.
Sanko Co., Ltd.	All.
Santest Co., Ltd.	All.
Shima Trading	All.
Sumitomo	All.
Taikoyo Sangyo Co., Ltd.	All.
Takeshita Seiko Co., Ltd.	Ball.
THK Co., Ltd.	All.
Toei Buhin Co., Ltd.	All.
TOK Bearing Co., Ltd.	All.
Tomen	All.
Tsubakimoto Precision Products Co., Ltd..	All.
Romania	
A–485–801:	
Tehnoimportexport	Ball.
All other exporters of ball bearings from Romania are conditionally covered by this review	
Singapore	
A–559–801:	
NMB Singapore/Pelmec Ind.	Ball.
Sweden	
A–401–801:	
SKF Sverige (including all relevant affiliates).	Ball & Cylindrical.
Thailand	
A–549–801:	
NMB Thai/Pelmec Thai Ltd.	Ball.
United Kingdom	
A–412–801:	
Barden Corporation	Ball & Cylindrical.
FAG (U.K.) Ltd.	Ball & Cylindrical.
NSK Bearings Europe, Ltd./ HP Bearings Ltd..	Ball & Cylindrical.
Normalair-Garrett Ltd.	Ball & Cylindrical.

Interested parties must submit applications for administrative protective orders in accordance with section 353.34(b) of the Department's regulations. However, due to the large number of parties to this proceeding, we strongly recommend that parties submit their APO applications as soon as possible, and we will process them on a first-come, first-serve basis.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930 (19 U.S.C. 1675(a)) and 19 CFR 353.22(c).

Dated: June 16, 1994.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 94–15180 Filed 6–21–94; 8:45 am]

BILLING CODE 3510–DS–P

[A–428–810]

High-Tenacity Rayon Filament Yarn, Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review.

SUMMARY: In response to a request by the respondents, Akzo Faser A.G. and Akzo Fibers, Inc. (Akzo), producers/importers of high-tenacity rayon filament yarn from Germany, the Department of Commerce (the Department) has conducted an administrative review of the antidumping duty order on high-tenacity rayon filament yarn from Germany. The review period is February 20, 1992 through May 31, 1993. This review involves one manufacturer/exporter of this merchandise to the United States, Akzo, and its United States subsidiary/importer.

The review indicates the existence of dumping margins for the period, and we preliminary determine to assess antidumping duties equal to the difference between the United States price (USP) and the foreign market value (FMV).

Interested parties are invited to comment on these preliminary results of review.

EFFECTIVE DATE: June 22, 1994.

FOR FURTHER INFORMATION CONTACT: Debra R. Crumbie, Amy S. Wei, or Michael J. Heaney, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–5253.

SUPPLEMENTARY INFORMATION:

Background

On June 30, 1992, the Department published in the **Federal Register** the antidumping duty order on high-tenacity rayon filament yarn from Germany (57 FR 29062). On June 7, 1993, the Department published a notice in the **Federal Register** notifying interested parties of the opportunity to request an administrative review of high-tenacity rayon filament yarn from Germany (58 FR 31941). On June 29, 1993, Akzo requested, in accordance with section 353.22(a) of the Commerce regulations, that we conduct an administrative review for the period February 20, 1992 through May 31, 1993. We published a notice of initiation of the antidumping duty

administrative review on July 21, 1993 (58 FR 39007).

The Department has now conducted a review for this period in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Review

The product covered by this administrative review is high-tenacity rayon filament yarn from Germany. During the review period, such merchandise was classifiable under the *Harmonized Tariff Schedule* (HTS) item number 5403.10.30.40. High-tenacity rayon filament yarn is a multifilament single yarn of viscose rayon with a twist of five turns or more per meter, having a denier of 1100 or greater, and a tenacity greater than 35 centinewtons per tex. The HTS item number is provided for convenience and U.S. Customs purposes. The written description remains dispositive as to the scope of the product coverage. The review covers Akzo and the period February 20, 1992 through May 31, 1993 (POR).

United States Price

In calculating USP, the Department treated Akzo's sales as purchase price (PP), as defined in section 772 of the Act, because the merchandise was sold to unrelated U.S. purchasers prior to importation. PP was based on the free-on-board (FOB) price to unrelated purchasers in the United States. We made adjustments, where applicable, for foreign brokerage and handling, foreign inland freight, ocean freight, U.S. duty, U.S. inland freight, foreign inland insurance, and U.S. brokerage.

We made an addition to USP for taxes which were rebated upon exportation. On October 7, 1993, the United States Court of International Trade (CIT), in *Federal-Mogul Corporation and The Torrington Company* v. *United States,* Slip Op. 93–194 (CIT, October 7, 1993), rejected the Department's methodology for calculating an addition to USP under section 772(d)(1)(C) of the Act to account for taxes that the exporting country would have assessed on the merchandise had it been sold in the home market. The CIT held that the addition to USP under section 772(d)(1)(C) of the Act should be the result of applying the foreign market tax rate to the price of the U.S. merchandise at the same point in the chain of commerce that the foreign market tax was applied to the foreign market sales (*see Federal-Mogul,*) Slip Op. 93–194 at 12).

In accordance with the *Federal-Mogul* decision, the Department added to USP the result of multiplying the foreign market tax rate by the U.S. price at the same point in the chain of commerce that the foreign market tax was applied to foreign market sales. The Department has also adjusted the USP tax adjustments and the amount of tax included in FMV to account for expenses that are later deducted from USP and FMV. These adjustments to the amount of the foreign market tax and the USP tax adjustment are necessary to prevent our new methodology for calculating the USP tax adjustment from creating antidumping duty margins where no margins would exist if not taxes were levied upon foreign market sales.

Without the adjustments, margins would be artificially increased because both the amount of tax included in the price of the foreign market merchandise and the amount of the USP tax adjustment include many expenses that are later deducted when calculating USP and FMV. After deductions are made for these expenses, the amount of tax included in FMV and the USP tax adjustment still reflects the amounts of these expenses. Thus, a margin may be created that is not dependent upon a difference between USP and FMV, but rather is the result of the price of the U.S. merchandise containing more expenses than the price of the foreign market merchandise.

The Department's policy of avoiding the creation of artificial margins is in accordance with court decisions. The United States Court of Appeals for the Federal Circuit has held that the application of the USP tax adjustment under section 772(d)(1)(C) of the Act should not create an antidumping duty margin if pre-tax FMV does not exceed USP (*see Zenith Electronics Corp.* v. *United States,* 988 F.2d 1573, 1581 (Fed. Cir. 1993)). In addition, the CIT has specifically held that an adjustment should be made to mitigate the impact of expenses that are deducted from FMV and USP upon the USP tax adjustment and the amount of tax included in FMV (*see Daewoo Electronics Co., Ltd.* v. *United States,* 760 F. Supp. 200, 208 (CIT, 1991)). However, the mechanics of the Department's adjustments to the USP tax adjustment and the foreign market tax amount as described above are not identical to those suggested in *Daewoo.*

In addition, the Department requested that Akzo submit information relating to all exporter's sales price (ESP) sales made during the POR. The Department analyzed data submitted by Akzo and determined that the ESP sales reported were entered and liquidated prior to the date of the Department's preliminary determination of sales at less-than-fair-value (LTFV). Because this merchandise was entered prior to the date of the preliminary determination, it was not covered by this order (*see* Notice of Antidumping Duty Order: High-Tenacity Rayon Filament Yarn from Germany, 57 FR 29062 (June 30, 1992)). Therefore, we have excluded these sales from this review.

No other adjustments to USP were claimed or allowed.

Foreign Market Value

Akzo had sufficient home market sales of the subject merchandise during the POR. Therefore, the sales of high-tenacity rayon filament yarn in the home market served as a viable basis for calculating FMV.

Based on findings in the LTFV investigation that home market sales of the subject merchandise were made by Akzo at prices below the cost of production (COP), the Department conducted a cost investigation for this administrative review. We examined whether home market sales were made below cost in substantial quantities over an extended period of time, and whether such sales were made at prices which permitted recovery of all costs within a reasonable period of time in the normal course of trade. We calculated Akzo's COP on a model-specific basis as the sum of all reported materials costs, labor expenses, factory overhead, selling expenses, net interest expense, and revised general and administrative expenses. We reallocated general and administrative costs as a percentage of cost of goods sold. We compared COP to home market prices, net of movement charges, third-party payments, packing, rebates, and discounts. Based upon this comparison, we found that there were sales below cost.

Where we determined that less than 10 percent of the home market sales of rayon yarn of a particular model were sold at prices below the COP, we did not disregard any sales of that model in our calculation of FMV. If 10 percent or more, but not more than 90 percent, of the home market sales of a particular model of rayon yarn were below cost, we excluded the below-cost home market sales prices from our calculation of FMV, provided that these below-cost home market sales were made over an extended period of time. For those models where more than 90 percent of the home market sales were made below cost over an extended period of time, we disregarded all home market sales of those models from our calculation of FMV and used the constructed value of those models as described below.

To determine whether sales below cost were made over an extended period of time, we compared the number of months in which sales below cost occurred for a particular model to the number of months in which that model was sold. If the model was sold in fewer than three months, we did not disregard below-cost sales unless there were below-cost sales of that model in each month sold. If a model was sold in three or more months, we did not disregard below-cost sales unless there were sales below cost in at least three of the months in which the model was sold.

Akzo has not submitted information indicating that any of its sales below cost were made at prices which would have permitted "recovery of all costs within a reasonable period of time in the normal course of trade," as required by section 773(b)(2) of the Act. Therefore, we have no basis for concluding that the costs of production of such sales have been recovered within a reasonable period of time. As a result of our investigation, we disregarded Akzo's below-cost sales made over an extended period of time.

We used constructed value (CV) as FMV for those U.S. sales for which there were insufficient sales of the comparison home-market model at or above the COP. We calculated CV in accordance with section 773(e) of the Act. We made an adjustment to general and administrative expenses based on our finding that Akzo had allocated general and administrative costs to different product groups based on specific allocation methodologies. The costs reported were general in nature and related to all operations, and we allocated them to all of Akzo's product lines. In addition, we summed the cost of materials, indirect selling expenses, direct selling expenses, revised general and administrative expenses, net interest expenses, and imputed credit. In our calculation of the selling, general, and administrative expenses (SG&A), where the sum of the actual selling expenses and the revised general and administrative expenses was less than the statutory minimum of 10 percent of the cost of manufacturing (COM), we calculated SG&A as 10 percent of the COM. Where the actual profits were less than the statutory minimum of 8 percent of COM plus SG&A, we calculated profit as 8 percent of the sum of COM plus SG&A. We adjusted CV for selling, credit, and packing expenses.

For those models that had sufficient above-cost sales, the Department calculated FMV using home market prices based on the FOB price to unrelated purchasers. Where applicable, we made adjustments for inland freight (post-sale), inland insurance, packing, discounts, other discounts, interest revenue, rebates, and third party payments. We made adjustments for differences in technical services expenses and credit. We also made adjustments for differences in the physical characteristics of merchandise. The Department also made an adjustment to the amount of consumption taxes included in FMV in accordance with the Department's aforementioned tax adjustment methodology.

Preliminary Results

As a result of our review, we preliminarily determine the dumping margin to be:

Manufacturer/ Exporter	Time period	Margin (percent)
Akzo Faser A.G.	2/20/92–5/31/93	1.11

Parties to this proceeding may request disclosure within 5 days of publication of this notice and any interested party may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication, or the first workday thereafter. Interested parties may submit case briefs and/or written comments not later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed not later than 37 days after the date of publication. The Department will publish a notice of the final results of this administrative review, which will include the results of its analysis of issues raised in any such briefs or comments.

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between USP and FMV may vary from the percentage stated above. The Department will issue appraisement instructions directly to the U.S. Customs Service.

Furthermore, the following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of high-tenacity rayon filament yarn from Germany entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a) of the Act: (1) The cash deposit rate for Akzo will be that established in the final results of this review; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in the original LTFV investigation, the cash deposit will continue to be the rate published in the final determination for which the manufacturer or exporter received a company-specific rate; (3) if the exporter is not a firm covered in this review, or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in the final results of this review, or the original investigation; (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review, the cash deposit rate will be the "all others rate" from the LTFV investigation.

On May 25, 1993, the CIT in *Floral Trade Council* v. *United States*, 822 F. Supp. 766 (1993), and *Federal-Mogul Corporation and the Torrington Company* v. *United States*, 822 F. Supp. 782 (1993), decided that once an "all others" rate is established for a company, it can only be changed through an administrative review. The Department has determined that in order to implement these decisions, it is appropriate to reinstate the original "all others" rate from the LTFV investigation (or that rate as amended for correction for clerical errors or as a result of litigation) in proceedings governed by antidumping duty orders for the purposes of establishing cash deposits in all current and future administrative reviews. Thus, the "all others" rate for the purposes of this review will be 24.58 percent, the "all others" rate established in the final notice of LTFV investigation by the Department (57 FR 21770).

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: June 15, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–15182 Filed 6–21–94; 8:45 am]

BILLING CODE 3510–DS–M

[A–508–604]

Industrial Phosphoric Acid From Israel; Final Results of Antidumping Duty Administrative Reviews

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of Final Results of Antidumping Duty Administrative Reviews.

SUMMARY: On March 8, 1994, the Department of Commerce published the preliminary results of its administrative reviews of the antidumping duty order on industrial phosphoric acid from Israel (59 FR 10787). The review periods are August 1, 1991 through July 31, 1992 and August 1, 1992 through July 31, 1993. These reviews involve Haifa Chemicals, Ltd., a manufacturer/exporter of this merchandise to the United States. We have now completed these reviews and determine the margin to be 6.82 percent *ad valorem* for Haifa Chemicals.

EFFECTIVE DATE: June 22, 1994.

FOR FURTHER INFORMATION CONTACT: Gayle Longest or Kelly Parkhill, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On March 8, 1994, the Department of Commerce (the Department) published in the **Federal Register** the preliminary results of its administrative reviews of the antidumping duty order on industrial phosphoric acid from Israel (59 FR 10787) covering the periods August 1, 1991 through July 31, 1992 and August 1, 1992 through July 31, 1993, the fifth and sixth review periods respectively. The review of Rotem Fertilizers (Rotem) was terminated in the preliminary results of these reviews (59 FR 10787) because Rotem was determined to be the successor to Negev Phosphates, Ltd. (Negev), a company that was revoked from the antidumping order in the final results of the changed circumstances review. The Department has now completed these administrative reviews in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Review

Imports covered by these reviews are shipments of industrial phosphoric acid (IPA). This product is classifiable under item number 2809.20.00 of the *Harmonized Tariff Schedule* (HTS). The HTS item number is provided for convenience and customs purposes. The written description remains dispositive.

The review periods are August 1, 1991 through July 31, 1992 and August 1, 1992 through July 31, 1993. These reviews involve Haifa Chemicals Ltd. (Haifa), an Israeli manufacturer/exporter to the United States of the subject merchandise.

Haifa reported that it did not have any shipments of the subject merchandise to the United States during these review periods. We subsequently confirmed with the United States Customs Service that there were no entries of this merchandise to the United States by Haifa during these review periods. Therefore, we are using the rate found in the previous review for this company for cash deposit purposes. *See Industrial Phosphoric Acid from Israel; Final Results of Antidumping Duty Administrative Review* (57 FR 38471; August 25, 1992). Because Haifa did not respond to the Department's questionnaire in that review, it was assigned a rate of 6.82 percent, the highest margin assigned to any company in a previous review or in the investigation.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received no comments.

Final Results of the Review

We determine the following dumping margin for the periods August 1, 1991 through July 31, 1992 and August 1, 1992 through July 31, 1993:

Manufacturer/Exporter	Margin (Percent)
Haifa Chemicals Ltd	6.82

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of these final results of administrative reviews for all shipments of the subject merchandise, entered, or withdrawn from warehouse, for consumption as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for the reviewed company will be the rate as listed; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in these reviews, a prior review, or the original less-than-fair-value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) cash deposits for all other manufacturers or exporters will be the "all other" rate of 1.77 percent. This is the rate established during the LTFV investigation.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during these review periods. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and subsequent assessment of double antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibilities concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

These administrative reviews and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: June 15, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–15181 Filed 6–21–94; 8:45 am]

BILLING CODE 3510–DS–P

[C–428–812]

Notice of Court Decision: Certain Hot Rolled Lead and Bismuth Carbon Steel Products from Germany

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: June 22, 1994.

FOR FURTHER INFORMATION CONTACT: Kristin Heim, Office of Countervailing Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW.,

Washington, DC 20230; telephone (202) 482–3798.

SUMMARY: On June 7, 1994, the United States Court of International Trade ("CIT") overturned the determination by the Department of Commerce ("the Department") that the benefit of Saarstahl AG's subsidization, by reason of forgiveness of debts, was passed through to Dillinger Hutte Saarstahl AG ("DHS") after Saarstahl was privatized.

SUPPLEMENTARY INFORMATION: In its *Final Affirmative Countervailing Duty Determination: Certain Hot Rolled Lead and Bismuth Carbon Steel Products From Germany*, 58 FR 6233 (January 27, 1993), the Department determined that subsidies previously bestowed on Saarstahl in the form of debt forgiveness passed through to DHS, a newly formed holding company of which Saarstahl became a subsidiary. The Department's determination was challenged. The Department subsequently requested, and was granted, a remand in order to reconsider its final determinations. On remand, the Department adopted its reasoning from *Final Affirmative Countervailing Duty Determination: Certain Steel Products From Germany*, 58 FR 37315 (July 9, 1993), in which it determined that a portion of the price DHS paid for Saarstahl represented repayment of prior subsidies. On June 7, 1994, in *Saarstahl AG* v. *United States*, Slip Op. 94–92, the CIT overturned the Department's determination that previously bestowed subsidies continued to benefit a company privatized in an arm's-length transaction.

In its decision in *Timken Co.* v. *United States*, 893 F.2d 337 (Fed. Cir. 1990), the United States Court of Appeals for the Federal Circuit held that, pursuant to 19 U.S.C. 1516a(e), the Department must publish a notice of a court decision which is not "in harmony" with a Department determination, and must suspend liquidation of entries pending a "conclusive" court decision. The CIT's decision in *Saarstahl* on June 7, 1994, constitutes a decision not in harmony with the Department's final affirmative determination. Publication of this notice fulfills the *Timken* requirement.

Accordingly, the Department will continue to suspend liquidation pending the expiration of the period of appeal or, if appealed, upon a "conclusive" court decision. Absent an appeal or, if appealed, upon a "conclusive" court decision affirming the CIT's opinion, the countervailing duty order will be revoked effective June 17, 1994.

Dated: June 16, 1994.

Paul L. Joffe,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 94–15178 Filed 6–21–94; 8:45 am]

BILLING CODE 3510–DS–P

[C–412–811]

Notice of Court Decision: Certain Hot Rolled Lead and Bismuth Carbon Steel Products From the United Kingdom

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: June 22, 1994.

FOR FURTHER INFORMATION CONTACT: Annika L. O'Hara or Julie Anne Osgood, Office of Countervailing Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–4198 and (202) 482–0167, respectively.

SUMMARY: On June 7, 1994, the United States Court of International Trade ("CIT") overturned the determination by the Department of Commerce ("the Department") that United Engineering Steels, Ltd. ("UES") was being subsidized by reason of subsidies previously bestowed on a government-owned company which sold one of its productive units to UES in an arm's-length transaction.

SUPPLEMENTARY INFORMATION: In its *Final Affirmative Countervailing Duty Determination: Certain Hot Rolled Lead and Bismuth Carbon Steel Products From the United Kingdom*, 58 FR 6237 (January 27, 1993), the Department determined that subsidies previously bestowed on the British Steel Corporation ("BSC") passed through, in part, to UES, a joint-venture company, when UES purchased one of BSC's productive units in an arm's-length transaction. The Department's determination was challenged. The Department subsequently requested, and was granted, a remand in order to reconsider its final determination. On remand, the Department adopted its reasoning in *Final Affirmative Countervailing Duty Determination: Certain Steel Products From the United Kingdom*, 58 FR 37393 (July 9, 1993), in which it determined that part of the price UES paid for the productive unit purchased from BSC constituted payment for prior subsidies. On June 7, 1994, in *Inland Steel Bar Co. v. United States*, ("*Inland Steel*"), Slip Op. 94–93, the CIT overturned the Department's determination that previously bestowed subsidies are passed through to a successor company sold in an arm's-length transaction.

In its decision in *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990), the United States Court of Appeals for the Federal Circuit held that, pursuant to 19 U.S.C. section 1516a(e), the Department must publish a notice of a court decision which is not "in harmony" with a Department determination, and must suspend liquidation of entries pending a "conclusive" court decision. The CIT's decision in Inland Steel on June 7, 1994, constitutes a decision not in harmony with the Department's final affirmative determination. Publication of this notice fulfills the *Timken* requirement.

Accordingly, the Department will continue to suspend liquidation pending the expiration of the period of appeal, or, if appealed, upon a "conclusive" court decision. Absent an appeal, or, if appealed, upon a "conclusive" court decision affirming the CIT's opinion, the countervailing duty order will be revoked effective June 17, 1994.

Dated: June 16, 1994.

Paul L. Joffe,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 94–15179 Filed 6–21–94; 8:45 am]

BILLING CODE 3510–DS–P

Minority Business Development Agency

Business Development Center Applications: Anaheim, CA; Notice

AGENCY: Minority Business Development Agency.

ACTION: Cancellation of notice.

SUMMARY: This notice cancels the advertisement as it appeared in the April 6, 1994, issue for the Minority Business Development Agency (MBDA) announcement that it solicited competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC in the Anaheim, California Geographic Service Area. The MBDA requirement for establishing a Minority Business Development Center in the Anaheim MSA has been cancelled.

CLOSING DATE: The closing date for submitting an application was May 13, 1994.

ADDRESSES: San Francisco Regional Office, Minority Business Development Agency, U.S. Department of Commerce, 221 Main Street, suite 1280, San Francisco, California 94105, 415/744–3001.

FOR FURTHER INFORMATION CONTACT: Steven Saho, Business Development Clerk, San Francisco Regional Office at 415/744–3001.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information can be obtained by contacting the San Francisco Regional Office.

11.800 Minority Business Development

(Catalog of Federal Domestic Assistance)

Dated: June 15, 1994.

Melda Cabrera,

Regional Director, San Francisco Regional Office.

[FR Doc. 94–15069 Filed 6–22–94; 8:45 am]

BILLING CODE 3510–21–M

Business Development Center Applications: Las Vegas, NV; Notice

AGENCY: Minority Business Development Agency.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) is revising the closing date and the performance period for the Las Vegas MBDC. The new closing date will be July 29, 1994. The revised performance period will be from November 1, 1994 thru October 31, 1995. The original Announcement was published in the May 11, 1994, issue of the Federal Register. The new project I.D. number will be 09–10–95004–01. A pre-bid conference will be held in Las Vegas, Nevada on July 8, 1994, at 1:30 P.M. at the following address: City Hall, 400 East Stewart, General Services Conference Room, 1st floor, Las Vegas, Nevada 89101.

The mailing address for submission is: San Francisco Regional Office, Minority Business Development Agency, U.S. Department of Commerce, 221 Main Street, San Francisco, California 94105.

FOR FURTHER INFORMATION CONTACT: Melda Cabrera, Regional Director, San Francisco Regional Office at 415/744–3001.

11.800 Minority Business Development Center

(Catalog of Federal Domestic Assistance)

Dated: June 15, 1994.

Melda Cabrera,

Regional Director, San Francisco Regional Office.

[FR Doc. 94–15070 Filed 6–21–94; 8:45 am]

BILLING CODE 3510–21–M

National Institute of Standards and Technology

[Docket No. 931057–4117]

RIN 0693–AA98

Approval of Withdrawal of Federal Information Processing Standard (FIPS) 71, Advanced Data Communication Control Procedures (ADCCP) and FIPS 78, Guideline for Implementing ADCCP

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice.

SUMMARY: The purpose of this notice is to announce that the Secretary of Commerce has approved the withdrawal of Federal Information Processing Standard (FIPS) 71, Advanced Data Communication Control Procedures (ADCCP) and FIPS 78, Guideline for Implementing Advanced Data Communication Control Procedures (ADCCP).

On November 16, 1993, notice was published in the Federal Register (58 FR 60425) proposing withdrawal of Federal Information Processing Standard (FIPS) 71, because the technical specifications that they adopt are obsolete and are no longer supported by industry. NIST also stated that if FIPS 71 were withdrawn, FIPS 78 would be withdrawn as well.

The written comments submitted by interested parties and other material available to the Department relevant to this standard was reviewed by NIST. On the basis of this review, NIST recommended that the Secretary approved the withdrawal of FIPS 71 and 78, and prepared a detailed justification document for the Secretary's review in support of that recommendation.

The detailed justification document which was presented to the Secretary is part of the public record and is available for inspection and copying in the Department's Central Reference and Records Inspection Facility, Room 6020, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC 20230.

EFFECTIVE DATE: This withdrawal is effective on June 22, 1994.

FOR FURTHER INFORMATION CONTACT: Ms. Shirley Radack, National Institute of Standards and Technology, Gaithersburg, MD 20899, telephone (301) 975–2833.

Authority: Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Institute of Standards and Technology after approval by the Secretary of Commerce pursuant to Section 111(d) of the Federal Property and Administrative Services Act of 1949 as amended by the Computer Security Act of 1987, Public Law 100–235.

Dated: June 17, 1994.

Samuel Kramer,

Associate Director.

[FR Doc. 94–15189 Filed 6–21–94; 8:45 am]

BILLING CODE 3510–CN–M

[Docket No. 940550–4150]

RIN No. 0693–AB28

Proposed Federal Information Processing Standard (FIPS) For SQL Environments

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice; Request for comments.

SUMMARY: This proposed FIPS defines general purpose profiles that can be used by both vendors and users to specify exact requirements for how various products will fit into an SQL environment. An SQL environment is an integrated data processing environment in which heterogeneous products, all supporting some aspect of FIPS 127, SQL, are able to communicate with one another and provide shared access to data and data operations and methods under appropriate security, integrity, and access control mechanisms.

The profiles in this proposed FIPS will enable Federal agencies to specify a subset of FIPS 127 to provide limited SQL access to legacy databases, or to support SQL gateways to specialized data managers such as Geographic Information Systems, full-text document management systems, or object database management systems.

Prior to the submission of this proposed FIPS to the Secretary of Commerce for review and approval, it is essential to assure that consideration is given to the needs and views of manufacturers, the public, and State and local governments. The purpose of this notice is to solicit such views.

This proposed FIPS contains two sections: (1) An announcement section, which provides information concerning the applicability, implementation, and maintenance of the standard; and (2) a specifications section. Only the announcement section of the standard is provided in this notice. Interested parties may obtain copies of the specifications section from the Standards Processing Coordinator (ADP), National Institute of Standards and Technology, Technology Building, room B64, Gaithersburg, MD 20899, telephone (301) 975–2816. An electronic version of this specification is available

using Internet anonymous FTP protocols.

Internet Node: speckle.ncsl.nist.gov
User name: ftp
Password:
<YourName>@<YourInternetAddress>
Change Directory to: isowg3/FIPSdocs
Get File: fipseri.ps —Postscript version

An ASCII text version of this document is also available in the same directory as above, but with file name "fipseri.txt".

You will receive some sign-on messages. If these messages confuse your FTP client, you can turn them off when you sign-on again by preceding your password with a hyphen (-).

DATES: Comments on this proposed FIPS must be received on or before September 20, 1994.

ADDRESSES: Written comments concerning the proposed FIPS should be sent to: Director, Computer Systems Laboratory, ATTN: Proposed FIPS for SQL Environments, Technology Building, Room B154, National Institute of Standards and Technology, Gaithersburg, MD 20899.

Written comments received in response to this notice will be made part of the public record and will be made available for inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Dr. Leonard J. Gallagher, National Institute of Standards and Technology, Gaithersburg, MD 20899, telephone (301) 975–3251.

Dated: June 17, 1994.

Samuel Kramer,

Associate Director.

Federal Information Processing Standards Publication XXX

(Draft—April 1994)

Announcing the Standard for SQL Environments

Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Institute of Standards and Technology after approval by the Secretary of Commerce pursuant to Section 111(d) of the Federal Property and Administrative Services Act of 1949 as amended by the Computer Security Act of 1987, Public Law 100–235.

1. Name of Standard. SQL Environments (FIPS PUB XXX).

2. Category of Standard. Software Standard, Database.

3. Explanation. An SQL environment is an integrated data processing environment in which heterogeneous products, all supporting some aspect of the FIPS SQL standard (FIPS PUB 127), are able to communicate with one another and provide shared access to data and data operations and methods under appropriate security, integrity, and access control mechanisms. Some components in an SQL environment will be full-function SQL implementations that conform to an entire level of FIPS SQL and support all of its required clauses for schema definition, data manipulation, transaction management, integrity constraints, access control, and schema information. Other components in an SQL environment may be specialized data repositories, or graphical user interfaces and report writers, that support selected portions of the SQL standard and thereby provide a degree of integration between themselves and other products in the same SQL environment.

This FIPS PUB is the beginning of a continuing effort to define appropriate conformance profiles that can be used by both vendors and users to specify exact requirements for how various products fit into an SQL environment. The emphasis in this first FIPS for SQL Environments is to specify general purpose, SQL external repository interface (SQL/ERI) profiles for non-SQL data repositories. These profiles specify how a subset of the SQL standard can be used to provide limited SQL access to legacy databases, or to support SQL gateways to specialized data managers such as Geographic Information Systems (GIS), full-text document management systems, or object database management systems. All of the profiles specified herein are for server-side products, that is, products that control persistent data and provide an interface for users access to that data. Subsequent versions of this FIPS PUB may specify SQL environment profiles for client-side products, that is, products that access data and then present that data in graphical or report-writer style to an end user, or process the data in some other way on behalf of the end user.

4. Approving Authority. Secretary of Commerce

5. Maintenance Agency. Department of Commerce, National Institute of Standards and Technology, (Computer Systems Laboratory)

6. Cross Index.

—*Federal Information Resources Management Regulations (FIRMR)* subpart 201.303, Standards, and subpart 201.39.1002, Federal Standards, April 1992.

—FIPS PUB 127–2, *Federal Information Processing Standards Publication—Database Language SQL*, adoption of ANSI SQL (ANSI X3.135–1992) and ISO SQL (ISO/IEC 0975:1992) for Federal use, U.S. Department of Commerce, National Institute of Standards and Technology, June 2, 1993.

—ANSI/ISO/IEC 9579, *International Standard for Remote Database Access (RDA), Part 1: Generic RDA and Part 2: SQL Specialization*, ISO/IEC 9579–1:1993 and ISO/IEC 9579–2:1993, published December, 1993.

—ANSI/ISO/IEC CD 9075–3, *(Committee Draft) International Standard for Database Language SQL, Part 3: Call Level Interface (SQL/CLI)*, JTC1 Committee Draft (CD), document SC21 N8436, February 1994.

—ANSI/ISO/IE CD 9075–4, *(Committee Draft) International Standard for Database Language SQL, Part 4: Persistent Stored Modules (SQL/PSM)*, JTC1 Committee Draft (CD), document SC21 N8438, March 1994.

7. Related Documents. SQL Environment specifications will often depend upon existing Database Language SQL standards (see Cross Index above) and upon emerging SQL and SQL Multimedia standards. The following items identify formal ISO/IEC international standards projects for which preliminary specifications and base documents exist, but where the development effort has not yet reached a complete and stable stage (i.e. the Committee Draft (CD) stage). As these specifications mature and move through the standards process, they can referenced more reliably in procurement requirements.

(Working Draft) Database Language SQL (SQL3)

Part 1: Framework
Part 2: Foundation—including Abstract Data Types and Object SQL
Part 3: Call Level Interface—extensions to ISO/IEC CD 9075–3 identified above.
Part 4: Persistent Stored Modules—extensions to ISO/IEC CD 9075–4 identified above.
Part 5: Language Bindings—extensions to the binding clauses of ISO/IEC 9075:1992.
Part 6: Encompassing Transactions—to support X/Open XA-interface.

(Working Draft) SQL Multimedia (SQL/MM)

Part 1: Framework and General Purpose Facilities
Part 3: Spatial

Other Parts: Reserved for other SQL/MM sub-projects with no current base document (e.g., images, photographs, motion pictures, sound, music, video, etc.).

For information on the current status of the above Working Drafts, contact NIST personnel working on SQL Standardization at 301–975–3251. For document references to the above and for additional related documents, see the References section of the SQL/ERI Server Profiles specification.

8. Objective. The primary objective of this FIPS PUB for SQL Environments is to specify SQL profiles that can be used by Federal departments and agencies to support integration of legacy databases and other non-SQL data repositories into an SQL environment. The intent is to provide a high level of control over a diverse collection of legacy or specialized data resources. An SQL environment allows an organization to obtain many of the advantages of SQL without requiring a large, complex, and error-prone conversion effort; instead, the organization can evolve, in a controlled manner, to a new environment.

9. Applicability. This standard is applicable in any situation where it is desirable to integrate a client-side productivity tool or a server-side data repository into an SQL environment. It is a non-mandatory standard that may be invoked on a case-by-case basis subject to the integration objectives of the procuring department or agency. It is particularly suitable for specifying limited SQL interfaces to legacy databases or to specialized data repositories not under the control of a full-function SQL database management system.

It can be used along with other procurement information to specify SQL interface requirements for a wide range of data management procurements.

One special area of application envisioned for this standard is Electronic Commerce, a National Challenge Application area of the National Information Infrastructure. The primary objective of Electronic Commerce is to integrate communications, data management, and security services in a distributed processing environment, thereby allowing business applications within different organizations to interoperate and exchange information automatically. At the data management level, electronic commerce requires a logically integrated database of diverse data stored in geographically separated data banks under the management and control of heterogeneous database management systems. An over-riding requirement is that these diverse data managers be able to communicate with one another and provide shared access to data and data operations and methods under appropriate security, integrity, and access control mechanisms. FIPS SQL provides a powerful database language for data definition, data manipulation, and integrity management to satisfy many of these requirements. It is unrealistic to expect that every data manager involved in electronic commerce will conform to even the Entry SQL level of the FIPS SQL standard; however, it is not unrealistic to require that they support a limited SQL interface, even a read-only interface, provided by one of the SQL/ERI Server profiles. New procurements to add components to the National Information Infrastructure, or to upgrade existing components, can define the necessary SQL schemas and point to appropriate SQL/ERI Server profiles as procurement requirements.

This standard may also be applicable, on a case-by-case basis, in many of the following areas:

Legacy databases
Full-Text document databases
Geographic Information Systems
Bibliographic information retrieval
Object database interfaces
Federal data distribution
Operating system file interface
Open system directory interface
Electronic mail repositories
CASE tool repositories
XBase repositories
C++ sequence class repositories
Object Request Broker interface repository
Real-time database interface
Internet file repositories

Further detail on each of these potential application areas can be found in Section 8, "Applicability", of the FIPS specification of SQL Environments.

10. Specifications. See the Specifications for SQL Environments—SQL External Repository Interface (SQL/ERI)—Server Profiles (Affixed).

11. Implementation. Implementation of this standard involves four areas of consideration: the effective date, acquisition of conforming implementations, interpretation, and validation.

11.1 Effective date. This publication is effective immediately upon publication. Since it is a nonmandatory specification, based on the established FIPS SQL standard, and used at the discretion of individual Federal procurements, no transitional period or delayed effective date is necessary.

11.2 Acquisition. All conforming implementations of a specific SQL/ERI profile will support some aspects of the FIPS SQL standard. However, such implementations will not normally be full function database management systems and conformance will often be dependent upon SQL schema definitions and other requirements provided as part of each individual procurement. In most cases, a procurement will not be able to simply point to an SQL/ERI profile and demand conformance to it. Instead, successful procurements will normally use an appropriate SQL/ERI profile, together with an application-specific schema definition, as one aspect of overall procurement requirements. In many cases, vendors of products that provide a limited SQL interface will define their interfaces in terms of a fixed SQL schema definition. In those cases, procurements can point to the vendor-provided schema definition and to an appropriate SQL/ERI profile as a procurement requirement. In some cases, especially in those situations where schema definitions and requirements are not known in advance, a request for a proposal (RFP) many require that an SQL schema, and adherence to one of the SQL/ERI Server profiles, be presented as part of the response proposal.

11.3 Interpretation. NIST provides for the resolution of questions regarding specifications and requirements of the FIPS for SQL Environments, and issues official interpretations as needed. Procedures for interpretations are specified in FIPS PUB 29–3. All questions about the interpretation of FIPS SQL Environments should be addressed to:

Director, Computer Systems Laboratory, Attn: SQL Environments, National Institute of Standards and Technology, Gaithersburg, MD 20899, Telephone: (301) 975–2833

11.4 Validation. Implementations of the FIPS for SQL Environments may be validated in accordance with NIST Computer Systems Laboratory (CSL) validation procedures for FIPS SQL (FIPS PUB 127). Recommended procurement terminology for validation of FIPS SQL is contained in the U.S. General Services Administration publication *Federal ADP & Telecommunications Standards Index*, Chapter 4 Part 2. This GSA publication provides terminology for three validation options: Delayed Validation, Prior Validation Testing, and Prior Validation. The agency may select the appropriate validation option and may specify appropriate time frames for validation and correction of nonconformities.

Implementations may be evaluated using the NIST SQL Test Suite, a suite of automated validation tests for SQL implementations. Although this test suite was designed to test conformance of full-function SQL database management systems, it can be modified to accommodate testing of SQL/ERI Server implementations. The results of validation testing by the SQL Testing Service are published on a quarterly basis in the *Validated Products List*, available from the National Technical Information Service (NTIS).

Current information about the NIST SQL Validation Service and the status of validation testing for SQL Environments is available from:

National Institute of Standards and Technology, Computer Systems Laboratory, Software Standards Validation Group, Building 225, Room A266, Gaithersburg, Maryland 20899, (301) 975–2490.

12. Where to Obtain Copies. Copies of this publication are for sale by the National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161, telephone 703–487–4650. When ordering, refer to Federal Information Processing Standards Publication XXX (FIPSPUBXXX), SQL Environments. Payment may be made by check, money order, or deposit account.

[FR Doc. 94–15188 Filed 6–21–94; 8:45 am]
BILLING CODE 3510–CN–M

Prospective Grant of Exclusive Patent License

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of Prospective Grant of Exclusive Patent License.

SUMMARY: This is a notice in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Institute of Standards and Technology ("NIST"), U.S. Department of Commerce, is contemplating the grant of a field of use exclusive license outside the United States to practice the invention embodied in U.S. Patent 5,295,176, titled, "Method and Apparatus for Precisely Measuring Accelerating Voltages Applied to X-Ray Sources" to Radical Corporation, having a place of business in Monrovia, California. The patent rights in this invention have been assigned to the United States of America.

FOR FURTHER INFORMATION CONTACT: Bruce E. Mattson, National Institute of Standards and Technology, Technology Development and Small Business Program, Building 221, Room B–256, Gaithersburg, MD 20899.

SUPPLEMENTARY INFORMATION: The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 C.F.R. 404.7 The prospective exclusive license may be granted unless, within sixty days from the date of this published Notice, NIST receives written evidence and argument which establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 C.F.R. 404.7.

U.S. Patent 5,295,176 provides a method of precisely measuring the accelerating voltage applied to an x-ray tube using a simple apparatus with a direct reading taken from a spectrographic image of the radiation produced by the x-ray tube.

The availability of the invention for licensing as published in the **Federal Register**, Vol. 58, No. 93 (May 17, 1993). A copy of the patent may be obtained from NIST at the foregoing address.

Dated: June 17, 1994.

Samuel Kramer,

Associate Director.

[FR Doc. 94–15187 Filed 6–21–94; 8:45 am]

BILLING CODE 3510–13–M

FARM CREDIT ADMINISTRATION

[BM–17–FEB–94–02]

Policy Statement on Regulatory Philosophy

AGENCY: Farm Credit Administration.

ACTION: Policy statement.

SUMMARY: The Farm Credit Administration (FCA) Board adopted a "Policy Statement on Regulatory Philosophy" [BM–17–FEB–94–02; FCA–PS–59] on February 17, 1994. This policy statement is in final form; however, pursuant to the "Policy Statement on Rules for Transaction of Business and Operational Responsibilities of the Farm Credit Administration Board" [NV–94–05 (07–FEB–94); FCA–PS–58], Article VII, Section 2(b), this Policy Statement should be reviewed by the FCA Board no later than February 17, 1999.

EFFECTIVE DATE: February 17, 1994.

FOR FURTHER INFORMATION CONTACT: Curtis M. Anderson, Secretary to the Farm Credit Administration Board, Farm Credit Administration, McLean, Virginia 22102–5090, (703) 883–4000, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION: The text of the Board's policy statement concerning regulatory philosophy is set forth below in its entirety:

Policy Statement on Regulatory Philosophy; BM–17–FEB–94–02; FCA–PS–59

Effective Date: Upon adoption.

Effect on Previous Action: None.

Source of Authority: Farm Credit Act of 1971, as amended; 12 U.S.C. 2001 *et seq.*

THE FCA BOARD HEREBY ADOPTS THE FOLLOWING POLICY STATEMENT:

The FCA shall develop regulations consistent with its authorities under the Farm Credit Act of 1971 (Act), as amended, and other relevant statutes. It is the FCA Board's philosophy to promulgate regulations that are necessary to implement the law and to promote the safety and soundness of the Farm Credit System (System). In general, the Board's regulatory objective will be to:

Protect the public, the investors, and the customer/shareholders of the System in an effort to create an environment whereby customer/shareholders and investors can take advantage of the System's strength and rely on its future viability with confidence.

The FCA Board believes that safe and sound operations of System institutions will promote: (a) Investor confidence in System debt securities, which works to ensure adequate funds at reasonable rates for lending to customer/shareholders; and, (b) customer/shareholder confidence in each cooperatively owned System institution, which works to ensure customers and capital.

To effectively achieve its objective, the FCA will do the following:

1. The FCA will promulgate regulations only as required by law, as necessary to interpret the law, or as necessary to promote the safe and sound operation of System institutions.

2. The FCA will work to eliminate outdated regulations and ensure that its regulations implement the purposes of the law without unnecessary burden or cost. The FCA Board recognizes that some costs and benefits are difficult to quantify and that some are qualitative, but essential to consider. When there is a significant cost impact, the FCA will consider the risk or problem, as well as the costs associated with a regulatory solution, from the perspective of the customer/shareholder, the System institution, the investor, and the regulator, including when appropriate a numerically-based cost analysis. In choosing among alternatives, the FCA will adopt its regulatory approach based upon a reasoned determination that the benefits of the intended regulations justify their cost.

3. The FCA will strive to ensure that each regulation has a well-defined objective. Regulations will address specific identified risks or problems. The Board will consider these risks from the perspective of the customer/shareholder, the System institution, the investor, and the regulator. Preambles to regulations will explain the FCA Board's rationale for the regulatory solution adopted. Consistent with its statutory authority, the FCA will establish a regulatory environment that grants System institutions the business flexibility to offer a full range of high quality, low cost credit and other services to customer/shareholders.

4. The FCA's regulations shall, to the extent feasible, specify performance criteria and objectives rather than operational methods for achieving its purposes. The FCA recognizes that it does not manage the day-to-day activities of System institutions. Operational constraints that are imposed by regulations should be based on specific statutory requirements or the achievement of regulatory objectives.

5. In setting regulatory priorities, the FCA, to the extent it has discretion, will give high priority to issues that pose the greatest risk within the Farm Credit System.

6. The FCA will carefully consider policy positions of the other financial regulators to determine whether or not consistency facilitates the objectives of the Act. The FCA Board recognizes that differences between the System and non-agricultural lenders will at times warrant different approaches.

7. The FCA will draft its regulations and policy statements to be clear and easy to understand, with the goal of minimizing the potential for ambiguity, uncertainty, and resultant litigation.

8. The FCA will utilize appropriate innovative approaches to seeking the public's perspective regarding regulatory proposals.

The FCA Board will take these principles into consideration as its considers the need for and the content of new regulatory initiatives and as it reviews existing regulations to determine their continuing need and effectiveness. The FCA Board is mindful that most regulatory activities will involve competing considerations and is committed to considering and weighing those competing considerations and arriving at thoughtful regulatory judgments.

Adopted this 17th day of February, 1994, by order of the Board.

Dated: June 16, 1994.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 94–15136 Filed 6–21–94; 8:45 am]

BILLING CODE 6705–01–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in the People's Republic of China

June 16, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: June 23, 1994.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, 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 limits for Categories 314, 334, 359–C, 359–V, 362, 611, 835 and 847 are being increased for swing, reducing the limit for Category 607 to account for the increases.

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.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the MOU dated January 17, 1994, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 16, 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 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 June 23, 1994, you are directed to amend further the directive dated January 24, 1994 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	
314	47,515,943 square meters.
334	311,323 dozen.
359–C [2]	553,922 kilograms.
359–V [3]	822,673 kilograms.
362	7,255,962 numbers.
607	1,725,477 kilograms.
611	5,190,606 square meters.
835	121,946 dozen.
847	1,258,450 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1993.

[2] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010.

[3] Category 359–V: only HTS numbers 6103.19.2030, 6103.19.4030, 6104.12.0040, 6104.19.2040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.0044, 6110.90.0046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.4030, 6204.12.0040, 6204.19.3040, 6211.32.0070 and 6211.42.0070.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–15184 Filed 6–21–94; 8:45 am]

BILLING CODE 3510–DR–F

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the Republic of Korea

June 16, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs reducing limits.

EFFECTIVE DATE: June 23, 1994.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, 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) 927–6707. 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 limits for Categories 200 and 338/339 are being reduced for carryforward used in 1993.

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 58 FR 65967, published on December 17, 1993.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 16, 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 December 13, 1993, 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 textile products, produced or manufactured in the Republic of Korea and exported during the twelve-month period which began on January 1, 1994 and extends through December 31, 1994.

Effective on June 23, 1994, you are directed to amend the December 13, 1993 directive to reduce the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments

of the United States and the Republic of Korea:

Category	Adjusted twelve-month limit [1]
Sublevel in Group I 200	408,007 kilograms.
Sublevel in Group II 338/339	1,093,997 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 to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–15183 Filed 6–21–94; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF EDUCATION

Notice of 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 July 22, 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 Patrick J. Sherrill, Department of Education, 400 Maryland Avenue SW., room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–9915. 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 (OBM) 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 Patrick J. Sherrill at the address specified above.

Dated: June 16, 1994.

Mary P. Liggett,

Acting Director, Information Resources Management Service.

Office of Special Education and Rehabilitation Services

Type of Review: New.
Title: A Longitudinal Study of the Vocational Rehabilitation (VR) Service Program.
Frequency: Annually.
Affected Public: Individuals and households; State or local governments; Non-profit institutions.
Reporting Burden:
Responses: 35,918.
Burden Hours: 18,492.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: P.L. 102–569 requires that the Rehabilitation Services Administration continue to conduct a longitudinal study of the short and long-term effects of the VR service program. This evaluation will measure the effects of VR program services on the economic and noneconomic outcomes of VR clients, through surveys of a sample of VR office personnel, and through longitudinal data collection from and about a sample of VR applicants and clients during and after VR services.

[FR Doc. 94–15087 Filed 6–21–94; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER86–704–004, et al.]

Canal Electric Company, et al.; Electric Rate and Corporate Regulation Filings

June 14, 1994.

Take notice that the following filings have been made with the Commission:

1. Canal Electric Company

[Docket No. ER86–704–004]

Take notice that on May 23, 1994, Canal Electric Company (Canal Electric) tendered for filing data pursuant to Section 7 of the Seabrook Unit No. 2 Termination Agreement. In its filing Canal Electric is submitting the activity relative to the fiscal years 1987 through 1993.

Comment date: June 28, 1994, in accordance with Standard Paragraph E at the end of this notice.

2. Wartsila Diesel Development Corp., Inc.

[Docket No. EG94–68–000]

Wartsila Diesel Development Corp., Inc. ("DDC") (c/o Lee M. Goodwin, Reid & Priest, 701 Pennsylvania Avenue, N.W., Washington, D.C. 20004) filed with the Federal Energy Regulatory Commission an application on June 7, 1994, for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

DDC is a Delaware corporation formed to develop, own, and/or operate eligible facilities. DDC will operate two diesel electric generating facilities in the Dominican Republic and one diesel electric generating facility in Guyana. DDC states that it also may engage in project development activities associated with its development or acquisition of operating or ownership interests in additional as-yet unidentified eligible facilities and/or exempt wholesale generators that meet the criteria in Section 32 of the Public Utility Holding Company Act.

Comment date: July 8, 1994, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. Kansas City Power & Light Company

[Docket No. ER94–1101–000]

Take notice that on May 26, 1994, Kansas City Power & Light Company submitted for filing an amendment to its March 30, 1994, filing in the above-referenced docket.

Comment date: June 28, 1994, in accordance with Standard Paragraph E at the end of this notice.

4. Great Bay Power Corporation

[Docket No. ER94–1257–000]

Take notice that on May 13, 1994, Great Bay Power Corporation (Great Bay) tendered for filing two executed service agreements, one between Orange and Rockland Utilities, Inc. and Great Bay, and the other between New York Power Authority and Great Bay; both service agreements are for service under Great Bay's Tariff for Short Term Sales. This Tariff was accepted for filing by the Commission on November 11, 1993, in Docket No. ER93–924–000. The service agreements are proposed to be effective May 1, 1994.

Comment date: June 28, 1994, in accordance with Standard Paragraph E at the end of this notice.

5. Boston Edison Company

[Docket No. ER94–1305–000]

Take notice that on May 27, 1994, Boston Edison Company (Edison) filed a standstill agreement between itself and Commonwealth Electric Company (Commonwealth) extending the deadline for Commonwealth's submission of objections to Edison's 1992 bills for services rendered under Commonwealth's Pilgrim power purchase contract in 1992. The standstill agreement extends that deadline from May 19, 1994 until June 30, 1994. The standstill agreements makes no other changes to the rates, terms and conditions of the affected Pilgrim contracts.

Edison states that it has served copies of this filing upon Commonwealth Electric Company and upon and the Pilgrim power purchasers: Montaup Electric Company, Reading Municipal Light Department, thirteen other Massachusetts municipal electric systems; as well as the Massachusetts Department of Public Utilities.

Comment date: June 28, 1994, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–15112 Filed 6–21–94; 8:45 am]

BILLING CODE 6717–01–P

[Project No. 2417 Wisconsin]

Northern States Power Co.; Availability of Draft Environmental Assessment

June 16, 1994.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for a subsequent license for the existing Hayward Hydroelectric Project, located on the Namekagon River, in the City of Hayward, Sawyer County, Wisconsin and has prepared a Draft Environmental Assessment (DEA) for the project. In the DEA, the Commission's staff has analyzed the potential environmental effects of the existing project and has concluded that approval of the project, with appropriate protection or enhancement measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the DEA are available for review in the Public Reference Branch, Room 3104, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Please submit any comments within 30 days from the date of this notice. Comments should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Please affix Project No. 2417 to all comments. For further information, please contact Rich McGuire, Environmental Coordinator, at (202) 219–3084.

Lois D. Cashell,

Secretary.

[FR Doc. 94–15107 Filed 6–21–94; 8:45 am]

BILLING CODE 6717–01–M

Mississippi River Trans. Corp.; Self-Implementing Transactions

[Docket Nos. ST94–4970–000 et al.]

June 15, 1994.

Take notice that the following transactions have been reported to the Commission as being implemented pursuant to part 284 of the Commission's regulations, sections 311 and 312 of the Natural Gas Policy Act of 1978 (NGPA) and section 7 of the NGA and section 5 of the Outer Continental Shelf Lands Act.[1]

The "Recipient" column in the following table indicates the entity receiving or purchasing the natural gas in each transaction.

The "Part 284 Subpart" column in the following table indicates the type of transaction.

A "B" indicates transportation by an interstate pipeline on behalf of an intrastate pipeline or a local distribution company pursuant to § 284.102 of the Commission's regulations and § 311(a)(1) of the NGPA.

A "C" indicates transportation by an intrastate pipeline on behalf of an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.122 of the Commission's regulations and § 311(a)(2) of the NGPA.

A "D" indicates a sale by an intrastate pipeline to an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.142 of the Commission's Regulations and section 311(b) of the NGPA. Any interested person may file a complaint concerning such sales pursuant to § 284.147(d) of the Commission's regulations.

An "E" indicates an assignment by an intrastate pipeline to any interstate pipeline or local distribution company pursuant to § 284.163 of the Commission's regulations and § 312 of the NGPA.

A "G" indicates transportation by an interstate pipeline on behalf of another interstate pipeline pursuant to § 284.222 and a blanket certificate issued under § 284.221 of the Commission's regulations.

A "G–I" indicates transportation by an intrastate pipeline company pursuant to a blanket certificate issued under § 284.227 of the Commission's regulations.

A "G–S" indicates transportation by interstate pipelines on behalf of

[1] Notice of a transaction does not constitute a determination that the terms and conditions of the proposed service will be approved or that the noticed filing is in compliance with the Commission's regulations.

shippers other than interstate pipelines pursuant to § 284.223 and a blanket certificate issued under § 284.221 of the Commission's regulations.

A "G–LT" or "G–LS" indicates transportation, sales or assignments by a local distribution company on behalf of or to an interstate pipeline or local distribution company pursuant to a blanket certificate issued under § 284.224 of the Commission's regulations.

A "G–HT" or "G–HS" indicates transportation, sales or assignments by a Hinshaw Pipeline pursuant to a blanket certificate issued under § 284.224 of the Commission's regulations.

A "K" indicates transportation of natural gas on the Outer Continental Shelf by an interstate pipeline on behalf of another interstate pipeline pursuant to § 284.303 of the Commission's regulations.

A "K–S" indicates transportation of natural gas on the Outer Continental Shelf by an intrastate pipeline on behalf of shippers other than interstate pipelines pursuant to § 284.303 of the Commission's regulations.

Lois D. Cashell,

Secretary.

ST94–4970	MISSISSIPPI RIVER TRANS. CORP.	QUANTUM ENERGY RESOURCES, INC.	04–04–94	G–S	10,000	N	I	03–17–94	INDEF.
ST94–4971	COLORADO INTERSTATE GAS CO.	MIGC, INC	04–04–94	G–S	1,601	N	I	03–23–94	INDEF.
ST94–4972	NORTHERN BORDER PIPELINE CO.	KOCH HYDROCARBON CO.	04–04–94	G–S	200,000	Y	I	03–24–94	01–14–96
ST94–4973	HIGH ISLAND OFFSHORE SYSTEM.	TENNESSEE GAS PIPELINE CO.	04–05–94	K	6,100	N	F	12–01–93	08–08–94
ST94–4974	HIGH ISLAND OFFSHORE SYSTEM.	TRANSCO GAS MARKETING CO.	04–05–94	K–S	4,500	N	F	03–18–94	03–31–94
ST94–4975	U–T OFFSHORE SYSTEM.	TRANSCO GAS MARKETING CO.	04–05–94	K–S	5,497	N	F	03–18–94	03–31–94
ST94–4976	U–T OFFSHORE SYSTEM.	TEXACO GAS MARKETING, INC.	04–05–94	K–S	25,000	N	F	03–01–94	03–31–94
ST94–4977	U–T OFFSHORE SYSTEM.	TENNESSEE GAS PIPELINE CO.	04–05–94	K	6,070	N	F	12–01–93	08–09–94
ST94–4978	NATURAL GAS P/L CO. OF AMERICA.	MRT ENERGY MARKETING.	04–06–94	G–S	50,000	N	I	03–24–94	INDEF.
ST94–4979	ARKANSAS WESTERN GAS CO.	ARKLA ENERGY RESOURCES, ET AL.	04–06–94	G–HT	5,000	N	I	10–01–92	06–01–94
ST94–4980	LONE STAR GAS CO	EL PASO NATURAL GAS CO.	04–07–94	C	50,000	N	I	03–10–94	INDEF.
ST94–4981	TENNESSEE GAS PIPELINE CO.	MARK WEST HYDROCARBON PARTNERS LTD.	04–07–94	G–S	40,000	N	I	03–17–94	INDEF.
ST94–4982	TENNESSEE GAS PIPELINE CO.	TAYLOR ENERGY CO	04–07–94	G–S	1,281	N	I	03–11–94	INDEF.
ST94–4983	NORTHERN NATURAL GAS CO.	ENRON GAS MARKETING, INC.	04–07–94	G–S	100	A	F	03–05–94	INDEF.
ST94–4984	COLUMBIA GAS TRANSMISSION CORP.	VALERO GAS MARKETING, L.P.	04–07–94	G–S	100,000	N	I	04–01–94	INDEF.
ST94–4985	COLUMBIA GAS TRANSMISSION CORP.	CARGILL, INC	04–07–94	G–S	100,000	N	I	04–01–94	INDEF.
ST94–4986	COLUMBIA GAS TRANSMISSION CORP.	ALLIANCE GAS SERVICES, INC.	04–07–94	G–S	30,000	N	I	04–01–94	INDEF.
ST94–4987	COLUMBIA GAS TRANSMISSION CORP.	INTERSTATE GAS MARKETING, INC.	04–07–94	G–S	52	N	F	04–01–94	03–31–95
ST94–4988	COLUMBIA GAS TRANSMISSION CORP.	POWER GAS MARKETING & TRANS., INC.	04–07–94	G–S	700	N	F	04–01–94	05–31–95
ST94–4989	COLUMBIA GAS TRANSMISSION CORP.	TORCH GAS L.C	04–07–94	G–S	100,000	N	I	04–01–94	INDEF.
ST94–4990	COLUMBIA GAS TRANSMISSION CORP.	ALLIANCE GAS SERVICES, INC.	04–07–94	G–ST	N/A	N	I	04–01–94	INDEF.
ST94–4991	EAST OHIO GAS CO	CNG PRODUCING CO	04–07–94	C	35,000	N	I	02–01–94	03–31–94
ST94–4992	TEJAS GAS PIPELINE CO.	AMERICAN HUNTER ENERGY.	04–08–94	G–I	3,000	N	I	01–18–94	INDEF.
ST94–4993	PANHANDLE EASTERN PIPE LINE CO.	ARKLA ENERGY MARKETING CO.	04–08–94	G–S	60,000	N	I	03–18–94	04–30–98
ST94–4994	SUPERIOR OFFSHORE PIPELINE CO.	GOODRICH OIL CO	04–11–94	B	10,000	N	I	02–01–94	INDEF.
ST94–4995	SUPERIOR OFFSHORE PIPELINE CO.	TRIDENT NGL, INC	04–11–94	G–S	10,000	N	I	12–20–93	INDEF.
ST94–4996	TENNESSEE GAS PIPELINE CO.	AQUILA ENERGY CORP.	04–11–94	G–S	5,522	N	F	04–01–94	INDEF.
ST94–4997	TENNESSEE GAS PIPELINE CO.	GASLANTIC CORP	04–11–94	G–S	3,919	N	F	04–02–94	INDEF.
ST94–4998	TENNESSEE GAS PIPELINE CO.	MG NATURAL GAS CORP.	04–11–94	G–S	6,643	N	F	04–01–94	INDEF.
ST94–4999	WEBB/DUVAL GATHERERS.	TEXAS EASTERN TRANSMISSION CO.	04–11–94	C	20,000	N	I	02–01–94	INDEF.
ST94–5000	WEBB/DUVAL GATHERERS.	TEXAS EASTERN TRANSMISSION CO.	04–11–94	C	30,000	N	I	02–01–94	INDEF.

ST94-5001	LONE STAR GAS CO	EL PASO NATURAL GAS CO., ET AL..	04-11-94	C	20,000	N	I	03-09-94	INDEF.
ST94-5002	LONE STAR GAS CO	EL PASO NATURAL GAS CO., ET AL..	04-11-94	C	20,000	N	I	03-01-94	INDEF.
ST94-5003	TENNESSEE GAS PIPELINE CO.	BETHLEHEM STEEL ..	04-12-94	G-S	14,000	N	F	04-01-94	INDEF.
ST94-5004	TENNESSEE GAS PIPELINE CO.	NORTHERN ILLINOIS GAS CO.	04-12-94	G-S	119,518	N	F	04-01-94	INDEF.
ST94-5005	DELHI GAS PIPELINE CORP.	CAPROCK PIPELINE CO., ET AL..	04-11-94	C	375,000	N	I	03-12-94	INDEF.
ST94-5006	COLORADO INTERSTATE GAS CO.	UNIVERSAL RESOURCES CORP.	04-11-94	G-S	10,000	N	F	04-01-94	09-30-94
ST94-5007	COLORADO INTERSTATE GAS CO.	ENRON GAS MARKETING, INC.	04-12-94	G-S	175	N	F	04-01-94	03-31-95
ST94-5008	NATURAL GAS P/L CO. OF AMERICA.	ALAGASCO PIPELINE CO.	04-12-94	B	250,000	N	I	02-01-88	INDEF.
ST94-5009	PANHANDLE EASTERN PIPE LINE CO.	AMGAS, INC	04-12-94	G-S	29,500	N	F	12-01-93	03-31-95
ST94-5010	ONG TRANSMISSION CO.	NATURAL GAS P/L CO. OF AMERICA.	04-13-94	C	100,000	N	I	03-30-94	INDEF.
ST94-5011	ONG TRANSMISSION CO.	NATURAL GAS P/L CO. OF AMERICA.	04-13-94	C	50,000	N	I	04-01-94	INDEF.
ST94-5012	COLUMBIA GAS TRANSMISSION CORP.	CATEX ENERGY, INC	04-13-94	G-ST	N/A	N	I	03-31-94	INDEF.
ST94-5013	COLUMBIA GAS TRANSMISSION CORP.	RILEY NATURAL GAS CO.	04-13-94	G-ST	N/A	N	N/A	03-28-94	INDEF.
ST94-5014	TENNESSEE GAS PIPELINE CO.	ATLAS GAS MARKETING INC.	04-13-94	G-S	2,000	N	F	04-01-94	INDEF.
ST94-5015	TENNESSEE GAS PIPELINE CO.	MG NATURAL GAS CORP.	04-13-94	G-S	1,758	N	F	04-01-94	INDEF.
ST94-5016	TENNESSEE GAS PIPELINE CO.	BELDEN & BLAKE CORP.	04-13-94	G-S	10,000	N	I	04-01-94	INDEF.
ST94-5017	NATURAL GAS P/L CO. OF AMERICA.	CHEVRON U.S.A., INC	04-14-94	G-S	9,000	N	I	10-01-90	INDEF.
ST94-5018	NATURAL GAS P/L CO. OF AMERICA.	ANTHEM ENERGY CO.	04-14-94	G-S	2,000	N	I	10-01-90	INDEF.
ST94-5019	TENNESSEE GAS PIPELINE CO.	TENNECO GAS MARKETING CO.	04-14-94	G-S	6,912	A	F	04-06-94	INDEF.
ST94-5020	WESTERN TRANSMISSION CORP.	VESSELS GAS	04-14-94	G-S	1,300	N	I	09-01-93	INDEF.
ST94-5021	CHANNEL INDUSTRIES GAS CO.	TENNESSEE GAS PIPELINE CO., ET AL.	04-14-94	C	100,000	Y	I	03-17-94	INDEF.
ST94-5022	WESTERN TRANSMISSION CORP.	KAISER FRANCIS OIL CO.	04-14-94	G-S	8,000	N	I	04-01-94	INDEF.
ST94-5023	WESTERN TRANSMISSION CORP.	COLORADO INTERSTATE GAS CO.	04-14-94	G	26,000	N	I	04-01-94	INDEF.
ST94-5024	TRANSOK, INC	ANR PIPELINE CO., ET AL.	04-15-94	C	50,000	N	I	03-16-94	INDEF.
ST94-5025	VALERO TRANSMISSION, L.P.	TRUNKLINE GAS CO .	04-15-94	C	11,500	N	I	04-01-94	INDEF.
ST94-5026	TRANSTEXAS PIPELINE.	TRUNKLINE GAS CO .	04-15-94	C	1,500	N	I	04-01-94	INDEF.
ST94-5027	VALERO TRANSMISSION, L.P.	NORTHERN NATURAL GAS CO.	04-15-94	C	700	N	I	04-01-94	INDEF.
ST94-5028	VALERO TRANSMISSION, L.P.	EL PASO NATURAL GAS CO.	04-15-94	C	2,812	N	I	04-01-94	INDEF.
ST94-5029	K N WATTENBERG TRANS.LTD. L. CO.	H.S. RESOURCES, INC.	04-15-94	G-S	60,000	N	I	03-04-94	INDEF.
ST94-5030	K N WATTENBERG TRANS.LTD. L. CO.	UNION PACIFIC RESOURCES CO.	04-15-94	G-S	15,000	N	I	03-01-94	03-29-03
ST94-5031	WILLIAMS NATURAL GAS CO.	GENERAL ATLANTIC RESOURCES, INC.	04-15-94	G-S	2,000	N	I	03-25-94	03-01-96
ST94-5032	WILLIAMS NATURAL GAS CO.	WARD GAS SERVICES, INC.	04-15-94	G-S	5,000	N	I	03-17-94	02-28-95
ST94-5033	FLORIDA GAS TRANSMISSION CO.	PEOPLES GAS SYSTEM, INC.	04-15-94	B	30,300	N	F	03-16-94	INDEF.
ST94-5034	TENNESSEE GAS PIPELINE CO.	NGC TRANSPORTATION, INC.	04-15-94	G-S	5,000	N	F	04-06-94	INDEF.
ST94-5035	TENNESSEE GAS PIPELINE CO.	GASLANTIC CORP	04-15-94	G-S	3,919	N	F	04-02-94	INDEF.
ST94-5036	SOUTHERN NATURAL GAS CO.	TENNGASCO CORP ..	04-15-94	G-S	50,000	N	I	04-01-94	INDEF.
ST94-5037	SOUTHERN NATURAL GAS CO.	ENRON GAS MARKETING, INC.	04-15-94	G-S	5,000	N	I	04-01-94	INDEF.
ST94-5038	SOUTHERN NATURAL GAS CO.	AMOCO ENERGY TRADING CO.	04-15-94	G-S	50,000	N	I	04-01-94	INDEF.
ST94-5039	SOUTHERN NATURAL GAS CO.	CITY OF WRENS	04-15-94	G-S	1,468	N	F	04-01-94	11-30-01
ST94-5040	SOUTHERN NATURAL GAS CO.	CITY OF WRENS	04-15-94	G-S	1,122	N	F	04-01-94	11-30-01
ST94-5041	SOUTHERN NATURAL GAS CO.	CITY OF WRENS	04-15-94	G-S	450	N	F	04-01-94	11-30-01

ST94–5042	SOUTHERN NATURAL GAS CO.	SONAT MARKETING CO.	04–15–94	G-S	50,000	A	I	04–13–94	INDEF.
ST94–5043	SOUTHERN NATURAL GAS CO.	SONAT MARKETING CO.	04–15–94	G-S	5,000	A	I	04–01–94	INDEF.
ST94–5044	SOUTHERN NATURAL GAS CO.	SOUTHERN NATURAL GAS CO.	04–15–94	G-S	50,000	Y	I	03–31–94	INDEF.
ST94–5045	SOUTHERN NATURAL GAS CO.	SOUTHERN NATURAL GAS CO.	04–15–94	G-S	15,000	Y	I	04–01–94	INDEF.
ST94–5046	SOUTHERN NATURAL GAS CO.	OXY USA INC	04–15–94	G-S	40,000	N	I	04–01–94	INDEF.
ST94–5047	SOUTHERN NATURAL GAS CO.	SOUTHERN NATURAL GAS CO.	04–15–94	G-S	10,000	Y	I	04–01–94	INDEF.
ST94–5048	SOUTHERN NATURAL GAS CO.	SOUTHERN NATURAL GAS CO.	04–15–94	G-S	15,500	Y	I	04–01–94	INDEF.
ST94–5049	SEA ROBIN PIPELINE CO.	SONAT MARKETING CO.	04–15–94	G-S	14,706	A	F	04–01–94	04–30–94
ST94–5050	SEA ROBIN PIPELINE CO.	HIGHLAND ENERGY CO.	04–15–94	G-S	2,000	N	I	04–01–94	03–31–95
ST94–5051	SEA ROBIN PIPELINE CO.	PENNZOIL GAS MARKETING CO.	04–15–94	G-S	85,000	N	F	04–01–94	03–31–97
ST94–5052	VALERO TRANSMISSION, L.P.	TEXAS EASTERN TRANSMISSION CORP.	04–18–94	C	10,000	N	I	03–23–94	INDEF.
ST94–5053	TRANSTEXAS PIPELINE.	TEXAS EASTERN TRANSMISSION CORP.	04–18–94	C	25,000	N	I	04–05–94	INDEF.
ST94–5054	DOW PIPELINE CO ...	BROOKLYN INTERSTATE NAT. GAS CORP.	04–18–94	G-I	5,000	N	I	02–01–94	12–31–95
ST94–5055	TENNESSEE GAS PIPELINE CO.	WESTERN GAS RESOURCES, INC.	04–19–94	G-S	1,500	N	F	04–19–94	INDEF.
ST94–5056	COLUMBIA GAS TRANSMISSION CORP.	VALERO GAS MARKETING L. P.	04–19–94	G-S	N/A	N	N/A	04–01–94	INDEF.
ST94–5057	COLUMBIA GAS TRANSMISSION CORP.	PENNSYLVANIA GAS & WATER CO.	04–19–94	G-S	11,346	N	F	04–01–94	INDEF.
ST94–5058	COLUMBIA GAS TRANSMISSION CORP.	PENN FUEL GAS, INC	04–19–94	G-S	14,250	N	F	04–01–94	INDEF.
ST94–5059	COLUMBIA GAS TRANSMISSION CORP.	INTERSTATE GAS MARKETING, INC.	04–19–94	G-S	2,035	N	F	04–01–94	INDEF.
ST94–5060	COLUMBIA GAS TRANSMISSION CORP.	NEW YORK STATE ELECTRIC & GAS CORP.	04–19–94	G-S	7,425	N	F	04–01–94	INDEF.
ST94–5061	COLUMBIA GAS TRANSMISSION CORP.	BETHLEHEM STEEL CORP.	04–19–94	G-S	30,707	N	F	04–01–94	INDEF.
ST94–5062	COLUMBIA GAS TRANSMISSION CORP.	INTERSTATE GAS MARKETING, INC.	04–19–94	G-S	1,000	N	I	04–01–94	INDEF.
ST94–5063	LONE STAR GAS CO	TRANCONTINENTAL GAS PIPE LINE CORP.	04–20–94	C	50,000	N	I	03–25–94	INDEF.
ST94–5064	TRANSOK GAS TRANSMISSION CO.	ARKLA ENERGY RESOURCES, ET AL.	04–20–94	C	80,000	N	I	02–01–94	INDEF.
ST94–5065	TEXAS GAS TRANSMISSION CORP.	APPALACHIAN GAS SALES.	04–20–94	G-S	100,000	N	I	04–07–94	INDEF.
ST94–5066	TEXAS GAS TRANSMISSION CORP.	ENERGY DEVELOPMENT CORP.	04–20–94	G-S	60,000	N	I	02–01–94	INDEF.
ST94–5067	PACIFIC GAS TRANSMISSION CO.	WASHINGTON NATURAL GAS CO.	04–21–94	G-S	90,392	N	F	11–01–93	10–31–23
ST94–5068	PACIFIC GAS TRANSMISSION CO.	CANADA IMPERIAL OIL LTD.	04–21–94	G-S	50,000	N	I	02–28–94	INDEF.
ST94–5069	TRANSOK GAS TRANSMISSION CO.	ARKLA ENERGY RESOURCES, ET AL.	04–20–94	C	15,000	N	I	04–01–94	INDEF.
ST94–5070	QUESTAR PIPELINE CO.	BARRETT FUELS CORP.	04–21–94	G-S	581	N	F	04–01–94	04–30–94
ST94–5071	NORA TRANSMISSION CO.	EQUITABLE RESOURCES ENERGY CO.	04–21–94	G-S	15,000	Y	I	04–01–94	INDEF.
ST94–5072	MIDWESTERN GAS TRANSMISSION CO.	SOUTHERN INDIANA GAS & ELECTRIC CO.	04–21–94	G-S	4,860	N	F	04–01–94	INDEF.
ST94–5073	FLORIDA GAS TRANSMISSION CO.	TORCH GAS, L.C	04–21–94	G-S	25,000	N	I	03–22–94	INDEF.
ST94–5074	TRUNKLINE GAS CO .	COKINOS NATURAL GAS CO.	04–21–94	G-S	20,700	N	I	04–01–94	INDEF.
ST94–5075	TRUNKLINE GAS CO .	FINA NATURAL GAS CO.	04–21–94	G-S	51,750	N	I	04–07–94	INDEF.
ST94–5076	TRUNKLINE GAS CO .	NATURAL GAS CLEARINGHOUSE, INC.	04–21–94	G-S	50,000	N	I	04–01–94	INDEF.

ST94–5077	AQUILA GAS SYSTEMS.	COASTAL OIL & GAS CORP.	04–21–94	C	10,000	N	I	03–01–94	02–28–99
ST94–5078	WESTAR TRANSMISSION CO.	EL PASO NATURAL GAS CO.	04–22–94	C	50,000	N	I	02–01–94	INDEF.
ST94–5079	WESTAR TRANSMISSION CO.	EL PASO NATURAL GAS CO.	04–22–94	C	50,000	N	I	02–04–94	INDEF.
ST94–5080	WESTAR TRANSMISSION CO.	ORTEX PIPELINE CO	04–22–94	C	30,000	N	I	02–14–94	INDEF.
ST94–5081	WESTAR TRANSMISSION CO.	NORTHERN NATURAL GAS CO.	04–22–94	C	100,000	N	I	02–01–94	INDEF.
ST94–5082	WESTAR TRANSMISSION CO.	WILLIAMS NATURAL GAS CO.	04–22–94	C	50,000	N	I	02–01–94	INDEF.
ST94–5083	RED RIVER PIPELINE CO.	ORTEX PIPELINE CO	04–22–94	C	50,000	N	I	02–01–94	INDEF.
ST94–5084	RED RIVER PIPELINE CO.	OKTEX PIPELINE CO	04–22–94	C	30,000	N	I	02–01–94	INDEF.
ST94–5085	RED RIVER PIPELINE CO.	OKTEX PIPELINE CO	04–22–94	C	100,000	N	I	02–01–94	INDEF.
ST94–5086	COLUMBIA GULF TRANSMISSION CO.	PPG INDUSTRIES, INC.	04–21–94	G–S	20,000	N	I	04–01–94	INDEF.
ST94–5087	COLUMBIA GULF TRANSMISSION CO.	SONAT MARKETING CO.	04–21–94	G–S	60,000	N	I	04–01–94	INDEF.
ST94–5088	ALGONQUIN GAS TRANSMISSION CO.	AGF DIRECT GAS SALES, INC.	04–22–94	G–S	10,000	N	I	04–12–94	INDEF.
ST94–5089	TRANSCONTINENTAL GAS P/L CORP.	CITY OF FOUNTAIN INN.	04–22–94	G–S	383	N	F	04–01–94	03–31–14
ST94–5090	TRANSCONTINENTAL GAS P/L CORP.	SONAT MARKETING CO.	04–22–94	G–S	100,000	N	I	04–01–94	INDEF.
ST94–5091	TRANSCONTINENTAL GAS P/L CORP.	TRANSOK GAS CO ...	04–22–94	G–S	500,000	N	I	04–07–94	INDEF.
ST94–5092	NORTHERN NATURAL GAS CO.	CITY OF DULUTH	04–22–94	G–S	6,000	N	I	03–24–94	01–23–95
ST94–5093	LOUISIANA RESOURCES PIPELINE CO.	FLORIDA GAS TRANS. CO., ET AL.	04–22–94	C	25,000	N	I	02–01–94	INDEF.
ST94–5094	LOUISIANA RESOURCES PIPELINE CO.	FLORIDA GAS TRANS. CO., ET AL.	04–22–94	C	75,000	N	I	01–01–94	INDEF.
ST94–5095	LOUISIANA RESOURCES PIPELINE CO.	FLORIDA GAS TRANS. CO., ET AL.	04–22–94	C	20,000	N	I	02–01–94	INDEF.
ST94–5096	LOUISIANA RESOURCES PIPELINE CO.	TENNESSEE GAS PIPELINE CO., ET AL.	04–22–94	C	50,000	N	I	02–01–94	INDEF.
ST94–5097	LOUISIANA RESOURCES PIPELINE CO.	FLORIDA GAS TRANS. CO., ET AL.	04–22–94	C	50,000	N	I	03–01–94	INDEF.
ST94–5098	LOUISIANA RESOURCES PIPELINE CO.	LOUISIANA GAS PIPE LINE CO., L.P.	04–22–94	C	20,000	N	I	07–01–92	INDEF.
ST94–5099	DELHI GAS PIPELINE CORP.	ARKLA ENERGY RESOURCES, ET AL.	04–22–94	C	500,000	N	I	04–07–94	INDEF.
ST94–5100	VALERO TRANSMISSION, L.P.	TENNESSEE GAS PIPELINE CO.	04–22–94	C	1,000	N	I	04–02–94	INDEF.
ST94–5101	AQUILA GAS SYSTEMS CORP.	APACHE CORP	04–22–94	C	300	N	I	02–01–94	01–31–99
ST94–5102	TENNESSEE GAS PIPELINE CO.	NORTH ATLANTIC UTILITIES INC.	04–22–94	G–S	327	N	F	04–13–94	INDEF.
ST94–5103	TENNESSEE GAS PIPELINE CO.	MONSANTO CO	04–22–94	G–S	400	N	F	04–01–94	INDEF.
ST94–5104	TENNESSEE GAS PIPELINE CO.	ASHLAND PETROLEUM.	04–22–94	G–S	2,685	N	F	04–06–94	INDEF.
ST94–5105	TENNESSEE GAS PIPELINE CO.	ENRON GAS MARKETING INC.	04–22–94	G–S	10,000	N	F	04–01–94	INDEF.
ST94–5106	TENNESSEE GAS PIPELINE CO.	NATIONAL GAS & OIL CORP.	04–22–94	G–S	800	N	F	04–01–94	INDEF.
ST94–5107	TENNESSEE GAS PIPELINE CO.	ASSOCIATED NATURAL GAS INC.	04–22–94	G–S	12,000	N	F	04–01–94	INDEF.
ST94–5108	GREAT LAKES GAS TRANSMISSION L.P.	SEMCO ENERGY SERVICES INC.	04–22–94	G–S	7,500	N	F	03–22–94	04–30–94
ST94–5109	GREAT LAKES GAS TRANSMISSION L.P.	COENERGY TRADING CO.	04–22–94	G–S	10,000	N	F	04–01–94	04–30–94
ST94–5110	GREAT LAKES GAS TRANSMISSION L.P.	MICHIGAN CONSOLIDATED GAS CO.	04–22–94	G–S	300,000	N	F	04–01–94	10–31–94
ST94–5111	GREAT LAKES GAS TRANSMISSION L.P.	SEMCO ENERGY SERVICES INC.	04–22–94	G–S	50,000	N	F	04–01–94	04–30–94
ST94–5112	FLORIDA GAS TRANSMISSION CO.	CF INDUSTRIES, INC	04–22–94	G–S	4,795	N	I	03–24–94	INDEF.
ST94–5113	EL PASO NATURAL GAS CO.	TENASKA MARKETING VENTURES.	04–22–94	G–S	100,000	N	I	03–25–94	INDEF.
ST94–5114	PANHANDLE EASTERN PIPE LINE CO.	DAYTON POWER & LIGHT CO.	04–25–94	B	10,209	N	F	04–01–94	03–31–98
ST94–5115	PANHANDLE EASTERN PIPE LINE CO.	AIG TRADING CORP .	04–25–94	G–S	100,000	N	I	04–01–94	03–31–04

ST94-5116	PANHANDLE EASTERN PIPE LINE CO.	UNION ELECTRIC CO	04-25-94	B	75,000	N	I	04-01-94	04-30-98
ST94-5117	PANHANDLE EASTERN PIPE LINE CO.	DAYTON POWER & LIGHT CO.	04-25-94	B	15,000	N	F	04-01-94	03-31-98
ST94-5118	PANHANDLE EASTERN PIPE LINE CO.	CONSUMERS POWER CO.	04-25-94	G-S	25,000	N	F	04-01-94	03-31-95
ST94-5119	PANHANDLE EASTERN PIPE LINE CO.	CONSUMERS POWER CO.	04-25-94	G-S	40,000	N	F	04-01-94	03-31-95
ST94-5120	DELHI GAS PIPELINE CORP.	EL PASO NATURAL GAS CO., ET AL.	04-22-94	C	30,000	N	I	04-07-94	INDEF.
ST94-5121	ALABAMA-TENNESSEE NATURAL GAS CO.	CHESAPEAKE ENERGY CORP.	04-25-94	G-S	25,000	N	I	04-01-94	04-01-95
ST94-5122	NORTHERN NATURAL GAS CO.	CENERGY, INC	04-25-94	G-S	3,000	N	F	04-01-94	09-30-94
ST94-5123	NORTHERN NATURAL GAS CO.	ARKLA ENERGY MARKETING CO.	04-25-94	G-S	25,000	N	F	04-01-94	03-30-95
ST94-5124	NORTHERN NATURAL GAS CO.	ARKLA ENERGY MARKETING CO.	04-25-94	G-S	27,000	N	F	04-01-94	10-31-94
ST94-5125	NORTHERN NATURAL GAS CO.	TEXACO EXPLORATION & PRODUCT. INC.	04-25-94	G-S	50,000	N	I	04-01-94	INDEF.
ST94-5126	NORTHERN NATURAL GAS CO.	TEXPAR ENERGY, INC.	04-25-94	G-S	1,600	N	F	04-01-94	10-31-94
ST94-5127	TENNESSEE GAS PIPELINE CO.	PITTSBURG CORNING CORP.	04-25-94	G-S	800	N	I	04-01-94	INDEF.
ST94-5128	TENNESSEE GAS PIPELINE CO.	O & R ENERGY INC ..	04-25-94	G-S	4,478	N	F	04-01-94	INDEF.
ST94-5129	TENNESSEE GAS PIPELINE CO.	MG NATURAL GAS CORP.	04-25-94	G-S	4,903	N	F	04-01-94	INDEF.
ST94-5130	COLUMBIA GAS TRANSMISSION CORP.	EMPIRE DETROIT STEEL.	04-25-94	G-S	1,500	N	F	04-01-94	INDEF.
ST94-5131	COLUMBIA GAS TRANSMISSION CORP.	EMPIRE DETROIT STEEL.	04-25-94	G-S	1,000	N	F	04-01-94	INDEF.
ST94-5132	COLUMBIA GAS TRANSMISSION CORP.	SUBURBAN NATURAL GAS CO.	04-25-94	G-S	5,134	N	F	04-01-94	INDEF.
ST94-5133	COLUMBIA GAS TRANSMISSION CORP.	DAYTON FORGINGS & HEAT TREATING.	04-25-94	G-S	488	N	F	04-01-94	INDEF.
ST94-5134	COLUMBIA GAS TRANSMISSION CORP.	CITY OF LANCASTER	04-25-94	G-S	5,285	N	F	04-01-94	INDEF.
ST94-5135	COLUMBIA GULF TRANSMISSION CO.	COLUMBIA GAS TRANSMISSION CORP.	04-25-94	G	1,850,000	Y	F/I	04-01-94	INDEF.
ST94-5136	COLUMBIA GAS TRANSMISSION CORP.	ARISTECH CHEMICAL CORP.	04-26-94	G-S	947	N	F	04-01-94	INDEF.
ST94-5137	COLUMBIA GAS TRANSMISSION CORP.	ROANOKE GAS CO ...	04-26-94	G-S	25,509	N	F	04-01-94	INDEF.
ST94-5138	COLUMBIA GAS TRANSMISSION CORP.	SOUTH JERSEY GAS CO.	04-26-94	G-S	12,489	N	F	04-01-94	INDEF.
ST94-5139	COLUMBIA GAS TRANSMISSION CORP.	BLUEFIELD GAS CO .	04-26-94	G-S	2,058	N	F	04-01-94	INDEF.
ST94-5140	COLUMBIA GAS TRANSMISSION CORP.	SCHULLER INTERNATIONAL, INC.	04-26-94	G-S	750	N	F	04-01-94	INDEF.
ST94-5141	COLUMBIA GAS TRANSMISSION CORP.	SCHULLER INTERNATIONAL, INC.	04-26-94	G-S	1,250	N	F	04-01-94	INDEF.
ST94-5142	COLUMBIA GAS TRANSMISSION CORP.	SOUTH JERSEY GAS CO.	04-26-94	G-S	10,022	N	F	04-01-94	INDEF.
ST94-5143	COLUMBIA GAS TRANSMISSION CORP.	SOUTH JERSEY GAS CO.	04-26-94	G-S	22,511	N	F	04-01-94	INDEF.
ST94-5144	COLUMBIA GAS TRANSMISSION CORP.	ATLAS GAS MARKETING.	04-26-94	G-S	600	N	F	04-01-94	INDEF.
ST94-5145	COLUMBIA GAS TRANSMISSION CORP.	KRUPP ENERGY ENGINEERING, INC.	04-26-94	G-S	292	N	F	04-01-94	INDEF.
ST94-5146	COLUMBIA GAS TRANSMISSION CORP.	CITY OF RICHMOND .	04-26-94	G-S	35,979	N	F	04-01-94	INDEF.
ST94-5147	COLUMBIA GAS TRANSMISSION CORP.	ARISTECH CHEMICAL CORP.	04-26-94	G-S	16,650	N	I	04-01-94	INDEF.

ST94-5148	COLUMBIA GAS TRANSMISSION CORP.	ARISTECH CHEMICAL CORP.	04-26-94	G-S	3,000	N	I	04-01-94	INDEF.
ST94-5149	COLUMBIA GAS TRANSMISSION CORP.	TIMKEN CO	04-26-94	G-S	4,000	N	F	04-01-94	INDEF.
ST94-5150	COLUMBIA GAS TRANSMISSION CORP.	TIMKEN CO	04-26-94	G-S	860	N	F	04-01-94	INDEF.
ST94-5151	ANR PIPELINE CO	COASTAL GAS MARKETING.	04-26-94	G-S	1,300	A	I	01-01-94	INDEF.
ST94-5152	ANR PIPELINE CO	HOWARD ENERGY CO.	04-26-94	G-S	1,100	N	I	01-01-94	12-31-
ST94-5153	TEJAS GAS PIPELINE CO.	SABINE GAS TRANSMISSION CO.	04-26-94	C	50,000	N	I	03-27-94	INDEF.
ST94-5154	TEJAS GAS PIPELINE CO.	TENNESSEE GAS PIPELINE CO.	04-26-94	C	5,000	N	I	01-18-94	INDEF.
ST94-5155	NATURAL GAS P/L CO. OF AMERICA.	TEJAS POWER CORP	04-26-94	G-S	1,000	N	F	04-09-94	11-30-93
ST94-5156	NATURAL GAS P/L CO. OF AMERICA.	NORTH SHORE GAS CO.	04-26-94	G-S	10,000	N	F	09-24-93	10-25-93
ST94-5157	NATURAL GAS P/L CO. OF AMERICA.	WARD GAS MARKETING, INC.	04-26-94	G-S	100,000	N	I	04-01-94	INDEF.
ST94-5158	ARKLA ENERGY RESOURCES CO.	J & B FARMS	04-26-94	G-S	395	N	F	04-01-94	03-31-95
ST94-5159	ARKLA ENERGY RESOURCES CO.	KOPPERS	04-26-94	G-S	400	N	F	04-01-94	03-31-95
ST94-5160	ARKLA ENERGY RESOURCES CO.	VERTAC SITE CONTRACTORS.	04-26-94	G-S	590	N	F	04-01-94	03-31-95
ST94-5161	ARKLA ENERGY RESOURCES CO.	HILL VALLEY FOODS, INC.	04-26-94	G-S	198	N	F	04-04-94	03-31-95
ST94-5162	ARKLA ENERGY RESOURCES CO.	SMITH FIBERGLASS	04-26-94	G-S	350	N	F	04-01-94	03-31-95
ST94-5163	ARKLA ENERGY RESOURCES CO.	TYSON FOODS, INC	04-26-94	G-S	622	N	F	04-01-94	03-31-95
ST94-5164	ARKLA ENERGY RESOURCES CO.	MEDSOURCE	04-26-94	G-S	100	N	F	04-01-94	03-31-95
ST94-5165	ARKLA ENERGY RESOURCES CO.	TYSON FOODS, INC	04-26-94	G-S	118	N	F	04-01-94	03-31-95
ST94-5166	ARKLA ENERGY RESOURCES CO.	TYSON FOODS, INC	04-26-94	G-S	137	N	F	04-01-94	03-31-95
ST94-5167	ARKLA ENERGY RESOURCES CO.	ST. JOSEPH'S REGIONAL HEALTH CENTER.	04-26-94	G-S	450	N	F	04-01-94	03-31-95
ST94-5168	PANHANDLE EASTERN PIPE LINE CO.	COENERGY TRADING CO.	04-26-94	G-S	100,000	N	F	04-01-94	03-31-16
ST94-5169	PANHANDLE EASTERN PIPE LINE CO.	PANHANDLE TRADING CO.	04-26-94	G-S	1,800	Y	F	04-01-94	07-31-94
ST94-5170	PANHANDLE EASTERN PIPE LINE CO.	GEDI, INC	04-26-94	G-S	2,254	N	F	04-01-94	10-31-94
ST94-5171	PANHANDLE EASTERN PIPE LINE CO.	COENERGY TRADING CO.	04-26-94	G-S	5,000	N	F	04-01-94	03-31-99
ST94-5172	PANHANDLE EASTERN PIPE LINE CO.	VESTA ENERGY CO	04-26-94	G-S	4,200	N	F	04-01-94	03-31-95
ST94-5173	PANHANDLE EASTERN PIPE LINE CO.	ASSOCIATED NATURAL GAS, INC.	04-26-94	G-S	35,000	N	I	04-01-94	03-31-99
ST94-5174	TRANSWESTERN PIPELINE CO.	VALERO GAS MARKETING, L.P.	04-28-94	G-S	713	N	F	04-01-94	04-30-94
ST94-5175	TRANSWESTERN PIPELINE CO.	VALERO GAS MARKETING, L.P.	04-28-94	G-S	15,620	N	F	04-01-94	04-30-94
ST94-5176	TRANSWESTERN PIPELINE CO.	CHEVRON USA, INC	04-28-94	G-S	50,000	N	I	04-01-94	INDEF.
ST94-5177	TRANSWESTERN PIPELINE CO.	WESTAR TRANSMISSION CO.	04-28-94	G-S	50,000	N	I	04-01-94	INDEF.
ST94-5178	TRANSWESTERN PIPELINE CO.	AMARILLO NATURAL GAS, INC.	04-28-94	G-S	100	N	I	04-01-94	INDEF.
ST94-5179	TRANSWESTERN PIPELINE CO.	CLAYTON WILLIAMS ENERGY, INC.	04-28-94	G-S	1,450	N	F	04-01-94	04-30-94
ST94-5180	NATURAL GAS P/L CO. OF AMERICA.	TEXACO GAS MARKETING, INC.	04-28-94	G-S	19,813	N	F	04-01-94	04-30-94
ST94-5181	NATURAL GAS P/L CO. OF AMERICA.	BROOKLYN INTERSTATE NAT. GAS CORP.	04-28-94	G-S	3,900	N	F	03-01-94	08-31-94
ST94-5182	NATURAL GAS P/L CO. OF AMERICA.	DELHI GAS PIPELINE CORP.	04-28-94	B	75,000	N	I	01-10-93	INDEF.
ST94-5183	NATURAL GAS P/L CO. OF AMERICA.	MINNEGASCO	04-28-94	B	100,000	N	I	05-08-93	INDEF.
ST94-5184	NATURAL GAS P/L CO. OF AMERICA.	DELHI GAS PIPELINE CORP.	04-28-94	B	75,000	N	I	11-26-92	INDEF.
ST94-5185	NATURAL GAS P/L CO. OF AMERICA.	NORTHERN ILLINOIS GAS CO.	04-28-94	G-S	66,100	N	F	04-01-94	11-30-97
ST94-5186	NATURAL GAS P/L CO. OF AMERICA.	NGC TRANSPORTATION, INC.	04-28-94	G-S	500,000	N	I	08-26-92	INDEF.
ST94-5187	WILLIAMS NATURAL GAS CO.	ENCORE ENERGY, INC.	04-28-94	G-S	800	N	I	04-01-94	03-31-95

ST94-5188	WILLIAMS NATURAL GAS CO.	GPM GAS CORP	04-28-94	G-S	1,000	N	I	02-01-94	06-30-94
ST94-5189	WILLIAMS NATURAL GAS CO.	UNION PACIFIC FUELS, INC.	04-28-94	G-S	10,000	N	I	04-06-94	03-31-09
ST94-5190	WILLIAMS NATURAL GAS CO.	WESTERN RESOURCES, INC.	04-28-94	G-S	10	N	I	10-01-93	10-01-94
ST94-5191	WILLIAMS NATURAL GAS CO.	CIBOLA CORP	04-28-94	G-S	5,000	N	I	01-01-94	09-30-98
ST94-5192	EL PASO NATURAL GAS CO.	BROOKLYN INTERSTATE NAT. GAS CORP.	04-28-94	G-S	100,000	N	I	04-01-94	INDEF.
ST94-5193	PANHANDLE EASTERN PIPE LINE CO.	CENTANA ENERGY CORP.	04-28-94	G-S	10,000	N	I	04-01-94	03-31-99
ST94-5194	PANHANDLE EASTERN PIPE LINE CO.	CATEX VITOL GAS, INC.	04-28-94	G-S	12,500	N	F	04-01-94	04-30-94
ST94-5195	PANHANDLE EASTERN PIPE LINE CO.	GPM GAS CORP	04-28-94	G-S	500	N	F	04-01-94	03-31-96
ST94-5196	PANHANDLE EASTERN PIPE LINE CO.	NGC TRANSPORTATION, INC.	04-28-94	G-S	2,000	N	F	04-01-94	06-30-94
ST94-5197	TRUNKLINE GAS CO .	EP OPERATING LIMITED PARTNERSHIP.	04-28-94	G-S	5,000	N	I	04-01-94	INDEF.
ST94-5198	TRUNKLINE GAS CO .	MERIT ENERGY CO ..	04-28-94	G-S	500	N	I	04-08-94	INDEF.
ST94-5199	TRUNKLINE GAS CO .	EP OPERATING LIMITED PARTNERSHIP.	04-28-94	G-S	5,000	N	I	04-01-94	INDEF.
ST94-5200	TRUNKLINE GAS CO .	EP OPERATING LIMITED PARTNERSHIP.	04-28-94	G-S	5,000	N	I	04-01-94	INDEF.
ST94-5201	TRUNKLINE GAS CO .	KOCH GATEWAY PIPELINE CO..	04-28-94	G	150,000	N	I	04-09-94	INDEF.
ST94-5202	TENNESSEE GAS PIPELINE CO.	NORTHERN ILLINOIS GAS CO.	04-28-94	G-S	127,272	N	F	04-01-94	INDEF.
ST94-5203	HOUSTON PIPE LINE CO.	BLACK MARLIN PIPELINE CO., ET AL.	04-28-94	C	25,000	N	I	01-07-94	INDEF.
ST94-5204	HOUSTON PIPE LINE CO.	BLACK MARLIN PIPELINE CO., ET AL.	04-28-94	C	75,000	N	I	02-01-94	INDEF.
ST94-5205	HOUSTON PIPE LINE CO.	BLACK MARLIN PIPELINE CO., ET AL.	04-28-94	C	50,000	N	I	01-01-94	INDEF.
ST94-5206	HOUSTON PIPE LINE CO.	BLACK MARLIN PIPELINE CO., ET AL.	04-28-94	C	50,000	N	I	02-01-94	INDEF.
ST94-5207	HOUSTON PIPE LINE CO.	ONYX GAS MARKETING CO., L.C.	04-28-94	G-I	50,000	N	I	01-01-94	INDEF.
ST94-5208	HOUSTON PIPE LINE CO.	MOBIL NATURAL GAS, INC.	04-28-94	G-I	50,000	N	I	01-15-94	INDEF.
ST94-5209	TENNESSEE GAS PIPELINE CO.	MOUNTAINEER GAS CO.	04-28-94	B	9,000	N	F	04-01-94	INDEF.
ST94-5210	NATURAL GAS P/L CO. OF AMERICA.	COMMONWEALTH EDISON CO.	04-29-94	G-S	500	N	F	04-01-94	11-30-95
ST94-5211	NATURAL GAS P/L CO. OF AMERICA.	MINNEGASCO	04-29-94	G-S	200,000	N	F	04-01-94	04-30-07
ST94-5212	NATURAL GAS P/L CO. OF AMERICA.	DGS TRADING INC	04-29-94	G-S	2,000	N	F	04-08-94	04-30-94
ST94-5213	NATURAL GAS P/L CO. OF AMERICA.	AMGAS, INC	04-29-94	G-S	30,000	N	F	04-01-94	03-31-96
ST94-5214	NORTHERN NATURAL GAS CO.	WESTCOAST GAS SERVICES (USA), INC.	04-29-94	G-S	10,000	N	F	04-01-94	10-31-94
ST94-5215	NORTHERN NATURAL GAS CO.	WESTCOAST GAS SERVICES (USA), INC.	04-29-94	G-S	20,000	N	F	04-01-94	09-30-94
ST94-5216	TRANSWESTERN PIPELINE CO.	TRISTAR GAS MARKETING CO.	04-29-94	G-S	5,000	N	F	04-04-94	04-30-94
ST94-5217	NORTHERN NATURAL GAS CO.	KAZTEX ENERGY MANAGEMENT, INC.	04-29-94	G-S	3,800	N	F	04-01-94	04-30-94
ST94-5218	NORTHERN NATURAL GAS CO.	CIBOLA CORP	04-29-94	G-S	48,192	N	F	04-01-94	04-30-94
ST94-5219	NORTHERN NATURAL GAS CO.	KAZTEX ENERGY MANAGEMENT, INC.	04-29-94	G-S	10,000	N	F	04-01-94	10-31-94
ST94-5220	COLUMBIA GAS TRANSMISSION CORP.	NORTHEAST OHIO NATURAL GAS CO.	04-29-94	G-S	100	N	F	04-01-94	INDEF.
ST94-5221	COLUMBIA GAS TRANSMISSION CORP.	WEST OHIO GAS CO	04-29-94	G-S	32,651	N	F	04-01-94	INDEF.
ST94-5222	COLUMBIA GAS TRANSMISSION CORP.	VIRGINIA NATURAL GAS, INC.	04-29-94	G-S	57,970	N	F	04-01-94	INDEF.
ST94-5223	COLUMBIA GAS TRANSMISSION CORP.	NEW YORK STATE ELECT. & GAS CORP.	04-29-94	G-S	36,794	N	F	04-01-94	INDEF.
ST94-5224	COLUMBIA GAS TRANSMISSION CORP.	KALIDA NATURAL GAS CO., INC.	04-29-94	G-S	400	N	F	04-01-94	INDEF.

ST94–5225	COLUMBIA GAS TRANSMISSION CORP.	SOLAR TURBINES, INC.	04–29–94	G–S	14,000	N	F	04–01–94	INDEF.
ST94–5226	COLUMBIA GAS TRANSMISSION CORP.	NORTHEAST OHIO NATURAL GAS CO.	04–29–94	G–S	50	N	F	04–01–94	INDEF.
ST94–5227	COLUMBIA GAS TRANSMISSION CORP.	GORDONSVILLE ENERGY L.P.	04–29–94	G–S	60,000	N	I	04–01–94	INDEF.
ST94–5228	COLUMBIA GAS TRANSMISSION CORP.	GORDONSVILLE ENERGY L.P.	04–29–94	G–ST	N/A	N	I	04–26–94	INDEF.
ST94–5229	COLUMBIA GAS TRANSMISSION CORP.	COMMONWEALTH ATLANTIC L.P.	04–29–94	G–S	96,000	N	I	04–01–94	INDEF.
ST94–5230	COLUMBIA GAS TRANSMISSION CORP.	COMMONWEALTH ATLANTIC L.P.	04–29–94	G–ST	N/A	N	I	04–26–94	INDEF.
ST94–5231	WILLISTON BASIN INTER. P/L CO.	WESTERN GAS RESOURCES.	04–29–94	G–S	30,000	A	I	04–01–94	03–31–96
ST94–5232	WILLISTON BASIN INTER. P/L CO.	RAINBOW GAS CO	04–29–94	G–S	80,000	A	I	04–01–94	03–31–96
ST94–5233	WILLISTON BASIN INTER. P/L CO.	CENERGY, INC	04–29–94	G–S	20,000	A	I	04–01–94	03–31–96
ST94–5234	WILLISTON BASIN INTER. P/L CO.	CENEX, INC	04–29–94	G–S	12,000	A	I	04–01–94	03–31–96
ST94–5235	EQUITRANS, INC	EQUITABLE GAS CO .	04–29–94	G–S	92,999	N	I	03–01–94	INDEF.
ST94–5236	TEXAS EASTERN TRANSMISSION CORP.	UNITED CITIES GAS CO.	04–29–94	G–S	10,000	N	I	04–05–94	01–31–95
ST94–5237	TEXAS EASTERN TRANSMISSION CORP.	CNG GAS SERVICES	04–29–94	G–S	45,000	N	I	03–31–94	02–28–95
ST94–5238	PANHANDLE EASTERN PIPE LINE CO.	SEMCO ENERGY SERVICES.	04–29–94	G–S	3,300	N	F	04–01–94	06–30–94
ST94–5239	PANHANDLE EASTERN PIPE LINE CO.	CITY OF TALOGA	04–29–94	G–S	300	N	I	03–31–94	03–31–04
ST94–5240	PANHANDLE EASTERN PIPE LINE CO.	ARCHER DANIELS MIDLAND CO.	04–29–94	G–S	20,000	N	F	04–01–94	03–31–96
ST94–5241	PANHANDLE EASTERN PIPE LINE CO.	CITY OF VICI PUBLIC WORKS AUTHORITY.	04–29–94	G–S	500	N	I	04–01–94	03–31–94
ST94–5242	PANHANDLE EASTERN PIPE LINE CO.	CITY OF SUNRAY	04–29–94	G–S	500	N	I	03–31–94	07–31–98
ST94–5243	PANHANDLE EASTERN PIPE LINE CO.	NITEX, INC	04–29–94	G–S	26,000	N	F	04–31–94	10–31–97
ST94–5244	K N INTERSTATE GAS TRANS. CO.	K N GAS MARKETING, INC.	04–29–94	G–S	10,000	Y	F	04–31–94	INDEF.
ST94–5245	K N INTERSTATE GAS TRANS. CO.	TENASKA MARKETING VENTURES.	04–29–94	G–S	450	N	F	04–01–94	09–30–94
ST94–5246	NATURAL GAS P/L CO. OF AMERICA.	COMMONWEALTH EDISON CO.	04–29–94	G–S	1,300	N	F	04–01–94	11–30–95
ST94–5247	ONG TRANSMISSION CO.	TRANSOK-BRADLEY (NGPL).	04–29–94	C	50,000	N	I	04–05–94	INDEF.
ST94–5248	ONG TRANSMISSION CO.	TRANSOK-BRADLEY (NGPL).	04–29–94	C	100,000	N	I	04–08–94	INDEF.
ST94–5249	ONG TRANSMISSION CO.	OZARK-DELHI	04–29–94	C	20,000	N	I	04–06–94	INDEF.
ST94–5250	LONE STAR GAS CO	NORTHERN NATURAL GAS CO., ET AL.	04–29–94	C	100,000	N	I	03–26–94	INDEF.

[1] Notice of Transactions does not constitute a determination that filings comply with Commission regulations in accordance with Order No. 436 (Final Rule and Notice requesting supplemental comments, 50 FR 42,372, 10/10/85).

[2] Estimated maximum daily volumes includes volumes reported by the filing company in MMBTU, MCF and DT.

[3] Affiliation of reporting company to entities involved in the transaction. A "Y" indicates affiliation, an "A" indicates marketing affiliation, and an "N" indicates no affiliation.

[FR Doc. 94–14994 Filed 6–21–94; 8:45 am]
BILLING CODE 6717–01–P

Kentucky West Virginia Gas Co.; Proposed Changes in FERC Gas Tariff

[Docket No. RP94–289–000]

June 16, 1994.

Take notice that on June 13, 1994, Kentucky West Virginia Gas Company (Kentucky West) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Original Sheet No. 161A, with an effective date of July 1, 1994.

Kentucky West states that it is proposing to refund its Account No. 191 negative balance attributable to gas purchases made prior to July 1, 1993, that were incurred as a consequence of Kentucky West providing a bundled merchant function. This filing is being made in accordance with the procedures set forth in section 31.2(a) of the General Terms and Conditions of Kentucky West's FERC Gas Tariff as approved and made effective by the Commission.

Kentucky West states that the total amount to be direct refunded by this filing under section 31.2(a) of the tariff is $188,912.00. Kentucky West also states that this amount reflects the negative balance on Account No. 191, plus interest calculated in accordance with section 154.305 of the

Commission's Regulations as detailed in Schedule C2 hereto.

Kentucky West states that the filing provides for the retention by Kentucky West of certain refund amounts otherwise payable to various former Rate Schedule GSS–1 customers pursuant to a Commission order of December 28, 1990 in Docket Nos. TQ89–1–46–000, et al. These customers will be notified that their Mid-La obligation amount has been credited by the amount of the refund retained by Kentucky West.

Any person desiring to be heard or protest this application should file a motion to intervene or protests with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 23, 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. 94–15111 Filed 6–21–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT94–52–000]

Mississippi River Transmission Corp.; Flowthrough of Refund Received

June 16, 1994.

Take notice that on June 13, 1994, Mississippi River Transmission Corporation (MRT) submitted worksheets reflecting the flowthrough of refunds received by MRT since its initial disposition of Account Nos. 191 and 858 costs in Docket No. RP94–123.

MRT states that the purpose of this filing is to reflect the allocation of Koch Gateway Pipeline Company's (KGPC) final refund amounts in Docket Nos. RP84–42–000, *et al.*, and KGPC's refund amounts in Docket Nos. RP91–126–012, *et al.*, among MRT's former Rate Schedule CD–1 and SGS–1 customers. MRT states that upon receipt of Commission approval, it proposes to credit each customer's June, 1994 transportation invoice for their respective portion of the refunds, including interest through July 20, 1994.

MRT states that a copy of this filing is being made to each of MRT's former jurisdictional sales customers and the state commissions of Arkansas, Illinois and Missouri.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR §§ 385.211, 385.214). All such motions or protests should be filed on or before June 23, 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.

Lois D. Cashell,

Secretary.

[FR Doc. 94–15105 Filed 6–21–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–745–001]

Natural Gas Pipeline Company of America; Amendment

June 16, 1994.

Take notice that on June 13, 1994, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard Illinois, 60148, filed in Docket No. CP93–745–001 an amendment to its application filed in Docket No. CP93–745–000 pursuant to section 7(c) of the Natural Gas Act, for authorization to increase Natural's maximum daily deliverability at three of Natural's storage fields, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

Natural indicates that in its original application, it proposed to construct and operate 16 injection/withdrawal wells, and associated piping and meters. Natural further states that it proposed to replace one compressor and two segments of storage field lines, in its original application. Natural states that the proposed construction, operation and/or replacement of facilities at two of its storage fields in Iowa, and one of its storage fields in Texas was designed to increase the maximum daily deliverability from its storage operations by an additional 250 MMcf per day, at an estimated construction cost of $14,650,000 for the jurisdictional facilities and approximately $6,137,000 for the non-jurisdictional facilities.

Natural is amending its application, by deleting its proposal to construct and operate all jurisdictional facilities proposed in Docket No. CP93–745–000. Natural further proposes to amend its original filing to this proceeding by increasing its maximum daily deliverability at three of Natural's existing storage fields by 175 MMcf per day original proposed in Docket No. CP93–745–000.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before July 1, 1994, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR §§ 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR § 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. All persons who have heretofore filed need not file again.

Lois D. Cashell,

Secretary.

[FR Doc. 94–15104 Filed 6–21–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MT88–33–009]

Natural Gas Pipeline Company of America; Proposed Changes in FERC Gas Tariff

June 16, 1994.

Take notice that on June 9, 1994, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, First Revised Sheet No. 360 and Second Revised Sheet Nos. 361 and 362, to be effective July 9, 1994.

Natural states that the purpose of the filing is to comply with § 250.16(d)(2) of the Commission's Regulations, which requires filings if changes occur in shared operating personnel between Natural and its marketing affiliate company.

Natural states that copies of the filing was mailed to Natural's jurisdictional customers and interested state regulatory agencies.

Any person desiring to protect said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance

with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before June 23, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–15106 Filed 6–21–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. PR94–16–000]

Southern California Gas Co.; Petition for Rate Approval

June 16, 1994.

Take notice that on May 31, 1994, Southern California Gas Company (SoCalGas) filed pursuant to § 284.123(b)(2) of the Commission's regulations, a petition for rate approval requesting that the Commission approve as fair and equitable a rate of $.7414 per Dth for wheeling services and $1.4149 per Dth for parking and loaning services performed under § 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA).

SoCalGas states that it is an intrastate pipeline within the meaning of section 2(16) of the NGPA and it owns and operates an intrastate pipeline system in the State of California. SoCalGas proposes an effective date of July 1, 1994.

Pursuant to § 284.123(b)(2)(ii), if the Commission does not act within 150 days of the filing date, the rate will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150-day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data, and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedures. All motions must be filed with the Secretary of the Commission on or before July 1, 1994. The petition for rate approval is on file with the Commission and is available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–15108 Filed 6–21–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–225–002]

Texas Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

June 16, 1994.

Take notice that on June 13, 1994, Texas Gas Transmission Corporation (Texas Gas) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets:

Second Substitute Fifth Revised Sheet No. 10
Substitute Third Revised Sheet No. 18
Fourth Revised Sheet No. 229
First Revised Sheet No. 230

Texas Gas states that the revised tariff sheets are being filed to revise the GSR Demand Surcharge and certain tariff language to comply with the Commission's "Order Accepting and Suspending Tariff Sheets Subject to Refund and Conditions, Rejecting Tariff Sheets and Consolidating Proceeding" dated May 27, 1994.

Texas Gas requests an effective date of June 1, 1994, for the proposed tariff sheets.

Texas Gas states that copies of the revised tariff sheets are being mailed to Texas Gas's affected firm jurisdictional customers, those appearing on the applicable service lists, and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before June 23, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–15109 Filed 6–21–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–227–000]

Transwestern Pipeline Co.; Technical Conference

June 16, 1994.

In the Commission's order issued on May 26, 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 Wednesday, July 13, 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. 94–15110 Filed 6–21–94; 8:45 am]

BILLING CODE 6717–01–M

Office of Hearings and Appeals

Final Closing Date for Special Refund Proceeding No. LEF–0052 Involving Whitaker Oil Co.

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of Closure of Special Refund Proceeding LEF–0052, Whitaker Oil Company.

The Office of Hearings and Appeals of the Department of Energy announces that it is terminating the proceeding established to distribute refunds from the escrow account maintained pursuant to an Agreed Judgment entered into between the Department of Energy and Whitaker Oil Company.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Stacy M. Crowell, Staff Analyst, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–2860 (Dugan), (202) 586–4921 (Crowell).

SUPPLEMENTARY INFORMATION: On May 6, 1993, the Office of Hearings and Appeals of the Department of Energy issued a Decision and Order setting forth final refund procedures to distribute the monies in the escrow account established in accordance with the terms of an Agreed Judgment entered into between the Department of Energy and Whitaker Oil Company. *See Whitaker Oil Co.*, 23 DOE ¶ 85,054 (1993), 58 FR 28009 (May 12, 1993). That Decision established a filing deadline 90 days from the date the Whitaker Decision and Order appeared in the **Federal Register**. Thus, August 10, 1993 was the deadline for the submission of refund applications for direct restitution by purchasers of Whitaker's kerosene, toluene, xylene, and diesel fuel. 23 DOE at 88,138.

The Office of Hearings and Appeals began accepting refund applications in the Whitaker proceeding on June 8, 1993. All of the Applications for Refund filed in the Whitaker proceeding have been considered and resolved. Furthermore, in view of the extended period of time that has transpired since the commencement of the proceeding,

we have concluded that all eligible applicants have been provided with more than ample time to file. Accordingly, as of the date of issuance of this Notice, the proceeding established to distribute funds from the escrow account maintained pursuant to the Agreed Judgment entered into between the DOE and Whitaker Oil Company is closed. Any unclaimed funds remaining after all meritorious claims have been paid will be made available for indirect restitution pursuant to the Petroleum Overcharge Distribution and Restitution Act of 1986, 15 U.S.C. § 4501.

Dated: June 16, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 94–15163 Filed 6–21–94; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5001–2]

Acid Rain Program: Notice of Draft Compliance Plans and Public Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of draft compliance plans and public comment period.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is issuing for comment 5-year nitrogen oxides (NO_X) compliance plans for 22 utility units which amend previously issued draft or final Phase I Acid Rain Permits, in accordance with the Acid Rain Program regulations (40 CFR part 76).

DATES: Comments on draft NO_X compliance plans must be received no later than 30 days after the date of this notice or the publication date of a similar notice in local newspapers.

ADDRESSES: Administrative Records. The administrative record for draft NO_X compliance plans, except information protected as confidential, may be viewed during normal operating hours at the following locations:

Region 2

For plants in New York: EPA Region 2, Jacob K. Javits Federal Bldg., 26 Federal Plaza, Room 505, New York, NY 10278.

Region 3

For plants in Maryland, Pennsylvania, and West Virginia: EPA Region 3, 841 Chestnut Bldg., Philadelphia, PA 19107, (215) 597–9800.

COMMENTS: Send comments, requests for public hearings, and requests to receive notice of future actions concerning a draft NO_X compliance plan to the following:

For plants in New York: EPA Region 2, Air and Waste Management Division, Attn: Steven C. Riva (address above).

For plants in Maryland, Pennsylvania, and West Virginia: EPA region 3, Air, Radiation, and Toxics Division, Attn: Thomas Maslany, Director (address above).

Submit all comments in duplicate and identify the NO_X compliance plan to which the comments apply, the commenter's name, address, and telephone number, and the commenter's interest in the matter and affiliation, if any, to the owners and operators of all units covered by the NO_X compliance plan. All timely comments will be considered, except comments on aspects of the permit other than the NO_X compliance plan and other comments not relevant to the NO_X compliance plan.

To request a public hearing, state the issue proposed to be raised in the hearing. EPA may schedule a hearing if EPA finds that it will contribute to the decision-making process by clarifying significant issues affecting the NO_X compliance plan.

FOR FURTHER INFORMATION: Contact the following persons for more information about the draft NO_X compliance plans;

For plants in New York, Gerry DeGaetano, (212) 264–6685, EPA Region 2 (address above).

For plants in Maryland, Pennsylvania, and West Virginia, Kimberly Peck, (215) 597–9839, EPA Region 3 (address above).

SUPPLEMENTARY INFORMATION: EPA proposes to approve NO_X compliance plans under which units will comply with the applicable emission limitations for NO_X under 40 CFR 76.5 (referred to as "standard emission limit") or other indicated compliance options for NO_X for the following:

Region 2

Dunkirk units 3 and 4 in New York will each meet the standard emission limit of 0.45 lbs/MMBtu. The designated representative is Clement E. Nadeau.

Greenidge unit 6 in New York will comply with a NO_X averaging plan for 1995–1999. For each year under the plan, this unit's actual annual average emission rate for NO_X shall not exceed the alternative contemporaneous annual emission limitation of 0.53 lbs/MMBtu, and this unit's actual annual heat input shall not be greater than the annual heat input limit of 6,169,000 MMBtu. The other units designated in this plan are Milliken units 1 and 2 in New York. The designated representative is James W. Rettberg.

Milliken units 1 and 2 in New York will each comply with a NO_X averaging plan for 1995–1999. For each year under the plan, the actual annual average emission rate for NO_X for each of these units shall not exceed the alternative contemporaneous annual emission limitation of 0.42 lbs/MMBtu, and the actual annual heat input for units 1 and 2 shall not be less than the annual heat input limits of 8,471,000 MMBtu and 9,240,000 MMBtu, respectively. The other unit designated in this plan is Greenidge unit 6 in New York. The designated representative is James W. Rettberg.

Region 3

Chalk Point units 1 and 2 in Maryland will each meet the standard emission limit of 0.50 lbs/MMBtu. Unit 1 will not be required to meet the emission limit until 1997 pursuant to 40 CFR 72.42. The designated representative is James S. Potts.

Morgantown units 1 and 2 in Maryland will each meet the standard emission limit of 0.45 lbs/MMBtu. These units will not be required to meet the emission limit until 1997 pursuant to 40 CFR 72.42. The designated representative is James S. Potts.

Brunner Island units 1, 2, and 3 in Pennsylvania will each comply with a NO_X averaging plan for 1995–1999. For each year under the plan, the actual annual average emission rate for NO_X for each of these units shall not exceed the alternative contemporaneous annual emission limitation of 0.449 lbs/MMBtu, and the actual annual heat input for units 1, 2, and 3 shall not be less than the annual heat input limits of 25,000,000 MMBtu, 28,000,000 MMBtu, and 55,000,000 MMBtu, respectively. The other units designated in this plan are Martins Creek units 1 and 2 in Pennsylvania, and Sunbury units 3 and 4 in Pennsylvania. The designated representative is Robert Shovlin.

Cheswick unit 1 in Pennsylvania will meet the standard emission limit of 0.45 lbs/MMBtu. The designated representative is Robert A. Irvin.

Martins Creek units 1 and 2 in Pennsylvania will each comply with a NO_X averaging plan for 1995–1999. For each year under the plan, the actual annual average emission rate for NO_X for each of these units shall not exceed the alternative contemporaneous annual emission limitation of 0.499 lbs/MMBtu, and the actual annual heat input for units 1 and 2 shall not be less than the annual heat input limit of 12,000,000

MMBtu for each unit. The other units designated in this plan are Brunner Island units 1, 2, and 3 in Pennsylvania, and Sunbury units 3 and 4 in Pennsylvania. The designated representative is Robert Shovlin.

Mount Storm units 1, 2, and 3 in Pennsylvania will each meet the standard emission limit of 0.45 lbs/MMBtu. These units will not be required to meet the emission limit until 1997 pursuant to 40 CFR 72.42. The designated representative is John A. Ahladas.

Sunbury units 3 and 4 in Pennsylvania will each comply with a NO_X averaging plan for 1995–1999. For each year under the plan, the actual annual average emission rate of NO_X for each of these units shall not exceed the alternative contemporaneous annual emission limitation of 0.499 lbs/MMBtu, and the actual annual heat input for units 1 and 2 shall not be less than the annual heat input limit of 10,000,000 MMBtu and 11,000,000 MMBtu, respectively. The other units designated in this plan are Brunner Island units 1, 2, and 3 in Pennsylvania and Martins Creek units 1 and 2 in Pennsylvania. The designated representative is Robert Shovlin.

Mitchell units 1 and 2 in West Virginia will each meet the standard emission limit of 0.50 lbs/MMBtu. The designated representative is John M. McManus.

Dated: June 14, 1994.

Brian J. McLean,

Director, Acid Rain Division, Office of Atmospheric Programs, Office of Air and Radiation.

[FR Doc. 94–14817 Filed 6–21–94; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5001–7]

Science Advisory Board

Executive Committee; Public Meeting

July 14–15, 1994.

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Science Advisory Board's (SAB) Executive Committee (EC) will conduct a meeting on Thursday and Friday, July 14–15, 1994. The meeting will be held in the Administrator's Conference Room 1103 West Tower at the Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. On Thursday, it will begin at 1 p.m. and adjourn not later than 5 p.m. on Thursday; on Friday, it will begin at 8:30 a.m. and adjourn not later than 5 p.m. The meeting is open to the public and limited unreserved seating will be available.

The portion of the meeting on Thursday will focus on an intra-SAB examination of the structure and function of the Board, through a report from the SAB Reinvention Committee. On Friday, the Executive Committee intends to review reports from its Committees, including the following:

(a) Drinking Water Committee (DWC)—Review of the Information Collection Rule; (b) Ecological Processes and Effects Committee (EPEC)—Commentary on EPA's approach to developing wildlife criteria; (c) Environmental Health Committee (EHC)—Commentaries on risk assessment guidelines, environmental equity, and the benchmark dose; (d) Indoor Air Quality/Total Human Exposure Committee (IAQC)—Review of EPA's Methodology for Assessing Indirect Routes of Exposure; and (e) Radiation Advisory Committee (RAC)—Retrospective analysis of RAC activities. In addition, the Committee intends to meet with Ms. Mary Nichols, Assistant Administrator for the Office of Air and Radiation, to discuss emerging problems and opportunities. The Committee also intends to meet with Dr. Dorothy Patton, Director of the Risk Assessment Forum, to discuss the Peer-Review Policy.

Any member of the public wishing further information concerning the meeting or who wishes to submit comments should contact Dr. Donald G. Barnes, Designated Federal Official, Executive Committee, Science Advisory Board (1400), U.S. Environmental Protection Agency, Washington DC 20460, or by phone at (202) 260–4126; FAX (202) 260–9232; or via The INTERNET at barnes.don@epamail.epa.gov.

Dated: June 10, 1994.

Donald G. Barnes, Ph.D.,

Staff Director, Science Advisory Board.

[FR Doc. 94–15085 Filed 6–21–94; 8:45 am]

BILLING CODE 6550–50–P

[OPP–50793; FRL–4870–1]

Receipt of Notification of Intent to Conduct Small-Scale Field Testing; Nonindigenous Microbial Pesticides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received from Ciba-Geigy Corp. a notification of intent to conduct small-scale field testing on cotton, vegetables and ornamentals in Florida, Mississippi, California, and New York of nonindigenous strains of *Pseudomonas fluorescens* isolated from plant roots in Switzerland.

DATES: Comments must be received on or before July 6, 1994.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1128, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Information submitted and any comment(s) concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment(s) that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Information on the proposed test and any written comments will be available for public inspection in Rm. 246 at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Steve Robbins, Acting Product Manager (PM-21), Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 227, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703)-305-6900.

SUPPLEMENTARY INFORMATION: A notification of intent to conduct small-scale field testing pursuant to the EPA's "Statement of Policy; Microbial Products Subject to the Federal Insecticide, Fungicide, and Rodenticide Act and the Toxic Substances Control Act" of June 26, 1986 (51 FR 23313), has been received from Ciba-Geigy Corp., P.O. Box 18300, Greensboro, NC 27419-8300. The purpose of the proposed testing is to evaluate the efficacy of nonindigenous strains of *Pseudomonas fluorescens*, identified as strains MOCG-0224, MOCG-0292, and MOCG-0299, isolated from roots of plants grown in Switzerland, for the control of soil-borne pathogens of cotton, vegetables (including green beans and potatoes) and ornamentals. The proposed field tests would be conducted at Ciba-Geigy research stations located in Florida, Mississippi, California, and New York. The total area of the proposed test sites is less than 10 acres.

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: June 3, 1994.

Stephanie R. Irene,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94–15082 Filed 6–21–94; 8:45 am]

BILLING CODE 6560–50–F

[OPP–50792; FRL–4869–3]

Receipt of Notification of Intent to Conduct Small-Scale Field Testing; Genetically Modified Microbial Pesticides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received from Ciba-Geigy Corp. a notification of intent to conduct small-scale field testing on cotton, vegetables and ornamentals in Florida, Mississippi, California, and New York with genetically modified strains of *Pseudomonas fluorescens* isolated from roots of cotton plants grown in Texas.

DATES: Comments must be received on or before July 22, 1994.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1128, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Information submitted and any comment(s) concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment(s) that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Information on the proposed test and any written comments will be available for public inspection in Rm. 246 at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Steve Robbins, Acting Product Manager (PM-21), Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 227, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703)-305-6900.

SUPPLEMENTARY INFORMATION: A notification of intent to conduct small-scale field testing pursuant to the EPA's "Statement of Policy; Microbial Products Subject to the Federal Insecticide, Fungicide, and Rodenticide Act and the Toxic Substances Control Act" of June 26, 1986 (51 FR 23313), has been received from Ciba-Geigy Corp., P.O. Box 18300, Greensboro, NC 27419. The purpose of the proposed testing is to evaluate the efficacy of five genetically modified strains of *Pseudomonas fluorescens* MOCG-0134 which are designated as MOCG-0134-137, MOCG-0134-E11, MOCG-0134-8392, MOCG-0134-2215, and MOCG-0134-6720. The genetic modifications have been limited to the use of plasmid and transposon vectors to deliver genetic information that is resident within the wild-type strain (MOCG-0134). Testing would be conducted to determine the efficacy of these strains for control of certain soil-borne pathogens of cotton, vegetables (including potatoes and green beans) and various ornamental plants. The proposed field tests would be conducted at Ciba-Geigy research stations located in Florida, Mississippi, New York, and California on a total area of less than 10 acres.

A previous notification was submitted by Ciba-Geigy Corp. on March 22, 1993. The purpose of the proposed testing was to evaluate the efficacy of a genetically-modified strain (CGA-267356) of an indigenous strain of *Pseudomonas fluorescens*, strain MOCG-0134, isolated from roots of cotton plants grown in Texas, for the control of soil-borne pathogens of cotton, vegetables and ornamentals. The review of that notification was not completed because there was insufficient information to allow for adequate evaluation by the public in the releasable version of the notification.

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests

Dated: June 3, 1994.

Stephanie R. Irene,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94–15083 Filed 6–21–94; 8:45 am]

BILLING CODE 6560–50–F

[OPP–180945; FRL 4873–1]

Receipt of Application for Emergency Exemption to use Pirate Insecticide; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Louisiana Department of Agriculture and Forestry (hereafter referred to as the "Applicant") for use of the pesticide, 4-bromo-2-(4-chlorophenyl)-1-(ethoxymethyl)-5-(trifluoromethyl)-1*H*pyrrole-3-carbonitrile, to control beet armyworms (BAW) on up to 200,000 acres of cotton in Louisiana. In accordance with 40 CFR 166.24, EPA is soliciting public comment before making the decision whether or not to grant the exemption.

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

ADDRESSES: Three copies of written comments, bearing the identification notation "OPP–180945," should be submitted by mail to: Public Response and Human Resource Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. In person, bring comments to: Rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain Confidential Business Information must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Susan Stanton, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. Office location and telephone number: 6th Floor, Crystal Station I, 2800 Jefferson Davis Highway, Arlington, VA 22202, (703) 308–8327.

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide,

Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at her discretion, exempt a State agency from any registration provision of FIFRA if she determines that emergency conditions exist which require such exemption. The Applicant has requested the Administrator to issue a specific exemption for use of the insecticide, 4-bromo-2-(4-chlorophenyl)-1-(ethoxymethyl)-5-(trifluoromethyl)-1*H*-pyrrole-3-carbonitrile, available as Pirate 3SC from American Cyanamid Company, to control beet armyworms (BAW) on up to 200,000 acres of cotton in Louisiana. Information in accordance with 40 CFR part 166 was submitted as part of this request.

According to the Applicant, BAW is an occasional pest of cotton in Louisiana which seldom causes economic damage. However, under favorable environmental conditions, BAW populations can increase to extremely high levels and cause severe economic losses. In 1993, a severe outbreak cost affected Louisiana cotton producers $15 to $85 per acre. According to the Applicant, the registered pesticides provide only partial control of BAW. If Pirate Insecticide is not available for use and another outbreak occurs, the Applicant claims that yield losses of 10 to 20 percent may occur, resulting in significant economic losses for affected growers.

Under the proposed exemption, a maximum of two ground applications of Pirate 3SC would be made at 8.53 fluid ounces of product (0.2 pounds active ingredient) per acre. No applications would be made within 21 days of harvest. A maximum of 40,000 pounds of active ingredient would be needed to treat up to 200,000 acres of cotton.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require that the Agency publish notice of receipt in the **Federal Register** and solicit public comment on an application for a specific exemption proposing use of a new chemical (i.e., an active ingredient not contained in any currently registered pesticide) [40 CFR 166.24 (a)(1)]. 4-bromo-2-(4-chlorophenyl)-1-(ethoxymethyl)-5-(trifluoromethyl)-1*H*-pyrrole-3-carbonitrile is a new chemical. Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above. The Agency will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the Louisiana Department of Agriculture and Forestry.

List of Subjects

Environmental protection, Crisis exemptions, Pesticides and pests.

Dated: June 13, 1994.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94–15075 Filed 6–21–94; 8:45 am]

BILLING CODE 6560–50–F

[OPP–180943; FRL 4872–8]

Receipt of Application for Emergency Exemption To Use Imidacloprid; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received specific exemption requests from the California Environmental Protection Agency, Department of Pesticide Regulation (hereafter referred to as the "Applicant") to use the pesticide imidacloprid (CAS 105827–78–9) to treat up to 22,000 acres of broccoli, cabbage, cauliflower, and rapini, and up to 40,000 acres of head and leaf lettuce, to control the silverleaf, or sweet potato whitefly (*Bemesia tabaci*). The Applicant proposes the first food use of an active ingredient; therefore, in accordance with 40 CFR 166.24, EPA is soliciting public comment before making the decision whether or not to grant the exemption.

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

ADDRESSES: Three copies of written comments, bearing the identification notation "OPP–180943," should be submitted by mail to: Public Response and Program Resource Branch Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. In person, bring comments to: Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain Confidential Business Information must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 1132, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Andrea Beard, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW, Washington, DC 20460. Office location and telephone number: Floor 6, Crystal Station #1, 2800 Jefferson Davis Highway, Arlington, VA, (703) 308–8791.

SUPPLEMENTARY INFORMATION: Pursuant to Section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at her discretion, exempt a state agency from any registration provision of FIFRA if she determines that emergency conditions exist which require such exemption. The Applicant has requested the Administrator to issue specific exemptions for the use of imidacloprid on broccoli, cabbage, cauliflower, and head and leaf lettuce to control the silverleaf whitefly (SLW). Information in accordance with 40 CFR part 166 was submitted as part of these requests.

Whiteflies have been a problem in the "desert-cropping systems" in California and Arizona for some time, but in 1990, a new strain (possibly a new species) was discovered, which appears to be much more prolific than the standard strain, and resistant to many insecticides. Whiteflies are common on many wild and cultivated crops such as tomatoes, cotton, cucurbits and solanaceae. The Applicant states that this new strain caused devastation to many crops in 1991 in California's Imperial Valley, with crop losses over $120 million. Whiteflies cause direct damage through feeding activities and indirectly through the production of honeydew which enhances sooty mold development. The Applicant claims that adequate control of this pest is not being achieved with the currently registered compounds. The Applicant claims that without control of this pest, growers could expect up to 50 percent yield losses, causing significant economic losses.

The Applicant proposes to apply imidacloprid at a maximum rate of 0.3016 lb. active ingredient (20 fluid oz. of product) per acre with a maximum of one application, at or near planting, per crop season on a total of 62,000 acres of the above-listed crops. For each of the crops named, it is possible to produce

two crops per calendar year on a given acre, and therefore, the acreage could potentially receive two applications of imidacloprid per calendar year. However, the Applicant proposed to limit the maximum amount which could be applied per calendar year to 0.5 lb. a.i. (32 fl. oz. product) per acre. Therefore, use under this exemption could potentially amount to a maximum total of 31,000 lbs. of active ingredient, or 15,500 gal. of product. This is the second time that the Applicant has applied for the use of imidacloprid on the named crops, and exemptions were issued for this use in California last year.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require publication of a notice of receipt in the **Federal Register** and solicit public comment on an application for a specific exemption proposing the first food use of an active ingredient. Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above.

The Agency, accordingly, will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the California Department of Pesticide Regulation.

List of subjects

Environmental protection, Crisis exemptions, Pesticides and pests.

Dated: June 13, 1994.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94–15076 Filed 6–21–94; 8:45 am]

BILLING CODE 6560–50–F

[OPP–180944; FRL 4872–9]

Receipt of Application for Emergency Exemption To Use Pirate Insecticide; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Georgia Department of Agriculture (hereafter referred to as the "Applicant") for use of the pesticide, 4-bromo-2-(4-chlorophenyl)-1-(ethoxymethyl)-5-(trifluoromethyl)-1*H*-pyrrole-3-carbonitrile, to control beet armyworms (BAW) on up to 25,000 acres of cotton in Georgia. In accordance with 40 CFR 166.24, EPA is soliciting public comment before making the decision whether or not to grant the exemption.

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

ADDRESSES: Three copies of written comments, bearing the identification notation "OPP–180944," should be submitted by mail to: Public Response and Human Resource Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. In person, bring comments to: Rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain Confidential Business Information must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Susan Stanton, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. Office location and telephone number: 6th Floor, Crystal Station I, 2800 Jefferson Davis Highway, Arlington, VA 22202, (703) 308–8327.

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at her discretion, exempt a State agency from any registration provision of FIFRA if she determines that emergency conditions exist which require such exemption. The Applicant has requested the Administrator to issue a specific exemption for use of the insecticide, 4-bromo-2-(4-chlorophenyl)-1-(ethoxymethyl)-5-(trifluoromethyl)-1H-pyrrole-3-carbonitrile, available as Pirate 3SC from American Cyanamid Company, to control beet armyworms (BAW) on up to 25,000 acres of cotton in Georgia. Information in accordance with 40 CFR part 166 was submitted as part of this request.

According to the Applicant, BAW has historically been a late-season pest of cotton, particularly in drought years. However, the use of organophosphate insecticides in the Boll Weevil Eradication Program has disrupted the natural biological control of BAW, causing it to become a serious, season-long problem in certain years. According to the Applicant, the registered pesticides provide only partial control of BAW. If Pirate Insecticide is not available for use and a severe outbreak occurs, the Applicant claims that yield losses of up to 100 percent are possible in some fields.

Under the proposed exemption, a maximum of two ground applications of Pirate 3SC would be made at 8.53 fluid ounces of product (0.2 pounds active ingredient) per acre. No applications would be made within 21 days of harvest. A maximum of 10,000 pounds of active ingredient would be needed to treat up to 25,000 acres of cotton.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require that the Agency publish notice of receipt in the **Federal Register** and solicit public comment on an application for a specific exemption proposing use of a new chemical (i.e., an active ingredient not contained in any currently registered pesticide) [40 CFR 166.24 (a)(1)]. 4-bromo-2-(4-chlorophenyl)-1-(ethoxymethyl)-5-(trifluoromethyl)-1*H*-pyrrole-3-carbonitrile is a new chemical. Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above. The Agency will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the Georgia Department of Agriculture.

List of Subjects

Environmental protection, Crisis exemptions, Pesticides and pests.

Dated: June 13, 1994.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94–15073 Filed 6–21–94; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL ELECTION COMMISSION

[NOTICE 1994–7]

Filing Dates for the Oklahoma Special Elections; Notice

AGENCY: Federal Election Commission.

ACTION: Notice of Filing Dates for Special Elections.

SUMMARY: Oklahoma has scheduled 1994 special elections on August 23, September 20 and November 8 to fill the U.S. Senate seat of Senator David L. Boren, which will become vacant when his resignation takes effect.

Committees required to file reports in connection with the Special Primary Election on August 23 should file a 12-day Pre-Primary Report on August 11. Committees required to file reports in connection with a Special Runoff Election on September 20 must file a 12-day Pre-Runoff Report on September 8. Committees required to file reports in connection with the Special General Election to be held on November 8 must file a 12-day Pre-General Report on October 27 and a Post-General Report on December 8.

FOR FURTHER INFORMATION CONTACT: Ms. Bobby Werfel, Information Division, 999 E Street NW., Washington, DC 20463, telephone: (202) 219–3420; Toll Free (800) 424–9530.

SUPPLEMENTARY INFORMATION:

Principal Campaign Committees

Special Primary Only

All principal campaign committees of candidates *only* involved in the Special Primary Election shall file a 12-day Pre-Primary Report on August 11 and an October Quarterly Report on October 15. (See the chart below for the closing date for each report.)

Special Primary and General Without Runoff

Each party will hold a Special Primary Election to nominate a candidate for the Special General Election. Principal campaign committees of candidates only participating in the Special Primary and Special General Elections shall file a 12-day Pre-Primary Report on August 11, an October Quarterly Report on October 15, a 12-day Pre-General Election Report on October 27, and a Post-General Election Report on December 8. (See the chart below for the closing date of each report.)

Special Primary and Runoff Elections

In the event that one candidate does not achieve more than 50% of the vote in his/her party's Special Primary Election, the two top vote-getters in that party's primary will participate in a Special Runoff Election.

Principal campaign committees only participating in the Special Primary and Runoff Elections shall file a 12-day Pre-Primary Election Report on August 11, a 12-day Pre-Runoff Election Report on September 8, and an October Quarterly Report on October 15. (See the chart below for the closing date of each report.)

Special Primary, Runoff, and General Elections

Principal campaign committees participating in the Special Primary, Runoff and General Elections must file a 12-day Pre-Primary Election Report on August 11, a 12-day Pre-Runoff Election Report on September 8, an October Quarterly Report on October 15, a 12-day Pre-General Election Report on October 27, and a Post-General Election Report on December 8. (See the chart below for the closing date of each report.)

Unauthorized Committees (PACs and Party Committees)

Quarterly Filers

All political committees filing on a quarterly basis are subject to special election reporting if they make previously undisclosed contributions or expenditures in connection with the Oklahoma Special Primary, Runoff or General Elections by the close of books for the applicable reports. (See the chart below for the closing date of each report.)

Monthly Filers

Political committees filing on a monthly basis are not required to file pre-election reports for the special primary or runoff elections; however, these committees must file pre- and post-general election reports. In addition, they may have to file 24-hour reports on independent expenditures. See 11 CFR §§ 104.4(b) and 104.5(g).

REPORTING DATES FOR OKLAHOMA SPECIAL ELECTIONS: AUGUST 23 PRIMARY, SEPTEMBER 20 RUNOFF, AND NOVEMBER 8 GENERAL

Report	Close books *	Reg./cert. mailing date **	Filing date
Pre-Primary	8/03/94	8/08/94	8/11/94
Pre-Runoff	8/31/94	9/05/94 ***	9/08/94
October Quarterly	09/30/94	10/15/94	10/15/94
Pre-General	10/19/94	10/24/94	10/27/94
Post-General	11/28/94	12/08/94	12/08/94

* The period begins with the close of books of the last report filed by the committee. If the committee has filed no previous reports, the period begins with the date of the committee's first activity.
** Reports sent by registered or certified mail must be postmarked by the mailing date; otherwise, they must be received by the filing date.
*** The mailing date for the Pre-Runoff Report is a federal holiday; nevertheless, the report must be received by the filing date.

Dated: June 14, 1994.

Trevor Potter,

Chairman, Federal Election Commission.

[FR Doc. 94–15100 Filed 6–21–94; 8:45 am]

BILLING CODE 6715–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1028–DR]

Michigan; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Michigan (FEMA–1028–R), dated May 10, 1994, and related determinations.

EFFECTIVE DATE: June 7, 1994.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective June 10, 1994.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Richard W. Krimm,

Associate Director, Response and Recovery Directorate.

[FR Doc. 94–15159 Filed 6–21–94; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL RESERVE SYSTEM

Consumer Advisory Council

Solicitation of Nominations for Membership

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice.

SUMMARY: The Board is inviting the public to nominate qualified individuals for appointment to its Consumer Advisory Council, which is comprised of representatives both of consumer and community interests and of the financial services industry. Thirteen new members will be selected for three-year terms that will begin in January 1995. The Board expects to announce the selection of new members by year-end 1994.

DATES: Nominations should be received by August 31, 1994.

ADDRESSES: Nominations should be submitted in writing to Dolores S. Smith, Associate Director, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551. Information about nominees will be available for inspection upon request.

FOR FURTHER INFORMATION CONTACT: Bedelia Calhoun, Staff Assistant, Division of Consumer and Community Affairs, (202) 452–6470; or for Telecommunications Device for the Deaf (TDD) users only, Dorothea Thompson (202) 452–3544; Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: The Consumer Advisory Council was established in 1976 at the direction of Congress to advise the Federal Reserve Board on the exercise of its duties under the Consumer Credit Protection Act and on other consumer-related matters. The Council by law represents the interests both of consumers and of the financial community. Members serve three-year terms that are staggered to provide the Council with continuity.

New members will be selected for terms beginning January 1, 1995, to replace members whose terms expire this year. *Nominations should include the address and telephone number of the nominee, information about past and present positions held, and a description of special knowledge, interests or experience related to consumer credit or other consumer financial services.* Persons may nominate themselves as well as other candidates.

The Board is interested in candidates who have some familiarity with consumer financial services and candidates who are willing to express their viewpoints. Candidates do not have to be experts on all levels of consumer financial services, but they should possess some basic knowledge of the area. In addition, they should be able to make the necessary time commitment to prepare for and attend meetings (usually two days long including committee meetings) three times a year.

In making the appointments, the Board will seek to complement the qualifications of continuing Council members in terms of affiliation and geographic representation, and to ensure the representation of women and minority groups. The Board expects to announce its selection of new members by year-end.

Council members whose terms end on December 31, 1994, are:

Barry A. Abbott, Director, Howard Rice Nemerovski Canady Robertson Falk & Rabkin, San Francisco, CA.

John R. Adams, Corporate Vice President and Compliance Officer, CoreStates Financial Corporation, Philadelphia, PA.

John A. Baker, Senior Vice President, Equifax, Inc., Atlanta, GA.

Mulugetta Birru, Executive Director, Urban Redevelopment Authority of Pittsburg, Pittsburgh, PA.

Genevieve Brooks, Deputy Borough President, Office of the Bronx Borough, President, Bronx, NY.

Cathy Cloud, Enforcement Program Director, National Fair Housing Alliance, Washington, DC.

Michael D. Edwards, President, Prairie Security Bank, Yelm, WA.

Gary S. Hattem, Managing Director, Bankers Trust Company, New York, NY.

Edmund Mierzwinski, Consumer Program Director, U.S. Public Interest Research Group, Washington, DC.

Jean Pogge, Vice President, South Shore Bank, Chicago, IL.

John V. Skinner, President and Chief Executive Officer, Jewelers Financial Services, Inc., Irving TX.

Lowell N. Swanson, (Retired) President, United Finance Co., Portland, OR.

Michael W. Tierney, Director, Local Initiatives Support Corporation, Washington, D.C.

Other Council members, whose terms continue through 1995 and 1996, are listed below (together with the expiration date of each one's term of office).

Douglas D. Blanke, Director of Consumer Policy, Office of the Attorney General, St. Paul, MN, December 31, 1995.

Alvin J. Cowans, President and CEO, McCoy Federal Credit Union, Orlando, FL, December 31, 1996.

Michael Ferry, Staff Attorney, Consumer Unit, Legal Services of Eastern Missouri, Inc., St. Louis, MO, December 31, 1995.

Norma L. Freiberg, Community Activist, New Orleans, LA.

Elizabeth G. Flores, Senior Vice President and Compliance Officer, Laredo National Bank, Laredo, TX, December 31, 1996.

Lori Gay, Executive Director, Los Angeles Neighborhood Housing Services, Los Angeles, CA, December 31, 1995.

Ronald A. Homer, Chairman and CEO, Boston Bank of Commerce, Boston, MA, December 31, 1995.

Thomas L. Houston, Executive Director, The Dallas Black Chamber of Commerce, Dallas, TX, December 31, 1995.

Katherine W. McKee, Associate Director, Center for Community Self-Help, Durham, NC, December 31, 1996.

Anne B. Shlay, Associate Director, Institute for Public Policy Studies, Temple University, Philadelphia, PA, December 31, 1996.

Reginald J. Smith, President, United Missouri Mortgage Company, Kansas City, MO, December 31, 1996.

John E. Taylor, President & CEO, National Community Reinvestment Coalition, Washington, D.C., December 31, 1996.

Lorraine VanEtten, Vice President & Community Lending Officer, Standard Federal Bank of Troy, Troy, MI, December 31, 1996.

Grace W. Weinstein, Financial Writer & Consultant, Englewood, NJ, December 31, 1995.

James L. West, President, Jim West Financial Group, Inc., Tijeras, NM, December 31, 1995.

Lily K. Yao, President & CEO, Pioneer Federal Savings, Honolulu, HI, December 31, 1996.

Robert O. Zdenek, Senior Program Associate, Annie E. Casey Foundation, Greenwich, CT/ Baltimore, MD, December 31, 1995.

Board of Governors of the Federal Reserve System, June 16, 1994.

William W. Wiles,

Secretary of the Board.

[FR Doc. 94–15129 Filed 6–21–94; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 89F–0177]

Ciba-Geigy Corp.; Withdrawal of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal, without prejudice to a future filing, of a food additive petition (FAP 9B4147). The petition proposed that the food additive regulations be amended to provide for the safe, increased use of ethylenebis(oxyethylene)-bis-(3-*tert*-butyl-4-hydroxy-5-methylhydrocinnamate) as a stabilizer for polyoxymethylene copolymers and homopolymers intended for food-contact use.

FOR FURTHER INFORMATION CONTACT: Edward J. Machuga, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9511.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of June 20, 1989 (54 FR 25905), FDA announced that a food additive petition (FAP 9B4147) had been filed by Ciba-Geigy Corp., Seven Skyline Dr., Hawthorne, NY 10532–2188. The petition proposed that § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) be amended to provide for the safe, increased use of ethylenebis(oxyethylene)-bis-(3-*tert*-butyl-4-hydroxy-5-methylhydrocinnamate) as a stabilizer for polyoxymethylene copolymers and homopolymers intended for food-contact use. Ciba-Geigy Corp. has now withdrawn the petition without prejudice to a future filing (21 CFR 171.7).

Dated: June 15, 1994.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 94–15185 Filed 6–21–94; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N–94–3793; FR–3740–N–01]

Submission of Proposed Information Collection Requirement to OMB

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

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for expedited review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: Comments must be received by June 29, 1994.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: This Notice informs the public that the Department of Housing and Urban Development has submitted to OMB, for expedited processing, an information collection package with respect to owner application for funds for a special adjustment for drug-related security retrofitting for Section 8 Moderate Rehabilitation projects.

Funds were appropriated for drug-related security retrofitting for Section 8 Moderate Rehabilitation projects by Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act of 1994 (Pub. L. 103–124, approved October 28, 1993).

HUD intends to provide six million dollars to Section 8 Moderate Rehabilitation owners who apply and are approved for a special adjustment for drug-related security retrofitting.

The form provides for owners of Section 8 Moderate Rehabilitation projects to apply for Fiscal Year 1994 funds for special rent adjustments for security retrofitting. It also provides for Housing Agencies (HAs) to review and comment on the owner's application, for the HUD Field Office to approve or disapprove the owner's application. All funding decisions regarding approved application will be made on a first come first served basis until the available funding has been depleted.

The Department has submitted the proposal for the collection of information as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 25);

(1) *The title of the information collection proposal:* Form HUD–52662, Owner Application, Funds for Special Adjustment for Drug-Related Security Retrofitting, Section 8 Moderate Rehabilitation Program.

(2) *Office of the agency to collect the information:* Office of the Assistant Secretary for Public and Indian Housing.

(3) *The description of the need for the information and its proposed use:* The data that will be collected on the form is necessary for HUD to determine whether a Moderate Rehabilitation project meets the statutory and administrative requirements necessary for HUD approval of funds for a special adjustment for drug-related security retrofitting.

(4) *Agency form number:* Form HUD–52662.

(5) *Members of the public who will be affected by the proposal:* Owners of Section 8 Moderate Rehabilitation projects; HAs with Section 8 Moderate Rehabilitation Programs.

(6) *How frequently information submissions will be required:* Once a year in years when Congress appropriates funds for this purpose.

(7) *An estimate of the total number of hours needed to prepare the information submissions including number of respondents, frequency of response, and hours of response:* Two hundred Moderate Rehabilitation owners are expected to apply voluntarily for the special adjustment for security retrofitting in Fiscal Year 1994. Owners will spend approximately three (3) hours competing the form. HA review of the form will take approximately one (1) hour. HUD Field Office review of the form will take approximately one (1) hour. This process will take place no more than once a year for funding purposes; Fiscal Year 1994 is the first year such funding has occurred, and it is not know whether future fiscal years will provide another opportunity for owners to apply for these funds. Total Fiscal Year 1994 hours of response is 1,000.

(8) *Type of request:* New request.
(9) *The names of telephone numbers of an agency official familiar with the proposal:* Gary Bowen, Office of Public and Indian Housing, (202) 708–7424.
Authority: Section 3507 of the Paper Work Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: June 15, 1994.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Owner Application, Drug-Related Security Retrofitting Section 8 Moderate Rehabilitation Program.

Office: Office of Assisted Housing, PIH, DHUD.

Description of the Need for the Information and its Proposed Use: This information collection enables the Department of Housing and Urban Development to assign the six million dollars appropriated by Congress for Fiscal Year 1994 to cover the costs of drug-related security retrofitting at selected Section 8 Moderate Rehabilitation projects. The statutory authority for special adjustments to Section 8 Moderate Rehabilitation Contract Rents is in Section 8(c)(2)(B) of the U.S. Housing Act of 1937 as amended by the Cranston-Gonzalez National Affordable Housing Act of 1990 at Section 542. Form HUD–52662, Owner Application, Special Adjustment for Drug-Related Security Retrofitting, Section 8 Moderate Rehabilitation Program, provides for owners of Section 8 Moderate Rehabilitation projects to apply for Fiscal Year 1994 funds for special rent adjustments for security. Owner application is voluntary.

Form Number: HUD–52662.

Respondents: Section 8 Moderate Rehabilitation project owners; Housing Agencies; HUD Field office staff.

Reporting Burden:

No. of respondents	X	Frequency of responses	X	House per response	=	Burden hours
200	..	1	..	5		1,000

Total Burden: 1,000.
Status: New Collection.
Contact: Gary Bowen/Delia McCormick (202) 708–7424.

Date: June 14, 1994.

SF 83 Supporting Statement for Requests for OMB Approval Under the Paperwork Reduction Act and 5 CFR 1320

A. Justification

1. *Explain the circumstances that make the collection of information necessary. Include the identification of any legal or administrative requirements that necessitate the collection.*

Congress has appropriated six million dollars for Fiscal Year 1994 for special adjustments to cover the costs of drug-related security measures at selected Section 8 Moderate Rehabilitation projects. The statutory authority for special adjustments to Section 8 Moderate Rehabilitation Contract Rents is in Section 8(c)(2)(B) of the U.S. Housing Act of 1937 as amended by the Cranston-Gonzalez National Affordable Housing Act of 1990 at Section 542. Section 8(c)(2)(B) states the following: "Where the Secretary determines that a project assisted under this section is located in a community where drug-related criminal activity is generally prevalent and the project's operating, maintenance, and capital repair expenses have been substantially increased primarily as a result of the prevalence of such drug-related activity, the Secretary may (at the discretion of the Secretary and subject to the availability of appropriations for contract amendments for this purpose), on a project-by-project basis, provide adjustments to the maximum monthly rents, to a level no greater than 120 percent of the project rents, to cover the costs of maintenance, security, capital repairs, and reserves required for the owner to carry out a strategy acceptable to the Secretary for addressing the problem of drug-related criminal activity." Form HUD–52662, Owner Application, Funds for Special Adjustment for Drug-Related Security Retrofitting, Section 8 Moderate Rehabilitation Program, provides for owners of Section 8 Moderate Rehabilitation projects to apply for Fiscal Year 1994 funds for special rent adjustments for security. Owner application is voluntary.

2. *Indicate how, by whom, and for what purpose the information is to be used and the consequence to Federal program or policy activities if the collection of information was not conducted.*

The information collected on Form HUD–52662 is to be used by Housing Agencies administering Moderate Rehabilitation Programs and HUD Field Office staff to evaluate the eligibility and need of project owners applying for the funds for special adjustments for security, and as a basis for assigning funds. If this collection of information was not conducted, the Department would be unable to assign Fiscal Year 1994 funds for special adjustments for security for Moderate Rehabilitation projects.

3. *Describe any consideration of the use of improved information technology to reduce burden and any technical or legal obstacles to reducing burden.*

Form HUD–52662 will collect information by Housing Assistance Payments (HAP) Contract Number. Field Office staff will be able to check information on the incoming HUD–52662 by using the newly available Control Files System (CFS) containing Moderate Rehabilitation HAP Contract information. CFS will reduce the burden to Field Office staff in evaluating the information in the HUD–52662.

4. *Describe efforts to identify duplication.*

The Department is not collecting this data through any other information collection mechanism. Owners are not asked to provide data of Form HUD–52662. Owners are not asked to provide data of Form HUD–52662 that can be obtained from other HUD computerized files.

5. *Show specifically why any similar information already available cannot be used or modified for use for the purpose(2) described in #2.*

Similar information (description of criminal activity in the neighborhood of the Moderate Rehabilitation project; impact of the drug-related criminal activity on the project's operating, maintenance and capital repair expenses; owner's strategy to address the problem of drug-related criminal activity; and security items needed) is not already available from other sources.

6. *If the collection of information involves small businesses or other small entities, describe the methods used to minimize burden.*

The collection of information may involve small businesses of other small entities that own Moderate Rehabilitation projects. These entities

are under no obligation to complete the application, and will do so on a voluntary basis if they believe they can benefit from the funds. Form HUD–52662 takes no more than three hours for an owner to complete.

7. Describe the consequence to Federal program or policy activities if the collection were conducted less frequently.

The collection will occur only in years in which Congress has appropriated funds for special adjustments for security for Moderate Rehabilitation projects.

8. Explain any special circumstances that require the collection to be conducted in a manner inconsistent with the guidelines in 5 CFR 1320.6.

This information collection does not violate 5 CFR 1320.6.

9. Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and record-keeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported. (Consultation should occur at least once every 3 years.)

In the supporting statement, provide:

a. The names and telephone numbers of those consulted and the year in which the consultation took place. Indicate the agencies, companies, State or local governments, or other organizations represented by those consulted.

b. A summary of any major problems that could not be resolved during consultation.

c. A description of other public contacts and opportunities for public comment, and a summary of the comments received.

The parties outside the agency who would have an interest in commenting on Form HUD–52662 are Housing Agencies (HAs) administering Moderate Rehabilitation Programs and Moderate Rehabilitation project owners. Since the form must be approved for use in assigning funds appropriated for the current fiscal year, time does not permit the opportunity for HAs and owners to comment. HAs and owners have expressed interest to the Department in having a mechanism for funding special adjustments for security.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.

Section 8 owners who choose to use Form HUD–52662 to apply for special adjustments for security are accustomed to providing information on the nature of project operations through their ongoing participation in the Section 8 Program. HAs and HUD staff are aware of many of the particulars of the ownership, financial and physical conditions of projects under HAP Contract. The additional information requested on Form HUD–52662 regarding drug-related criminal activity and its impact on the project is considered non-confidential and customary under the program.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.

There are no questions of this nature in the collection.

12. Provide estimates of annualized cost to the Federal Government and to the respondents. Also provide a description of the method use to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), and any other expense that would not have been incurred without the paperwork burden.

An owner who chooses to use the form will spend approximately three (3) hours completing the form. Housing Agency review of the form will take approximately one (1) hour. HUD Field Office review of the form will take approximately one (1) hour. This process will take place no more than once a year for funding purposes; Fiscal Year 1994 is the first year such funding has occurred, and it is not know whether future fiscal years will provide another opportunity for owners to apply for these funds.

13. Provide estimates of the burden of the collection of information. The statement should:

- *Provide number of respondents, frequency of response, annual burden, and an explanation of how the burden was estimated. Unless directed to do so, agencies should not make special survey to obtain information on which to base burden estimates. Consultation with a few potential respondents is desirable. If the burden on respondents is expected to vary widely because of differences in activity, size, or complexity, show the range of estimated burden, and explain the reasons for the variance.*
- *If the request for approval is for more than one form, provide burden estimates for each form for which approval is sought and summarize the burdens on the SF 83.*
- *If the proposed collection of information was not included in the agency's Information Collection Budget (ICB) or if the burden show on the SF 83 is different from that in the ICB, explain the difference.*

Two hundred Moderate Rehabilitation owners are expected to apply for the special adjustment for security in Fiscal Year 1994. The annual "burden" will be once per year, if Congress provides appropriations after the current fiscal year.

14. Explain reasons for changes in burden, including the need for any increase.

This is a new information collection requirement, since this is the first time Congress has appropriated funds for this purpose.

15. For collections of information whose results are planned to be published for statistical use, outline plans for tabulation, statistical analysis, and publication. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.

The results of this collection will not be published for statistical use.

B. Collections of Information Employing Statistical Methods

Descriptions of collections of information submitted for approval that employ statistical methods.

This information collection does not employ statistical methods.

BILLING CODE 4210–33–M

Owner Application

Funds for Special Adjustment for Drug-Related Security Retrofitting

DRAFT

U.S. Dept. of Housing and Urban Development
Office of Public and Indian Housing
Section 8 Moderate Rehabilitation Program

OMB Approval No. 2577-0000 (exp. mm/dd/yy)

Public reporting burden for this collection of information is estimated to average 3 hours per response, including 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 this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600 and to the Office of Management and Budget, Paperwork Reduction Project (2577-0000), Washington, D.C. 20503. Do not send this completed form to either of these addressees.

Part A. Project Information

1. Owner's Name & Address:	Contact's Name & Telephone Number:
2. Management Agent's Name & Address:	Contact's Name & Telephone Number:
3. Housing Agency (HA) Name & Address:	Contact's Name and Telephone Number

4. Moderate Rehabilitation Project Number	5. Housing Assistance Payments (HAP) Contract Number:	6. HAP Contract Effective Date:	Termination Date

7. Project Data	Number of Assisted Units		Current Gross Rents		Monthly Rents
SRO		X		=	
0 Bedroom Units		X		=	
1 Bedroom Units		X		=	
2 Bedroom Units		X		=	
3 Bedroom Units		X		=	
4 Bedroom Units		X		=	

7a.	Total Monthly Rents	
7b.	Total Annual Rents (multipy line 7a by 12)	
7c.	Maximum Special Adjustment (20% of line 7b)	

Attach additional pages if more room is needed for the following information:

8. **Project Description.** Provide narrative describing property including building type, age, amenities, and location.

9. **Description of Tenant Population.** Provide narrative including number of tenants and tenant characteristics, i.e., family types, ages, races, education, employment status, problems, etc.

DRAFT

form HUD-52662 (5/10/94)
ref. Handbooks 7420.3 & 7420.7

10. **Neighborhood Description.** Provide narrative describing neighborhood including boundaries, nature of neighborhood, neighborhood problems, and general security of the neighborhood.

11 **Description of Criminal Activity in Neighborhood.** Provide narrative including nature and analysis of criminal activity; whether crimes are drug-related; degree to which tenants are victimized and involved in criminal activity; and the impact of crime on the tenants, the environment within the project and the neighborhood. Attach documentation in the form of newspaper articles, police reports, correspondence with police department, etc.

12. **Impact of Drug-Related Criminal Activity on Project Finances.** Describe the impact of the drug-related criminal activity identified above on the project's operating, maintenance and capital repair expenses. Identify amount and type of cost increases caused by drug-related criminal activity.

13. **Project Financial Status.** Attach latest audited statements of project's annual operating income and expenses. If the project is HUD-insured, attach the latest form HUD-92410. For HAP Contracts with 20 or fewer units, statements are not required to be audited.

Part B. Owner Proposal

1. **Owner's Strategy to Address Problem of Drug-Related Criminal Activity.** Provide a plan to address problems and improve security. Include objectives, planned activities, timetable --not to exceed 12 months -- and total implementation costs. Plan may include physical repairs and improvements to the project to enhance security, for example, fences, lights, security systems, etc. Plan may also provide for additional activities that cannot be funded through the special adjustment for security, for example: improvements to project management, maintenance, and operations; drug prevention, control, and elimination activities, including information and referal to counseling and treatment, and other outreach efforts to reduce drug use in and around the project. State whether this plan ties into any community-wide or other plans to address drug-related criminal activity.

DRAFT

2. **Requested Amount of Special Adjustment for Security.** List items and costs included in request. Substantiate costs by providing written cost estimates and actual bills from non-identity-of-interest vendors or contractors. The special adjustment is limited to 20 percent of current gross rents for each unit size under HAP Contract. Indicate the purchase date of items. Special adjustments for security will pay for physical repairs and improvements to the project to enhance security.

3. **Other Resources.** Identify financial resources available to leverage the costs of the plan. Identify contributions to be made by owner, management agent, Housing Agency, local police department, local government, and charitable organizations, etc. Owners are encouraged to pursue funds from other sources, but the availability of funds from other sources is not a requirement for special adjustment funding.

Part C. Owner Certifications

I certify that the costs described and requested in this application are actual and necessary expenses of owning and maintaining this Moderate Rehabilitation project; that this request for funds is not the result of fraud, mismanagement, or program abuse; and that Low Income Housing Tax Credits (LIHTC) or other government funds ☐ **were** ☐ **were not** used in the development of this project. (If LIHTCs or other government funds were used and the Agreement was executed after March 8, 1990, attach latest audited sources and uses statement.) I hereby certify that all the information stated herein, as well as any information provided in the accompaniment herewith, is true and accurate. **Warning:** HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)

Signature, Title, & Date:

X

Part D. Housing Agency Review

1. **Physical Condition of the Project.** Provide date and outcome of latest Housing Quality Standards (HQS) inspection, state whether project currently meets HQS, and provide statement of project's overall physical condition, including maintenance. Provide vacancy rate.

DRAFT

2. **Criminal Activity in Neighborhood.** Provide narrative description of criminal activity in the neighborhood and its impact on the project. Comment on owner's description of same.

3. **Owner Compliance with HAP Contract.** Provide statement as to whether owner is in compliance with the HAP Contract; describe problems between the owner and the Housing Agency that may have occurred during the term of the HAP Contract.

4. **Completeness of Application.** Please ensure that the owner has fully completed the application. Incomplete applications will be returned to the HA. ☐ **Complete** ☐ **Incomplete**

5. **HA Recommendation.** Specify the items and amount the HA recommends to be funded as a special adjustment for security. Provide justification for the recommendation.

6. Date Owner Application Received by HA:	Signature of Authorized HA Official, Title, & Date:
Date of HA Review:	X

The HA shall forward completed applications to the HUD Field Office (FO) Director of Public Housing.

Part E. HUD Field Office Approval/Disapproval

1. **Completeness of Application.** Please ensure that the owner and Housing Agency portions of this application are complete. Incomplete applications will not be approved. ☐ **Complete** ☐ **Incomplete**
2. **FO Approval/Disapproval.** Indicate whether the application is approved or disapproved. Provide justification as necessary. Indicate the items and amount to be funded as a special adjustment for security. ☐ **Approved** ☐ **Disapproved**

3. Date of Field Office Review:	4. Name & Telephone Number of FO Contact:
Date of memorandum to Headquarters requesting funding, if approved.	Signature of FO Director of Public Housing & Date: X

The FO shall request funds from Headquarters for approved applications.

DRAFT

form HUD-52662 (5/10/94)
ref. Handbooks 7420.3 & 7420.7

Office of the Assistant Secretary for Administration

[Docket No. N–94–3794; FR–3738–N–01]

Privacy Act of 1974; Proposed Amendment to a System of Records

AGENCY: Department of Housing and Urban Development (HUD).

ACTION: Notification of a proposed amendment to an existing system of records.

SUMMARY: The Department of Housing and Urban Development (HUD) proposes to amend its system of records entitled, "Accounting Records, HUD/DEPT–2," in its inventory of systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. Notice of this system was last published at 55 FR 17676, April 26, 1990.

EFFECTIVE DATES: This action will be effective without further notice on July 22, 1994 unless comments are received that would result in a contrary determination.

ADDRESSES: Interested persons are invited to submit comments regarding these routine uses to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410–0500. Communications should refer to the above docket number and title. An original and four copies of comments should be submitted. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Jeanette Smith, Departmental Privacy Act Officer, at (202) 708–2374, or Mary Felton at (202) 708–4256.

SUPPLEMENTARY INFORMATION: Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, notice is given that HUD proposes to identify by name two agencies under its routine uses (Item (i)) to its system of records, HUD/DEPT–2, Accounting Records; namely, to the United States Postal Service and to the Department of Defense for the purpose of collecting debts owed to the Federal Government by administrative or salary offsets. Also, we are adding a new routine use (Item (k)); namely, to other agencies, such as Departments of Agriculture, Education and Veterans Affairs and the Small Business Administration, for use of HUD's Credit Alert Interactive Voice Response System (CAIVRS) to prescreen applicants for loans or loans guaranteed by the Federal Government to ascertain if the applicant is delinquent in paying a debt owed to or insured by the Government. The routine uses paragraph is published below in its entirety.

Title 5 U.S.C. 552a(e) (4) and (11) provide that the public be afforded a 30-day period in which to comment on the new record system.

The system report, as required by 5 U.S.C. 552a(r) of the Privacy Act has been submitted to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget OMB), pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, Federal Agency Responsibilities for Maintaining Records About Individuals" dated June 25, 1993 (58 FR 36075, July 2, 1993).

Authority: 5 U.S.C. 552a. 88 Stat. 1896; sec. 7(d), Department of HUD Act (42 U.S.C. sec. 3535(d)).

Issued at Washington, D.C. June 16, 1994.

Marilynn A. Davis,

Assistant Secretary for Administration.

HUD/DEPT–2

SYSTEM NAME:

Accounting Records.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, other routine uses are as follows:

(a) To the U.S. Treasury—for disbursements and adjustments thereof.

(b) To the Internal Revenue Service—for reporting of sales commissions and to obtain current mailing addresses.

(c) To the General Accounting Office, General Services Administration, Department of Labor, Labor housing authorities, and taxing authorities—for audit, accounting and financial reference purposes.

(d) To mortgage lenders—for accounting and financial reference purposes, for verifying information provided by new loan applicants and evaluating creditworthiness.

(e) To HUD contractors—for debt and/or mortgage note servicing.

(f) To financial institutions that originated or serviced loans—to give notice of disposition of claims.

(g) To title insurance companies—for payment of liens.

(h) To local recording offices—for filing assignments of legal documents, satisfactions, etc.

(i) To the United States Postal Service, Department of Defense, and other government agencies—for the purpose of collecting debts owed to the Federal Government by administrative or salary offset.

(j) To consumer credit reporting agencies—for protecting private sector institutions that extend credit, and to encourage debtors to repay their legitimate debts.

(k) Other agencies; such as, Departments of Agriculture, Education and Veterans Affairs and the Small Business Administration—for use of HUD's Credit Alert Inactive Voice Response System (CAIVRS) to prescreen applicants for loans or loans guaranteed by the Federal Government to ascertain if the applicant is delinquent in paying a debt owed to or insured by the Government.

[FR Doc. 94–15121 Filed 6–21–94; 8:45 am]

BILLING CODE 4210–01–M

Office of the Assistant Secretary for Housing

[Docket No. D–94–1056; FR–3668–C–03]

Federal Housing Commissioner, HUD; Revocation and Redelegation of Authority; Correction

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of revocation and redelegation of authority; correction.

SUMMARY: This notice corrects the notice of revocation and redelegation of authority published in the **Federal Register** on Friday, April 15, 1994, at Part IV, 59 CFR 18282, by specifically identifying two programs to clarify that they are included on the list of Single Family Housing Programs for which all power and authority necessary to carry out the programs was redelegated.

EFFECTIVE DATE: April 15, 1994.

FOR FURTHER INFORMATION CONTACT: Robert G. Hunt, Director, Management Services Division, U.S. Department of Housing and Urban Development, 451 7th Street SW., room 9116, Washington, DC 20410, (202) 708–0826.

SUPPLEMENTARY INFORMATION: On Friday, April 15, 1994, the Department of Housing and Urban Development published for the Office of the Assistant Secretary for Housing a notice of revocation and redelegation of authority. This notice, at 59 CFR 18282 of Part IV of the **Federal Register**, revoked and redelegated program authority to meet the objectives of the reorganization of HUD's field structure for the Office of Housing—FHA. It was intended that the list of Single Family

Housing Programs for which all power and authority was redelegated include all programs currently being carried out in the field, including assignment and property disposition. To clarify this matter, they are being specifically identified herein.

Accordingly, the Revocation and Redelegation of Authority published in the Federal Register on April 15, 1994, at 59 CFR 18282, is corrected to read as follows:

On page 18283, in FR Doc. 94–9236 [Docket No. D–94–1056; FR–3668–D–02], the following are expressly named as being included on the list of Single Family Housing Programs:

29. Property Disposition Program (section 204(g), National Housing Act (12 U.S.C. 1710(g)).

30. Assignment Program (section 230(b), National Housing Act (12 U.S.C. 1715u(b)).

Authority: Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: June 16, 1994.

Myra L. Ransick,

Assistant General Counsel for Regulations.

[FR Doc. 94–15102 Filed 6–21–94; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

PRT–191337

Applicant: Saint Louis Zoological Park, Saint Louis, MO.

The applicant requests a permit to import one captive bred male Jaguar (*Panthera onca*) from Proyecto Balam Jaguar Breeding Center, Puebla, Pue, Mexico for the purpose of enhancement of the survival of the species through propagation.

PRT–784520

Applicant: Crystal Ostos, Brownsville, TX.

The applicant requests a permit to import a sport-hunted cheetah (*Acinonyx jubatus*) from Nuanetsi Ranch, Zimbabwe to enhance the survival of the species.

PRT–789268

Applicant: Donald Gates, Harrisburg, IL.

The applicant requests a permit to import a sport-hunted cheetah (*Acinonyx jubatus*) from Namibia to enhance the survival of the species.

PRT–791624

Applicant: Armando Garcia-Segovia, c/o South Texas Fur Dressers, Victoria, TX.

The applicant requests a permit to export his sport-hunted bontebok trophy to his home in Mexico. The bontebok, imported into the U.S. on October 15, 1993, was culled from the captive herd maintained by Mr. V.Z. Lubbe, Marino Donkerpoort, Phillippolis, in South Africa. It is now being returned to Mexico after being processed by a taxidermist.

PRT–790002

Applicant: Arthur McGowan, Colorado Springs, CO.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*) culled from the captive-herd maintained by Mr. F. Bowker, "Thornkoof", Grahamstown, South Africa, for the purpose of enhancement of survival of the species.

PRT–789243

Applicant: Richard Schoonmaker, Dayton, OH.

The applicant requests a permit to travel with one captive-bred male tiger on the Cruise line "Cercutt," for the purpose of enhancement of survival of the species through conservation education.

PRT–790003

Applicant: Duke University Primate Center, Durham, NC.

The applicant requests a permit to import blood samples taken from wild-caught indri (Indri indri) and sifaka (Propithecus diadema diadema) lemurs from Mantadia National Park, Madagascar, for the purpose of genetic research to enhance the survival of the species.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 432, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act,* by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: June 17, 1994.

Caroline Anderson,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 94–15169 Filed 6–21–94; 8:45 am]

BILLING CODE 4310–55–P

Bureau of Land Management

NV–050–4210–06, N–57922

Intent To Amend Two Land Use Plans for a Proposed Withdrawal

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent and Scoping Period.

SUMMARY: The Bureau of land Management (BLM) is proposing to amend the Caliente Management Framework Plan (MFP) and the Nellis Air Force Range Resources Plan (RP) to analyze a proposed withdrawal by the Nellis Air Force Base. The withdrawal would involve 3,972 acres of public land in the White Sides Area of the BLM's Caliente Resource Area, Lincoln County, Nevada. This amendment is proposed to be an environmental assessment (EA) level amendment.

A 30 day scoping period is being conducted to give the public an opportunity to comment on this proposed amendment and the following tentative issues: (1) Oil and gas leasing; (2) Off-road vehicle use; (3) Locatable minerals; and (4) Access. In addition to the proposed withdrawal and the no action alternative, the public is also invited to suggest alternatives to be analyzed in this amendment.

DATES: A 30 day scoping period is scheduled from June 24, 1994, to July 25, 1994.

ADDRESSES: All comments and concerns the public may have with this proposed amendment and EA must be mailed to: Bureau of Land Management, Attention: District Manager, P.O. Box 26569, Las Vegas, Nevada 89126, or delivered to the Las Vegas District Office, 4765 W. Vegas Drive, Las Vegas, Nevada.

FOR FURTHER INFORMATION CONTACT: Gary Ryan, Acting District Manager, at the above address or telephone (702) 647–5000.

SUPPLEMENTARY INFORMATION: The purpose of the proposed withdrawal of the White Sides area, located adjacent to the Nellis Air Force Range, is to provide a security buffer to the Nellis Air Force Range.

The White Sides area is currently managed by the Caliente MFP. The adjacent Nellis Air Force Range is withdrawn for military purposes (see

Public Laws 99–606 and 100–338) and its natural and cultural resources are managed by the BLM through the Nellis Air Force Range Resource Plan (RP). If this area is to be withdrawn, its management would be similar to that of this RP. Therefore, it is proposed that the Caliente MFP be amended to not include the management of the subject 3,972 acres and the Nellis Air Force Range RP be amended to include the management of the subject 3,972 acres.

Management of resources that may be changed by this amendment include: (1) Oil and gas leasing; (2) Off-road vehicle use; (3) Locatable minerals; and (4) Access. Thus, they become tentative issues that will be addressed in one or more of the alternatives of the amendment. Issue 1. Oil and gas leasing: The area is currently open to leasing under the Caliente MFP Minerals decision 2.0. The proposed withdrawal could impact oil and gas exploration and development. Issue 2. Locatable minerals: The subject area is open to locatable mining under the Caliente Minerals decision 1.1. The proposed withdrawal would close the land under the mining laws. Issue 3. Recreation/ Off-Road Vehicle Use: The subject area is currently open to sight-seeing, recreational, and off-road vehicle use under Caliente MFP Recreation Decision R–2. The proposed withdrawal would close the area to public access.

This amendment will analyze the impacts of several alternatives to the proposed withdrawal, including the no action alternative.

Federal, state and local agencies, and other individuals or organizations who are interested in/or affected by aspects of the proposed amendment and environmental assessment, are invited to participate in this planning process. Comments and recommendations will be accepted only on those subjects being addressed by this amendment.

Dated: June 15, 1994.

Ronald B. Wenker,

Acting State Director, Nevada.

[FR Doc. 94–15117 Filed 6–21–94; 8:45 am]

BILLING CODE 4310–HC–M

[WY–930–4210–06; WYW 132596]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM) proposes to withdraw approximately 80 acres of public land in Fremont County, to protect a future recreation site near South Pass, Wyoming. This notice closes the land for up to 2 years from surface entry and mining location. The land will remain open to mineral leasing.

EFFECTIVE DATE: June 22, 1994. Comments must be received by September 20, 1994.

ADDRESSES: Comments and requests should be sent to the Wyoming State Director, BLM, P.O. Box 1828, Cheyenne, Wyoming 82003.

FOR FURTHER INFORMATION CONTACT: Bill Lebarron, Green River Resource Area Manager, 1993 DeWar Drive, Rock Springs, Wyoming 82941, (307) 362–6422.

SUPPLEMENTARY INFORMATION: On June 1, 1994, a petition/application was approved allowing the Bureau of Land Management to file an application to withdraw the following described land from settlement, location, or entry under the general land laws, including the mining laws, subject to valid existing rights:

Sixth P.M.

T. 30 N., R. 102 W.,
Sec. 19, NW¼NE¼, NE¼NW¼.
The area described contains approximately 80 acres in Fremont County.

The purpose of the proposed withdrawal is to protect a future recreation site, which will include the Sweetwater Campground.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the Wyoming State Director of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the Wyoming State Director within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the Federal Register at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

For a period of two years from the date of publication of this notice in the Federal Register, the land will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary uses which may be permitted during this segregative period are licenses, permits, rights-of-way, cooperative agreements, or discretionary land use authorizations of a temporary nature which do not significantly disturb the surface of the land or impair the existing values of the area.

Dated: June 16, 1994.

F. William Einkenberry,

Associate State Director.

[FR Doc. 94–15116 Filed 6–21–94; 8:45 am]

BILLING CODE 4310–22–P

National Park Service

Delta Region Preservation Commission; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Delta Region Preservation Commission will be held at 7:00 p.m., on Wednesday, July 6, 1994, in the University Center, University of New Orleans, Lakefront, New Orleans, Louisiana.

The Delta Region Preservation Commission was established pursuant to Section 907 of Public Law 95–625 (16 U.S.C. 230f), as amended, to advise the Secretary of the Interior in the selection of sites for inclusion in Jean Lafitte National Historical Park and Preserve, and in the implementation and development of a general management plan and of a comprehensive interpretive program of the natural, historic, and cultural resources of the Region.

The matters to be discussed at this meeting include:

—General Park Update
—Draft Amendment to the General Management Plan

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited, and persons will be accommodated on a first-come-first-served basis. Any member of the public may file a written statement concerning the matters to be discussed with the Superintendent, Jean Lafitte National Historical Park and Preserve.

Persons wishing further information concerning this meeting, or who wish to submit written statements may contact Robert Belous, Superintendent, Jean Lafitte National Historical Park and Preserve, 365 Canal Street, Suite 3080, New Orleans, Louisiana 70130, Telephone 504/589–3882.

Minutes of the meeting will be available for public inspection four

weeks after the meeting at the office of Jean Lafitte National Historical Park and Preserve.

Dated: June 16, 1994.

John E. Cook,

Regional Director, Southwest Region.

[FR Doc. 94–15118 Filed 6–21–94; 8:45 am]

BILLING CODE 4310–70–M

UNITED STATES INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–357]

Notice of Commission Decision to Review and Remand to the Presiding Administrative Law Judge and Initial Determination Granting a Joint Motion to Terminate the Investigation With Respect to Respondent Brown Group Retail, Inc., on the Basis of a Consent Order

In the Matter of Certain Sports Sandals and Components Thereof

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review and remand to the presiding administrative law judge (ALJ) for clarification of the parties' intent an initial determination (ID) issued by the presiding ALJ on April 19, 1994, in the above-captioned investigation. The ID granted the joint motion of complainant Deckers Corporation and respondent Brown Group Retail, Inc. to terminate the investigation as to Brown on the basis of a settlement agreement, consent order agreement, and proposed consent order.

FOR FURTHER INFORMATION CONTACT: Rhonda M. Hughes, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202–205–3083.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation, which concerns allegations of section 337 violations in the importation, the sale for importation, and the sale within the United States after importation of sports sandals that infringe three claims of U.S. Letters Patent 4,793,075, on September 8, 1993.

On January 14, 1994, Deckers and Brown filed a joint motion to terminate the investigation on the basis of a settlement agreement, a consent order agreement, and a proposed consent order. The ALJ issued an ID granting the joint motion and terminating the investigation as to Brown on April 19, 1994. No agency or public comments concerning the ID were filed. Deckers filed a petition for review of the ID on the grounds that the ID raised issues not properly before the ALJ. The Commission determined to review the ID and remand it to the ALJ for clarification of the parties' intent concerning their stipulation of patent validity on May 20, 1994.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. § 1337, and Commission interim rule 210.54, 19 CFR § 210.54.

Copies of the Commission's order, the ID, and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

By order of the Commission.

Issued: June 13, 1994.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–15168 Filed 6–21–94; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 731–TA–652 (Final)]

Aramid Fiber Formed of Poly Para-Phenylene Terephthalamide From the Netherlands

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines,[2] pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from the Netherlands of aramid fiber formed of poly para-phenylene terephthalamide (PPD-T aramid fiber),[3] provided for in subheadings 5402.10.30, 5402.32.30, 5503.10.00, and 5601.30.00 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted this investigation effective December 14, 1993, following a preliminary determination by the Department of Commerce that imports of PPD-T aramid fiber from the Netherlands were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. § 1673b(b)). Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of January 20, 1994 (59 FR 3122). The hearing was held in Washington, DC, on May 5, 1994, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on June 15, 1994. The views of the Commission are contained in USITC Publication 2783 (June 1994), entitled "Aramid Fiber Formed of Poly Para-Phenylene Terephthalamide from the Netherlands: Investigation No. 731–TA–652 (Final)."

By order of the Commission.

Issued: June 17, 1994.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–15166 Filed 6–21–94; 8:45 am]

BILLING CODE 7020–02–P

[Inv. No. 731–TA–668 (Final)]

Phthalic Anhydride From Venezuela

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of final antidumping investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigation No. 731–TA–668 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Venezuela of phthalic anhydride (PAN), provided for in subheading 2917.35.00 of the Harmonized Tariff Schedule of the

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

[2] Commissioner Bragg did not participate in the determination in this investigation.

[3] The imported merchandise which is the subject of Commerce's investigation is all forms of PPD-T aramid fiber from the Netherlands. This consists of PPD-T aramid fiber in the form of filament yarn (including single and corded), staple fiber, pulp (wet or dry), spunlaced and spunbonded nonwovens, chopped fiber, and floc.

United States, that are alleged to be sold in the United States at less than fair value.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: May 25, 1994.

FOR FURTHER INFORMATION CONTACT: Fred H. Fischer (202–205–3179), Office of Investigations, U.S. International Trade Commission, 500 E Street S.W., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. Information can also be obtained by calling the Office of Investigations' remote bulletin board system for personal computers at 202–205–1895 (N,8,1).

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted as a result of an affirmative preliminary determination by Commerce that imports of PAN from Venezuela are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. § 1673b). The investigation was requested in a petition filed on October 22, 1993, by Aristech Chemical Corporation, Pittsburgh, PA; BASF Corporation, Parsippany, NJ; Koppers Industries, Inc., Pittsburgh, PA; and Stepan Company, Northfield, IL.

Participation in the investigation and public service list.—Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules, not later than twenty-one (21) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this final investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than twenty-one (21) days after the publication

Staff report.—The prehearing staff report in this investigation will be placed in the nonpublic record on July 27, 1994, and a public version will be issued thereafter, pursuant to § 207.21 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on August 9, 1994, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before July 29, 1994. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on August 2, 1994, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by §§ 201.6(b)(2), 201.13(f), and 207.23(b) of the Commission's rules. Parties are strongly encouraged to submit as early in the investigation as possible any requests to present a portion of their hearing testimony in camera.

Written submissions.—Each party is encouraged to submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.22 of the Commission's rules; the deadline for filing is August 3, 1994. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.23(b) of the Commission's rules, and posthearing briefs, which must conform with the provisions of § 207.24 of the Commission's rules. The deadline for filing posthearing briefs is August 17, 1994; witness testimony must be filed no later than three (3) days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before August 17, 1994. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules.

By order of the Commission.

Issued: June 17, 1994.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–15167 Filed 6–21–94; 8:45 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32514]

Fort Worth and Dallas Belt Railroad—Acquisition and Operation Exemption—Certain Lines of St. Louis Southwestern Railway Company

Fort Worth and Dallas Belt Railroad (FW&DB), a noncarrier subsidiary of holding company Tarantula Corporation (Tarantula), has filed a notice of exemption to acquire and operate approximately 1.97 miles of rail line owned by the St. Louis Southwestern Railroad (SSW) between milepost 632.27 and milepost 632.68 (by purchase) and milepost 632.68 and milepost 634.246 (by lease), in Tarrant County, TX. FW&DB expected to consummate the proposed acquisition transaction on or after May 30, 1994.

This proceeding is related to *Tarantula Corporation—Continuance in Control Exemption—Fort Worth and Dallas Belt Railroad Company*, Finance Docket No. 32515, wherein Tarantula seeks an exemption for its continuance in control of FW&DB once it acquires the rail line of SSW and becomes a rail carrier.

Any comments must be filed with the Commission and served on: Kevin M. Sheys, Oppenheimer Wolff & Donnelly, 1020 19th Street NW., suite 400, Washington, DC 20036.

The notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction

Decided: June 14, 1994

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–15170 Filed 6–21–94; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the paperwork Reduction Act (44 USC Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) the agency from number, if any, and the applicable component of the Department sponsoring the collection;

(3) how often the form must be filled out or the information is collected;

(4) who will be asked or required to respond, as well as a brief abstract;

(5) an estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(6) an estimate of the total public burden (in hours) associated with the collection; and,

(7) an indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 *AND* to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer *AND* the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, *AND* to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/ Information Resources Management/ Justice Management Division Suite 850, WCTR, Washington, DC 20503.

Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

(1) Petition for Amerasian, Widow or Special Immigrant (Form I–360).

(2) I–360. Immigration and Naturalization Service.

(3) On occasion.

(4) Individuals or households. The I–360 Form is used by the Immigration and Naturalization Service to determine eligibility for the requested immigration benefit.

(5) 10,000 annual respondents at 1.5 hours per response.

(6) 15,000 annual burden hours.

(7) Not applicable under Section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: June 16, 1994.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice,

[FR Doc. 94–15127 Filed 6–21–94; 8:45 am]

BILLING CODE 4410–10–M

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) the agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) how often the form must be filled out or the information is collected;

(4) who will be asked or required to respond, as well as a brief abstract;

(5) an estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(6) an estimate of the total public burden (in hours) associated with the collection; and,

(7) an indication as to whether Section 3504(h) to Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/ Information Resources Management/ Justice Management Division, Suite 850, WCTR, Washington, DC 20530.

Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

(1) Application to Replace A Naturalization/Citizenship Certificate (Form N–565).

(2) Form N–565 Immigration and Naturalization Service.

(3) On Occasion.

(4) Individuals or households. The N–565 Form is used to apply for a duplicate Naturalization Certificate, Certificate of Citizenship or other relating documents.

(5) 18,000 annual respondents at .9 hours per response.

(6) 16,200 annual burden hours.

(7) Not applicable under Section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: June 16, 1994.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 94–15126 Filed 6–21–94; 8:45 am]

BILLING CODE 4410–10–M

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) How often the form must be filled out or the information is collected;

(4) Who will be asked or required to respond, as well as a brief abstract;

(5) An estimate of the total number of respondents and the amount of time

estimated for an average respondent to respond;

(6) An estimate of the total public burden (in hours) associated with the collection; and,

(7) An indication as to whether section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/Information Resources Management/Justice Management Division Suite 850, WCTR, Washington, DC 20530.

Extension of the Expiration Date of a Currently Approved Collection Without Any Change in the Substance or in the Method of Collection

(1) Application for Naturalization (Form N–400).

(2) Form N–400 Immigration and Naturalization Service.

(3) On Occasion.

(4) Individuals or households. The N–400 Form is used by the designated immigration examiner to determine the eligibility of the applicant for naturalization.

(5) 471,200 annual respondents at 4.335 hours per response.

(6) 2,042,652 annual burden hours.

(7) Not applicable under section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated May 16, 1994.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 94–15124 Filed 6–21–94; 8:45 am]

BILLING CODE 4410–10–M

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 USC Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) the title of the form/collection;

(2) the agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) how often the form must be filled out or the information is collected;

(4) who will be asked or required to respond, as well as a brief abstract;

(5) an estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(6) an estimate of the total public burden (in hours) associated with the collection; and,

(7) an indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 *AND* to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer *AND* the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, *AND* to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/Information Resources Management/Justice Management Division Suite 850, WCTR, Washington, DC 20530.

Extension of the Expiration Date of a Currently Approved Collection Without Any Change in the Substance or in the Method of Collection

(1) Application to Replace Alien Registration Card (Form I–90).

(2) Form I–90 Immigration and Naturalization Service.

(3) Recordkeeping.

(4) Individuals or households. The I–90 Form is used by the Immigration and Naturalization Service to determine eligibility for a replacement Alien Registration Card.

(5) 1,300,000 annual respondents at .9 hours per response.

(6) 1,170,000 annual burden hours.

(7) Not applicable under Section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: June 16, 1994.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 94–15125 Filed 6–21–94; 8:45 am]

BILLING CODE 4410–10–M

Drug Enforcement Administration

Revised Aggregate Production Quotas for Controlled Substances in Schedules I and II

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Notice of final revised aggregate production quotas for 1994.

SUMMARY: This notice establishes revised 1994 aggregate production quotas for controlled substances in Schedules I and II of the Controlled Substances Act (CSA).

EFFECTIVE DATE: This order is effective on June 22, 1994.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug & Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537, telephone: (202) 307–7183.

SUPPLEMENTARY INFORMATION: Section 306 of the CSA (21 U.S.C. 826) requires the Attorney General to establish aggregate production quotas for controlled substances in Schedules I and II each year. This responsibility has been delegated to the Administrator of the DEA pursuant to § 0.100 of title 28 of the Code of Federal Regulations. The Administrator, in turn, has redelegated this function to the Deputy Administrator pursuant to 59 FR 23637 (May 6, 1994).

On April 13, 1994, a notice of the proposed revised 1994 aggregate production quotas for certain controlled substances in Schedules I and II was published in the **Federal Register** (59 FR 17568). All interested parties were invited to comment on or object to these proposed aggregate production quotas on or before May 13, 1994.

Several companies commented that the revised 1994 aggregate production quotas for amphetamine, codeine (for sale), d-desoxyephedrine, opium, oxycodone (for sale), pentobarbital and secobarbital were insufficient to provide for the estimated medical, scientific,

research and industry needs of the United States, for export requirements and for the establishment and maintenance of reserve stocks.

The DEA has reviewed the involved companies' 1993 year-end inventories, their initial 1994 manufacturing quotas, 1994 export requirements and their actual and projected 1994 sales. Based on this data, the DEA has adjusted the revised 1994 aggregate production quotas for amphetamine, codeine (for sale), d-desoxyephedrine, opium, oxycodone (for sale), pentobarbital and secobarbital to meet the estimated medical, scientific, research and industrial needs of the United States.

Regarding levorphanol, methylphenidate, phencyclidine and sufentanil, DEA has received updated information from several manufacturers which shows the necessity for adjustments of the revised 1994 aggregate production quotas for these controlled substances. The adjustments will provide for the estimated medical, scientific, research and industrial needs of the United States and for the establishment and maintenance of reserve stocks. The DEA has adjusted the 1994 revised aggregate production quotas for levorphanol, methylphenidate, phencyclidine and sufentanil accordingly.

The Office of Management and Budget has determined that notices of aggregate production quotas are not subject to centralized review under Executive Order 12866. This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this matter does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

The Deputy Administrator hereby certifies that this action will have no significant impact upon small entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601 *et. seq.* The establishment of aggregate production quotas for Schedules I and II controlled substances is mandated by law and by international treaty obligations. While aggregate production quotas are of primary importance to large manufacturers, their impact upon small entities is neither negative nor beneficial. Accordingly, the Deputy Administrator has determined that this action does not require a regulatory flexibility analysis.

Therefore, under the authority vested in the Attorney General by section 306 of the Controlled Substances Act of 1970 (21 U.S.C. 826), delegated to the Administrator of the DEA by § 0.100 of title 28 of the Code of Federal Regulations, and redelegated to the Deputy Administrator pursuant to 59 FR 23637 (May 6, 1994), the Deputy Administrator hereby orders that the 1994 revised aggregate production quotas, expressed in grams of anhydrous acid or base, be established as follows:

Basic class	Established revised 1994 quotas
Schedule I:	
2,5-Dimethoxyamphetamine	15,510,000
Schedule II:	
Alfentanil	8,000
Amphetamine	787,000
Codeine (for sale)	61,765,000
d-Desoxyephedrine	22,100
Diphenoxylate	638,000
Levorphanol	8,500
Methylphenidate	7,313,000
Opium	1,242,000
Oxycodone (for sale)	3,853,000
Oxycodone (for conversion)	5,400
Oxymorphone	2,420
Pentobarbital	17,000,000
Phencyclidine	62
Secobarbital	550,000
Sufentanil	897

Dated: June 15, 1994.

Stephen H. Greene,

Deputy Administrator.

[FR Doc. 94–15088 Filed 6–21–94; 8:45 am]

BILLING CODE 4410–09–M

[Docket No. 93–35]

Linwood T. Townsend, D.D.S.; Denial of Application

On March 12, 1993, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Linwood Thomas Townsend, D.D.S., Respondent, at 1285 N.E. 148th Street, North Miami, Florida. The Order to Show Cause proposed to deny his application for registration executed on November 8, 1991, and filed with the DEA pursuant to 21 U.S.C. 823(f). The Order alleged that Respondent's registration with DEA would be inconsistent with the public interest, as that term is used in 21 U.S.C. 823 and 824.

Respondent requested a hearing and the matter was docketed before Administrative Law Judge Paul A. Tenney. Following prehearing procedures, a hearing was held in Miami, Florida on October 13, 1993. On January 18, 1994, Judge Tenney issued his Findings of Fact, Conclusions of Law, and Recommended Ruling. Neither party filed exceptions to the administrative law judge's opinion and recommended decision and, on February 18, 1994, the administrative law judge transmitted the record to the Acting Administrator. The Deputy Administrator has considered the record in its entirety and, pursuant to 21 CFR § 1316.67, hereby enters his final order in this matter.

The administrative law judge found that in 1977 Respondent obtained a license to practice dentistry in Florida. On May 30, 1980, Respondent was issued DEA Registration, AT9228708. On November 17, 1980, Respondent was issued a second Certificate of Registration. On November 30, 1981, Respondent's DEA registration expired, and was never renewed.

From November 1981 through November 1991, Respondent issued prescriptions for controlled substances with the expired registration number. A DEA Investigator conducted a survey of 11 pharmacies in the Miami area for prescriptions for controlled substances issued by the Respondent. The survey included prescriptions issued between January 1989 and November 1991. The Investigator recovered approximately 575 prescriptions for controlled substances issued by the Respondent during that period. Respondent did not possess a valid DEA registration during that time.

At the DEA administrative hearing, Respondent testified that he thought his registration was transferable and that at that time he did not know that he was doing anything wrong. Respondent further testified that once he became aware of the need for a new DEA registration, he immediately submitted an application to DEA. Additionally, the Respondent said that he had not prescribed controlled substances since that time.

Respondent also represented that during the period in question, he was employed by institutions which were part of the public health service, and was therefore exempt from DEA registration under 21 CFR § 1301.25. The administrative law judge found that Respondent's claim was without any factual foundation. The Deputy Administrator agrees. The term "public health service" as set forth in § 1301.25, refers to the United States Public Health Service. None of the institutions at which Respondent was employed was part of the Public Health Service as contemplated by § 1301.25.

The administrative law judge additionally found that on February 4, 1988, in the Circuit Court of the Eleventh Judicial Circuit in Dade County, Florida, Respondent was convicted upon his plea of *nolo contendere* to filing false Medicaid

claims. He was placed on eighteen months probation and ordered to pay restitution.

Additionally, as a result of the conviction, on May 13, 1988, the Florida Department of Health and Rehabilitative Services terminated Respondent from further participation in the Florida Medicaid program. By letter dated June 24, 1988, the United States Department of Health and Human Services excluded Respondent from participation in the Medicare program pursuant to 42 U.S.C. 1320a–7(a), for a period of five years.

The administrative law judge further found that on November 3, 1988, the Department of Professional Regulation, Board of Dentistry (Board), filed an 18 count administrative complaint against Respondent. The complaint alleged that from March 1985 to May 1987, Respondent billed the Florida Medicaid Department for services that he did not render and filed false documents pertaining to the billing of these services to patients. With the exception of two counts, Respondent did not dispute the allegations in the complaint. Consequently, on February 27, 1989, the Board entered its final order in which it adopted the allegations in the administrative complaint as findings of fact. The order placed Respondent's state dental license on suspension for three months, two months stayed. Following the suspension, Respondent's license was placed on five years probation and Respondent was ordered to take 24 hours of instruction in ethics and perform 500 hours of community service.

The Board filed an administrative complaint and an amended administrative complaint against the Respondent on March 14, 1990 and December 19, 1990, respectively. The amended complaint alleged that the Respondent failed to meet the minimum standard of care in diagnosis and treatment of his patients and failed to keep records which justified his course of treatment. A stipulation entered into by the parties was approved and adopted by Final Order dated August 13, 1991. As part of the order, Respondent was required to pay $1,000 and his license to practice dentistry was placed on probation for two years.

The administrative law judge further found that Respondent filed a DEA application for registration, dated November 8, 1991, and indicated that he never had a state professional license or controlled substance registration revoked, suspended, denied, restricted, or placed on probation. In fact, Respondent knew that his dental license had twice been disciplined and placed on suspension and probation by the Board. Since DEA must rely on the truthfulness of information supplied by applicants in registering them to handle controlled substances, falsification cannot be tolerated. Any material falsification of any application for registration is an independent statutory basis for the denial of an application. Herbert J. Robinson, M.D., 59 FR 6304 (1994); John W. Wang, M.D., 57 FR 47869 (1992); Ronald H. Futch, M.D., 53 FR 38990 (1988).

The administrative law judge recommended that the Administrator deny Respondent's application for registration at this time. The administrative law judge further found that the circumstances are sufficient to support a recommendation to the Administrator that an application be looked on favorably after the passage of one year. The Deputy Administrator adopts the findings of fact, conclusions of law and recommended ruling of the administrative law judge in its entirety.

Pursuant to 21 U.S.C. 823(f), the Deputy Administrator may deny an application for DEA registration if he determines that the registration would be inconsistent with the public interest. Section 823(f) requires that the following factors be considered:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

These factors are to be considered in the disjunctive. That is, the Deputy Administrator may properly rely on any one or a combination of those factors, giving each the weight he deems appropriate in determining whether a registration should be revoked, or an application denied. See David W. Warren, M.D., 55 FR 40017 (1990); Henry J. Schwarz, Jr., M.D., 54 FR 16422 (1989); England Pharmacy, 52 FR 1674 (1987); and Felix Seisin, M.D., 51 FR 3863 (1986).

The Deputy Administrator finds that the fourth and fifth factors are relevant to the adjudication of this matter. The record clearly establishes that the Respondent issued approximately 575 prescriptions for controlled substances without a valid DEA registration. Further, Respondent had been excluded from the Medicare program and had disciplinary action taken against him by the Florida Dental Board based upon Medicaid fraud and unprofessional conduct. Additionally, Respondent falsified his DEA application. The administrative law judge concluded that the record warrants denial of Respondent's application for registration at this time. The Deputy Administrator concurs in this evaluation.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR §§ 0.100(b) and 0.104 [59 FR 23637 (1994)], hereby orders that the application for a DEA Certificate of Registration submitted by Linwood Thomas Townsend, D.D.S., dated November 8, 1991, be, and it hereby is, denied. This order is effective July 22, 1994.

Dated June 15, 1994.

Stephen H. Greene,

Deputy Administrator.

[FR Doc. 94–15089 Filed 6–21–94; 8:45 am]

BILLING CODE 4410–09–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 94–035]

NASA Advisory Council; Task Force on Shuttle-Mir Rendezvous and Docking Missions; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Task Force on Shuttle-Mir Rendezvous and Docking Missions.

DATES: July 13, 1 p.m. to 4 p.m.

ADDRESSES: National Aeronautics and Space Administration, Lyndon B. Johnson Space Center, Building 1 room 945, Houston, TX 77058.

FOR FURTHER INFORMATION CONTACT: Mr. William L. Vantine, Code M, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–1698.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Review the upcoming Shuttle-Mir missions from the following perspectives: training, operations, rendezvous and docking.

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: June 14, 1994.

Timothy M. Sullivan,

Advisory Committee Management Officer.

[FR Doc. 94–15130 Filed 6–21–94; 8:45 am]

BILLING CODE 7510–01–M

[Notice 94–036]

NASA Advisory Council (NAC), Aeronautics Advisory Committee (AAC), Subcommittee on Human Factors; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a NAC, Aeronautics Advisory Committee, Subcommittee on Human Factors, meeting.

DATES: July 13, 1994, 8:30 a.m. to 5 p.m.; and July 14, 1994, 8 a.m. to 5 p.m.; and July 15, 1994, 8 a.m. to 11:30 a.m.

ADDRESSES: National Aeronautics and Space Administration, Ames Research Center, Room 100, Building 262, Moffett Field, CA 94035.

FOR FURTHER INFORMATION CONTACT: Mr. C. Thomas Snyder, National Aeronautics and Space Administration, Ames Research Center, Moffett Field, CA 94035, 415/604–5066.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—NASA Aeronautics Overview

—NASA Human Factors Overview

—High-Speed Research Flight Deck Overview

—Advanced Subsonic Technology—Short

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitors register.

Dated: June 17, 1994.

Timonthy M. Sullivan,

Advisory Committee Management Officer.

[FR Doc. 94–15131 Filed 6–21–94; 8:45 am]

BILLING CODE 7510–01–M

UNITED STATES NUCLEAR REGULATORY COMMISSION

Biweekly Notice

Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97-415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from May 27, 1994, through June 10, 1994. The last biweekly notice was published on June 8, 1994 (59 FR 29623).

Notice Of Consideration Of Issuance Of Amendments To Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, And Opportunity For A Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11555 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By July 22, 1994, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board

Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 248-5100 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to **(Project Director)**: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room for the particular facility involved.

Consolidated Edison Company of New York, Docket No. 50-247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of amendment request: April 26, 1994

Description of amendment request: The proposed amendment would revise the Technical Specifications to change the Table 3.5-1 High Containment Pressure (Hi Level), Safety Injection Setting Limit from less than or equal to 2.0 psig to less than or equal to 5.0 psig.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed change does not involve a significant hazards consideration since:

1. There is no significant increase in the probability or consequences of an accident.

It is proposed that the High Containment Pressure (Hi Level) actuation setting of [less than or equal to] 2.0 psig be revised to [less than or equal to] 5.0 psig. This additional operating flexibility will decrease the frequency of Containment venting necessary to relieve containment of non-condensible gases which build up during normal operation.

Based upon a statistical analysis of the containment pressure channel uncertainty for a 30 month operating cycle, a margin must be allowed between the Technical Specification limit (plant setting) and the Safety Analysis limit so that the Safety Analysis limit(s) will not be exceeded under the worst circumstances. For a Technical Specification value of [less than or equal to] 5.0 psig, the corresponding Safety Analysis limit must be increased to 10 psig to provide margin for the channel statistical allowance. A safety evaluation performed pursuant to 10 CFR 50.59 is on file which supports a change in the Safety Analysis limit from 7.3 psig (current value) to 10.0 psig. Key conclusions of the Safety Evaluation are that neither the probability nor the consequences of an accident or malfunction of equipment important to safety previously evaluated in the Safety Analysis report would be increased.

Thus, assurance is provided that appropriate protective actions in accordance with the Technical Specifications will be taken so that Safety Analysis limits are not exceeded.

2. The possibility of a new or different kind of accident from any previously analyzed has not been created.

The proposed change in the Technical Specification limit together with the change in the Safety Analysis limit provides adequate margin to accommodate instrument channel uncertainty over a 30 month operating cycle. Plant equipment, which would be set at the Technical Specification limit, will therefore provide protective functions to assure that safety analysis limits are not exceeded. This would prevent the possibility of a new or different kind of accident from that previously evaluated from occurring.

3. There has been no reduction in the margin of safety.

The proposed change to the Technical Specification limit would decrease the frequency of containment purges necessary to vent the build up of non-condensible gases during normal operation. This would result in a decrease in the amount of radioactivity discharged to the environment (due to decay), decrease the potential for high Containment pressure alarms and increase the margin for an ESF trip. The change to the Safety Analysis limits, justified by a safety Evaluation performed in accordance with 10 CFR 50.59, assures sufficient margin exists to accommodate channel instrument uncertainty over the maximum operating cycle length. This margin is necessary so that safety functions will occur and Safety Analysis limits will be preserved.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Attorney for licensee: Brent L. Brandenburg, Esq., 4 Irving Place, New York, New York 10003.

NRC Project Director: Michael L. Boyle

Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: May 24, 1994

Description of amendment request: The proposed amendments would transfer the boron concentration in Technical Specification (TS) 3.9.1 for the reactor coolant system and the refueling canal during MODE 6, and the boron concentration in TS 3.9.12 for the spent fuel pool from the TS to the Core Operating Limits Report (COLR). The application is submitted in response to the guidance in Generic Letter 88-16 which addresses the transfer of fuel cycle-specific parameter limits from the TS to the COLR.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The following analysis, performed pursuant to 10 CFR 50.91, shows that the proposed amendment will not create a significant hazards consideration as defined by the criteria of 10 CFR 50.92.

1. This amendment will not significantly increase the probability or consequence of any accident previously evaluated.

No component modification, system realignment, or change in operating procedure will occur which could affect the probability of any accident or transient. The relocation of boron concentration values to the COLR is an adminsitrative change which will have no effect on the probability or consequences of any previously-analyzed accident. The required values of boron concentration will continue to be determined through use of approved methodologies.

2. This amendment will not create the possibility of any new or different accidents not previously evaluated.

No component modification or system realignment will occur which could create the possibility of a new event not previously considered. The administrative change of relocating parameters to the COLR, in this case boron concentration, cannot create the probability of an accident.

3.This amendment will not involve a significant reduction in a margin of safety.

Required boron concentrations will remain appropriate for each cycle, and will continue to be calculated using approved methodologies. There is no significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

NRC Project Director: David B. Matthews, Director

GPU Nuclear Corporation, et al., Docket No. 50-219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of amendment request: May 12, 1994

Description of amendment request: The proposed amendment would revise Technical Specification Sections 3.1 and 4.1 for Protective Instrumentation, the associated bases, and tables to increase the surveillance test intervals (STIs) and add allowable out-of-service times (AOTs). All proposed STI and AOT changes are in accordance with General Electric Company Licensing Topical Reports (LTRs) which have been previously reviewed and approved by the NRC staff. Also, AOTs are clarified in accordance with the most recently approved BWR Owners' Group letters which were used in the development of NUREG-1433 "Standard Technical Specifications, General Electric Plants, BWR/4." The Technical Specification changes will permit specified Channel Tests to be conducted quarterly rather than weekly or monthly. The amendment will enhance operational safety by reducing 1) the potential for inadvertent plant scrams, 2) excessive test cycles on equipment, and 3) the diversion of plant personnel and resources on unnecessary testing.

Two additional technical changes are proposed. The first change involves extending the Channel Calibration interval for average power range monitor (APRM) scram instrumentation from weekly to quarterly. GPUN has evaluated the effect of drift on the setpoint over the longer interval for this instrumentation and found it to be acceptable. The second change would add a quarterly Channel Calibration requirement for High Drywell Pressure (for Core Cooling) and Turbine Trip Scram instrumentation. This would be a new requirement not currently incorporated in the Technical Specifications.

Nineteen editorial changes have been incorporated in Instrumentation Sections 3.1 and 4.1 to provide clarity and consistency. These items are editorial only and do not alter the meaning or intent of any requirements. Examples of editorial changes are: 1) capitalize definitions where used, 2) punctuation and grammatical corrections, 3) ensuring consistency in STI nomenclature, and 4) reformat of tables. A table note and its associated footnote were deleted which involved a 1985 licensing condition which is no longer applicable.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analyses of the issue of no significant hazards consideration, which is presented below:

NO SIGNIFICANT HAZARDS CONSIDERATION EVALUATION OF TECHNICAL CHANGES

1. The operation of the Oyster Creek Nuclear Generating Station, in accordance with the proposed amendment, will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The generic analysis contained in LTR NEDC-30851P-A assessed the impact of changing RPS [reactor protection system] STIs and adding AOTs on RPS failure frequency, scram frequency and equipment cycling. Specifically, Section 5.7.4, "Significant Hazards Assessment," of NEDC-30851P-A states that:

Fewer challenges to the safeguards system, due to less frequent testing of the RPS, conservatively results in a decrease of approximately one percent in core damage frequency. This decrease is based upon the following:

Based on the plant-specific experience presented in Appendix J, the estimated reduction in scram frequency (0.3 scrams/yr) represents a 1 to 2 percent decrease in core damage frequency based on the BWR plant-specific Probabilistic Risk Assessments (PRAs) listed in Table 5-8.

The increase in core damage frequency due to less frequent testing is less than one percent. This increase is even lower (less than 0.01 percent) when the changes resulting from the implementation of the Anticipated Transients Without Scram (ATWS) rule are considered. Therefore, this increase is more than offset by the decrease in CDF [core damage frequency] due to fewer scrams.

The effect of reducing unnecessary cycles on RPS equipment, although not easily quantifiable also results in a decrease in core damage frequency.

The overall impact on core damage frequency of the changes in allowable out-of-service times is negligible.

The BWR Owners' Group concluded that the proposed changes do not significantly increase the probability or consequences of an accident previously evaluated since the increase in probability of a scram failure due to RPS unavailability is insignificant. The overall probability of an accident is decreased as the time RPS logic operates as designed is increased resulting in less inadvertent scrams during testing and repair. The plant-specific evaluation performed by GPUN and GE demonstrates that while the Oyster Creek RPS differs from the generic model analyzed in the RPS LTR (NEDC-30851P-A), the net effect of the differences do not alter the generic conclusions. The AOTs proposed for RPS instrumentation are based on improved wording developed for use in NUREG 1433, "Standard Technical Specifications, General Electric Plants, BWR/4," which ensures a loss of function does not occur. In addition, the change to the APRM Scram Channel Calibration surveillance interval from weekly to quarterly has been evaluated by GPUN to determine the effect on setpoint drift. The results of the evaluation show acceptable performance of this scram parameter ensuring that the safety analysis remains valid. The clarification that a Channel Calibration is not applicable to Turbine Trip Scram instrumentation is appropriate since this trip parameter senses turbine stop valve position via limit switches which are fixed in position and adjusted, as necessary, during valve maintenance. This trip parameter and its switch adjustment methods are similar to the Main Steamline Isolation Valve [MSIV] Scram for which the Technical Specifications require only a Channel Test.

LTR NEDC-30936P-A (Parts 1 and 2) contains an assessment of the impact of changing STIs and AOTs for BWR ECCS Actuation Instrumentation. Section 4.0, "Technical Assessment of Changes," of NEDC-30963P-A (Part 2) states that:

The results indicate an insignificant (less than 5E-7 per year) increase in water injection function failure frequency when STIs are increased from 31 days to 92 days, AOTs for repair of the ECCS actuation instrumentation are increased from one hour to 24 hours, and AOTs for surveillance testing are increased from two to six hours. For all four BWR models the increase represents less than 4% increase in failure frequency. However, when other factors which influence the overall plant safety are considered, the net result is judged to be an improvement in plant safety.

From this generic analysis, the BWR Owners' Group concluded that the proposed changes do not significantly increase the probability or consequences of an accident previously evaluated since the increase in probability of a water injection failure due to ECCS instrumentation unavailability is insignificant and the net result is judged to be an improvement in plant safety. The plant-specific evaluation performed by GPUN and GE demonstrates that while the Oyster Creek ECCS differs from the generic model analyzed in LTR NEDC-30936P-A, the net effect of the plant-specific differences do not alter the generic conclusions. The addition of a quarterly Channel Calibration STI for the High Drywell Pressure ECCS initiation parameter is consistent with the calibration interval requirement for other similar instrumentation at Oyster Creek and ensures the regular performance of calibrations. This is a new requirement not currently contained in the Technical Specifications and experience performing the High Drywell Pressure (Core Cooling) instrument calibration at a quarterly interval has proven adequate for instrument performance monitoring.

LTRs NEDC-30851P-A, Supplement 2 and NEDC-31677P-A contain generic analyses assessing the impact of changing STIs and AOTs for BWR Isolation Actuation Instrumentation which are common or not common to RPS and ECCS instrumentation. Section 4.0, "Summary of Results," of NEDC-30851P-A, Supplement 2 states that:

The results indicated that the effects on probability of failure to initiate isolation are very small and the effects on probability or frequency of failure to isolate are negligible in nearly every case. In addition, the results indicated that increasing the AOT to 24 hours for tests and repairs has a negligible effect on the probability of failure of the isolation function. These combined with changes to the testing intervals and allowed out-of-service times for RPS and ECCS instrumentation provide a net improvement to plant safety and operations.

and Section 5.6, "Assessment of Net Effect of Changes," of NEDC-31677P-A states that:

A reduction in core damage frequency (CDF) of at least as much as estimated in the ECCS instrumentation analysis can be expected when the isolation actuation instrumentation STIs are changed from one month to three months. The chief contributor to this reduction is the channel functional tests for the MSIVs. Inadvertent closure of the MSIVs will cause an unnecessary plant scram. This reduction in CDF more than compensates for any small incremental increase (10% or 1.0E-07/year) in calculated isolation function failure frequency when the STI is extended to three months.

Based on this generic analysis, the BWR Owners' Group concluded that the proposed changes do not significantly increase the consequences of an accident previously evaluated since the increase in probability of an isolation failure due to isolation instrumentation unavailability is insignificant. The proposed wording of the AOTs is based on the clarifications used in the development of NUREG 1433, "Standard Technical Specifications, General Electric Plants, BWR/4," which ensures a loss of function does not occur where applied to isolation actuation instrumentation.

LTR NEDC-30851P-A, Supplement 1 contains a generic analysis assessing the impact of changing control rod block STIs on Rod Block failure frequency. Section 5 (Brookhaven National Laboratory Technical Evaluation Report - Attachment 2 to the NRC SER) of NEDC-30851P-A, Supplement 1 states that:

The BWROG proposed changes to the Technical Specifications concerning the test requirements for BWR control rod block instrumentation. The changes consist of increasing the surveillance test intervals form one to three months. These test interval extensions are consistent with the already approved changes to STIs for the reactor protection system. The technical analysis reviewed and verified as documented herein indicates that there will be no significant changes in the availability of the control rod block function if these changes are implemented. In addition, there will be a negligible impact on the plant core melt frequency due to the decreased testing.

Bases contained in GE Topical Report GENE-770-1-A assessed the impact of changing STIs and AOTs on failure frequency for selected systems. Section 2.0, "Summary," of GENE-770-06-1-A states that:

Technical bases are provided for selected proposed changes to the instrumentation STIs and AOTs that were identified in the BWROG Improved BWR Technical Specification activity. These STI and AOT changes are consistent with approved changes to the RPS, ECCS, and isolation actuation instrumentation. These proposed changes do not result in a degradation to overall plant safety.

The BWR Owners' Group concluded from the generic analysis in NEDC-30851P-A, Supplement 1 and the bases in GENE-770-06-1-A that the proposed changes do not significantly increase the probability or consequences of an accident previously evaluated. GPUN's utilization of GENE-770-06-1-A is limited to the identified AOTs for Control Rod Block instrumentation analyzed in NEDC-30851P-A since the Control Rod Block LTR did not explicitly address AOTs.

2. The operation of Oyster Creek Nuclear Generating Station, in accordance with the

proposed amendment, will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The addition of allowable out-of-service times (AOTs) consistent with wording developed for use in Improved Standard Technical Specifications to ensure no loss of function and the revision of surveillance test intervals (STIs) does not alter the function of RPS, ECCS, Isolation or Rod Block instrumentation nor involve any type of plant modification. No new modes of plant operation are involved with the changes.

Adding a quarterly Channel Calibration STI for High Drywell Pressure instrumentation (for Core Cooling) establishes a requirement in the Technical Specifications which is not currently incorporated. This is an additional requirement beyond that already in place for this instrumentation and will not alter its operation since by their nature STIs ensure proper instrument performance. The clarification that a Channel Calibration is not applicable to Turbine Trip Scram instrumentation is appropriate since this trip parameter senses turbine stop valve position via limit switches which are fixed in position and adjusted during valve maintenance. This trip parameter and its switch adjustment methods are similar to the Main Steamline Isolation Valve Scram for which the Technical Specifications require only a Channel Test. Revising the Channel Calibration STI for APRM Scram instruments from weekly to quarterly allows these instruments to benefit from the Channel Test STI change provided by the generic analysis in the RPS LTR. The benefits include a significant reduction in the number of half-scram states the plant will undergo reducing the potential for inadvertent plant trips. The effect of setpoint drift over the longer interval has been evaluated and found acceptable.

The proposed changes will not alter the physical characteristics of any plant systems or components and all safety-related systems and components remain within their applicable design limits. Thus, system and component performance is not adversely affected by these changes, thereby assuring that the design capabilities of those systems and components are not challenged in a manner not previously assessed so as to create the possibility of a new or different kind of accident.

3. The operation of the Oyster Creek Nuclear Generating Station, in accordance with the proposed amendment, will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed and approved the generic studies contained in the GE Licensing Topical Reports and has concurred with the BWR Owners' Group that the proposed changes do not significantly affect the availability of RPS, ECCS Actuation, Isolation Actuation and Control Rod Block instrumentation. The proposed addition of allowable out-of-service times for instruments addressed by the LTRs provides reasonable times for making repairs and performing tests. The lack of sufficient out-of-service time provided in current Technical Specifications, increases the potential for an inadvertent scram or equipment actuation. The proposed AOTs provide realistic times to complete required actions without increasing overall instrument failure frequency and ensure that no loss of function occurs, therefore, there is no significant reduction in the margin of safety.

The LTRs demonstrate that extending surveillance test intervals does not result in significant changes in the probability of instrument failure. Where Channel Calibration frequency has not changed, assurance exists that setpoints will not be affected by drift. In the case of the APRM Scram Channel Calibration, the proposed change to quarterly from weekly has been evaluated and found acceptable. Expected instrument performance over the extended interval will assure that applicable safety analyses will continue to be met. In addition, other instrumentation was evaluated for drift effects of setpoints and was found acceptable. The addition of a quarterly Channel Calibration interval for High Drywell Pressure (for Core Cooling) is consistent with Channel Calibration STIs for most other instrumentation at Oyster Creek and has been the interval used to achieve an adequate level of instrument performance monitoring. The clarification that a Channel Calibration is not applicable to Turbine Trip Scram instrumentation ensures consistency in the establishment of surveillance requirements. This trip parameter senses turbine stop valve position via limit switches which are fixed in position and adjusted during valve maintenance. This trip parameter and its switch adjustment methods are similar to the Main Steamline Isolation Valve Scram for which the Technical Specifications require only a Channel Test. These proposed changes, when coupled with the reduced probability of test-induced plant transients and equipment failures, do not result in a reduction in the margin of safety.

No Significant Hazards Consideration Evaluation For Editorial Changes

The above nineteen proposed changes are editorial in nature and are typical example I.c.2.e.i in 51FR7744. Therefore, they do not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The editorial changes described above do not change the design or operation of any structure, system or component relied upon to prevent or mitigate the consequences of any accident evaluated. These editorial changes also do not add new structures, systems or components which may have an effect on existing elements of the facility. The changes proposed correct, clarify and/or retain existing requirements.

2. Create the possibility of a new or different kind of accident form any accident previously evaluated.

Since neither physical changes to the facility nor changes in its operation are involved in the proposed editorial changes to the Technical Specifications, there is no possibility for creation of a new or different kind of accident.

3. Involve a significant reduction in the margin of safety.

Facility configuration and operation are unaffected by the proposed editorial changes. As a result no changes in margin of safety occur.

The editorial changes described and evaluated above are purely administrative to achieve consistency or correct an error in the Technical Specifications.

The NRC staff has reviewed the licensee's analyses and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied for both the technical issues and editorial changes. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Ocean County Library, Reference Department, 101 Washington Street, Toms River, New Jersey 08753

Attorney for licensee: Ernest L. Blake, Jr., Esquire. Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz

GPU Nuclear Corporation, et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of amendment request: February 10, 1994

Description of amendment request: The revision proposed by Technical Specification Change Request (TSCR) No. 230 to the Technical Specifications would revise specification 3.7.2.c, "Unit Electric Power System," to eliminate testing of an emergency diesel generator (EDG) when the redundant EDG is inoperable.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment serves to assure that an EDG is always available to perform on demand and the lower number of demands for performance reduce the probability of equipment failure. The required action no longer requires a "test" be performed. Therefore, the word "test" has been deleted from TS 3.7.2.c. The change is administrative. Since the proposed amendment does not affect the design or performance of the diesel generators or their ability to perform their design function, the change will not result in an increase in the consequences or probability of an accident previously analyzed. The proposed change will increase diesel generator reliability, thereby increasing overall plant safety.

2. Operation of the facility in accordance with the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. Accidents involving loss of off-site power and single failure have been previously evaluated. The change does not introduce any new mode of plant

operation or new accident precursors, involve any physical alterations to plant configurations, or make any changes to system setpoints which could initiate a new or different kind of accident.

3. Operation of the facility in accordance with the proposed amendment does not involve a significant reduction in a margin of safety. This change does not result in a reduction in the margin of safety since there is no margin of safety associated with the supplemental immediate and daily testing of the operable EDG. If a margin of safety were presumed to exist, no reduction would result because of the proposed amendment: no physical modification to the plant or change to procedurally prescribed operator actions resulted from the proposed amendment.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz

Maine Yankee Atomic Power Company, Docket No. 50-309, Maine YankeeAtomic Power Station, Lincoln County, Maine

Date of amendment request: May 25, 1994

Description of amendment request: The proposed amendment would 1) allow entry through an operable personnel air lock hatch to perform surveillance testing, repair an inoperable hatch, or perform other necessary activities inside containment, 2) update plant Technical Specifications to reflect a previous change to the list of containment boundary valves, 3) add a new exception to allow quarterly surveillance testing of the excess flow check valves, 4) add a new exception to allow periodic preventive maintenance on control room ventilation lasting up to 30 minutes per calendar quarter without a written report of such inoperability, and 5) make related administrative changes to reflect and clarify items 1 through 4 above.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The staff's analysis is presented below:

1. The proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

Containment air lock hatch entry, surveillance testing of the excess flow check valves, and preventive maintenance of control room ventilation are of short duration and do not alter any associated remedial action completion times, or the requirements of Technical Specification 3.0.A. If necessary, prompt operator action to restore containment integrity, excess flow check valve position, or control room ventilation is assured by plant operators, or individual(s) procedurally dedicated to perform such restoration. The subject containment boundary valves are manual containment isolation valves, and the current specification allows them to be repositioned under administrative control without compensatory measures to isolate the penetration. The boundary valves to be added remain closed during power operation, and are opened only after the reactor is shut down and cooldown has begun. The boundary valves to be deleted are open only during plant heatup.

The staff therefore concludes that implementation of the proposed change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change to containment air lock hatch entry, surveillance testing of the excess flow check valves, and preventive maintenance of the control room ventilation system, will not affect equipment reliability when such equipment is required to be operable. The Limiting Conditions for Operation and Remedial Actions for these items remain unchanged to govern operability of the equipment. The containment boundary valves being added are closed when the reactor is at power, and are opened only after the reactor is shut down. The boundary valves being deleted are open only during plant heatup. The subject boundary valves are manual containment isolation valves, and the current specification allows them to be repositioned under administrative control without compensatory measures to isolate the penetration.

The staff therefore concludes that implementation of the proposed change will not create any new or different kind of accident from any accident previously evaluated.

3. The proposed amendment does not involve a significant reduction in a margin of safety.

The proposed change would allow excess flow check valves to be exercised through approximately 1.5 inches of valve travel on a quarterly basis without declaring the valves inoperable or taking compensatory measures. Such testing constitutes approximately 15 minutes per calendar quarter, during which time containment isolation can easily be reestablished. Similarly, access through an operable air lock hatch would allow the hatch to be open for only a short period of time and while under control of an individual dedicated to operating the hatch. The proposed change also permits the control room ventilation system to be inoperable for 30 minutes per calendar quarter, without a written report of such inoperability. Because of the short time during which these systems are unavailable, and because operation is easily reestablished, there is no significant reduction in a margin of safety. The containment boundary valves being added are closed when the reactor is at power, and are opened only after the reactor is shut down. The boundary valves being deleted are open only during plant heatup. The subject boundary valves are manual containment isolation valves, and the current specification allows them to be repositioned under administrative control without compensatory measures to isolate the penetration.

The staff therefore concludes that implementation of the proposed change would not involve a significant reduction in a margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Wiscasset Public Library, High Street, P.O. Box 367, Wiscasset, Maine 04578

Attorney for licensee: Mary Ann Lynch, Esquire, Maine Yankee Atomic Power Company, 83 Edison Drive, Augusta, Maine 04336

NRC Project Director: Walter R. Butler

Northeast Nuclear Energy Company (NNECO), Docket No. 50-245,Millstone Nuclear Power Station, Unit 1, New London County, Connecticut

Date of amendment request: April 29, 1994

Description of amendment request: The amendment would change the requirement for reactor operators (RO) in Table 6.2-1 from 2 to 3 for the RUN, STARTUP/HOT STANDBY and HOT SHUTDOWN conditions. In addition, two typographical corrections are made to page 6-4.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

NNECO has reviewed the proposed changes in accordance with 10CFR50.92 and concluded that the changes do not involve a significant hazards consideration (SHC). The basis for this conclusion is that the three criteria of 10CFR50.92(c) are not compromised. The proposed changes do not involve a significant hazards consideration because the changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously analyzed.

Accident analyses for Millstone Unit No. 1 do not require a specific number of operators. Increasing the Technical Specification minimum to require a third RO does not decrease the effectiveness of the shift staff in response to normal or abnormal conditions. In fact, the third RO enhances the ability of the operating crew to mitigate complex transients which could occur during beyond design basis events. The shifts have trained and functioned at the higher staffing level for several years.

The typographical corrections to page 6-4 provide a clearer representation of the required actions, and do not affect the intent nor implementation of the specification.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of a previously analyzed accident.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

The addition of a third RO to the minimum shift-crew composition required by Technical Specification Table 6.2-1 does not affect the operation of the unit, nor does it change any of the operating procedures, off-normal procedures, or EOPs [emergency operating procedures]. Staffing the control room with an additional operator enhances the capability of the operating crew to mitigate transients. Therefore, addition of a third RO to the minimum shift-crew composition cannot create the possibility of a new or different accident.

3. Involve a significant reduction in the margin of safety.

The proposed addition of a third reactor operator is to ensure that sufficient operating staff is available to respond to complex transients involving multiple equipment failures. Ensuring that sufficient resources are available to cope with beyond design basis event scenarios provides an increase in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, Thames Valley Campus, 574 New London Turnpike, Norwich, Connecticut 06360.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, Counselors at Law, City Place, Hartford, Connecticut 06103-3499.

NRC Project Director: John F. Stolz

Northeast Nuclear Energy Company, et al., Docket No. 50-336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of amendment request: May 6, 1994

Description of amendment request: The proposed amendment would modify the Limiting Conditions for Operation (LCO) for the Millstone Unit 2 Technical Specifications 3.8.2.3 and 3.8.2.4 and the surveillance requirement of TS 4.8.2.3.2.c.3. These changes relate to the amperage requirements and the charging capability of the DC distribution systems.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed changes do not involve an SHC [significant hazards consideration] because the changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously analyzed.

In 1993, revised battery and battery charger sizing calculations demonstrated that a charger capacity of 400 amperes is sufficient to provide the continuous DC loads, and is capable of recharging a fully discharged station battery in a timely manner consistent with the design basis discussed in Section 8.5.3.1 of the Millstone Unit No. 2 FSAR [Final Safety Analysis Report]. The calculations determined that the largest continuous load was 154 amperes; therefore, 400 amperes of charging capacity could provide 246 amperes to recharge a battery.

The calculations conservatively demonstrated that this charging capacity could recharge a battery in 10.37 hours. This recharging time is well within the 12-hour recharging time discussed in Section 8.5.3.1 of the Millstone Unit No. 2 FSAR. Additionally, this recharging time is more conservative than the 24-hour recharging time stated in Section 8.3.2 of the original Safety Evaluation for Millstone Unit No. 2. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously analyzed.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

The proposed LCO and surveillance changes do not alter the existing DC bus configuration, as described in Section 8.5.3.1 of the Millstone Unit No. 2 FSAR. This bus configuration has been previously analyzed, and was found acceptable. The proposed changes also meet the recharging time specified in the design basis. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously analyzed.

3. Involve a significant reduction in the margin of safety.

In 1993, revised battery and battery charger sizing calculations demonstrated that a charger capacity of 400 amperes is sufficient to provide the continuous DC loads, and is capable of recharging a fully discharged station battery in a timely manner consistent with the design basis discussed in Section 8.5.3.1 of the Millstone Unit No. 2 FSAR. The calculations determined that the largest continuous load was 154 amperes; therefore, 400 amperes of charging capacity could provide 246 amperes to recharge a battery. The calculations conservatively demonstrated that this charging capacity could recharge a battery in 10.37 hours. This recharging time is well within the 12-hour recharging time discussed in Section 8.5.3.1 of the Millstone Unit No. 2 FSAR. Additionally, this recharging time is more conservative than the 24-hour recharging time stated in Section 8.3.2 of the original Safety Evaluation for Millstone Unit No. 2. Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resource Center, Three Rivers Community-Technical College, Thames Valley Campus, 574 New London Turnpike, Norwich, Connecticut 06360.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, City Place, Hartford, Connecticut 06103-3499.

NRC Project Director: John F. Stolz

Northeast Nuclear Energy Company, et al., Docket No. 50-336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of amendment request: May 6, 1994

Description of amendment request: The proposed amendment would provide additional Technical Specification requirements regarding non-Quality Assurance (QA) equipment utilized to achieve feedwater isolation in response to a main steam line break (MSLB) inside containment. Specifically the amendment would incorporate additional sections numbered 3/4.7.1.6, titled "Plant Systems - Main Feedwater Isolation Components (MFICs);" 3/4.8.2.1A, titled " Onsite Power Distribution Systems - A.C. Distribution - Operating;" and 3/4.8.2.5, titled "Onsite Power Distribution Systems (Turbine Battery) - D.C. Distribution - Operating." In addition, the proposed amendment would modify the Index and the Bases to reflect the additional requirements.

Basis for proposed no significant hazards consideration determination:

As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

NNECO has reviewed the proposed changes in accordance with 10CFR50.90 and has concluded that the changes do not involve a significant hazards consideration (SHC). The basis for this conclusion is that the three criteria of 10CFR50.92(c) are not compromised. The proposed changes do not involve an SHC because the changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously analyzed.

Currently, the Millstone Unit No. 2 Technical Specifications contain response time requirements for the feedwater isolation valves to ensure rapid isolation of feedwater to the steam generators and to maintain the peak containment pressure below the containment design pressure of 54 psig. However, clear Action Statements specifying operability requirements for the non-QA equipment associated with feedwater isolation are not included within the Millstone Unit No. 2 Technical Specifications. NNECO's proposal to add sections 3/4.7.1.6, 3/4.8.2.1A, and 3/4.8.2.5 into the Millstone Unit No. 2 Technical Specifications will incorporate additional requirements regarding components that are credited to provide feedwater isolation in the event of an MSLB inside containment. These proposed changes will impose additional limitations, restrictions, and controls not currently in place in the Millstone Unit No. 2 Technical Specifications.

Additionally, NNECO's proposals to modify the Bases and the Index of the Millstone Unit No. 2 Technical Specifications will: 1) provide personnel with information concerning the additional requirements, and 2) correct an editorial error. These proposed changes to the Bases and the Index do not alter the manner in which equipment is operated, nor do they affect equipment availability.

Based on the above, the proposed license amendment does not involve a significant increase in the probability or consequences of an accident previously analyzed.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

NNECO's proposal to add section 3/4.7.1.6, 3/4.8.2.1A, and 3/4.8.2.5 into the Millstone Unit No. 2 Technical Specifications will incorporate additional requirements regarding components that are credited to provide feedwater isolation in the event of an MSLB inside containment. These proposed changes will impose additional limitations, restrictions, and controls not currently in place in the Millstone Unit No. 2 Technical Specifications.

Additionally, NNECO's proposals to modify the Bases and the Index of the Millstone Unit No. 2 Technical Specifications will: 1) provide personnel with information concerning the additional requirements, and 2) correct an editorial error. These proposed changes to the Bases an the Index do not alter the manner in which equipment is operated, nor do they affect equipment availability.

Based on the above, the proposed license amendment cannot create the possibility of a new or different kind of accident from any previously analyzed.

3. Involve a significant reduction in a margin of safety.

NNECO's proposal to add sections 3/4.7.1.6, 3/4.8.2.1A, and 3/4.8.2.5 into the Millstone Unit No. 2 Technical Specifications will incorporate additional requirements regarding components that are credited to provide feedwater isolation in the event of an MSLB inside containment. These proposed changes will impose additional limitations, restrictions, and controls not currently in place in the Millstone Unit No. 2 Technical Specifications.

Additionally, NNECO's proposals to modify the Bases and the Index of the Millstone Unit No. 2 Technical Specifications will: 1) provide personnel with information concerning the additional requirements, and 2) correct an editorial error. These proposed changes to the Bases and the Index do not alter the manner in which equipment is operated, nor do they affect equipment availability.

Therefore, this proposed license amendment does not involve a significant reduction in a margin of safety. In fact. The margin of safety will be increased due to the imposition of restriction on the non-QA equipment credited for feedwater isolation in the event of an MSLB inside containment.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resource Center, Three Rivers Community-Technical College, Thames Valley Campus, 574 New London Turnpike, Norwich, Connecticut 06360.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, City Place, Hartford, Connecticut 06103-3499.

NRC Project Director: John F. Stolz

Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: May 6, 1994

Description of amendment request: The proposed amendment modifies the monthly operational test of the reactor trip bypass breakers to monthly staggered, such that each breaker is tested every 62 days.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed changes do not involve an SHC [significant hazards consideration] because the changes would not:

1. Involve a significant increase in probability or consequences of an accident previously evaluated.

Revising the technical specifications to require a staggered monthly surveillance operational test of the reactor trip bypass breakers (such that each breaker is tested every 62 days) will only make operational testing of the reactor trip bypass breakers consistent with operational testing of the trip breakers and the automatic trip and interlock logic. It will also reduce cycling of the reactor trip bypass breakers by eliminating the requirement to test both bypass breakers during the monthly surveillance, thereby reducing maintenance and surveillance time. The proposed changes do not affect any of the design basis accidents nor are there any malfunctions associated with these changes.

Additionally, this technical specification bases change only clarifies both the meaning of a reactor trip breaker and trip breaker train which have been included for completeness and clarity concerning the reactor trip breaker system.

2. Create the possibility of a new or different kind of accident previously evaluated.

Revising the technical specifications to require a staggered monthly surveillance operational test of the reactor trip bypass breakers (such that each breaker is tested every 62 days) will only make operational testing of the reactor trip bypass breakers consistent with operational testing of the reactor trip breakers and the automatic trip and interlock logic. There are no new failure modes associated with the proposed changes. Since the plant will continue to operate as designed, the proposed changes will not modify the plant response to the point where it can be considered a new accident.

3. Involve a significant reduction in a margin of safety.

Revising the technical specifications to require a staggered monthly surveillance operational test of the reactor trip bypass breakers (such that each breaker is tested ever 62 days) will only make operational testing of the reactor trip bypass breakers consistent with operational testing of the reactor trip breakers and the automatic trip and interlock logic. It will also reduce cycling of the reactor trip bypass breakers by eliminating the requirement to test both bypass breakers during the monthly surveillance, thereby reducing maintenance and surveillance time. The proposed changes do not have any adverse impact on the protective boundaries nor do they affect the consequences of any accident previously analyzed. The surveillance requirements will still ensure that the reactor trip breakers and the reactor trip bypass breakers are tested and within the limits. Therefore, the proposed changes will not impact the margin of safety as designated in the bases of any technical specification.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three

standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resource Center, Three Rivers Community-Technical College, Thames Valley Campus, 574 New London Turnpike, Norwich, Connecticut 06360.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, City Place, Hartford, Connecticut 06103-3499.

NRC Project Director: John F. Stolz

Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: May 18, 1994

Description of amendment request: The amendment would change operability requirements for the Fuel Building Exhaust Filter System to require it to be operable whenever irradiated fuel is in the spent fuel pool, which has had less than 60 days of decay time. Surveillance requirements for the Fuel Building Exhaust Filter System would be changed to require that the system be tested and verified operable at no greater than 31 days prior to its required usage.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

...The proposed change does not involve an SHC [significant hazards consideration] because the change would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed modification will revise the period of time during which the Fuel Building Exhaust Filter System must be operable.

The propose[d] change will require that the system is operable whenever irradiated fuel, which has decayed less than 60 days, is in the spent fuel pool. Currently, the system is required to be operable whenever a load is moved over the pool or fuel is being moved in the pool.

The modification has no effect on the probability of a fuel handling accident. The consequences of a fuel handling accident has been evaluated at two intervals. The first time is the minimum decay time. At this time (t=100 hours) with irradiated fuel in the pool, the Fuel Building Exhaust Filter System is required, per the existing and the proposed Technical Specification, to be operable. Therefore, the consequences of an accident are identical to that described in the FSAR [Final Safety Analyses Report]. The second scenario evaluated is when the filters are initially isolated (t=60 days). The resultant offsite dose, assuming no filtration and lower core inventory due to decay, are significantly lower than was calculated at t=100 hours. Therefore, the existing accident analysis in FSAR Section 15.7.4 is limiting and the proposed modification will not impact the probability or consequences of an accident.

2. Create the possibility of a new or different kind of accident from any previously evaluated.

The proposed change does not impact any system or component which could cause a fuel handling accident. The Fuel Building Exhaust Filter System is used for accident mitigations. It's failure cannot, in any way, create the possibility of a new or different kind of accident.

3. Involve a significant reduction in a margin of safety.

The proposed change to the Fuel Building Exhaust Filter System has been analyzed at the two most critical times. The first analysis was done when the fuel is first placed in the pool, and the second analysis was done when the filtration system is isolated. The first event resulted in no change in assumptions in the analysis presented in the FSAR, ergo no change in dose. The second event has been analyzed and doses have decreased, when compared to the first event. The system will be verified operable per the performance of Surveillance Requirement 4.9.12a prior to fuel or load movement over the pool. Therefore, there is no reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resource Center, Three Rivers Community-Technical College, Thames Valley Campus, 574 New London Turnpike, Norwich, Connecticut 06360.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, City Place, Hartford, Connecticut 06103-3499.

NRC Project Director: John F. Stolz

Philadelphia Electric Company, Docket Nos. 50-352 and 50-353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of amendment request: May 13, 1994

Description of amendment request: This amendment would revise Technical Specifications Surveillance Requirement 4.8.1.1.2e.8, which requires that an emergency diesel generator be retested within 5 minutes after completing a 24-hour endurance run.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed Technical Specifications (TS) change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed TS change would revise the Emergency Diesel Generator (EDG) surveillance criteria to allow the hot restart test to be performed independent of the Engineered Safety Features (ESF) load sequencing test and the 24 hour endurance run. The proposed surveillance requirements would continue to demonstrate that the objectives of each of these tests are met. Specifically, the EDG's are shown to be capable of starting the ESF loads in the required sequence, operating at full load for an extended period of time, and restarting from a full load temperature condition. Therefore, the proposed changes would not adversely affect the EDG's ability to support mitigation of the consequences of any previously evaluated accident. The proposed changes to the surveillance requirements do not affect the initiation or progression of any accident sequence.

Therefore, the proposed change does not involve an increase in the probability or consequences of an accident previously evaluated.

2. The proposed TS change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

This proposed TS change does not require physical changes to the plant or equipment, and does not impact any design or functional requirements of the Emergency Diesel Generators (EDGs). The proposed change affects surveillance test criteria such that increased scheduling flexibility is allowed while the test objectives associated with demonstrating EDG operability continue to be met. The proposed changes do not allow any plant configurations that are presently prohibited by the Technical Specifications.

Therefore, the proposed TS change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed TS change does not involve a significant reduction in a margin of safety.

The proposed TS change does not involve a change to the physical design or functional requirements of the Emergency Diesel Generators (EDGs). Surveillance testing in accordance with the proposed Technical Specification will continue to demonstrate the ability of the EDG's to perform their intended function of providing electrical power to ESF systems needed to mitigate design basis transients, consistent with the plant safety analyses. The margin of safety demonstrated by the plant safety analyses is therefore not affected by the proposed change.

Therefore, the proposed TS change does not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this

review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Attorney for licensee: J. W. Durham, Sr., Esquire, Sr. V. P. and General Counsel, Philadelphia Electric Company, 2301 Market Street, Philadelphia, Pennsylvania 19101

NRC Project Director: Charles L. Miller

Philadelphia Electric Company, Public Service Electric and Gas Company,Delmarva Power and Light Company, and Atlantic City Electric Company,Docket No. 50-277, Peach Bottom Atomic Power Station, Unit No. 2,York County, Pennsylvania

Date of application for amendment: May 13, 1994

Description of amendment request: The proposed amendment would extend the Type A test (i.e., Containment Integrated Leak Rate Test) interval on a one-time basis.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed Technical Specifications (TS) change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The accidents which are potentially negatively impacted by the proposed change are any Loss of Coolant Accident (LOCA) inside primary containment as described in the PBAPS [Peach Bottom Atomic Power Station], Units 2 and 3 UFSAR [Updated Final Safety Analysis Report].

The proposed change increases the surveillance interval of the 10 CFR [Part] 50, Appendix J Type A test (i.e., Containment Integrated Leakage Rate Test (CILRT)) from 42 months to 66 months. This test is performed to determine that the total leakage from containment does not exceed the maximum allowable primary containment leakage rate (i.e., designated La) at a calculated peak containment internal pressure (Pa), as defined in 10 CFR [Part] 50, Appendix J. The primary containment limits the leakage of radioactive material during and following design bases accidents in order to comply with the offsite dose limits specified in 10 CFR [Part] 100. Accordingly, the primary containment is not an accident initiator, it is an accident mitigator. No physical or operational changes to the containment structure, plant systems, or components would be made as a result of the proposed change. Therefore, the probability of occurrence of an accident previously evaluated is not increased.

The failure effects that are potentially created by the proposed one-time TS change have been considered. The relevant components important to safety which are potentially affected are the containment structure, plant systems, and containment penetrations. There are no physical or operational changes to any plant equipment associated with the proposed TS change. Therefore, the probability or consequences of a malfunction of equipment important to safety is not increased.

The proposed change introduces the possibility that primary containment leakage in excess of the allowable value (i.e., La) would remain undetected during the proposed 24 month extension of the interval between the second and third Type A test. The types of mechanisms which could cause degradation of the primary containment can be categorized into two types. These are: 1) degradation due to work which is performed as part of a modification or maintenance activity on a component or system (i.e., activity-based), or; 2) degradation resulting from a time-based failure mechanism.

A review of activity-based failure mechanisms has determined that the potential from degradation due to activity based mechanisms is minimal.

Regarding the potential for primary containment degradation due to a time-based mechanism, we have concluded that the PBAPS Local Leak Rate Test (LLRT) program would identify most types of penetration leakage. The LLRT program involves measurement of leakage from Type B and Type C primary containment penetrations as defined in 10 CFR [Part] 50, Appendix J.

The 10 CFR [Part] 50, Appendix J, Type B tests are intended to detect local leaks and to measure leakage across pressure containing or leakage-limiting boundaries other than valves, such as containment penetrations incorporating resilient seals, gaskets, expansion bellows, flexible seal assemblies, door operating mechanism penetrations that are part of the containment system, doors, and hatches. 10 CFR [Part] 50, Appendix J, Type C testing is intended to measure reactor system primary containment isolation valve leakage rates. The frequency of the Type B and Type C testing is not being altered by the proposed TS change. [However, in an April 18, 1994 letter, the licensee has requested a 60-day extension of the Type B and Type C testing.] The acceptance criterion for Type B and Type C leakage is 0.6 La (i.e., 0.3 % wt/day) which, when compared to the Type A test acceptance criterion of 0.75 La (i.e., 0.375 % wt/day), is a significant portion of the Type A test allowable leakage.

The proposed TS change only extends the interval between two consecutive Type A tests. The Type B and Type C tests will be performed as required. The Type B and Type C tests will continue to be used to confirm that the containment isolation valves and penetrations have not degraded. Containment system components that would not be tested are the containment structure itself and small diameter instrumentation lines. Time-based degradation of any of the instrumentation lines would most likely be identified by faulty instrument indication or during instrument calibrations that will be performed during the PBAPS, Unit 2 refueling outage 10. In examining the potential for a time-based failure mechanism that could cause significant degradation of the containment structure, we concluded that the risk, if any, of such a mechanism is small since the design requirements and fabrication specifications established for the containment structure are in themselves adequate to ensure containment leak tight integrity.

Based on the above evaluation, we have concluded that the proposed TS change will have a negligible impact on the consequences of any accident previously evaluated. To support this conclusion, a review of the PBAPS, Unit 2 CILRT history was performed. This review identified that the only failure mechanism that has been detected during the past CILRTs is an activity based component failure, and that there is no indication of any time-based degradation that would not be identified during performance of Type B and Type C tests.

Although this review concluded that the risk of undetected primary containment degradation is not increased, the Individual Plant Examination (IPE) for PBAPS, Units 2 and 3, was also reviewed in order to assess the impact of exceeding the primary containment allowable leakage rate, if a non-mechanistic activity type (i.e., time-based) failure were to occur. The IPE included an evaluation of the effect of various containment leakage sizes under different scenarios. The IPE results showed that a containment leakage rate of 35% wt/day would represent less than a 5% increase in risk to the public being exposed to radiation. This evaluation was based on a study performed by Oak Ridge National Laboratory for light water reactors that evaluated the impact of leakage rates on public risk. As stated earlier, the current value of La for PBAPS, Unit 2, is 0.5% wt/day, which is significantly less than the 35% wt/day discussed in the IPE evaluation.

Therefore, the proposed TS change involving a one-time extension of the Type A test interval and performing the third Type A test after the second Appendix J 10-year service period will not involve an increase in the probability or consequences of an accident previously evaluated.

2. The proposed TS change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change is an increase of a surveillance test interval and does not make any physical or operational changes to existing plant systems or components. Primary containment acts as an accident mitigator not initiator. Therefore, the possibility of a different type of accident than any previously evaluated or the possibility of a different type of equipment malfunction is not introduced.

Therefore, the proposed TS change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed TS change does not involve a significant reduction in a margin of safety.

The total primary containment leakage rate ensures that the total containment leakage volume will not exceed the value assumed in the safety analyses at the peak accident pressure. As an added conservatism, the measured overall leakage rate is further limited to less than or equal to 0.75 La during performance of periodic tests to account for possible degradation of the containment leakage barriers between leakage tests. There is the potential that containment degradation could remain undetected during the proposed 24 month surveillance interval extension and result in the containment leakage exceeding the allowable value assumed in safety analysis. A review of activity-based failure mechanisms has determined that the potential from degradation due to activity based mechanisms is minimal.

Regarding the potential for primary containment degradation due to a time-based mechanism, we have concluded that the PBAPS Local Leak Rate Test (LLRT) program would identify most types of penetration leakage. The LLRT program involves measurement of leakage from Type B and Type C primary containment penetrations as defined in 10 CFR [Part] 50, Appendix J.

The 10 CFR [Part] 50, Appendix J, Type B tests are intended to detect local leaks and to measure leakage across pressure containing or leakage-limiting boundaries other than valves, such as containment penetrations incorporating resilient seals, gaskets, expansion bellows, flexible seal assemblies, door operating mechanism penetrations that are part of the containment system, doors, and hatches. 10 CFR [Part] 50, Appendix J, Type C testing is intended to measure reactor system primary containment isolation valve leakage rates. The frequency of the Type B and Type C testing is not being altered by the proposed TS change.

Finally, a review of the results of previous PBAPS, Unit 2 CILRT results concluded that the only failure mechanism which has been detected during the past CILRTs is activity-based and that there is no indication of time-based failures that would not be identified during performance of Type B and Type C tests. Therefore, we have concluded that the proposed extended test interval would not result in a non-detectable PBAPS, Unit 2 primary containment leakage rate in excess of the allowable value (i.e., 0.5% wt/day) established by the TS and 10 CFR [Part] 50, Appendix J.

Therefore, the proposed TS change does not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room Location: Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Attorney for licensee: J. W. Durham, Sr., Esquire, Sr. V. P. and General Counsel, Philadelphia Electric Company, 2301 Market Street, Philadelphia, Pennsylvania 19101

NRC Project Director: Charles L. Miller

South Carolina Electric & Gas Company, South Carolina Public ServiceAuthority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of amendment request: March 11, 1994

Description of amendment request: The proposed amendment would reduce the allowed outage time for the residual heat removal (RHR) suction relief valves (SRVs) in accordance with the guidance of Generic Letter (GL) 90-06.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The probability or consequences of an accident previously evaluated is not significantly increased.

This change decreases the allowed outage time of a Low Temperature Overpressure Protection (LTOP) system. There is no hardware, software, or operating methodology change, so there is no increase in probability or consequences. Since the time allowed for one train of this equipment to be inoperable is shorter, the probability of an overpressure event not being mitigated has also been reduced. The consequences will not change unless the system or operation of the system changes.

2. [The proposed change will not] [c]reate the possibility of a new or different kind of accident from any previously analyzed.

As this proposed change will not involve any changes to hardware, software, or operating practices, it cannot create any possibility of new or different kinds of accidents from those previously analyzed. The RHR SRVs are intended to provide protection against a rupture of a pressure boundary from an over-pressure condition which has the potential to result in core uncovery. The original design basis of the plant complies with the requirements of 10 CFR 50 Appendix G and uses the RHR SRVs to meet the fracture toughness requirements of 10 CFR 50 Appendix G. This change only increases the availability of this protection and does not create any new or different kinds of accidents.

3. [The proposed amendment does not] [i]nvolve a significant reduction in a margin of safety.

SCE&G already has administrative controls in place to minimize the possibility of an overpressure event occurring as well as to assure that there are two trains of LTOP equipment operable during the modes when the potential exists for this event. There are controls to preclude the inadvertent start-up of a Reactor Coolant Pump or Charging Pump and controls to ensure that both RHR Suction Isolation Valves for each train are open and remain open except for testing and maintenance. This alignment is maintained until the RHR System is realigned for its ECCS function. These controls are proceduralized in plant operating procedures.

This change does not involve a significant reduction in a margin of safety as nothing is changed which affects the margin in a negative direction. The decrease in AOT actually increases the margin since the allowed time for one train to be inoperable has been reduced.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180

Attorney for licensee: Randolph R. Mahan, South Carolina Electric & Gas Company, Post Office Box 764, Columbia, South Carolina 29218

NRC Project Director: William H. Bateman

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment request: May 16, 1994 (TS 94-03)

Description of amendment request: The proposed change would remove Table 3.3-2, "Reactor Trip System Instrumentation Response Times," and Table 3.3-5, "Engineered Safety Features Response Times," from the technical specifications and incorporate the limits into the Updated Final Safety Analysis Report. In addition, references to these tables in Specifications 3.3.1.1, 3.3.2.1, and 4.3.1.1.3 (for Unit 1) and 3.3.1, 3.3.2, and 4.3.1.1.3 (for Unit 2) would be removed. A footnote would be added to Specification 4.3.1.1.3 indicating that neutron detectors are exempt from response time testing. These changes have been proposed in accordance with Generic Letter 93-08. A change to the Bases would indicate that the response time limits would be maintained in the Updated Final Safety Analysis Report.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

TVA has evaluated the proposed technical specification (TS) change and has determined

that it does not represent a significant hazards consideration based on criteria established in 10 CFR 50.92(c). Operation of Sequoyah Nuclear Plant (SQN) in accordance with the proposed amendment will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change does not alter the response time limit requirements for the reactor trip or engineered safety feature actuation systems or surveillance testing and frequency. Placing these limits in the Updated Final Safety Analysis Report (UFSAR) will ensure the plant design basis is maintained in accordance with 10 CFR 50.59. Since no actual changes to response time limits or surveillance requirements are involved, the probability or consequences of an accident are not increased.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

The proposed changes does not affect any plant equipment, functions, or setpoint by relocating response time limits to the UFSAR. Therefore, the possibility of a new or different kind of accident is not created.

3. Involve a significant reduction in a margin of safety.

The proposed change will continue to require SQN to maintain the plant functions at the required setpoints necessary for the design basis and to support the accident analysis. The margin of safety is not reduced because there is no change to plant functions and the 10 CFR 50.59 process will continue to ensure the plant design basis is appropriately maintained.

The NRC has reviewed the licensee's analysis and, based on thisreview, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11H, Knoxville, Tennessee 37902

NRC Project Director: Frederick J. Hebdon

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment request: May 18, 1994 (TS 94-05)

Description of amendment request: The proposed change would add a note to the action statement for Limiting Condition for Operation 3.7.7, "Control Room Emergency Ventilation System," indicating that the provisions of TS 3.0.3 are not applicable while performing actions associated with a tornado warning.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

TVA has evaluated the proposed technical specification (TS) change and has determined that it does not represent a significant hazards consideration based on criteria established in 10 CFR 50.92(c). Operation of Sequoyah Nuclear Plant (SQN) in accordance with the proposed amendment will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The control room emergency ventilation system (CREVS) was designed to ensure control room habitability during accident conditions. The design basis of SQN does not include an accident creating a contaminated air condition concurrent with a tornado. The ability of the CREVS to perform its design function has not been affected by this change. The proposed change will not increase the possibility or consequences of an accident.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

An accident involving a contaminated air condition and a tornado have been analyzed as part of the SQN design basis. Both accidents are assumed to occur independently. This change does not create a new or different accident not previously analyzed.

3. Involve a significant reduction in a margin of safety.

The design basis of the CREVS is not impacted by this TS change. There is no change in any assumptions made in the Final Safety Analysis Report. Therefore, there is no reduction in the margin of safety as a result of this change.

The NRC has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11H, Knoxville, Tennessee 37902

NRC Project Director: Frederick J. Hebdon

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment request: March 19, 1994; superseded May 16, 1994 (TS 93-04)

Description of amendment request: The proposed change would clarify and consolidate the technical specifications (TS) regarding the dual function of the containment vacuum relief system (i.e., the vacuum relief and containment isolation functions). The proposed changes would revise TS 3/4.6.6, "Vacuum Relief Valves," to indicate the actions that would be required should one or more vacuum relief (VR) lines be incapable of performing its containment isolation function or incapable of performing its VR function. In addition, the testing requirements would be revised to add specific requirements and reflect the inservice test (IST) program by relocating the testing requirements from TS 4.6.3.2.d and Table 3.6-2 to the new TS 4.6.6 (and to Sequoyah's IST program). Other proposed changes affect Bases 3/4.6.6 section and TS index pages to reflect the proposed changes indicated above. This proposed change was originally noticed on May 12, 1993 (58 FR 28060), which is superseded by this notice.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

TVA has evaluated the proposed technical specification (TS) change and has determined that it does not represent a significant hazards consideration based on criteria established in 10 CFR 50.92(c). Operation of Sequoyah Nuclear Plant (SQN) in accordance with the proposed amendment will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

TVA's proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed change does not increase the probability of an accident since the proposed change does not affect any plant systems, equipment, or components. The dual design functions of SQN's containment vacuum relief (VR) system (i.e., provide containment VR and containment isolation) are not affected. The consequences of an event are not significantly increased by the proposed increase in allowed outage time from 4 hours to 72 hours for returning an inoperable VR system to operable status. The probability of an event during the relatively short duration of the TS completion times, in conjunction with the redundancy provided in the design of the system, provide sufficient assurance that the VR lines are available for mitigating an accident or abnormal event.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

No physical modification is being made to any plant hardware or plant operating setpoints, limits, or operating procedures as a result of this change. TVA's proposed change provides a TS improvement that clarifies the TS requirements associated with the dual design function of SQN's VR system. The proposed change removes the potential

for creating a conflict between Specification 3/4.6.3, "Containment Isolation Valves," and Specification 3/4.6.6, "Vacuum Relief Valves."

The proposed change does not alter any accident analysis or any assumptions used to support the accident analyses. The containment leakage assumptions used to determine offsite dose limits for compliance with 10 CFR 100 are not affected. The analysis that supports the containment VR system also remains unchanged. The proposed 72-hour and 1-hour completion times for returning an inoperable VR line to operable status are consistent with the NUREG-1431 and NUREG-1433. Consequently, the proposed change does not create the possibility of a new or different kind of accident from any previously analyzed.

3. Involve a significant reduction in a margin of safety.

The margin of safety provided by the design of SQN's containment VR system remains unchanged. TVA's proposed change does not affect the VR function or the containment isolation function that currently exists in SQN TSs. The proposed change eliminates the potential for conflicting requirements within SQN TSs and ensures that the proper action is taken to preserve these dual design functions while the plant is in Modes 1, 2, 3, or 4. TVA's proposed change provides a TS improvement that combines these functional requirements into a single specification. Both VR and containment isolation requirements will continue to be provided. Accordingly, the proposed change does not involve a reduction in the margin of safety.

The NRC has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Chattanooga-Hamilton County Library,1101 Broad Street, Chattanooga, Tennessee 37402

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11H, Knoxville, Tennessee 37902

NRC Project Director: Frederick J. Hebdon

TU Electric Company, Docket Nos. 50-445 and 50-446, Comanche Peak Steam Electric Station, Units 1 and 2, Somervell County, Texas

Date of amendment request: February 14, 1993

Brief description of amendments: The proposed amendments would revise the Comanche Peak Steam Electric Station (CPSES), Units 1 and 2, technical specifications (TS) by (1) changing the allowable value for Unit 2 overtemperature N-16 and pressurizer pressure-low setpoints, (2) deleting Equation 2.2-1 from TS 2.2.1, and (3) administrative changes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of a previously evaluated accident.

Overtemperature N-16, Unit 2

Incorporation of the increased temperature uncertainties reported by Rosemount will change the Allowable Value of the Overtemperature N-16 trip function. The change does not affect the Safety Analysis Limits assumed in the accident analysis. Because the change only impacts the Allowable Value for a setpoint and does not affect any system designs or operations, the change does not increase the probability of an accident. Although the Allowable Value is changed in the conservative direction, the change assures that, considering the newly identified transmitter uncertainty, the trip actuates prior to the conditions assumed in the accident analyses. As such, there is no impact on the consequences of any accidents previously evaluated.

Pressurizer Pressure - Low, Unit 2

The added uncertainties change the Allowable Value of the Unit 2 Pressurizer Pressure-Low Reactor Trip function. The change does not affect the Safety Analysis Limits assumed in the accident analysis. Because the change only impacts the Allowable Value for a setpoint and does not affect the system design or operations, the change does not increase the probability of an accident. Although the Allowable Value is changed in the conservative direction, the change assures that, considering the newly identified transmitter uncertainty, the trip actuates prior to the conditions assumed for the accident analyses. As such, there is no impact on the consequences of any accidents previously evaluated.

Equation 2.2-1

The changes to Specifications 2.2.1 and 3.3.2, to Tables 2.2-1 and 3.3-3, and to the bases sections will require recalibration of the channel and removal of any accumulated errors in any function whose "as found" setpoint is found to be less conservative than its allowable value. These changes delete a potentially less conservative option and will result in actual channel operation closer to the nominal setpoint and within the allowable value band. These changes will in effect validate one of the assumptions made in the accident analysis and will not increase the probability or consequences of any accident evaluated in the Safety Analysis Report.

Administrative Changes

The changes to combine the Unit 1 and Unit 2 line items into a dual Unit line if the Trip Setpoint and Allowable Value values are the same is administrative and meant as a human factors improvement for operator convenience. The change does not affect the operation of any equipment, the operating point of any equipment, nor any equipment hardware and thus does not increase the probability or consequences of any accident evaluated in the Safety Analysis Report.

2. The proposed change does not create the possibility of a new or different kind of accident from any previously analyzed accident.

Overtemperature N-16 and Pressurizer Pressure - Low, Unit 2

As the proposed amendment changes only the Unit 2 Allowable Values of the Overtemperature N-16 reactor trip and the Pressurizer Pressure-Low reactor trip and does not have any physical effect on the transmitter or circuitry, there are no new or different types of accident introduced.

Equation 2.2-1

Deletion of this equation and its associated action statements, definitions and values does not introduce any physical changes to any systems, structures, or components. The change merely assures that setpoints which are less conservative than their Allowable Value are recalibrated prior to being declared operable. These changes do not introduce any new credible failure modes which may create the possibility of a new or different accident.

Administrative Changes

Combining line items for Unit 1 and Unit 2 into a dual Unit entry for administrative purposes does not introduce any new credible failure modes which may create the possibility of a new or different accident.

3. The proposed change does not involve a significant reduction in the margin of safety.

Overtemperature N-16 and Pressurizer Pressure - Low, Unit 2

Incorporation of the added temperature uncertainties of the Rosemount transmitters assures that the safety analysis limits assumed in the accident analyses for Overtemperature N-16 and Pressurizer Pressure-Low reactor trip functions for Unit 2 are met. There is no change in the acceptance criteria or the results of these analyses due to this change. Thus there is no effect on the margin of safety.

Equation 2.2-1

Deletion of Equation 2.2-1, related actions and associated definitions and values, merely eliminates one option to assure that the safety analysis assumptions are met. This option is not presently in use and the accident analyses assumptions have been and will continue to be met using the other option (to re-calibrate channels prior to restoring operability). Thus the margin of safety is unaffected.

Administrative Changes

Combining the Unit 1 and Unit 2 line items of Table 2.2-1 for RTS [Reactor Trip Systems] functions and of Table 3.3-3 for ESFAS [Engineered Safety Features Actuation System] functions into dual unit entries does not change the Trip Setpoint or the Allowable Value for the functions. The margin of safety is unaffected.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the

amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Texas at Arlington Library, Government Publications/Maps, 701 South Cooper, P.O. Box 19497, Arlington, Texas 76019

Attorney for licensee: George L. Edgar, Esq., Newman and Holtzinger, 1615 L Street, N.W., Suite 1000, Washington, D.C. 20036

NRC Project Director: William D. Beckner

Wolf Creek Nuclear Operating Corporation, Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: April 19, 1994

Description of amendment request: The proposed amendment revises Technical Specification 6.2.2.g to reflect a title designation change within the Wolf Creek Nuclear Operating Corporation (WCNOC) organization. The title of Supervisor Operations is being changed to Assistant Manager Operations. The title change does not represent any change in reporting relationships, job responsibilities, or overall organizational commitments.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated. This change involves an administrative change to the WCNOC organization and to the position title and as such has no effect on plant equipment or the technical qualification of plant personnel.

2. The proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed change does not create the possibility of a new or different kind of accident from any previously evaluated. This change is administrative in nature and does not involve any change to installed plant systems or the overall operating philosophy of Wolf Creek Generating Station.

3. The proposed change does not involve a significant reduction in the margin of safety.

The proposed change does not involve a significant reduction in a margin of safety. This change does not involve any changes in overall organizational commitments. A position title change alone does not reduce any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room locations: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, N.W., Washington, D.C. 20037

NRC Project Director: Theodore R. Quay

Wolf Creek Nuclear Operating Corporation, Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: April 19, 1994

Description of amendment request: The proposed amendment revises Technical Specification Table 3.6-1, "Containment Isolation Valves," by deleting reference to two (2) valves. The Technical Specification change reflects a planned modification which removes the essential service water (ESW) containment air cooler return line isolation valve bypass valves and associated piping.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

After the design modification is completed the ESW Containment Penetrations will be provided with stainless steel isolation valves, which will be provided with automatic SIS [safety injection signal] actuation signals to open automatically to provide required cooling water flow to the Containment Air Coolers following a LOCA [loss-of-coolant accident] or MSLB [main steamline break]. Replacement of the current carbon steel isolation valves with stainless steel valves and removing the unnecessary bypass lines and bypass isolation valves will reduce the amount of seat leakage currently experienced with these valves.

The probability of occurrence of a previously evaluated accident is not increased because this modification does not introduce any new potential accident initiating conditions. The consequences of an accident previously evaluated is not increased because the ability of containment to restrict the release of any fission product radioactivity to the environment will not be degraded by this modification.

2. The proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed modification will reduce the number of containment isolation valves and replace several carbon steel isolation valves with stainless steel valves, which will be less susceptible to erosion and corrosion. Thus, potential system leakage will be reduced by this modification, while valve reliability will be enhanced. The new valves are designed to the original ESW System requirements, and removal of the bypass lines and bypass isolation valves will not result in a malfunction of any other plant equipment. Therefore, this proposed modification will not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in the margin of safety.

The removal of the bypass lines and bypass isolation valves will not adversely affect containment isolation capability for credible accident scenarios. Due to a previous design change, the bypass lines are no longer required to ensure adequate cooling flow to the Containment Air Coolers. In addition, the operability and reliability of the remaining isolation valves will be enhanced by replacing the current carbon steel valves with stainless steel valves.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room locations: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, N.W., Washington, D.C. 20037

NRC Project Director: Theodore R. Quay

Previously Published Notices Of Consideration Of Issuance Of Amendments To Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, And Opportunity For A Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued

involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Carolina Power & Light Company, et al., Docket No. 50-400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of amendment request: May 11, 1994

Brief description of amendment request: The amendment would allow reduced power operation as a function of reactor coolant system (RCS) total flow rate for flow rate reductions of up to 5 percent below the currently specified flow rate. Operation will be allowed at total flow rates slightly lower than (293,540 gpm X (1.0 plus C1)) if rated thermal power (RTP) is reduced by 1.5 percent for each one percent that RCS total flow is less than this rate. This change would provide for needed operational margin and flexibility without the unnecessary penalty of a large power reduction.

Date of publication of individual notice in **Federal Register:** May 25, 1994 (59 FR 27079)

Expiration date of individual notice: June 24, 1994

Local Public Document Room location: Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605.

Northeast Nuclear Energy Company, Docket No. 50-245, Millstone NuclearPower Station, Unit 1, New London County, Connecticut

Date of amendment request: May 27, 1994

Description of amendment request: The amendment would add a new section to Technical Specification Section 6.17 and would require that procedures be in place to provide for monitoring and sampling of emergency service water (ESW) discharge flow during accident conditions when a positive differential pressure cannot be maintained between ESW and low pressure coolant injection (LPCI) in the LPCI heat exchangers.

Date of publication of individual notice in **Federal Register:** June 7, 1994 (59 FR 29448)

Expiration date of individual notice: July 7, 1994

Local Public Document Room location: Learning Resource Center, Three Rivers Community-Technical College, Thames Valley Campus, 574 New London Turnpike, Norwich, Connecticut 06360.

Notice Of Issuance Of Amendments To Facility Operating LIcenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document rooms for the particular facilities involved.

Arizona Public Service Company, et al., Docket Nos. STN 50-528, STN 50-529, and STN 50-530, Palo Verde Nuclear Generating Station, Units 1, 2, and 3, Maricopa County, Arizona

Date of application for amendments: February 18, 1994, as supplemented by letter dated May 16, 1994

Brief description of amendments: These amendments modify Technical Specification (TS) Figure 3.2-1, "REACTOR COOLANT COLD LEG vs CORE POWER LEVEL," of TS 3/4.2.6, "REACTOR COOLANT COLD LEG TEMPERATURE," for Units 1 and 3 to include the cold leg temperature between 552°F and 562°F at core power levels between 90 percent and 100 percent within the AREA OF ACCEPTABLE OPERATION. Also, the proposed amendments modify TS 3/4.1.1.4, "MINIMUM TEMPERATURE FOR CRITICALITY," and BASES 3/4.1.1.4, "MINIMUM TEMPERATURE FOR CRITICALITY," to allow the minimum temperature for criticality to be established at 545°F, rather than the current value of 552°F, to establish the surveillance temperature at 552°F, rather than the current 557°F, and to clarify the BASES for this TS.

Date of issuance: June 7, 1994

Effective date: NPF-41 and NPF-51, prior to startup from the next refueling outage; NPF-74, no later than 45 days from the date of issuance.

Amendment Nos.: 77, 63, and 49

Facility Operating License Nos. NPF-41, NPF-51, and NPF-74: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 30, 1994 (59 FR 14886) The additional information contained in the May 16, 1994, letter was clarifying in nature, was within the scope of the initial notice, and did not affect the NRC staff's proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 7, 1994.No significant hazards consideration comments received: No.

Local Public Document Room location: Phoenix Public Library, 12 East McDowell Road, Phoenix, Arizona 85004

Carolina Power & Light Company, et al., Docket Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County,North Carolina

Date of application for amendments: April 14, 1994, as supplemented on May 16, 1994.

Brief description of amendments: The amendments change the Technical Specifications (TS) to relocate the Instrument Response Time Tables to the Updated Final Safety Analysis Report in accordance with NRC Generic Letter 93-08.

Date of issuance: May 31, 1994

Effective date: May 31, 1994

Amendment Nos.: 171 and 202

Facility Operating License Nos. DPR-71 and DPR-62. Amendments revise the Technical Specifications.

Date of initial notice in **Federal Register:** April 26, 1994 (59 FR 21785) The May 16, 1994, letter provided clarifying information that did not change the initial no significant hazards

consideration determination.The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 31, 1994.No significant hazards consideration comments received: No.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

Commonwealth Edison Company, Docket Nos. 50-373 and 50-374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of application for amendments: August 20, 1993, as supplemented by letters dated December 27, 1993, March 22, 1994, and May 31, 1994.

Brief description of amendments: The amendments delete Technical Specification Section 3/4.6.1.5, "Primary Containment Structural Integrity" which includes Surveillance Requirements for the Primary Containment Tendons and adds a Technical Specification requirement to establish, implement, and maintain a comprehensive containment tendon program. The containment tendon program is based on Regulatory Guide 1.35, Rev. 3, and is titled "Inservice Inspection Program for Post Tensioning Tendons." The new program will allow the Unit 1 and 2 containments to be tested as twin containments.

Date of issuance: June 3, 1994

Effective date: June 3, 1994

Amendment Nos.: 100 and 84

Facility Operating License Nos. NPF-11 and NPF-18. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 10, 1993 (58 FR 59746) The supplemental information submitted December 27, 1993, March 22, 1994, and May 31, 1994, contained clarifying information related to the original request, and did not change the no significant hazards finding. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 3, 1994.No significant hazards consideration comments received: No

Local Public Document Room location: Public Library of Illinois Valley Community College, Rural Route No. 1, Oglesby, Illinois 61348.

Commonwealth Edison Company, Docket Nos. 50-254 and 50-265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of application for amendments: December 20, 1993

Brief description of amendments: The amendments increase the minimum critical power ratio (MCPR) from 1.06 to 1.07 for Quad Cities, Units 1 and 2, as a result of the planned implementation of GE 8x8NB-3 fuel for Cycle 14 of each unit.

Date of issuance: June 10, 1994

Effective date: June 10, 1994

Amendment Nos.: 146 and 142

Facility Operating License Nos. DPR-29 and DPR-30. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 17, 1994 (59 FR 10003) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 10, 1994.No significant hazards consideration comments received: No

Local Public Document Room location: Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021.

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut

Date of application for amendment: February 25, 1994

Brief description of amendment: The amendment adds a new Technical Specification 3/4.7.12, "Ultimate Heat Sink" and its associated Bases Section 3/4.7.12.

Date of Issuance: May 31, 1994

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 172

Facility Operating License No. DPR-61. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 13, 1994 (59 FR 17596) The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated May 31, 1994.No significant hazards consideration comments received: No.

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Consolidated Edison Company of New York, Docket No. 50-247, Indian PointNuclear Generating Unit No. 2, Westchester County, New York

Date of application for amendment: December 6, 1993

Brief description of amendment: The amendment revises the Technical Specifications (TSs) to provide several temporary one-time changes that are necessary to support the fuel out, chemical decontamination program that is currently scheduled for the upcoming 1995 refueling outage. Specifically, the amendment revises the definition of the cold shutdown condition in TS 1.2.1 by changing the upper limit of T_{avg} for the cold shutdown condition from 200°F to 250°F. The amendment also revises the definition of the hot shutdown condition in TS 1.2.2 by changing the lower limit of T_{avg} for the hot shutdown condition from greater than 200°F to greater than 250°F.

Date of issuance: June 9, 1994

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 170

Facility Operating License No. DPR-26: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 16, 1994 (59 FR 7687) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 9, 1994.No significant hazards consideration comments received: No

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: January 27, 1994

Brief description of amendments: The amendments would eliminate the humidity control functions of the containment purge (VP) system humidistats by deleting the surveillance requirement (SR) for periodic verification of automatic isolation of the VP system on a high relative humidity (RH) test signal and heater failure from the existing SR for Catawba Units 1 and 2.

Date of issuance: May 25, 1994

Effective date: May 25, 1994

Amendment Nos.: 118 and 112

Facility Operating License Nos. NPF-35 and NPF-52: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 2, 1994 (59 FR 10005) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 25, 1994.No significant hazards consideration comments received: No

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: April 29, 1993, as supplemented May 16, 1994

Brief description of amendments: The amendments delete License Condition 2.C.(20) from Facility Operating License NPF-35 for Unit 1, and License Condition 2.C.(11) from Facility Operating License NPF-52 for Unit 2. These conditions address engine teardown and inspection required following the crankshaft failure of an Enterprise emergency diesel generator at the Shoreham Nuclear Plant.

Date of issuance: June 2, 1994

Effective date: June 2, 1994

Amendment Nos.: 119/113

Facility Operating License Nos. NPF-35 and NPF-52: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 26, 1993 (58 FR 30192) The May 16, 1994, letter provided additional information that did not change the scope of the April 29, 1993, application and proposed initial no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 2, 1994.No significant hazards consideration comments received: No

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of application for amendments: January 13, 1993, as supplemented January 28, February 17, and April 26, 1993.

Brief description of amendments: The amendments revise Technical Specification Table 2.2.1, Sections 3/4.1.2.5, 3/4.1.2.6, 3/4.5.1.1, 3/4.5.5, and their associated Bases, and Technical Specification 6.9.1.9, to relocate the values of certain cycle-dependent limits from the Technical Specifications to the Core Operating Limits Report.

Date of issuance: May 31, 1994

Effective date: May 31, 1994

Amendment Nos.: 143 and 125

Facility Operating License Nos. NPF-9 and NPF-17: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 4, 1993 (58 FR 41503) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 31, 1994.No significant hazards consideration comments received: No.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223.

Duke Power Company, Docket Nos. 50-269, 50-270, and 50-287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of application of amendments: March 23, 1994, as supplemented April 14, May 11, and May 17 (two letters) 1994.

Brief description of amendments: The amendments relating to the March 23, 1994, application revise Technical Specification (TS) 6.9.2, "Core Operating Limits Report," (COLR) to include a reference to a Duke Power Company Topical Report describing an analytical method for determining the core operating limits. Specifically, the amendments add: "(4) DPC-NE-1004A, Nuclear Design Methodology Using CASMO-3/SIMULATE-3P," to TS 6.9.2.

The May 11, 1994, letter added a statement to TS 6.9.2 that the approved methods used to determine the core operating limits given in TS 6.9.1 are specified in the COLR. The May 11 and 17, 1994, letters provided information regarding Duke Power's transition from the EPRI-NODE-P based methodology to the simulate methodology. Revision 1 to the COLR for Oconee 1 Cycle 16 was submitted by letter dated May 17, 1994.

The April 14, 1994, letter revised the TS Table of Contents to delete reference to Table 4.4-1. This table was removed from the TS by an amendment issued on September 16, 1993.

Date of Issuance: June 8, 1994

Effective date: June 8, 1994

Amendment Nos.: 206, 206, and 203

Facility Operating License Nos. DPR-38, DPR-47, and DPR-55: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 28, 1994 (59 FR 22007) The April 14, May 11, and May 17 (two letters), 1994, letters provided additional information that did not change the scope of the March 23, 1994, application and the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 8, 1994. No significant hazards consideration comments received: No

Local Public Document Room location: Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina 29691

Entergy Operations, Inc., Docket No. 50-382, Waterford Steam ElectricStation, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: December 23, 1993

Brief description of amendment: The amendment revised the Technical Specifications in accordance with Generic Letter 93-05, "Line Item Technical Specification Improvements To Reduce Surveillance Requirements For Testing During Power Operation" for radiation monitors, pressurizer heaters, reactor coolant isolation valves, and auxiliary feedwater pumps.

Date of issuance: June 6, 1994

Effective date: June 6, 1994

Amendment No.: 96

Facility Operating License No. NPF-38. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 16, 1994 (59 FR 7689) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 6, 1994.No significant hazards consideration comments received: No.

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-424 and 50-425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of application for amendments: December 30, 1993

Brief description of amendments: The proposed change would allow a one time extension of the allowable outage time for each residual heat removal (RHR) pump from 3 to 7 days to allow modifications to the RHR system while the plant is in Mode 1.

Date of issuance: May 31, 1994

Effective date: May 31, 1994

Amendment Nos.: 72 and 51

Facility Operating License Nos. NPF-68 and NPF-81: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 2, 1994 (59 FR 10007) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 31, 1994.No significant hazards consideration comments received: No

Local Public Document Room location: Burke County Library, 412 Fourth Street, Waynesboro, Georgia 30830

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-424 and 50-425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of application for amendments: November 19, 1993

Brief description of amendments: The amendments modify Technical Specification Table 3.3-2, Engineered Safety Features Actuation System Instrumentation, modifying the Mode for which Item 6.e, "Trip of All Main Feedwater Pumps, Start Motor-Driven Pumps," is required to be operable.

Date of issuance: June 1, 1994

Effective date: June 1, 1994

Amendment Nos.: 73 and 52

Facility Operating License Nos. NPF-68 and NPF-81: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 22, 1993 (58 FR 67847) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June, 1, 1994.No significant hazards consideration comments received: No

Local Public Document Room location: Burke County Library, 412 Fourth Street, Waynesboro, Georgia 30830

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-424 and 50-425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of application for amendments: March 1, 1994

Brief description of amendments: The amendments modify Technical Specification (TS) 3.2.4, "Quadrant Power Tilt Ratio," by adding an exception to the requirements of TS 3.0.4.

Date of issuance: June 1, 1994

Effective date: June 1, 1994

Amendment Nos.: 74 and 53

Facility Operating License Nos. NPF-68 and NPF-81: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 13, 1994 (59 FR 17599) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 1, 1994.No significant hazards consideration comments received: No

Local Public Document Room location: Burke County Library, 412 Fourth Street, Waynesboro, Georgia 30830

GPU Nuclear Corporation, et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of application for amendment: February 7, 1994

Brief description of amendment: The amendment revises the plant Technical Specifications (TS) to require the Three Mile Island, Unit 1 (TMI-1) annual radioactive effluent release report for the previous calendar year be submitted by May 1 of each year. The current TS requires the TMI-1 report be submitted within 60 days after January 1 of each year. Changing the TMI-1 due date to May 1 enables the licensee to combine the reports for TMI-1 and TMI-2 into a single report with a common due date.

Date of Issuance: June 10, 1994

Effective date: As of its date of issuance to be implemented within 30 days.

Amendment No.: 185

Facility Operating License No. DPR-50. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 13, 1994 (59 FR 17600) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 10, 1994. No significant hazards consideration comments received: No.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas, Docket Nos. 50-498 and 50-499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: May 27, 1993, as supplemented by letter dated April 18, 1994.

Brief description of amendments: The amendments upgrade the fuel used in the South Texas Project reactors to Westinghouse VANTAGE 5 Hybrid (V5H) design and implement several analytical and operational upgrades into the South Texas Project Updated Final Safety Analysis Report. The amendments modify related setpoints, limiting conditions for operation, surveillance requirements, design features information, and associated bases in the following specifications: TS Table 2.2-1, "Reactor Trip System Instrumentation Trip Setpoints," TS Figure 3.1-1, "Required Shutdown Margin for Modes 1 and 2," TS Figure 3.1-2, "Required Shutdown Margin for Mode 5," TS Figure 3.1-2a, "MTC versus Power Level," TS 3/4.2.5, "Power Distribution Limits - DNB Parameter," TS Table 3.3-4, "Engineered Safety Features Actuation System Instrumentation Trip Setpoints," TS 3/4.6.1.1, "Primary Containment - Containment Integrity," TS 3/4.6.1.2, "Containment Systems - Containment Leakage," TS 3/4.6.1.3, "Containment Systems - Containment Air Locks," TS 3/4.6.1.5, "Containment Systems - Air Temperature," TS 3/4.7.1.2, "Plant Systems - Auxiliary Feedwater System," TS 5.2.1, "Containment - Configuration," TS 5.3.1, "Reactor Core - Fuel Assemblies," TS 5.6.1, "Fuel Storage - Criticality," and adds TS Figure 5.6-7, "Minimum IFBA Content for In-Containment Rack Fuel Storage."

Date of issuance: May 27, 1994

Effective date: May 27, 1994, to be implemented prior to completion of Unit 1 REO5

Amendment Nos.: Unit 1 - Amendment No. 61; Unit 2 - Amendment No. 50

Facility Operating License Nos. NPF-76 and NPF-80: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 7, 1993 (58 FR 36436) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 27, 1994.No significant hazards consideration comments received: No

Local Public Document Room location: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488

Indiana Michigan Power Company, Docket No. 50-316, Donald C. Cook, Nuclear Plant, Unit No. 2, Berrien County, Michigan

Date of application for amendment: March 9, 1994, as supplemented April 13, 1994.

Brief description of amendment: The amendment revises the Technical Specifications to allow a one-time extension for Type B and C leak rate tests. The Commission had previously granted a one-time schedular exemption from the requirements in 10 CFR Part 50, Appendix J, paragraphs III.D.2.(a) and III.D.3. The exemption extends the maximum allowable time between tests by 150 days.

Date of issuance: June 1, 1994

Effective date: June 1, 1994

Amendment No.: 162

Facility Operating License No. DPR-74. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** April 28, 1994 (59 FR 22009). The April 13, 1994, supplemental letter provided clarifying information that was within the scope of the April 28, 1994, notice. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 1, 1994.No significant hazards consideration comments received: No.

Local Public Document Room location: Maud Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Tennessee Valley Authority, Docket Nos. 50-259 and 50-296, Browns Ferry Nuclear Plant, Units 1 and 3, Limestone County, Alabama

Date of application for amendment: January 14, 1992 (TS 300)

Brief description of amendments: The amendments add requirements to the Browns Ferry Units 1 and 3 Technical Specifications to ensure thermal-hydraulic stability, consistent with guidance provided by NRC Bulletin 88-07 "Power Oscillations in Boiling Water Reactors," and Supplement 1 to that Bulletin.

Date of issuance: May 31, 1994

Effective date: May 31, 1994

Amendment Nos.: 206 and 179

Facility Operating License Nos. DPR-33 and DPR-68:

Date of initial notice in **Federal Register:** April 15, 1992 (57 FR 13138) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 31, 1994.No significant hazards consideration comments received: None

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: February 8, 1994 (TS 93-14)

Brief description of amendments: The amendments increase the pressure setpoint for the motor driven auxiliary feedwater pumps switchover from the condensate storage tank to the essential raw cooling water supply.

Date of issuance: May 27,1994

Effective date: May 27, 1994

Amendment Nos.: 183 and 175

Facility Operating License Nos. DPR-77 and DPR-79: Amendments revise the technical specifications.

Date of initial notice in **Federal Register:** March 16, 1994 (59 FR 12368) The Commission's related evaluation of the amendments are contained in a Safety Evaluation dated May 27, 1994.No significant hazards consideration comments received: None

Local Public Document Room location: Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402

Vermont Yankee Nuclear Power Corporation, Docket No. 50-271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of application for amendment: July 14, 1993

Brief description of amendment: This amendment revises Sections 3.6 and 4.6 of the Technical Specifications to incorporate reactor coolant system leakage detection requirements to address Generic Letter 88-01 "NRC Position on Intergranular Stress Corrosion Cracking (IGSCC) in BWR Austenitic Stainless Steel Piping."

Date of issuance: June 1, 1994

Effective date: June 1, 1994

Amendment No.: 139

Facility Operating License No. DPR-28. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 16, 1994 (59 FR 12370) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 1, 1994 No significant hazards consideration comments received: No

Local Public Document Room location: Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont 05301.

Notice Of Issuance Of Amendments To Facility Operating Licenses And Final Determination Of No Significant Hazards Consideration And Opportunity For A Hearing (Exigent Public Announcement Or Emergency Circumstances)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing.

For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards consideration determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental

impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room for the particular facility involved.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. By July 22, 1994, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses. Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 248-5100 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to **(Project Director)**: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

Commonwealth Edison Company, Docket No. STN 50-456, Braidwood Station, Unit No. 1, Will County, Illinois

Date of application for amendments: April 25, 1994, as supplemented April 28, 1994, April 30, 1994, May 2, 1994, May 4, 1994, and May 6, 1994.

Brief description of amendments: The amendment revises Braidwood, Unit 1, technical specifications (TSs) in Appendix A to the operating license by adding additional surveillance and operating requirements to Section 4.4.5.2, "Steam Generator Tube Sample Selection and Inspection≥; Section 4.4.5.4, "Acceptance Criteria≥; Section 4.4.5.5, "Reports≥; and Section 3.4.6.2. This amendment is applicable only for 100 calendar days from the date of issuance, not counting any time when the T_{hot} temperature is below 500°F. These changes revise the existing steam generator tube repair criteria to allow usage of the voltage-based criteria identified by the staff in draft NUREG-1477 as the interim plugging criteria (IPC). Additionally, a footnote is added to TS 3.4.8 to limit the dose equivalent iodine-131 concentration to 0.35

microcuries per gram of coolant for the limited time period cited above. The Unit 1 Bases are revised to be consistent with the changes cited above.

Date of issuance: May 7, 1994

Effective date: May 7, 1994

Amendment No.: 50

Facility Operating License No. NPF-72. The amendment revised the Technical Specifications. Public comments requested as to proposed no significant hazards consideration: Yes. The NRC published a public notice of the proposed amendment, issued a proposed finding of no significant hazards consideration and requested that any comments on the proposed no significant hazards consideration be provided to the staff by the close of business on May 5, 1994. The notice was published in the Herald News and the Morris Daily Herald on May 3, 1994. The Commission's related evaluation of the amendment, finding of emergency circumstances, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated May 7, 1994.

Attorney for the licensee: Michael I. Miller, Esquire, Sidley and Austin, One First National Plaza, Chicago, Illinois 60690

Local Public Document Room location: Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

NRC Project Director: James E. Dyer

Florida Power Corporation, et al., Docket No. 50-302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of application for amendment: May 19, 1994

Brief description of amendment: The amendment revises the surveillance requirements in TS 3.3.9.3 and 3.3.10.3, to change the neutron power limits i.e., 10^5 neutron counts per second (cps) and 1E-6 amperes (amps) indications on the source and intermediate range instruments, respectively, for verifying overlap between them.

Date of issuance: May 27, 1994

Effective date: May 27, 1994

Amendment No.: 150

Facility Operating License No. DPR-72. Amendment revised the Technical Specifications. Public comments requested as to proposed no significant hazards consideration: No. The Commission's related evaluation of the amendment and the final determination of no significant hazards consideration comments are contained in a Safety Evaluation dated May 27, 1994.

Attorney for the Licensee: Harold F. Reis, Esquire, Newman and Holtzer, P.C., 1615 L Street, NW., Washington DC 20036

Local Public Document Room location: Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida 32629

NRC Project Director: Herbert N. Berkow

Northeast Nuclear Energy Company, et al., Docket No. 50-336, MillstoneNuclear Power Station, Unit No. 2, New London County, Connecticut

Date of application for amendment: May 27, 1994, as supplemented June 1, 1994.

Brief description of amendment: The amendment revises the Technical Specifications (TS) by adding a footnote to Tables 3.3-3, 3.3-4 and 3.3-5 of the Millstone Unit No. 2 TS denoting that the operability of the automatic initiation logic for the auxiliary feedwater system will rely on operator action for the remainder of Cycle 12.

Date of issuance: June 7, 1994

Effective date: As of the date of issuance, to be implemented within 30 days.

Amendment No.: 176

Facility Operating License No. NPF-49. Amendment revised the Technical Specifications.Public comments requested as to proposed no significant hazards consideration: No. The Commission's related evaluation of the amendment, finding of emergency circumstances, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated June 7, 1994.

Local Public Document Room location: Learning Resource Center, Three Rivers Community-Technical College, Thames Valley Campus, 574 New London Turnpike, Norwich, Connecticut 06360.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, Counselors at Law, City Place, Hartford, Connecticut 06103-3499.

NRC Project Director: John F. Stolz

Dated at Rockville, Maryland, this 15th day of June 1994.

For the Nuclear Regulatory Commission

Steven A. Varga,

Director, Division of Reactor Projects - I/ IIOffice of Nuclear Reactor Regulation

[Doc. 94-15025 Filed 6-21-94 8:45 am]

BILLING CODE 7590-01F

NUCLEAR REGULATORY COMMISSION

Planning Meeting With NEI on PTS

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The staff of Nuclear Regulatory Commission will meet with NEI (Nuclear Energy Institute) and other interested participants for a public meeting on Thursday, June 30, 1994, to discuss the need for or benefits of additional "experts" meetings on pressurized thermal shock (PTS), and a schedule for such meetings if they are warranted. Please note that this is not a technical meeting, and it is only for planning purposes.

DATES: Thursday, June 30, 1994.

TIME: 1 p.m.–5 p.m.

ADDRESSES: U.S. NRC Headquarters, One White Flint North, Room: 4–B–11, 11555 Rockville Pike, Rockville, MD 20852–2738.

FOR FURTHER INFORMATION CONTACT: Mr. Shah Malik, or Mr. Michael Mayfield, Materials Engineering Branch, Office of Nuclear Regulatory Research, Nuclear Regulatory Commission, MS: T–10 E–10, Washington, DC 20555–0001. Telephone: (301) 415–6007, or 415–5888.

Dated at Rockville, Maryland, this 16th day of June, 1994.

For the Nuclear Regulatory Commission.

Lawrence C. Shao,

Director, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 94–15134 Filed 6–21–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–245]

Northeast Utilities (Millstone Nuclear Plant, Unit 1); Receipt of Petition for Director's Decision Under 10 CFR 2.206

Notice is hereby given that by letter dated May 23, 1994, Anthony J. Ross (Petitioner) has requested that the Nuclear Regulatory Commission (Commission): (1) Issue a Severity Level II violation against a maintenance manager at the Millstone plant, (2) institute other sanctions against the manager, and (3) remove the maintenance manager from his position until resolution of the issues raised in his request.

Petitioner, who is employed as an electrician at the plant, asks for this action on the grounds that he was told by the maintenance manager that he must report all safety concerns to the manager before reporting them elsewhere. Petitioner asserts that this action reflects an environment of harassment, retaliation and intimidation that exists at the Millstone plant.

The request is being treated pursuant to 10 CFR 2.206 of the Commission's

regulations. The request has been referred to the Director of the Office of Enforcement. As provided by section 2.206, appropriate time 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 16 day of June 1994.

For the Nuclear Regulatory Commission.

Joseph R. Gray,

Deputy Director, Office of Enforcement.

[FR Doc. 94–15133 Filed 6–21–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–461]

Illinois Power Co.; Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–62, issued to the Illinois Power Company (the licensee), for operation of the Clinton Power Station, Unit 1, located in DeWitt County, Illinois.

The proposed amendment would modify Technical Specification 3/4.4.3.1, "Reactor Coolant System Leakage—Leakage Detection Systems," to permit continued plant operation with inoperable drywell floor drain sump flow rate monitoring instrumentation. Continued plant operation would be permitted until the first time the plant is required to be brought to COLD SHUTDOWN after July 10, 1994.

Technical Specification 3/4.4.3.1 requires that systems capable of monitoring unidentified reactor coolant system leakage rates remain operable. Rector coolant system leakage that falls on the drywell floors is channeled through the floor drains and enters the drywell floor drain sump. Prior to entering the floor drain sump, water passes through the drywell floor drain sump flow monitoring instrumentation where the instantaneous flow rates and total integrated flow are measured. The flow monitoring instrumentation consists of a V-notch weir box containing a capacitance probe. Water flows through a V-notch water level which is directly proportional to the flow through the weir box. Thus, flow through the V-notch is equal to the sump inlet flow rate. The capacitance probe is calibrated to correspond to the incoming flow rate and provides a continuous control room indication of the unidentified reactor coolant system leakage rate. An alarm is generated when the technical specification limit of 5 gpm of unidentified leakage occurs. The V-notch weir box instrumentation meets the accuracy and sensitivity requirements of Regulatory Guide 1.45 for drywell floor drain sump flow monitoring.

The licensee began to observe questionable readings from the indicated drywell floor drain sump inlet flow and subsequently declared the drywell floor drain sump monitoring instrumentation inoperable on June 10, 1994. Technical Specification 3.4.3.1 permits 30 days of continuous plant operation provided the drywell floor drain sump flow rate is monitored and determined by alternative means at least once every 8 hours.

All efforts by the licensee to restore the drywell sump inlet flow monitoring instrumentation to operable status have been unsuccessful. The instrument loop has been recalibrated and equipment external to the drywell has been verified to be operating properly. The only option remaining for the licensee is to enter the drywell in order to examine the V-notch weir box and associated capacitance probe. However, the V-notch weir box is located in a keyway beneath the reactor vessel and inside the biological shield wall. Due to the high radiation and temperatures in this location, a plant shutdown would be required before personnel would be able to reach the instrumentation.

In a letter dated June 20, 1994, the licensee requested that this amendment application be treated as an emergency because unless approved, technical specifications would require a plant shutdown. The licensee stated that such action would be necessary to preclude an unnecessary plant transient and related plant risk associated with a plant shutdown. Due to time constraints, sufficient time is not available to permit the customary public notices in advance of this action.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) The proposed change does not affect any initiators of any previously evaluated accidents. Additionally, the proposed change involves equipment that only provides indication and therefore, it cannot increase the probability of any accident previously evaluated.

As stated in Updated Safety Analysis Report (USAR) Section 7.7.1.24.1, no credit is taken in the safety analysis for operation of or operator reliance upon the leakage detection monitoring instrumentation associated with the drywell sumps. Notwithstanding, the drywell floor drain sump flow monitoring system provides the capability to detect and measure leakage from unknown sources of leakage in the drywell. The drywell floor drain sump inlet flow monitoring V-notch weir box instrumentation is designed to meet the accuracy requirements of Regulatory Guide 1.45. This instrumentation does not provide any automatic action or control functions. In addition to the V-notch system, drywell floor drain sump flow rates can be determined by using the sump pump pump-out timers, cycle counters and level switches. In addition, unidentified leakage into the drywell is monitored by a flow rate meter in the condensate discharge line from the drywell air coolers and by a particulate and a gaseous radiation monitoring channel of the drywell fission product monitor. While the drywell fission product monitor does not provide a quantitative leakage rate, it is sensitive enough to provide plant operators with early indication of an unanticipated increase in unidentified leakage. Furthermore, a number of other parameters are monitored with appropriate instrumentation to provide the plant operators with indirect indication of increases in unidentified leakage. These parameters include drywell pressure and drywell temperature. These alternative methods of detecting increases in unidentified leakage rates provide operators with sufficient information to take appropriate action to respond to an increase in leakage. Based on the above, Illinois Power concludes that the proposed change will not increase the consequences of any accident previously evaluated.

(2) The proposed change does not involve any modification to plant structures or components and only involves equipment that provides indication of leakage to the plant operators. The affected equipment does not provide any automatic action or control functions. As a result, the proposed change does not involve a change in the operation of the plant, nor does it introduce any new failure modes. Therefore, this proposed

change cannot create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) The margin of safety associated with the instrumentation affected by the proposed change may be related to the limits on unidentified leakage. As stated in the Bases for Technical Specification 3/4.4.3.2. "The allowable leakage rates from the reactor coolant system have been based on the predicted and experimentally observed behavior of cracks in pipes . . . The evidence obtained from experiments suggests that for leakage somewhat greater than that specified for unidentified leakage the probability is small that the imperfection or crack associated with such leakage would grow rapidly. With respect to Intergranular Stress Corrosion Cracking (IGSCC) related cracks in service sensitive austenitic stainless steel piping however, an additional limit on the allowed increase in unidentified leakage (within a 24-hour period or less) is imposed in accordance with NRC Generic Letter 88–01, 'NRC Position on IGSCC in BWR Austenitic Stainless Steel Piping,' since an abrupt increase in the unidentified leakage could be indicative of leakage from such a source." The proposed change does not alter any of these limits on the unidentified leakage.

As previously described, flow rates into the drywell floor drain sump can be determined based on the indicated run time for the sump pumps and the known pump flow rates or by monitoring the sump fill-up times and considering the volume corresponding to the current level control band. These alternate methods are sufficient to determine whether unidentified leakage in the drywell exceeds the 5 pgm limit and whether changes in this leakage exceed the limit of a 2 gpm increase in any 24-hour period or less.

Additionally, with respect to the ability to detect changes in unidentified leakage rates, in addition to the V-notch system, drywell floor drain sump flow rates can be determined by using the sump pump pump-out timers, cycle counters and level switches. In addition, unidentified leakage into the drywell is monitored by a flow rate meter in the condensate discharge line from the drywell air coolers and by a particulate and a gaseous radiation monitoring channel of the drywell fission product monitor. While the drywell fission product monitor does not provide a quantitative leakage rate, it is sensitive enough to provide plant operators with early indication of an unanticipated increase in the unidentified leakage rate involving reactor coolant. Furthermore, a number of other parameters are monitored with appropriate instrumentation to provide the plant operators with indirect indication of increases in unidentified leakage. These parameters include drywell pressure and drywell temperature.

As stated above, the drywell floor drain sump flow monitoring instrumentation does not provide any automatic action or control functions. Further, as stated in USAR Section /.7.1.24.1, no credit is taken in the safety analysis for operation of or operator reliance upon the leakage detection monitoring instrumentation associated with the drywell sumps.

In light of all the above, Illinois Power concludes that the proposed change does not involve a reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 15 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 15-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 15-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11555 Rockville Pike, Rockville Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By July 22, 1994, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois, 61727. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularly the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert

opinion which support the contention and on which the petitioner intends to rely in providing the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide significant information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of the 30-day hearing period, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700. The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to John Hannon, Director, Project Directorate III–3; petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Sheldon Zabel, Esq., Schiff, Hardin and Waite, 7200 Sears Tower, 233 Wacker Drive, Chicago, Illinois 60606, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated June 20, 1994, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room, located at the Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

For the Nuclear Regulatory Commission.

Douglas V. Pickett,

Acting Director, Project Directorate III–3, Division of Reactor Projects–III–IV, Office of Nuclear Reactor Regulation.

[FR Doc. 94–15266 Filed 6–21–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–348]

Southern Nuclear Operating Co.; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–2 issued to Southern Nuclear Operating Company (the licensee) for operation of the Joseph M. Farley Nuclear Plant, Unit 1, located in Houston County, Alabama.

The proposed amendment would change Technical Specification 3/4.2.3 to change the nuclear enthalpy rise hot channel factor (F delta H) from equal to or less than 1.65 [1 plus .3(1–P)] to equal to or less than 1.70 [1 plus .3(1–P)] where P is a fraction of rated power. The amendment would also revise the action statement to reflect guidance contained in the improved standard technical specifications.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed increase in [F delta H] for Vantage 5 fuel does not involve a significant increase in the probability or consequences of an accident previously evaluated in the Farley Final Safety Analysis Report. No changes in the mechanical design of the fuel are necessary for this [F delta H] increase. No new performance requirements are being imposed on the fuel or any system or component because of this change. Vantage 5 fuel contains several features that provide increased margin to core limits. The proposed increase in [F delta H] is utilization of this margin with no violation of any acceptance criteria. Subsequently, overall plant integrity is not reduced. [F delta H] is not an accident initiator. Therefore, the probability of an accident has not significantly increased.

The radiological consequences of all accidents, including the fuel handling accident, remain within the previous appropriate acceptance limits as well as those included in 10CFR100. Therefore, the radiological consequences to the public resulting from any accident previously evaluated in the Final Safety Analysis Report has not significantly increased.

2. Will the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed specification change to the [F delta H] limit does not create the possibility of a new or different kind of accident from any previously evaluated in the Final Safety Analysis Report. No new accident scenarios, failure mechanisms, or

limiting single failures are introduced as a result of the increase in [F delta H]. Any accident using the revised analytical assumption has been evaluated or reanalyzed and it has been determined that there is no adverse effect on, or do not challenge the performance of, any safety-related system. Therefore, the possibility of a new or different kind of accident, is not created.

3. Will the proposed amendment involve a significant reduction in a margin of safety?

The Vantage 5 technical specification change for increasing [F delta H] does not involve a significant reduction in the margin of safety. The margin of safety for the Vantage 5 fuel parameters are defined by the accident analyses that are performed to conservatively bound the operating conditions defined by the technical specifications and to demonstrate that the regulatory acceptance limits are met. Performance of analyses (including the LBLOCA [large break loss-of-coolant accident]) and evaluations for the proposed inclusion of an increased [F delta H] for Vantage 5 fuel type confirmed that the operating envelope defined by the technical specifications continues to be bounded by the revised analytical basis, which in no case exceeds the acceptance limits. Therefore, the margin of safety provided by the analyses in accordance with these acceptance limits is maintained and is not significantly reduced.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11555 Rockville Pike, Rockville Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By July 22, 1994, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at Houston-Love Memorial Library, 212 W. Burdeshaw Street, Post Office Box 1369, Dothan Alabama 36302. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order. As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above. Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective,

notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to William H. Bateman: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to James H. Miller, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to James H. Miller, III, Southern Nuclear Operating Company, P.O. Box 1295, Birmingham, Alabama 35201, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated June 17, 1994, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at Houston-Love Memorial Library, 212 W. Burdeshaw Street, Post Office Box 1369, Dothan Alabama 36302.

Dated at Rockville, Maryland, this 17th day of June 1994.

For the Nuclear Regulatory Commission.

William H. Bateman,

Director, Project Directorate II–1, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94–15267 Filed 6–21–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–397]

Washington Public Power Supply System Nuclear Project No. 2 (WNP–2); Exemption

I

Washington Public Power Supply System (the licensee) is the holder of Facility Operating License No. NPF–21 which authorizes operation of the WNP–2 Nuclear Plant at steady-state reactor power levels not in excess of 3323 megawatts thermal. The WNP–2 facility is a boiling water reactor located on Hanford Reservation in Benton County near Richland, Washington. The license provides, among other things, that it is subject to all rules, regulations, and Orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

II

Paragraph III.D.3 of Appendix J to 10 CFR Part 50 requires, in part, that "Type C tests shall be performed during each reactor shutdown for refueling but in no case at intervals greater than two years." By letter dated April 29, 1987, the staff issued an exemption from the requirement for Type C testing during each reactor refueling shutdown, and an extension of the maximum interval from 24 months to 27 months for Type B and C testing. This exemption specifically excluded Containment Purge Supply and Exhaust Valves, which the staff required to continue to be tested at the existing 6-month interval.

Pursuant to 10 CFR 50.12(a), the NRC may grant exemptions from the requirements of the regulations (1) which are authorized by law, will not present an undue risk to public health and safety, and are consistent with the common defense and security; and (2) where special circumstances at present.

III

By letter dated March 25, 1994, the licensee requested an exemption from 10 CFR 50 Appendix J to allow Type C testing of Containment Purge Supply and Exhaust Valves with metal-to-metal seats at 27-month intervals. The licensee plans to replace approximately half of the valves during the 1994 refueling outage, and the remainder at a future date. No change to the 6-month test interval is requested for the remaining Containment Purge Supply and Exhaust Valves that have resilient seats. In a letter dated December 20, 1993, regarding an associated technical specification change request, the licensee stated that the new valves have been proven by industry experience and design to be capable of maintaining design requirements for leakage over an extended period of time. The licensee indicated that the replacement valves will be required to meet even tighter permissible leakage limits. Extending the maximum allowable interval between tests to 27 months is requested to allow for variations in the weather-related length of the approximately annual operating cycle from year to year. Details concerning the justification for extending the Type C test interval from 24 to 27 months are contained in the staff's letter granting the exemption dated April 29, 1987.

IV

Accordingly, the Commission concluded that the licensee's proposed test schedule for the metal-to-metal seated Containment Purge Supply and Exhaust Valves is acceptable, and can be tested at a 27-month maximum interval. The remaining valves with resilient seats will continue to be tested every 6 months.

The special circumstances for granting this exemption pursuant to 10 CFR 50.12 have also been identified. As stated in part 10 CFR 50.12(a)(2)(ii), special circumstances are present when applicable of the regulation in the particular circumstance is not necessary to achieve the underlying purpose of the rule. Application of the resilient-seated valve leak test requirements to metallic-seated valves would increase surveillance and maintenance costs for no increased safety benefit. The vendor certifies that appropriate leakage criteria are met, as applicable. The licensee states that the valve design, specifications, and qualification documentation for these valves verify that Type C leakage testing intervals are appropriate. The special circumstance of 10 CFR 50.12(as)(2)(ii) for extending the Type C leakage test interval from 24 months to 27 months is as described in the staff's letter granting the exemption dated April 29, 1987. Consequently, the Commission concludes that the special circumstances of 10 CFR 50.12(a)(2)(ii) exist in that application of the regulation in these particular circumstances is not necessary to achieve the underlying purpose of the rule.

V

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, this exemption as described in Section III. above is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission further determines that special circumstances as provided in 10 CFR 50.12(a)(2)(ii) are present justifying the exemption.

Therefore, the Commission hereby grants an exemption from the requirement for Type C testing during each reactor refueling shutdown, with an extension of the maximum interval from 24 months to 27 months for Type C testing, as described in Section III. above.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact on the environment (59 FR 27075).

Dated at Rockville, Maryland this 15th day of June 1994.

This exemption is effective upon issuance.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Acting Director, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 94–15132 Filed 6–21–94; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee; Public Comments on U.S. Negotiations With the People's Republic of China (CHINA) Regarding Its Accession to the General Agreement on Tariffs and Trade (GATT) and the World Trade Organization (WTO)

AGENCY: Office of the United States Trade Representative.

ACTION: Notice and request for comments.

SUMMARY: Notice is hereby given that the Trade Policy Staff Committee (TPSC) is requesting written public comments with respect to market access issues, particularly tariffs and non-tariff measures and services, related to China's participation in the GATT and the WTO. Comments received will be considered by the Executive Branch in developing the U.S. position and objectives for the bilateral and multilateral negotiations that will determine the terms of GATT/WTO accession for China.

DATES: Public comments on the GATT/WTO market access issues are due by noon July 13, 1994.

ADDRESSES: Office of the U.S. Trade Representative, 600 17th Street NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: The Office of GATT Affairs, Barbara Chattin, Director for Tariff Negotiations (telephone: 202–395–5097) or Cecilia Leahy Klein, Director for GATT Affairs (telephone: 202–395–3063), Office of the U.S. Trade Representative, 600 17th Street NW., Washington, DC 20506.

SUPPLEMENTARY INFORMATION: The Chairman of the Trade Policy Staff Committee invites written comments from the public on the market access-related issues to be addressed in the course of negotiations with China for its accession to the GATT and the WTO. These terms will be negotiated in bilateral meetings with government representatives and in meetings of the Working Party, established by the Contracting Parties to the GATT to conduct the negotiations.

The Committee is seeking public comments on the possible effect on U.S. trade of China's accession to the GATT/WTO, with particular reference to any trade measures applied by China that could be subject to the provisions of the GATT or the WTO, particularly market access issues. Public comments on market access issues related to China's GATT accession were requested in August 1988.

All comments will be considered in developing the U.S. position and objectives for an eventual request of the Chinese government related to market access (tariff rates and non-tariff measures) concerning the establishment of schedules for market access in the areas of agriculture, industrial goods, and services. Information on products or practices subject to these negotiations should include, whenever appropriate, the import or export tariff classification number used by China for the product concerned.

Persons submitting written comments should provide a statement, in twenty copies, by noon, Wednesday, July 13, 1994 to Carolyn Frank, TPSC Secretary, Office of the U.S. Trade Representative, Room 414, 600 17th Street NW., Washington, DC 20506. Non-confidential information received will be available for public inspection by appointment, in the USTR Reading Room, 600 17th Street NW., Room 101, Washington, DC, Monday through Friday, 10 a.m. to 12 noon and 1 p.m. to 4 p.m. For an appointment call Brenda Webb on 202–395–6186. Business confidential information will be subject to the requirements of 15 CFR § 2003.6. Any business confidential material must be clearly marked as such on the cover letter or page and each succeeding page, and must be accompanied by a non-confidential summary thereof. (Authority: 15 CFR 2002.2)

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.

[FR Doc. 94–15164 Filed 6–21–94; 8:45 am]

BILLING CODE 3190–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–34218; File No. SR–DTC–94–07]

June 15, 1994.

Self-Regulatory Organizations; the Depository Trust Company; Notice of Filing of a Proposed Rule Change Relating to Establishment if the Stock Loan Income-Tracking System

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on May 6, 1994, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will establish the stock loan income-tracking system that will eliminate the need for participants to track income distributions on their securities that are the subject of outstanding stock loans.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections, A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1) (1988).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Participants have informed DTC that pursuant to the terms of stock loan agreements, the borrower must promptly pass to the lender distributions received on the borrowed securities during the period that the loan is outstanding. Stock loan activity among participants is a high-volume business, and there usually are many outstanding loans in DTC's system at any one time. Because the underlying collateral involved in these loans constantly changes, careful record keeping of loan activity for the purpose of determining the proper allocation of income distributions is important.

While existing DTC procedures enable participants to identify stock loan-related deliver orders ("DOs") through the use of reason codes, proper allocation of income payments arising from these loans currently rests entirely with the lending and borrowing participants because DTC currently allocates such income to participants to whom the securities are credited on the relevant date (*i.e.*, generally the record date). Lending participants recover income that DTC has allocated to borrowers of securities either through DTC's securities payment order ("SPO") service or through some other mechanism upon which the participants mutually agree.

The proposed stock loan income-tracking system will facilitate participants' processing of income attributable to securities that are the subject of outstanding stock loans.[2] The proposed system will track and monitor participants' stock loan-related DOs; will net the share amounts by participant, CUSIP, and transaction type; and will automatically credit income distributions to the proper participant on income payment date. To accomplish this, DTC will create a special stock loan memo account, which will maintain a daily net balance of loan obligations for each stock loan counterparty of each participant.

Should a stock loan memo position not balance with a participant's records (*e.g.*, because of a DO processed with an incorrect reason code), either the lending or borrowing participant can adjust the stock loan memo account position through the participant terminal system ("PTS"). Any such adjustments will be subject to affirmation by the counterparty participant.

In addition, the proposed rule change will provide that a party from whom distributions are due to be transferred may unilaterally halt all future distribution transfers by giving a letter of instructions to DTC two or more business days in advance and by giving a copy to the counterparty. DTC will notify the counterparty participant of any action DTC takes based on the instructions. DTC will implement the directions contained in the letter of instructions without making any determination about the parties' legal obligations to each other. If the participant submitting the letter of instructions is in fact still legally obligated, the noninstructing counterparty may seek to enforce its right to receive future distributions outside of DTC.

If by reason of merger, acquisition, or the like, one participant's accounts are being transferred to another participant, DTC also will transfer the transferring participant's open stock loan positions to the transferee participant.

Before permitting a participant to retire, DTC will verify that the participant has closed out all its entitlements and obligations for future distributions created by stock loans. If DTC ceases to act for a participant, DTC will determine which other DTC participants are stock loan counterparties and will adjust those participants' stock loan memo account positions in order to balance the elimination of DTC's obligations and rights to or from the terminated participant. The counterparties' legal obligations or rights with respect to the terminated participant will not be changed DTC's action. However, because DTC will cease allocating distributions attributable to the terminated participant's transactions, remaining counterparty participants will have to make arrangements outside DTC to receive or pay future distributions on any stock loans with the terminated participant that remains open after DTC has ceased to act.

Before the stock loan income-tracking system is implemented, DTC will provide a means for participants to load DTC's stock loan data base with information about currently outstanding stock loans. Deliveries made after implementation with a stock loan reason code will automatically be added to this data base.

The proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder because it is an automated procedure that will eliminate inefficient income processing by stock loan counterparties. The proposed rule change also is consistent with DTC's obligation under Section 17A to safeguard securities and funds in its custody or control or for which it is responsible because the proposal provides reports and inquiry functions to participants for their review and reconciliation and provides for the termination of future DTC obligations upon a participants's voluntary or involuntary termination of its membership.

B. Self-Regulatory Organization's Statement on Burden on Competition

DTC perceives no impact on competition by reason of the proposed rule change.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

DTC's plan to investigate the automation of stock loan income processing was announced to participants in the 1991 DTC Program Agenda which described a stock loan tracking system, similar to DTC's repurchase agreement tracking, that would monitor participant stock loan positions and automatically credit the lender instead of the borrower with dividends or interest due. The system was also noted in the 1992 and 1993 Program Agendas. DTC held a series of meetings with approximately ten broker and bank participants to solicit their comments on plans for the stock loan income-tracking system. These comments were incorporated into the final design of the proposed system.

Written comments received on the 1991 Program Agenda included comments from thirteen participants and others on stock loan income-tracking system. (No comments were received on either the 1992 or 1993 Program Agenda entry.)[3] Two of those comments raised issues to which responses follow. In its November 27, 1991, comment letter, the Securities Industry Association asked whether DTC could assist participants with the monitoring of substitute payments by a special report. In response, DTC notes that in the proposed system income payments will be coded as stock loan payments on DTC's reports to participants, and the participant will have the ability to identify stock loan income payments on electronic files. In its December 18, 1991, comment letter,

[2] The term stock loan is used in the securities industry to describe loans of both debt and equity securities. DTC's proposed system will track income attributable to both debt and equity securities.

[3] These comment letters, all of which were favorable, are cited in Exhibit 5 to the filing.

the New York Clearing House recommended that DTC develop access to the stock loan income-tracking service through DTC's computer-to-computer facility and mainframe dual host as well as through PTS. In response, DTC notes that the reason codes on DOs that will trigger stock loan income-tracking are accepted by all three means of DO input.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and published its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statement, with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submission should refer to File No. SR–DTC–94–07 and should be submitted by July 13, 1994.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–15142 Filed 6–21–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34222; International Series Release No. 674; File No. SR–ISCC–94–1]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by International Securities Clearing Corporation Relating to an Amendment to ISCC's Clearing Fund Formula

June 16, 1994.

Pursuant to Section 19(b)(1) of the Securities and Exchange Act of 1934 ("Act"),[1] notice is hereby given that on June 9, 1994, International Securities Clearing Corporation ("ISCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by ISCC. 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 text of the proposed rule change is as follows:

[indicates deletion]

indicates addition

indicates previously underlined material

Rule 4. Clearing Fund

* * * * *

Sec. 7. Except for Members subject to surveillance and except for increases due to currency fluctuation adjustments for which any proposed increase may be required to be paid in less than [10] *3* business days, the Corporation shall give at least [10] *3* business days' prior written notice of a Member of any proposed increase in his Required Deposit. If a Member fails to give written notice to the Corporation of his election to terminate his business with the Corporation within [10] *3* business days after notice of the increase was given to him, he shall deposit in the Clearing Fund that which is necessary to satisfy the increase in his Required Deposit; in such event the Member's obligation to so deposit shall not be affected by his subsequent cessation of membership, whether voluntary or involuntary. At the time the increase becomes effective, the Member's obligations to the Corporation shall be determined in accordance with the increased Required Deposit whether or not the increase in his Required Deposit has been made.

* * * * *

[1] 15 U.S.C. § 78s(b)(1).

Addendum A

A. Clearing Fund Formula

Each Member of the Corporation is required to contribute to the Clearing Fund maintained by the Corporation an amount approximately equal to:

[(i) 3% of the Member's average daily settlement debits]

(Gross Debit Value)×(Market Risk Factor)+(Foreign Exchange Factor)

The Gross Debit Value shall equal the largest single daily gross debit value minus 15% of the INS receive value for that day, calculated in dollars, based on debit values for the calendar week following the week in which the calculation is performed.

The Market Risk Factor shall be the largest calculated percentage change over 11 days in the Financial Times Index over a minimum of 365 days.

The Foreign Exchange Factor shall be equal to: (Gross Debit Value×Estimated Foreign Exchange Volatility) minus (Gross Debit Value×Market Risk Factor×Estimated Foreign Exchange Volatility)

The Estimated Foreign Exchange Volatility shall be the largest one day percentage change in the US Dollar—British Pound foreign exchange rate over a minimum of 365 days.

[p]*P*rovided, however, that each Member shall be required to contribute a minimum of $50,000 (the "minimum contribution"). The first $50,000 of a Member's contribution is required to be in cash unless all or part of the Member's open account indebtedness is collateralized with Letters of Credit, in which case, the first $100,000 of the Member's contribution is required to be in cash.

* * * * *

Addendum B

Standards of Financial Responsibility and Operational Capability

* * * * *

III. Guidelines for Computing Clearing Fund Deposits for Members on Surveillance Status

A. Clearing Fund deposits for Members on surveillance status shall be computed on a daily basis;

B. *The Market Risk Factor and Foreign Exchange Factor used in determining* Clearing Fund deposits for Members on "Advisory" Surveillance Status shall be [comprised of 3% or] *increased,* in the discretion of the Corporation, *by a maximum of 3* [up to 6% of the average daily debits to the Member's settlement account];

C. *The Market Risk Factor and Foreign Exchange Factor used in*

determining Clearing Fund deposits for Members on Class "A" Surveillance Status shall be [comprised of 4% or] *increased,* in the discretion of the Corporation, *by a maximum of 5* [up to 8% of the average daily debits to the Member's settlement account];

D. *The Market Risk Factor and Foreign Exchange Factor used in determining* Clearing Fund deposits for Members on Class "B" Surveillance Status shall be [comprised of 5% or] *increased,* in the discretion of the Corporation, *by a maximum of 7* [up to 10% of the average daily debits to the Member's settlement account];

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ISCC 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. ISCC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statement.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

(a) The proposed rule change consists of a change of ISCC's clearing fund formula. ISCC's responsibility to the London Stock Exchange under the linkage agreement is to pay for securities delivered. ISCC has no responsibility to complete open pending trades. ISCC's current Clearing Fund calculation therefore is based on the ISCC member's average daily gross settlement debits and takes into consideration purchases due for settlement and purchases which have failed to settle.

To cover ISCC's market risk exposure, ISCC has been collecting 2½% of the average gross settlement value over two account periods (this 2½% reflected the calculated market risk exposure in 1986). Because trades are executed in pounds and ISCC would be required to purchase pounds to meet the settlement obligation, ISCC also has been collecting a percentage of the gross settlement value to cover the foreign exchange risk. This has amounted to .5%. Since trades currently settle on a fortnightly settlement basis, the Clearing Fund has been calculated and collected on a bi-weekly basis.

When the London Stock Exchange moves to a ten day rolling settlement cycle on July 18, 1994, trades will settle on a daily basis ten days after trade date. ISCC will continue to be obligated to pay for securities which are delivered to members in the event that the members are unable to complete their settlement obligation. ISCC still will have market risk and foreign exchange risk, but the period of time to which ISCC will be subject to these risks will change.

To adequately cover ISCC's exposure, the clearing fund deposit will be calculated and collected on a weekly basis. The formula will be based on trades which are due to settle in the week following the calculation. Calculations will be made each Tuesday, and ISCC members will be required to deposit additional amounts within three days. This process will permit ISCC to collect clearing fund deposits prior to the settlement of the transactions.

The formula will take into consideration the largest daily gross debit obligation, for trades due to settle in the week following the calculation, offset by a percentage for Institutional Net Settlement Participant ("INSP") redeliveries. The debits will be offset only partially since these items may be reclaimed by the receiver, and in such circumstance ISCC will be liable to the London Stock Exchange for the full value of the reclamation. ISCC will apply a market risk factor and foreign exchange risk factor to this debit obligation. Initially the factors will be determined as set forth below and will be reviewed annually thereafter.

To determine the appropriate percentage for market risk, ISCC will review the Financial Times Index and assume that it will take one day to sell all positions. Based on a ten day settlement cycle this will result in 11 days elapsing from trade date to close out date. Accordingly, the formula will take into consideration the largest price movement over an 11 day period. Initially ISCC will use the largest price movement in 1993 of 7% for the market risk factor component of the formula.

To calculate the foreign exchange risk, ISCC will review the daily rate fluctuation for the exchange rate between the British Pound and U.S. Dollars. Initially, ISCC will use data from the 1989–1992 period and the maximum fluctuation during that time was 4.445%. This number will be used on the foreign exchange factor component of the formula.

Currently, Clearing Fund Requirements for ISCC members on surveillance are increased, in the discretion of the Corporation, by requiring up to an additional 3%, 5%, and 7% of average daily debits for members on Advisory, Class A, and Class B surveillance, respectively. The same increases (of three, five, and seven percent for Advisory, Class A, and Class B surveillance) will be retained under the new formula, only they will be added to the Market Risk Factor and Foreign Exchange Risk Factor.

(b) The proposed rule changes will permit ISCC to safeguard securities and funds in its custody or control and is therefore consistent with Section 17A of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

ISCC does not believe that the proposed rule change imposes any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members. Participants, or Others

ISCC has received no written comments. ISCC will notify the Commission of any written comments received by ISCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve the proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the

provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C., 20549. Copies of such filing also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File No. SR–ISCC–94–1 and should be submitted by July 13, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–15140 Filed 6–21–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34219; File No. SR–93–17]

Self-Regulatory Organizations; the Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Conversion of Delivery Versus Payment Authorization Process to an On-Line System

June 15, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, ("Act"),[1] notice is hereby given that on October 15, 1992, The Options Clearing Corporation ("OCC") file with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by OCC. On November 12, 1993, OCC submitted an amendment [2] so that the proposed rule change would file pursuant to section 19(b)(3)(A) [3] instead of section 19(b)(2) of the Act.[4] 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 purpose of the proposed rule change is to allow OCC to convert its Delivery Versus Payment ("DVP") authorization process to an on-line system. The changes proposed herein will require OCC's clearing members to submit DVP authorization instructions to OCC via electronic means and, thereby, will eliminate the use of paper DVP authorization forms and the need for clearing members to make physical delivery of such forms to OCC's offices.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC 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. OCC 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

DVP authorization is an alternate settlement procedure for the settlement of foreign currency options and cross-rate foreign currency options.[5] Pursuant to the DVP authorization process, a clearing member's approved DVP bank guarantee to OCC's agent bank delivery on the exercise settlement date of either a designated quantity of foreign currency against payment of a specified sum of U.S. dollars or a specified sum of U.S. dollars against delivery of a designated quantity of a foreign currency. The current DVP authorization process is a batch system which begins on the first business day following exercise when a clearing member brings a completed multipart DVP authorization form to the OCC operations window on the business day following exercise.[6] Following submission of the DVP form to OCC, the clearing member must wait until notified by OCC that the DVP instructions have been accepted. OCC accepts DVP instructions after verifying that the form has been filled out correctly and that the DVP amounts are valid.

Once the DVP instructions have been accepted, OCC returns a copy of the form to the clearing member. Upon receiving the accepted DVP form, the initiating clearing member must deliver a copy of the accepted DVP form to its own agent bank. OCC transmits the DVP instructions to its own agent bank through an electronic communications link. In addition to transmitting the DVP information via computer, OCC sends a hard copy DVP log to its agent bank.

On the second business day following exercise, the clearing member's DVP agent bank must send a SWIFT or tested telex message to OCC's agent bank guaranteeing payment of dollar and/or foreign currency settlement amounts to OCC's agent bank or OCC's correspondent bank. On the third business day following exercise, OCC's agent bank must confirm to OCC that the guarantee message from the clearing member's DVP agent bank was received. OCC receives confirmation from its agent bank via facsimile. On the fourth business day following exercise, the clearing member's DVP agent bank must make an irrevocable transfer of U.S. dollars and/or foreign currency to the designated OCC agent bank or OCC's correspondent bank in the country of origin.

The current DVP processing system is a manually intensive and time consuming process. Accordingly, OCC is proposing to convert the DVP authorization process to an on-line system. OCC is proposing to accomplish this goal in two Phases. Phase 1 will require clearing members to submit DVP instructions to OCC and receive confirmations of acceptance from OCC via electronic means. This change would eliminate the paper DVP authorization form and the need for clearing members to physically deliver such forms to OCC. In Phase 2, OCC will propose changes which will allow members to submit DVP messages to their DVP agency banks via electronic means a well. This filing, File No. SR–OCC–93–17, seeks to make the changes necessary to accomplish only Phase 1.[7]

The proposed rule change will require clearing members to submit and receive electronic DVP messages to and from OCC through the use of the Clearing Management and Control System ("C/MACS").[8] The on-line DVP instructions will contain the same information currently required on the DVP authorization form. Once an on-line DVP instruction is entered, the same verification/acceptance process

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[1] 15 U.S.C. 78s(b)(1) (1998).

[2] Letter from James C. Yong, Vice President and Deputy General Counsel, OCC, to Jerry W. Carpenter, Branch Chief, Division of Market Regulation, Commission (November 10, 1993).

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 15 U.S.C. 78s(b)(2).

[5] Currently, the DVP authorization settlement procedures are not in effect for cross-rate foreign currency option exercises.

[6] Currently, OCC maintains offices in Chicago and New York. Clearing members located in cities other than Chicago and New York send the DVP authorization form to OCC's Chicago office via facsimile and later send the hard copy form.

[7] When OCC and the banks are operationally ready to accomplish Phase 2, OCC will file a proposed rule change with the Commission.

[8] C/MACS is a fully automated participant terminal system which allows clearing members to submit reports, notices, instructions, data, and other items directly to OCC via on-line data entry. For a detailed description of the operational capabilities of C/MACS, see Securities Exchange Act Release No. 20983 (May 22, 1984), 49 FR 22427 [Filed No. SR–OCC–83–15] (order approving implementation of C/MACS).

currently performed by OCC staff will be performed through C/MACS. The clearing member will receive an on-line confirmation of acceptance message shortly after entering the DVP instruction. In addition, the clearing member will be able to inquire about the status of a DVP instruction by viewing an on-line screen.

Once the clearing member's DVP instruction has been entered and accepted and OCC has completed its processing, the clearing member will be able to print an OCC C/MACS-generated authorization report from its own computer terminal. This new report will replace the DVP authorization form and will contain all of the information currently on the DVP authorization form with the exception of an OCC signature. The clearing member will be required to deliver the C/MACS-generated report to its DVP agent bank and to direct such DVP agent bank to issue a SWIFT or tested telex message to OCC's agent bank guaranteeing delivery or payment, as the case may be, in accordance with the terms of the DVP authorization instruction contained in the report.

OCC will send a message to its own agent bank through an electronic communications link to confirm the terms of the accepted DVP instructions. Following receipt of the guarantee message from the clearing member's DVP agent bank, OCC's agent bank or correspondent bank will carry out its payment or delivery obligation to the recipient named in the DVP authorization instruction on the exercise settlement date.

In general, the proposed changes to OCC Rules 1606A and 2107 will require clearing members to submit DVP instructions to OCC through on-line transmissions.[9] Other specific changes are also being made. Language is being added to Rule 1606A(b) to clarify that a clearing member's "agent bank" is an approved bank acting on its behalf. The additional language will make the language of Rule 1606A(b) consistent with the language of Rule 2107(b).

Rules 1606A(c) and 2107(c) are being amended to reflect an operational change in OCC's DVP processing. Currently, a clearing member may specifically elect to apply a DVP instruction to settle all or part of a gross settlement obligation or a net settlement obligation. Under the proposed on-line system, a clearing member will not be permitted to elect whether its DVP instruction is applied to a gross settlement obligation or a net settlement obligation. Rather, the system will automatically apply the DVP instruction to the clearing member's gross settlement obligation and then adjust the clearing member's remaining net settlement obligation accordingly. This remaining net settlement obligation will then settle through the regular settlement procedures pursuant to Rule 1606.

Rules 1606A(d) and 2107(d) are being amended to provide that OCC's confirmation of acceptance of the clearing member's DVP authorization instruction will be carried out through an on-line confirmation message from OCC to the clearing member rather than by OCC's signature on a DVP form. Rules 1606A(f) and 2107(f) are being amended to provide that the clearing member must deliver to its agent bank a C/MACS-generated DVP report that contains the approved DVP instructions instead of the OCC-endorsed DVP form.

Finally, an interpretation is being added both to Rule 1606A and to Rule 2107 to provide that should unusual or unforeseen circumstances prevent a clearing member from submitting DVP instructions by on-line data entry prior to any applicable cut-off time, OCC in its discretion may require the clearing member to submit such item by other approved means, including the use of hard copy forms, and/or may extend the applicable cut-off time.

As part of the development of the on-line DVP system, extensive testing was undertaken to assess the operational impact of the new on-line system. Based on OCC's testing of the on-line CVP system, OCC has determined that the implementation of the on-line DVP authorization process should not stress OCC's current processing systems.

With respect to security, internal and external controls have been put in place to ensure the integrity of the data and the software of the product. Data security is maintained through security software. In addition, OCC's Security Administration Department develops, reviews, and maintains appropriate security guidelines and standards. The integrity of OCC's operating systems is maintained through limited access to central systems libraries. Physical access to OCC's systems is restricted to those employees that require access. Finally, on-line access is restricted to users with authorized log-in IDs and passwords.

With respect to contingency procedures, OCC has adequate back-up procedures in place to ensure the timely continuation of DVP processing in the event that any problem develops with respect to the on-line system. For instance, if C/MACS were not functioning properly, OCC could permit a clearing member to enter the DVP instructions at one of OCC's offices or to submit hard copy forms. Furthermore, if a system failure were to prevent a clearing member from submitting any DVP instruction through on-line data entry prior to any applicable cut-off time, OCC could extend such cut-off time by such period as OCC deemed reasonable, practicable, and equitable under the circumstances.

OCC believes that the proposed rule change is consistent with Section 17A(b)(3)(F)[10] of the Act because it promotes the prompt and accurate clearance and settlement of securities transactions by substantially reducing the paperwork associated with the DVP settlement process. OCC believes that this first step in converting the DVP authorization process to an on-line system will make the system operationally more efficient and will reduce the time delays inherent in a system using paper forms. Furthermore, OCC believes that it has sufficiently considered capacity, security, and contingency issues in its development of the on-line DVP authorization system and that the proposed on-line DVP system should in no way pose a threat to the integrity or security of OCC's current processing systems.

B. Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)[11] of the Act and pursuant to Rule 19b–4(e)(4)[12] in that the proposed rule change effects a change in an existing service of OCC that does not adversely effect the safeguarding of securities or funds in custody or control of OCC and does not significantly effect the rights or obligations of OCC or persons using the service At any time

[9] Rules 1606A and 2107 set forth the DVP settlement procedures for foreign currency options and cross-rate foreign currency options, respectively.

[10] 15 U.S.C. 78q–1(b)(3)(F).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(e)(4) (1992).

within sixty 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 submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filings will also be available for inspection and copying at the principal offices of OCC. All submissions should refer to File No. SR–OCC–93–17 and should be submitted by July 13, 1994.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–15141 Filed 6–21–94; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Research, Engineering and Development Advisory Committee, Subcommittee on Capacity Technology and Automation of the Airspace and Airport Surface; Meeting

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 Subcommittee on Capacity Technology & Automation of the Airspace & Airport Surface of the Federal Aviation Administration Research, Engineering and Development Advisory Committee.

[13] 17 CFR 200.30–3(a)(12) (1992).

The meeting will take place on Tuesday, July 12, 1994, at 9:30 a.m. in Conference Rooms 5 A/B, 5th floor, Federal Aviation Administration (FAA), 800 Independence Avenue, SW., Washington, DC.

The agenda for this meeting will include a briefing and discussion of the Wake Vortex Program; CODAS Delay Measurement Methodology and Implementation Progress; discussion of FAA efforts to develop a future airport surface traffic management system; status of parallel runway, triple/quads, and converging runway approach minimums reduction efforts; and development of recommendations.

Attendance is open to the interested public but limited to space available. With the approval of the Subcommittee Chairman, members of the public may present oral statements at the meeting. Persons wishing to present oral statements, obtain information, or access to the building to attend the meeting should contact Mr. Nick Johnson, Office of System Capacity and Requirements, FAA/ASC–200, 800 Independence Avenue, SW, Washington, DC 20591(202) 267–9817.

Members of the public may present a written statement to the subcommittee at any time.

Issued in Washington, DC, on June 15, 1994.

Ronald E. Morgan,

Acting Deputy Associate Administrator for System Engineering & Development.

[FR Doc. 94–15149 Filed 6–21–94; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Fiscal Service

Senior Executive Service; Financial Management Service Performance Review Board (PRB)

AGENCY: Treasury Department; Fiscal Service; Financial Management Service.

ACTION: Notice of members to the FMS PRB.

SUMMARY: Pursuant to 5 U.S.C. 4314(c)(4), this Notice announces the appointment of members to the Financial Management Service (FMS) Performance Review Board (PRB). This Board reviews the performance appraisals of career senior executives below the Assistant Commissioner level and makes recommendations regarding ratings, bonuses, and other personnel actions. Three voting members constitute a quorum. The names and titles of the FMS PRB members are as follows:

Primary Members

Michael T. Smokovich, Deputy Commissioner
Bland T. Brockenbourough, Assistant Commissioner, Management
Diane E. Clark, Assistant Commissioner, Financial Information
Mitchell A. Levine, Assistant Commissioner, Regional Operations

Alternate Members

Larry D. Stout, Assistant Commissioner, Federal Finance
Walter L. Jordan, Assistant Commissioner, Agency Services
Virginia B. Harter, Associate Deputy Commissioner for Re-Engineering

DATES: Membership is effective on the date of this Notice.

FOR FURTHER INFORMATION CONTACT: Michael T. Smokovich, Deputy Commissioner, Financial Management Service, 401 14th Street SW., Washington, DC 20227; telephone (202) 874–7000.

Russell D. Morris,

Commissioner.

[FR Doc. 94–15144 Filed 6–21–94; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF VETERANS AFFAIRS

Persian Gulf Expert Scientific Committee; Meeting

The Department of Veterans Affairs (VA), in accordance with Public Law 92–463, gives notice that meetings of the VA Persian Gulf Expert Scientific Committee will be held on:

Thursday, July 28, 1994, at 9:00 a.m.–5:00 p.m.
Friday, July 29, 1994, at 8:30 a.m.–12:01 p.m.

The location of the meeting will be 810 Vermont Avenue NW.; Washington, DC; room 230.

The Committee's objectives are to advise the Under Secretary for Health, about medical findings affecting Persian Gulf era veterans.

At this meeting the Committee will review all aspects of patient care and medical diagnoses and will provide professional consultation as needed. The Committee may advise on other areas involving research and development, veterans benefits and/or training aspects for patients and staff.

All portions of the meeting will be open to the public except from 4:00 p.m. until 5:00 p.m. on July 28, 1994, and 1:00 a.m. until 12:01 p.m. on July 29, 1994. During these executive sessions discussions and recommendations will deal with medical records of specific

patients and individually identifiable patient medical histories. The disclosure of this information would constitute a clearly unwarranted invasion of personal privacy. Closure of these portions of the meetings is in accordance with subsection 10(d) of Public Law 92–463, as amended by Public Law 94–409, and as cited in 5 U.S.C. 552b(c)(6).

Additional information concerning these meetings may be obtained from the Chairperson, Office of Environmental Medicine and Public Health, 810 Vermont Avenue NW., Washington, DC 20420.

By Direction of the Secretary.

Dated: May 26, 1994.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 94–15086 Filed 6–21–94; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register

Vol. 59, No. 119

Wednesday, June 22, 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).

U.S. CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, June 23, 1994.

LOCATION: Room 420, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

1. Baby Walkers

The staff will brief the Commission on options for Commission action to address the risks of injury associated with baby walkers.

2:00 p.m.

2. Toy Safety

The staff will brief the Commission on proposed regulations that would implement the Child Safety Protection Act.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–0800.

Dated: June 20, 1994.

Sadye E. Dunn,

Secretary.

[FR Doc. 94–15349 Filed 6–20–94; 3:21 pm]

BILLING CODE 6355–01–M

U.S. CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Wednesday, June 22, 1994.

LOCATION: Room 420, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Open to the Public and Part Closed.

MATTERS TO BE CONSIDERED:

1. Fireworks

The Commission will consider options for Commission action to address the risk associated with multiple tube mine and shell fireworks devices.

2. Gas-Fired Water Heaters

The staff will brief the Commission on options for Commission action to address the risk that gas-fired water heaters will ignite vapors from flammable liquids that are present in the home. A final portion of the briefing will be closed to discuss information relating to an enforcement matter.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–0800.

Dated: June 20, 1994.

Sadye E. Dunn,

Secretary.

[FR Doc. 94–15348 Filed 6–20–94; 3:21 pm]

BILLING CODE 6355–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: Approximately 11 a.m., Monday, June 27, 1994, following a recess at the conclusion of the open meeting.

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: June 17, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–15288 Filed 6–20–94; 1:06 pm]

BILLING CODE 6210–01–P

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Monday, June 27, 1994.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Publication for comment of proposed amendments to Regulation T (Credit by Brokers and Dealers) regarding (1) securities settlement purchases and (2) the status of government securities transactions.

2. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452–3684 or by writing to:

Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: June 17, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–15287 Filed 6–20–94; 1:06 pm]

BILLING CODE 6210–01–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 1:30 p.m., Thursday, June 23, 1994.

PLACE: 6th Floor, 1730 K Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Consolidation Coal Co.*, Docket No. WEVA 92–798. (Issues include whether the judge correctly found that Consolidation Coal Company's violation of 30 C.F.R. § 70.201(d) was not presumptively significant and substantial.)

Any person attending this meeting who requires special accessibility feature and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(e).

CONTACT PERSON FOR MORE INFO: Jean Ellen (202) 653–5629/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Dated: June 17, 1994

Jean H. Ellen,

Chief Docket Clerk.

[FR Doc. 94–15313 Filed 6–20–94; 2:23 p.m.]

BILLING CODE 6735–01–M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 59 FR 30980, June 16, 1994.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 2:00 p.m. (Eastern Time) June 28, 1994.

CHANGE IN THE MEETING: The meeting has been cancelled.

CONTACT PERSON FOR MORE INFORMATION: Frances M. Hart, Executive Officer on (202) 663–4070.

Dated: June 20, 1994.

Frances M. Hart,

Executive Officer, Executive Secretariat.

[FR Doc. 94–15357 Filed 6–20–94; 3:31 pm]

BILLING CODE 6750–06–M

federal register

Wednesday
June 22, 1994

Part II

Department of Education

34 CFR Parts 668, 674, 675, and 676

Student Assistance General Provisions, Federal Perkins Loan Program, Federal Work-Study Programs, and Federal Supplemental Educational Opportunity Grant Program; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 668, 674, 675, and 676

RIN 1840- AB71

Student Assistance General Provisions, Federal Perkins Loan Program, Federal Work-Study Programs, and Federal Supplemental Educational Opportunity Grant Program

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations governing the campus-based programs (Federal Perkins Loan, Federal Work-Study (FWS), and Federal Supplemental Educational Opportunity Grant (FSEOG) programs). These amendments are needed to implement changes made to the Higher Education Act of 1965, as amended (HEA). The Secretary also proposes to reduce the administrative burden imposed on applicants for student financial assistance and educational institutions resulting from the verification requirements by amending the verification regulations contained in subpart E of the Student Assistance General Provisions, 34 CFR part 668.

DATES: Comments must be received on or before August 22, 1994.

ADDRESSES: All comments concerning these proposed regulations should be addressed to: Susan M. Morgan, Chief, Campus-Based Loan Programs Section, Loans Branch, Division of Policy Development, Student Financial Assistance Programs, Office of Postsecondary Education, U.S. Department of Education, 400 Maryland Avenue SW. (Regional Office Building 3, room 4310), Washington, DC 20202–5447.

A copy of any comments that concern information collection requirements also should be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT:

1. For the Federal Perkins Loan program: Sylvia R. Ross, Campus-Based Loan Programs Section, Loans Branch on 202–708–8242;
2. For the FWS and FSEOG programs: Kathy S. Gause, Campus-Based Programs Section, Grants Branch on 202–708–4690; or
3. For the General Provisions: Lorraine Kennedy, Student Eligibility and Verification Section, General Provisions Branch on 202–708–7888.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Student Assistance General Provisions regulations implement requirements that are common to the student financial assistance programs under title IV of the Higher Education Act of 1965, as amended, (title IV, HEA programs). The title IV, HEA programs include the Federal Pell Grant, Federal Family Education Loan (FFEL), Federal Direct Student Loan, State Student Incentive Grant (SSIG), Federal Perkins Loan, Federal Work-Study (FWS), and Federal Supplemental Educational Opportunity Grant (FSEOG) programs.

On February 21, 1992, a notice was published in the **Federal Register** requesting public comments on statutes and regulations that substantially impede economic growth, are no longer needed, or otherwise impose unnecessary costs or burdens. The proposed change to the Student Assistance General Provisions regulations results from the public comments received in response to that notice.

These proposed amendments also revise the existing campus-based program regulations. The campus-based programs are authorized as follows: Federal Perkins Loan—20 U.S.C. 1087aa–1087hh and 20 U.S.C. 421–429; FWS—42 U.S.C. 2751–2756b; FSEOG—20 U.S.C. 1070b–1070b–3. These proposed regulations would implement provisions of the Crime Control Act of 1990 (Pub. L. 101–647), enacted November 29, 1990, the National and Community Service Act of 1990 (Pub. L. 101–610), enacted November 16, 1990, the Higher Education Amendments of 1992 (Pub. L. 102–325), enacted July 23, 1992 (Amendments), and the Higher Education Technical Amendments of 1993 (Pub. L. 103–208), enacted December 20, 1993 (Technical Amendments). A description of the major proposed changes follows. The proposed changes that pertain to more than one program are described first followed by descriptions of provisions that pertain to only a specific program. The Federal student financial assistance programs support the National Education Goals by enhancing opportunities for postsecondary education. The National Education Goals call for increasing the rate at which students graduate from high school and pursue high quality postsecondary education and for supporting life-long learning.

Summary of Proposed Changes

Student Assistance General Provisions

Section 668.57(c) Acceptable Documentation

The verification regulations contained in subpart E of the Student Assistance General Provisions regulations (34 CFR part 688) govern verification of the information that is used to calculate an applicant's expected family contribution (EFC) as part of determining an applicant's need for student financial assistance. The EFC is the amount that an applicant and the applicant's family reasonably can be expected to contribute toward the applicant's cost of attendance at an institution of higher education.

Currently, dependent applicants are required to provide the signature of both parents when verifying the number of family household members enrolled in postsecondary institutions. The Secretary is proposing to amend § 668.57(c) to require the signature of one parent instead of both parents. If only one parent's income is considered in the title IV, HEA aid awarding process, that is the parent who must sign. Otherwise, either parent may sign. This amendment is being proposed in an effort to reduce the administrative burden imposed on applicants and institutions by the verification requirements.

Campus-Based Programs

Sections 674.2 and 675.2 Definitions

The current regulations restrict eligibility for Federal Perkins Loan and FWS assistance for undergraduate students to those who have not already earned baccalaureate or first professional degrees.

The Amendments changed the Federal Perkins Loan and FWS programs to provide that a student is not ineligible for assistance because he or she has previously received a baccalaureate or professional degree. Therefore, the Secretary proposes to amend the definition of "undergraduate student" to delete the restriction from the current Federal Perkins Loan and FWS regulations. The statutory restriction remains for the FSEOG program.

Sections 674.4, 675.4, and 676.4 Allocation and Reallocation

The Secretary proposes to amend §§ 674.4, 675.4, and 676.4 in accordance with amended sections 413D(e)(2), 422(e)(2), and 462(j)(4) of the HEA to state that if an institution returns more than 10 percent of its Federal Perkins Loan, FWS, or FSEOG allocation for an

award year, the institution will have its allocation for the next fiscal year for that program reduced by the dollar amount returned. The Amendments established this requirement for the Federal Perkins Loan and FSEOG programs. The same requirement was provided for the FWS Program by the Technical Amendments. These statutory provisions authorize the Secretary to take appropriate measures to ensure effective use of program funds when an institution fails to expend its allocation. The Secretary may waive these provisions if enforcement would be contrary to the interest of the programs. To accomplish the purpose of the statute, the Secretary expects to find enforcement to be contrary to the interest of the program in very limited circumstances, such as a natural disaster.

Sections 674.10, 675.10, and 676.10 Selection of Students

The Secretary proposes to amend §§ 674.10, 675.10, and 676.10 in accordance with amended sections 413C(d), 443(b)(3), and 464(b)(2) of the HEA to state that if an institution's FSEOG allocation, FWS grant, or Federal Perkins Loan capital contribution is directly or indirectly based in part on the financial need of less-than-full-time or independent students and if the need of all of these students exceeds 5 percent of the total need of all students at an institution, then at least 5 percent of that allotment for FSEOG, 5 percent of that grant for FWS, or 5 percent of the dollar amount of the loans made for Federal Perkins must be made available to these students.

Sections 674.14, 675.14, and 676.14 Overaward

A financial aid administratrato may not award or disburse aid from a campus-based program if that aid, when combined with all other resources, would exceed the student's need. Before awarding aid from campus-based programs, the aid administrator must take into account the aid that the student will receive from other student financial assistance programs and other resources that the aid administrator knows about or can reasonably anticipate at the time aid is awarded to the student. If the student receives additional resources at any time during the award period that were not considered in determining the student's eligibility for aid, and these resources combined with the expected financial aid will exceed the student's need, the amount in excess of the student's need is considered an overaward.

In the situation in which an institution learns that a student has received additional resources that were not included in calculating the student's eligibility for financial assistance, the regulations for the three campus-based programs currently permit a student's resources to exceed the student's financial need by no more than $200. Further, the current regulations allow an institution to continue to employ a student under the FWS program after the full financial need has been met until the student's cumulative earnings from both need-based and non-need-based employment exceed his or her financial need by more than $200.

Section 443(b)(4) of the HEA has been amended to allow a student employed under the FWS program to earn up to $300 from need-based employment in excess of his or her financial need before employment under the FWS program must be discontinued. In addition, for the purpose of determining when FWS funds may no longer be used to pay the student, an institution will not be required to monitor the student's non-need-based earnings. (However, as in the past, earnings from non-need-based employment will be counted as income for the following year.) Therefore, the Secretary is proposing to amend the regulations for the FWS program in accordance with the statute to provide that a student employed under the FWS program may continue to receive FWS funding after the student's full financial need has been met until the student's cumulative earnings from need-based employment exceed his or her financial need by more than $300.

The statute does not address the common situation whereby a student receives a financial aid package consisting of an FWS award in combination with a Federal Perkins Loan or FSEOG award or both. The Secretary is proposing to change the current $200 overaward threshold for this situation. Under the proposed change, if FWS is awarded to a student by itself or in combination with one or both of the other campus-based programs, then a $300 overaward threshold will be in effect. However, under the proposed change, if a student is not employed under the FWS program but is receiving a Federal Perkins Loan or FSEOG, the current regulatory $200 overaward threshold will still be in effect for those programs.

In making awards, an institution may not make campus-based awards in excess of the amount of the student's need. Although a threshold is allowed subsequent to the packaging of campus-based aid, the threshold does not allow an institution deliberately to award campus-based aid that, in combination with other resources, exceeds the student's financial need.

Section 674.16 Making and Disbursing Loans

Section 676.16 Payment of an FSEOG

The Secretary proposes to allow institutions to disburse a Federal Perkins Loan or an FSEOG award after a student ceases to be enrolled under certain circumstances. Currently, the Federal Perkins Loan and the FSEOG programs do not provide for late disbursements while the other title IV, HEA programs have provisions for late disbursements. This proposed change would prevent a student from being penalized because the student did not receive funds that he or she needed and expected due to a delay in payment.

The proposal would allow an institution to disburse funds under the Federal Perkins Loan and FSEOG programs to a student when he or she is no longer enrolled if the assistance was awarded while the student was still an eligible student. Further, the institution must determine that the funds are needed to cover the student's documented educational costs that are normally included in the student's cost of attendance under section 472 of the HEA for the payment period for which the loan or grant was intended and the student was actually enrolled. The institution would be expected to collect and retain documentation supporting the amount of and the reason for the late disbursement paid to the student.

Federal Perkins Loan Program

Program Name Change

The "Perkins Loan program" will be known as the "Federal Perkins Loan program."

Section 674.2 Definitions

Section 462(h) of the HEA replaced the dollar-volume "default rate" calculation in the Federal Perkins Loan program with a borrower-based "cohort default rate," beginning in the 1993–94 award year. Accordingly, the Secretary proposes to amend § 674.2 to remove the definition of "default rate," "defaulted principal amount," and "matured loans," which are definitions used in the calculation of an institution's "default rate," but are not used in the "cohort default rate" calculation. Section 462(h) of the HEA also provides that any loan on which the borrower has made satisfactory arrangements to resume repayment is not counted toward an institution's cohort default rate. "Satisfactory

arrangements to resume payment" is a term currently used in the FFEL program. The Secretary proposes to add the same definition of "satisfactory arrangements to repay the loan" to § 674.2.

The amendments in section 464(c)(2)(A) of the HEA created a new economic hardship deferment and added a new provision of forbearance in section 464(e), both of which were also provisions added to the FFEL program. Negotiated rulemaking in the FFEL program resulted in the requirement that in order for a borrower to establish eligibility for an economic hardship deferment or for forbearance of payments, the borrower would be required to provide certain documentation to the granting institution, including evidence showing the borrower's most recent monthly disposable income. The Secretary proposes to add the same definition of "disposable income" as resulted from the negotiated rulemaking process for the FFEL program.

Section 484 of the HEA now permits borrowers pursuing a second baccalaureate degree to receive assistance under the Federal Perkins Loan program. The Secretary is, therefore, proposing to amend the definition of "undergraduate student" in § 674.2 of the Federal Perkins Loan program regulations.

The specific date on which a loan is made to a borrower as well as the specific date on which a borrower enters repayment on his or her Federal Perkins Loan is critical to the determination of eligibility for certain benefits (for example, deferments, cancellations, exclusion from an institution's cohort default rate, interest rates, and grace periods). However, there has been some confusion on the meaning of these concepts. Therefore, the Secretary proposes to incorporate into the Federal Perkins Loan program regulations the definitions of the term "making of a loan" and the term "enter repayment." These definitions are based on common institutional practice.

The Secretary is aware that the term "Direct Loans" when used to mean a "National Direct Student Loan" is the same as the term used to mean the new "Federal Direct Student Loan" and will clarify the distinction between these two terms.

Section 674.4 Allocation and Reallocation

The Secretary proposes to amend § 674.4 to incorporate the requirements in section 462(j) of the HEA that the Secretary shall reallocate 80 percent of the available funds to institutions that participated in the Federal Perkins Loan program in the 1985–86 award year but did not receive an allocation for the award year for which the reallocation determination is made. The reallocated amount may not exceed the institution's fair share shortfall amount.

Section 462(j) of the HEA requires that the remaining 20 percent must be reallocated in accordance with the regulations. The Secretary proposes to amend § 674.4 to provide for the flexibility to reallocate the 20 percent of unexpended funds. This change would allow the Secretary to assist students who suffer financial harm from a natural disaster such as a flood or hurricane.

Section 462(e)(2) of the HEA requires the Secretary to establish an appeals process by which the anticipated collections required in section 462(e)(1) may be waived for institutions with "low default rates" in the Federal Perkins Loan program. The Secretary proposes to amend § 674.4 to incorporate an automatic appeals process. The Secretary would waive the calculation of anticipated collections in section 462(e)(1) for any institution with a cohort default rate that does not exceed 7.5 percent and would instead use an amount equal to actual collections during the second year preceding the beginning of the award year.

Section 674.5 Federal Perkins Loan Cohort Default Rate and Penalties

The Secretary proposes to add new § 674.5 to the regulations. This section establishes, in accordance with section 462(f) of the HEA, the Federal Perkins Loan program cohort default rate and penalties for an institution with a high cohort default rate for the 1994–95 award year and subsequent award years. This section includes the definition of which loans are to be included in the cohort default rate calculation and provisions detailing how the cohort default rate would be calculated for an institution with more than one location or undergoing a change in status, in accordance with section 462(h)(3)(G) of the HEA which requires the Secretary to prescribe regulations designed to prevent an institution from evading the application of the cohort default rate because of situations such as changing control of the institution. These provisions on calculating a cohort default rate for locations of an institution are the same as in the FFEL Program.

Section 674.6 Default Reduction Plan

The Secretary proposes to add new § 674.6 to the regulations. The proposed requirements in § 674.6 describe measures that an institution participating in the Federal Perkins Loan program must take to reduce its cohort default rate. Section 462(f) of the HEA now requires that beginning in the 1994–95 award year, if an institution's cohort default rate equals or exceeds 15 percent, the institution must establish a default reduction plan.

It is the Secretary's intent that an institution be able to coordinate its default reduction efforts in the Federal Perkins Loan program with its default reduction plan under the requirements of the FFEL program. To that end, the Secretary is proposing to require institutions with a cohort default rate that equals or exceeds 15 percent to implement a default reduction plan that is similar to the plan established by the FFEL program in appendix D of part 668. Any substantive differences from appendix D are related to characteristics specific to the FFEL program. Section 674.6(b) describes the plan that an institution will be required to establish to reduce Federal Perkins Loan defaults by its students in the future.

Section 674.7 Expanded Lending Option (ELO)

The Amendments, in section 463(a)(2)(B) of the HEA, established the Expanded Lending Option (ELO) beginning in the 1993–94 award year for institutions with default rates of 7.5 percent or less that have executed an ELO participation agreement with the Secretary. The Technical Amendments further amended that section to provide for a cohort default rate of 15 percent or less to participate in the ELO for the 1994–95 award year and subsequent award years. This was necessary because a default rate will no longer be calculated for an institution. Instead, as required by the Amendments the default rate calculation has been replaced by a cohort default rate calculation for the Federal Perkins Loan Program.

Institutions that receive a Federal Capital Contribution (FCC) and participate in the ELO are required to match the FCC on a dollar-for-dollar basis and are allowed to make loans to students at higher annual maximum and aggregate loan limits than is the case at nonparticipating institutions. The Secretary proposes to add this section to incorporate these statutory changes.

Section 674.8 Program Participation Agreement

Section 463(a)(2)(B) of the HEA increased the capital contribution requirements for institutions that have a participation agreement with the Secretary to participate in the Federal Perkins Loan program in the 1993–94

award year and subsequent award years. The Secretary proposes to include in the participation agreement, under § 674.8, these new capital contribution requirements. In addition, the HEA eliminated the definition of default rate and implemented the cohort default rate, which includes new reporting requirements. The Secretary therefore proposes to amend the regulations to incorporate new reporting requirements containing information that the Department will use to determine an institution's cohort default rate.

Section 674.9 Student Eligibility

The amendments to section 461(a) of the HEA provide for the eligibility of a student engaged in a program of study abroad. This program must be approved for credit by the home institution. The Secretary proposes to amend the regulations to reflect this statutory change.

The Secretary proposes to amend the regulations to incorporate the new statutory requirement (section 464(b)(1) of the HEA) that a student must provide a driver's license number, if any, to the institution at the time of application for the Federal Perkins Loan.

The Secretary also proposes to amend § 674.9 to require that, to establish eligibility to receive additional Federal Perkins Loan funds, a borrower must reaffirm a Federal Perkins Loan debt that was previously cancelled due to the borrower's total and permanent disability, discharged in bankruptcy, or written off (if the amount of the write off exceeded $25). This proposal has been incorporated from the current Federal Family Education Loan program regulations as part of the Secretary's on-going effort to maintain similar provisions, wherever possible, in the title IV, HEA student loan programs. This proposal would treat any borrower who has not satisfied a previous Federal Perkins Loan debt in a manner that is consistent with 34 CFR 668.7(a)(7), which provides that a borrower who is in default on a Federal Perkins Loan is ineligible for new loans. It is the Secretary's position that cancellation in exchange for performing a service (such as teaching in a low-income school or teaching disabled children) satisfies the debt but cancellation for total and permanent disability or bankruptcy does not satisfy the debt.

Section 674.12 Loan Maximums

The Amendments establish annual maximum loan amounts and increase the aggregate maximum loan amounts allowable for an eligible student. These amounts depend on whether the student is attending an institution that participates in the ELO or whether the student is in a program of study abroad approved for credit by the home institution. The Secretary proposes to amend the maximum loan limits in § 674.12 to reflect the statutory changes.

Sections 674.13, 674.19, 674.31, 674.41, 674.47, and 674.49

The Secretary is proposing to amend §§ 674.13, 674.19, 674.31, 674.41, 674.47, and 674.49 to remove all references to the term "endorser" in accordance with section 464(c)(1)(E) of the HEA, which now provides that Federal Perkins Loans are to be made without security or endorsement.

Section 674.16 Making and Disbursing Loans

The Amendments require an institution to report to any one national credit bureau organization with which the Secretary has an agreement the amount of the Federal Perkins Loan made to a borrower. The Technical Amendments require that an institution report this information at least annually. The Secretary proposes in § 674.16 to incorporate the new statutory requirement that an institution report loan disbursements to a national credit bureau organization, in accordance with section 463(c)(4) of the HEA. In addition, the Secretary proposes to establish procedures by which a borrower may not be required to sign for any advance of funds made while the borrower is in a program of study abroad, if obtaining the borrower's signature would pose an undue hardship on the institution.

Section 674.18 Use of Funds

The Amendments provide for an institution to transfer up to 25 percent of its Federal Capital Contribution allotment for an award year to either or both the FSEOG and FWS programs effective for the award years beginning on or after July 1, 1993. The Secretary proposes to amend this section to incorporate this new authority.

Section 674.31 Promissory Note

The Secretary proposes to require an institution to use the promissory note that the Secretary has developed and approved and to prohibit the institution from changing any provisions of that note, as is the case with the promissory notes in the FFEL program and the Federal Direct Student Loan program. The notes approved by the Secretary will no longer appear as appendices in the regulations but will be provided in a "Dear Colleague Letter."

In accordance with provisions in the Amendments, the Secretary is also proposing to delete the defense of infancy provision in § 674.31(a)(6).

Section 674.33 Repayment

The Secretary is proposing, in accordance with amended section 464(c) of the HEA, to allow an institution to increase to $40 the minimum monthly repayment amount provided for in the loan agreement. This provision applies to loans for which the first disbursement is made on or after October 1, 1992, to a borrower who on the date the loan is made owes no balance on any Federal Perkins Loan or National Direct Student Loan.

The Amendments also established forbearance of principal and interest, or principal only, as requested in writing by the borrower, if the borrower's monthly title IV, HEA loan repayment obligation equals or exceeds 20 percent of the borrower's monthly disposable income. The institution may also grant forbearance to a borrower if it identifies other reasons that warrant it. The Secretary proposes to add this provision to this section.

To encourage repayment of defaulted loans, the Amendments provide that the Secretary may authorize an institution to compromise on the repayment of a loan if the borrower pays: (1) At least 90 percent of the loan; (2) all interest due; and (3) any collection fees due. The Secretary is proposing to include this authority in this section.

Section 674.34 Deferment of Repayment—Federal Perkins Loans and Direct Loans Made On or After July 1, 1993

Effective for loans made on or after July 1, 1993, the deferment provisions under the Federal Perkins Loan Program will change in accordance with amended section 464(c)(2)(A) of the HEA. The Secretary is proposing to revise the regulations to reflect this change. Loan repayment for these loans may be deferred for periods during which a borrower: (1) Is at least a half-time student; (2) is pursuing a course of study in a graduate fellowship program approved by the Secretary or in a rehabilitation training program for disabled individuals approved by the Secretary, excluding a medical internship or residency program; (3) is, for a period not to exceed three years, unable to find full-time employment; (4) is, for a period not to exceed three years, suffering an economic hardship; or (5) is engaged in service described under the cancellation provisions.

The definition of economic hardship proposed in these regulations is the same as the definition of economic hardship as was proposed in the FFEL

program notice of proposed rulemaking, published on March 24, 1994. The Secretary will incorporate the same definition of economic hardship into the Federal Perkins Loan, the FFEL, and the Federal Direct Student Loan program regulations based on public comments received on this notice, the FFEL program notice, the discussions of the negotiators during the Federal Direct Student Loan program negotiated rulemaking sessions, and the public comments received on proposed regulations in the Federal Direct Student Loan program.

Section 674.35 Deferment of Repayment—Federal Perkins Loans Made Before July 1, 1993

The Secretary is proposing to amend § 674.35 in accordance with the National and Community Service Act of 1990, which provides that a borrower who is performing volunteer service that is comparable to service in the Peace Corps may be compensated at a rate not to exceed the Federal minimum wage and still qualify for a deferment.

Section 674.38 Deferment Procedures

The Secretary is proposing to amend § 674.38 to include the requirement that a defaulted borrower make satisfactory arrangements to repay the loan as one of the conditions to be met in order to be granted a deferment to bring the Federal Perkins Loan program in line with the FFEL program.

Section 674.42 Contact With the Borrower

The Secretary is proposing to amend § 674.42 (a)(1)(ii) and (a)(3) in accordance with amended sections 464(e) and 485(b) of the HEA, which require each institution to notify the borrower during the exit interview of the right to forbearance and to require the borrower to provide during the exit interview: (1) The borrower's expected permanent address after leaving the institution (regardless of the reason for leaving); (2) the name and address of the borrower's expected employer after leaving the institution; (3) the name and address of the borrower's next-of-kin; and (4) any corrections in the institution's records relating to the borrower's name, address, social security number, personal references, and driver's license number.

Section 674.43 Billing Procedures

The Secretary is proposing to amend § 674.43 to allow a borrower to elect to repay his or her Federal Perkins loan by means of the electronic transfer of funds from the borrower's bank account. The Secretary believes that implementing this provision would result in a burden reduction for both the borrower and the institution.

Section 674.44 Address Searches

Section 463(e) of the HEA has been added to make use of the Internal Revenue Service and Department of Education's skip-tracing service permissive rather than mandatory for institutions. Currently, institutions are required to use the Internal Revenue Service and Department of Education's skip-tracing service in order to assign a Federal Perkins loan to the Department. The Secretary proposes to amend § 674.44 to eliminate skip-tracing as a required due diligence step. Also, the Secretary proposes to amend § 674.44, in accordance with a provision of the Amendments that eliminates the statute of limitations as a limitation on the litigation of a Federal Perkins Loan.

Section 674.45 Collection Procedures

The Secretary is proposing to amend § 674.45 in accordance with amended section 463(c) of the HEA to require institutions to report defaulted loans to any one of the credit bureau organizations with which the Secretary has an agreement. The Secretary proposes to amend § 674.45 in accordance with a provision of the Amendments that eliminate the statute of limitations as a limitation on recovering amounts owed on defaulted accounts. The Secretary is also proposing to amend this section to clarify that these regulations preempt State collection laws. This change is needed because some states do not allow a collection agency to collect a Federal Perkins Loan if the collection agency is not physically located in the state and this circumstance directly conflicts with the exercise of Federal authority.

Section 674.46 Litigation Procedures

In accordance with the changes made to section 484A of the HEA, the Secretary is proposing to amend § 674.46 to eliminate the statute of limitations as a limitation on the litigation of a Federal Perkins Loan.

Section 674.48 Use of Contractors to Perform Billing and Collection or Other Program Activities

The HEA has been amended to prohibit requiring contractors to deposit funds they collect into an interest-bearing account, unless those funds will be held longer than 45 days. The Secretary is proposing to add this provision in § 674.48 in accordance with section 463(d) of the HEA.

Section 674.50 Assignment of Defaulted Loans to the United States

The Secretary is proposing to amend § 674.50 to reflect the statutory change from default rate to cohort default rate as a measurement of institutional administrative capability. Pursuant to the statute, institutions with cohort default rates of at least 20 percent will be required to provide documentation demonstrating due diligence to assign loans to the United States.

Section 674.51 Special Definitions

The Amendments added new loan cancellation provisions for borrowers who perform certain kinds of public service. The cancellation provisions use several terms which need to be defined. The Amendments provided definitions for "Low-income communities," "High-risk children," "Infants and toddlers with disabilities," "Children and youth with disabilities," "Early intervention services," and "Qualified professional provider of early intervention services." The Secretary is proposing definitions for "Nurse," "Medical technician," and "Teaching in a field of expertise." The Secretary proposes to amend § 674.51 to incorporate the definitions of these terms based on consultations with appropriate experts in these fields.

Section 674.53 Teacher Cancellation—Federal Perkins Loans and Direct Loans Made on or After July 23, 1992

Section 465(a)(2) of the HEA has been amended by removing the 50-percent limitation on all Chapter 1 schools in a State. Teacher cancellation provisions are expanded for loans made on or after July 23, 1992, to include loan cancellation for service as: (1) A full-time special-education teacher, including teachers of infants, toddlers, children, or youth with disabilities in a public or other nonprofit elementary or secondary school system, or a full-time qualified professional provider of early-intervention services in a public or other nonprofit program under public supervision; or (2) a full-time teacher of mathematics, science, foreign languages, bilingual education, or any other field of expertise that is determined by the State education agency to have a shortage of qualified teachers. The Secretary proposes to add this section to incorporate these statutory changes.

Section 674.54 Teacher Cancellation—Federal Perkins Loans and Direct Loans Made Before July 23, 1992

The Secretary is proposing to amend § 674.54 to reflect the statutory elimination of the 50-percent limitation on all Chapter 1 schools in a State. Teaching in any Chapter 1 school will

now qualify a borrower for a loan cancellation.

Section 674.56 Employment Cancellation—Federal Perkins Loans and Direct Loans Made On or After July 23, 1992

The Amendments expanded the cancellation provisions for loans made on or after July 23, 1992, to include the following services: (1) A full-time nurse or medical technician; (2) a full-time employee of a public or private nonprofit child or family service agency who is providing or supervising the provision of services to high-risk children and their families from low-income communities; or (3) a full-time qualified professional provider of early intervention services in a public or other nonprofit program under public supervision by the lead agency. The Secretary proposes to add this section to incorporate these changes.

Section 674.57 Cancellation for Law Enforcement or Corrections Officer Service

Section 465(a)(2) of the HEA was amended by the Police Recruitment and Education Program (PREP), a provision of the Crime Control Act of 1990. PREP provides for Federal Perkins Loan and National Direct Student Loan cancellation benefits for full-time law enforcement or corrections officers providing service to local, State, and Federal law enforcement or corrections agencies. The provision only applies to Federal Perkins Loans and Direct Loans made on or after November 29, 1990. The Secretary is proposing to add a new § 674.57 to the regulations to reflect these provisions. In developing § 674.57, the Secretary relied on the experience gained from the Law Enforcement Education Program (LEEP), a highly successful program in the 1970's that provided financial assistance to law enforcement officers to attend an institution of higher education. The concepts of an eligible agency, a law enforcement officer, and eligible service were drawn from LEEP.

Section 674.61 Cancellation for Death or Disability

The Secretary is proposing to amend the definition of permanent and total disability in § 674.61 to include the inability of the borrower to attend an institution.

Federal Work-Study Programs

Program Name Change

The three (3) Federal work-study programs under section 441 of the HEA are the Federal Work-Study program under subpart A (formerly named the College Work-Study program), the Job Location and Development program under subpart B, and the Work-Colleges program under the new subpart C. These programs will be known collectively as the Federal Work-Study programs.

Section 675.1 Purpose and Identification of Common Provisions

The National and Community Service Act Amendments of 1990 authorized the creation of full- and part-time national and community service programs. In an effort to increase participation in community service, Congress amended the statement of purpose for the FWS program, in section 441(a) of the HEA, to encourage students receiving program assistance to participate in community service activities. The Secretary proposes to amend § 675.1(a) in accordance with the statute.

Section 675.2 Definitions

The Secretary proposes to amend the definitions section to add a new definition of "low-income individual" for purposes of community services. The Secretary is proposing to use the same definition provided for in § 674.33(c) of the Federal Perkins Loan program regulations. The Secretary believes that the "income protection allowance" (IPA) is the best indicator of a "low-income individual." Also, the IPA charts are very accessible because the Secretary publishes annually in the **Federal Register** the revised IPA table that is mailed to all institutions participating in title IV, HEA programs.

Section 675.8 Program Participation Agreement

The Secretary is proposing to amend the provisions governing the program participation agreement between the Secretary and the institution in § 675.8 in accordance with the statutory change in section 443(b) of the HEA to add assurances that: (1) employment under the program may be used to support programs for supportive services to students with disabilities; and (2) institutions will inform all eligible students of the opportunity to perform community service and will consult with local nonprofit, governmental, and community-based organizations to identify community service opportunities. In identifying community service opportunities, the Secretary expects institutions to consult with their students.

Section 675.18 Use of Funds

The Secretary is proposing several amendments to § 675.18. First, in accordance with section 448(b)(1) of the HEA, the Secretary is proposing to amend § 675.18(a) to provide that institutions participating in the Work-Colleges program may use funds allocated under section 442 of the HEA for meeting costs of the Work-Colleges program.

Second, in accordance with section 447 of the HEA, the Secretary is proposing to amend § 675.18(b)(5) to eliminate the institutional administrative expense allowance for work-study for community service learning. Institutions would, however, be allowed to use up to 10 percent of the funds available for the institution's administrative cost allowance and attributable to the institution's FWS program expenditures to cover expenses incurred for its program of community services.

Third, in accordance with section 488 of the HEA, the Secretary is proposing to amend § 675.18(f)(1) to increase the amount of an institution's allocation under the FWS programs that may be transferred to the FSEOG program from 10 percent to 25 percent.

Fourth, in accordance with section 445(b)(2) of the HEA, the Secretary is proposing to amend § 675.18 to provide that an institution is authorized to make payments to students for services performed on or after May 15 of the previous award year but prior to the beginning of the succeeding award year (that is, for summer employment) from the succeeding award year's allocation. This carry-back authority would be in addition to the existing authority to carry-back 10 percent of the succeeding year's allocation for use at any time during the preceding award year.

Fifth, in accordance with section 443(b)(2)(A) of the HEA, the Secretary is proposing to amend § 675.18 to provide that institutions are required to use at least 5 percent of the total funds granted to the institution to compensate students employed in community service activities for the 1994–95 and subsequent award years. If an institution is unable to comply with this requirement to provide community services, the institution may request a waiver of this requirement. The Secretary will approve a waiver if the Secretary determines that enforcing this requirement would create a hardship for students at the institution. The public is invited to comment on the circumstances under which the community service requirement might create a hardship for students.

Section 675.21 Institutional Employment

Current regulations provide that a proprietary institution may employ a

student to work for the institution in jobs that are in community services but also involve the provision of student services that are directly related to the work-study student's training or education. In accordance with section 443(b)(8) of the HEA, as amended by the Technical Amendments, the Secretary is proposing to amend § 675.21(b) to provide that a student employed by a proprietary institution and performing community services is no longer also required to be furnishing student services. This change would help promote community services because of the limited employment opportunities that satisfy both types of services.

Section 675.26 FWS Federal Share Limitations

Current regulations provide that the Federal share of FWS compensation paid to a student employed other than by a for-profit organization may not exceed 70 percent. In accordance with section 443(b)(5) of the HEA, the Secretary is proposing to amend § 675.26 to increase the Federal share to 75 percent. However, the Federal share of FWS compensation paid to a student employed by a for-profit organization still may not exceed 50 percent as established by the HEA.

It is important to note that the Secretary will continue to authorize a Federal share of 100 percent of the compensation earned by students during an award year if all of the following criteria are met:

1. The work performed by the student is for the institution itself, for a Federal, state or local public agency, or for a private nonprofit organization.
2. The institution at which the student is enrolled is designated as an eligible institution under the Strengthening Institutions Program (34 CFR part 607), the Strengthening Historically Black Colleges and Universities Program (34 CFR part 608), or the Strengthening Historically Black Graduate Institutions Program (34 CFR part 609).
3. The institution requests the increased Federal share as part of its regular FWS funding application for that year.

Section 675.28 Community Service Learning Program

Current regulations provide for a separate "Community Service Learning program" under the FWS programs. In an effort to increase participation in community service activities in the title IV, HEA programs, Congress amended the statement of purpose for the FWS program to encourage students to participate in community service activities. The Amendments removed the authority for a separate "Community Service-Learning program" and instead require institutions to employ a percentage of their FWS students in community service jobs. As a result of this change, the Secretary is proposing to remove § 675.28 from the regulations.

Job Location and Development (JLD) Program (Subpart B)

Sections 675.31, 675.32 Purpose and Program Description

Current regulations provide for two separate Job Location and Development programs: (1) A regular JLD program to expand off-campus job opportunities for students enrolled in eligible institutions of higher education who, regardless of their financial need, want jobs; and (2) a "Community Services" JLD program to locate and develop community services jobs for students with financial need.

The Secretary is proposing to amend § 675.31 in accordance with amended section 446 of the HEA to combine the two programs into one program to expand off-campus job opportunities for students enrolled in eligible institutions, regardless of their financial need. The Secretary is further proposing to amend § 675.31, in accordance with the amended statement of purpose for all the FWS programs in section 441(a) of the HEA, to include in the statement of purpose for the JLD program the encouragement of participation in community service activities. Also, in accordance with amended section 446 of the HEA, the Secretary is proposing to amend § 675.32 to allow an institution to use the lesser of $50,000 or 10 percent of the institution's allocation to establish or expand a program to locate and develop jobs, including community service jobs.

Section 675.34 Multi-Institutional Job Location and Development Programs

Current regulations provide that institutions may enter into agreements with other participating institutions and nonprofit organizations to establish and operate job location programs for its students.

The Secretary is proposing to amend § 675.34 in accordance with amended section 446(a) of the HEA to eliminate the authority for institutions to enter into agreements with nonprofit organizations and limit institutions to working with other institutions for the purpose of developing jobs.

Work-Colleges (Subpart C)

Sections 675.41–675.47

The Amendments added new section 448 to the HEA to establish the "Work-Colleges program." Congress created this program to encourage comprehensive work-learning programs and recognize the special nature of institutions that choose to make work-learning a central part of their educational programs.

Under the statute, institutions that satisfy the definition of "work-college" may apply to the Secretary to participate in the Work-Colleges program. The term "work-college" under the statute means an eligible institution that (1) has been a public or private nonprofit institution with a commitment to community service; (2) has operated a comprehensive work-learning program for at least two years; (3) requires all resident students who reside on campus to participate in a comprehensive work-learning program and the provision of services as an integral part of the institution's educational program and as part of the institution's educational philosophy; and (4) provides students participating in the comprehensive work-learning program with the opportunity to contribute to their education and to the welfare of the community as a whole.

A comprehensive work-learning program does not provide only narrowly career-oriented or job-skill-oriented employment. It provides work experiences that teach basic habits and attitudes, responsibility, interpersonal relations, communication, teamwork, self analysis, organizational behavior, problem solving, leadership and other lessons that are not job specific or career specific.

The statute requires that funds made available to work-colleges must be matched on a dollar-for-dollar basis from non-Federal sources. In addition to any amounts appropriated, the statute allows work-colleges to also use FWS program funds and Federal Perkins Loan funds to provide flexibility in strengthening the self-help-through-work element in financial aid packaging.

Federal Supplemental Educational Opportunity Grant Program

Program Name Change

The "Supplemental Educational Opportunity Grant program" will now be known as the "Federal Supplemental Educational Opportunity Grant program."

Section 676.4 Allocation and Reallocation

The Secretary proposes to amend this section to provide for the flexibility to reallocate unexpended FSEOG funds. This change would allow the Secretary

to assist students who suffer financial harm from a natural disaster such as a flood or hurricane.

Section 676.18 Use of Funds

The Secretary proposes to eliminate an institution's authority to transfer FSEOG funds to the FWS program. This change is required by the Amendments.

Section 676.20 Minimum and Maximum FSEOG Award

Current regulations provide that an institution may award a student a maximum of $4,000 per academic year. In accordance with section 413B(a)(3) of the HEA, the Secretary proposes to amend the regulations to allow an institution to increase the FSEOG to $4,400, for a student engaged in a program of study abroad.

Section 676.21 FSEOG Federal Share Limitations

The Amendments require that the Federal share of FSEOG awards will not exceed 75 percent effective for award years beginning on or after July 1, 1993. The Secretary is proposing to amend this section to incorporate this statutory change.

It is important to note that the Secretary will continue to authorize a Federal share of 100 percent of the FSEOGs awarded to students by an institution for an award year if all of the following criteria are met:

1. The institution is designated as an eligible institution under the Strengthening Institutions Program (34 CFR part 607) or the Strengthening Historically Black Colleges and Universities Program (34 CFR part 608).

2. The institution requests that increased Federal share as part of its regular FSEOG funding application for that year.

Executive Order 12866

1. Assessment of Costs and Benefits

These proposed regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the proposed regulations are those resulting from statutory requirements and those determined by the Secretary to be necessary for administering this program effectively and efficiently. Burdens specifically associated with information collection requirements, if any, are identified and explained elsewhere in this preamble under the heading Paperwork Reduction Act of 1980.

In assessing the potential costs and benefits—both quantitative and qualitative—of these proposed regulations, the Secretary has determined that the benefits of the proposed regulations justify the costs.

The Secretary has also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

To assist the Department in complying with the specific requirements of Executive Order 12866, the Secretary invites comment on whether there may be further opportunities to reduce any potential costs or increase potential benefits resulting from these regulations without impeding the effective and efficient administration of the program.

2. Clarity of the Regulations

Executive Order 12866 requires each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed regulations clearly stated? (2) Do the regulations contain technical terms or other wording that interferes with their clarity? (3) Does the format of the regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity? Would the regulations be easier to understand if they were divided into more (but shorter) sections? (A "section" is preceded by the symbol "§" and a numbered heading, for example, § 674.4 *Allocation and reallocation.*) (4) Is the description of the regulations in the "Supplementary Information" section of this preamble helpful in understanding the regulations? How could this description be more helpful in making the regulations easier to understand? (5) What else could the Department do to make the regulations easier to understand?

A copy of any comments that concern how the Department could make these proposed regulations easier to understand should be sent to Stanley M. Cohen, Regulations Quality Officer, U.S. Department of Education, 400 Maryland Avenue SW. (Room 5125, FOB–6), Washington, DC 20202–2241.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. The small entities affected by these proposed regulations are small institutions of postsecondary education. The changes in these regulations will not substantially increase institutions' workload or costs associated with administering the title IV, HEA programs and, therefore, will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act of 1980

Sections 668.57, 674.6, 674.8, 674.10, 674.16, 674.31, 674.34, 674.35, 674.42, 674.45, 674.48, 674.49, 674.50, 675.10, 675.27, 675.34, 675.35, 675.46, 675.47, and 676.16 contain information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these sections to the Office of Management and Budget (OMB) for its review. (44 U.S.C. 3504(h)).

Annual public reporting and recordkeeping burden for the Student Assistance General Provisions—subpart E, which includes § 668.57, is estimated to average 365,693 hours, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Annual public reporting and recordkeeping burden for the Federal Perkins Loan program—subpart C, §§ 674.42, 674.45, 674.48, 674.49, and 674.50 is 80,431 hours, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Annual public reporting and recordkeeping burden for the Federal Perkins Loans, the Federal Work-Study, and the Federal Supplemental Educational Opportunity Grant programs, §§ 674.6, 674.8, 674.10, 674.16, 674.31, 674.34, 674.35, 675.10, 675.27, 675.34, 675.35, 675.46, 675.47, and 676.16 is 12,723 hours, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, room 3002, New Executive Office Building, Washington, DC 20503; Attention: Daniel J. Chenok.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 4310, ROB–3, 7th and D Streets SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects

34 CFR Part 668

Administrative practice and procedure, Colleges and universities, Consumer protection, Loan programs—education, Grant programs—education, Student aid, Reporting and recordkeeping requirements.

34 CFR Part 674

Loan programs—education, Student aid, Reporting and recordkeeping requirements.

34 CFR Part 675

Loan programs—education, Student aid, Reporting and recordkeeping requirements.

34 CFR Part 676

Loan programs—education, Student aid, Reporting and recordkeeping requirements.

Dated: February 8, 1994.

Richard W. Riley,

Secretary of Education.

(Catalog of Federal Domestic Assistance Numbers: 84.007 Federal Supplemental Educational Opportunity Grant Program; 84.032 Consolidation Program; 84.032 Guaranteed Student Loan Program; 84.032 PLUS Program; 84.032 Supplemental Loans for Students Program; 84.038 Federal Perkins Loan Program; 84.033 Federal Work-Study Program; 84.226 Income Contingent Loan Program; 84.063 Federal Pell Grant Program; 84.069 State Student Incentive Grant Program)

The Secretary proposes to amend parts 668, 674, 675, and 676 of title 34 of the Code of Federal Regulations as follows:

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

1. The authority citation for part 668 continues to read as follows:

Authority: 20 U.S.C. 1085, 1088, 1091, 1092, 1094, and 1141, unless otherwise noted.

2. Section 668.57 is amended by revising paragraph (c)(1), introductory text to read as follows:

§ 668.57 Acceptable documentation.

* * * * *

(c) *Number of family household members enrolled in postsecondary institutions.* (1) Except as provided in § 668.56 (b), (c), (d), and (e), an institution shall require an applicant selected for verification to verify annually information included on the application regarding the number of household members in the applicant's family enrolled on at least a half-time basis in postsecondary institutions. The institution shall require the applicant to verify that information by submitting a statement signed by the applicant and one of the applicant's parents whose income was used in the applicant's need analysis, if the applicant is a dependent student, or by the applicant and the applicant's spouse, if the applicant is an independent student, listing—

* * * * *

PART 674—FEDERAL PERKINS LOAN PROGRAM

1. The authority citation for part 674 continues to read as follows:

Authority: 20 U.S.C. 1087aa–1087ii and 20 U.S.C. 421–429, unless otherwise noted.

2. Section 674.2(b) is amended by removing the definitions of "Default rate", "Defaulted principal amount outstanding", and "Matured loans"; by revising the definition of "Undergraduate student"; and by adding, in alphabetical order, the definitions of "Disposable income", "Enter repayment", "Making of a loan", and "Satisfactory arrangements to repay the loan" to read as follows:

§ 674.2 Definitions.

* * * * *

(b) * * *

Disposable income: That part of a borrower's compensation from an employer or other income from any source that remains after the deduction of any amounts required by law to be withheld.

Enter repayment: The day following the expiration of the initial grace period or the day the borrower waives the initial grace period. This date does not change if a forbearance, deferment or cancellation is granted after the borrower enters repayment.

Making of a loan: When the borrower signs for an advance of loan funds and those funds are disbursed.

Satisfactory arrangements to repay the loan: The establishment of a new written repayment agreement and the making of one payment each month for six consecutive months.

Undergraduate student: A student enrolled in a course of study at an institution of higher education that is at or below the baccalaureate level and that usually does not exceed four academic years, or is enrolled in a four to five academic year program designed to lead to a first degree. A student enrolled in a program of any other length is considered an undergraduate student for only the first four academic years of that program.

* * * * *

3. Section 674.4 is amended by revising paragraph (b) and by adding new paragraphs (e) and (f) to read as follows:

§ 674.4 Allocation and reallocation.

* * * * *

(b) The Secretary reallocates Federal capital contributions to institutions participating in the Federal Perkins Loan program by—

(1) Reallocating 80 percent of the total funds available in accordance with section 462(j) of the HEA; and

(2) Reallocating 20 percent of the total funds available in a manner that best carries out the purposes of the Federal Perkins Loan program.

* * * * *

(e) *Unexpended funds.* (1) If an institution does not expend its Federal Perkins Loan allocation during an award year and returns more than 10 percent of the allocation, the Secretary reduces its allocation for the next fiscal year by the amount returned.

(2) The Secretary may waive the provision of paragraph (e)(1) of this section for a specific institution if the Secretary finds that enforcement would be contrary to the interests of the program.

(3) The Secretary considers enforcement of paragraph (e)(1) of this section to be contrary to the interest of the program only if the institution returned more than 10 percent of its allocation due to circumstances beyond the institution's control that are not expected to recur.

(f) *Anticipated collections.* (1) For the purposes of calculating an institution's share of any excess allocation, an institution's anticipated collections are equal to the amount that was collected during the second year preceding the beginning of the award period multiplied by 1.21.

(2) The Secretary may waive the provision of paragraph (f)(1) of this section for any institution that has a cohort default rate that does not exceed 7.5 percent.

4. A new § 674.5 is added to read as follows:

§ 674.5 Federal Perkins Loan program cohort default rate and penalties.

(a) *Default penalty.* If an institution's cohort default rate meets the following levels, a default penalty is imposed on the institution as follows:

(1) If the institution's cohort default rate equals or exceeds 15 percent, the institution must establish a default reduction plan in accordance with § 674.6.

(2) If the institution's cohort default rate equals or exceeds 20 percent, but is less than 25 percent, the institution's FCC is reduced by 10 percent.

(3) If the institution's cohort default rate equals or exceeds 25 percent, but is less than 30 percent, the institution's FCC is reduced by 30 percent.

(4) If the institution's cohort default rate equals or exceeds 30 percent, the institution's FCC is reduced to zero.

(b) *Cohort default rate.* (1) The term "cohort default rate" means, for any award year in which 30 or more current and former students at the institution enter repayment on a loan received for attendance at the institution, the percentage of those current and former students who enter repayment in that award year on the loans received for attendance at that institution who default before the end of the following award year.

(2) In determining the number of students who default before the end of the following award year, the Secretary excludes any loans that, due to improper servicing or collection, would result in an inaccurate or incomplete calculation of the cohort default rate.

(3) For any award year in which less than 30 current and former students at the institution enter repayment on a loan received for attendance at the institution, the "cohort default rate" means the percentage of those current and former students who entered repayment on loans received for attendance at that institution in any of the three most recent award years and who defaulted on those loans before the end of the award year immediately following the year in which they entered repayment.

(c) *Defaulted loans to be included in the cohort default rate.* For purposes of calculating the cohort default rate under paragraph (b) of this section—

(1) A borrower must be included only if the borrower's default has persisted for at least—

(i) 240 consecutive days for loans repayable in monthly installments; or

(ii) 270 consecutive days for loans repayable in quarterly installments;

(2) A loan is considered to be in default if a payment is made by the institution of higher education, its owner, agency, contractor, employee, or any other entity or individual affiliated with the institution, in order to avoid default by the borrower;

(3)(i) Any loan that is in default, but on which the borrower has made satisfactory arrangements to repay the loan, or any loan that has been rehabilitated before the end of the following award year is not considered to be in default for purposes of the cohort default rate calculation; and

(ii) In the case of a student who has attended and borrowed at more than one institution, the student and his or her subsequent repayment or default are attributed to the institution for attendance at which the student received the loan that entered repayment in the award year; and

(4) Improper servicing or collection means the failure of the institution to comply with subpart C of this part.

(d) *Locations of the institution.* (1) A cohort default rate of an institution applies to all locations of the institution as it exists on the first day of the award year for which the rate is calculated.

(2) A cohort default rate of an institution applies to all locations of the institution from the date the institution is notified of that rate until the institution is notified by the Secretary that the rate no longer applies.

(3) For an institution that changes status from a location of one institution to a free-standing institution, the Secretary determines the cohort default rate based on the institution's status as of July 1 of the award year for which a cohort default rate is being calculated.

(4)(i) For an institution that changes status from a free-standing institution to a location of another institution, the Secretary determines the cohort default rate based on the combined number of students who enter repayment during the applicable award year and the combined number of students who default during the applicable award years from both the former free-standing institution and the other institution. This cohort default rate applies to the new consolidated institution and all of its current locations.

(ii) For free-standing institutions that merge, the Secretary determines the cohort default rate based on the combined number of students who enter repayment during the applicable award year and the combined number of students who default during the applicable award years from both of the institutions that are merging. This cohort default rate applies to the new, consolidated institution.

(iii) For an institution that changes status from a location of one institution to a location of another institution, the Secretary determines the cohort default rate based on the combined number of students who enter repayment during the applicable award year and the number of students who default during the applicable award years from both of the institutions in their entirety, not limited solely to the respective locations.

(5) For an institution that has a change in ownership that results in a change in control, the Secretary determines the cohort default rate based on the combined number of students who enter repayment during the applicable award year and the combined number of students who default during the applicable award years from the institution under both the old and new control.

(e) *Loan rehabilitation.* (1) A loan is considered rehabilitated only after the borrower has executed a new written repayment agreement and has made one payment each month for 12 consecutive months.

(2) The institution shall report to any one national credit bureau organization with which the Secretary has an agreement within 30 days of the date the loan was rehabilitated that the loan is no longer in default.

(Authority: 20 U.S.C. 1087bb)

5. A new § 674.6 is added to read as follows:

§ 674.6 Default reduction plan.

(a) *General.* An institution with a cohort default rate that equals or exceeds 15 percent shall establish and implement a plan designed to reduce defaults by its students in the future. The institution shall submit to the Secretary by December 31 of the calendar year in which the cohort default rate was calculated—

(1) A written description of the default reduction plan;

(2) A statement indicating that the institution agrees to comply with the required measures in paragraph (b) of this section; or

(3) For an institution that is participating in the Federal Family Education Loan Program and has in place a default reduction plan for that program, a statement indicating that the institution agrees to apply that plan to the Federal Perkins Loan program.

(b) *Required measures.* The default reduction plan required under this section must include a description of the measures to be taken by the institution to reduce defaults. The institution shall explain how it plans to implement the following measures:

(1) Revise admission policies and screening practices, consistent with applicable State law, to ensure that students enrolled in the institution, especially those who are not high school graduates or those who are in need of substantial remedial work, have a reasonable expectation of succeeding in their programs of study.

(2) Improve the availability and effectiveness of academic counseling and other support services to decrease withdrawal rates, including—

(i) Providing academic counseling and other support services to students on a regular basis, at a time and location that is convenient for the students involved;

(ii) Publicizing the availability of the academic counseling and other support services;

(iii) Establishing procedures to identify academically high-risk students and schedule those students for immediate counseling services; and

(iv) Maintaining records identifying those students who receive academic counseling.

(3) Attempt to reduce its withdrawal rate by conforming with that accrediting agency's standards of satisfactory progress and with those described in 34 CFR 668.14, and improving its curricula, facilities, materials, equipment, qualifications and size of faculty, and other aspects of its educational program in consultation with its academic accrediting agency.

(4) Increase the frequency of reviews of in-school status of borrowers to ensure the institution's prompt recognition of instances in which borrowers withdraw without notice to the institution. Reviews must be conducted each month.

(5) Expand its job placement program for its students by—

(i) Increasing contacts with local employers, counseling students in job search skills, and exploring with local employers the feasibility of establishing internship and cooperative education programs;

(ii) Attempting to improve its job placement rate and licensing examination pass rate by improving its curricula, facilities, materials, equipment, qualifications and size of faculty, and other aspects of its educational program in consultation with the cognizant accrediting body; and

(iii) Establishing a liaison for job information and placement assistance with the local office of the United States Employment Service and the Private Industry Council supported by the U.S. Department of Labor.

(6) Remind the borrower of the importance of the repayment obligation and of the consequences of default and update the institution's records regarding the borrower's employer and employer's address as part of the contacts with the borrower under § 674.42(b).

(7) Obtain information from the borrower regarding references and family members beyond those provided on the loan application to provide the institution or its agent with a variety of ways to locate a borrower who later relocates without notifying the institution at the time of a borrower's admission to the institution.

(8) Explain to a prospective student that the student's dissatisfaction with, or nonreceipt of, the educational services being offered by the institution does not excuse the borrower from repayment of any Federal Perkins Loan.

(9) Use a written test and intensive additional counseling for those borrowers who fail the test to ensure the borrower's comprehension of the terms and conditions of the loan including those described in §§ 674.16 and 674.42(a) as part of the initial loan counseling and the exit interview.

(10) During the exit interview provided to a Federal Perkins Loan borrower—

(i) Explain the use by institutions of outside contractors to service and collect loans;

(ii) Provide general information on budgeting of living expenses and other aspects of personal financial management; and

(iii) Provide guidance on the preparation of correspondence to the borrower's institution or agent and completion of deferment and cancellation forms.

(11) Use available audio-visual materials such as videos and films to enhance the effectiveness of the initial and exit counseling.

(12) Conduct an annual comprehensive self-evaluation of its administration of the title IV programs to identify institutional practices that should be modified to reduce defaults, and then implement those modifications.

(13) Delay loan disbursements to first-time borrowers for 30 days after enrollment.

(14) Require first-time borrowers to endorse their loan check at the institution and to pick up at the institution any loan proceeds remaining after deduction of institutional charges.

(Authority: 20 U.S.C. 1087bb)

6. A new § 674.7 is added to read as follows:

§ 674.7 Expanded lending option (ELO).

(a) To participate in the expanded lending option in any award year, an eligible institution shall enter into a special ELO participation agreement with the Secretary. The agreement provides that the institution shall—

(1) Deposit ICC equal to 100 percent of its FCC into the Fund;

(2) Maintain a cohort default rate that is equal to or less than 15 percent; and

(3) Have participated in the Federal Perkins Loan Program for at least two years.

(b) The maximum annual amount of Federal Perkins Loans and Direct Loans an eligible student who attends an institution that participates in the ELO may borrow in any academic year is—

(1) $4,000 for a student who has not successfully completed a program of undergraduate education; and

(2) $6,000 for a graduate or professional student.

(c) The aggregate maximum amount of Federal Perkins and Direct Loans an eligible student who attends an institution that participates in the ELO may borrow in any academic year is—

(1) $8,000 for a student who has not successfully completed two years of a program leading to a bachelor's degree;

(2) $20,000 for a student who has successfully completed two years of a program leading to a bachelor's degree but who has not received the degree; and

(3) $40,000 for a graduate or professional student.

(d) The maximum annual amounts described in paragraph (b) of this section and the aggregate maximum amounts described in paragraph (c) of this section may be exceeded by 20 percent if the student is engaged in a program of study abroad that is approved for credit by the home institution at which the student is enrolled and that has reasonable costs in excess of the home institution's cost of attendance.

(e) For each student, the maximum annual amounts described in paragraphs (b) and (d) of this section and the aggregate maximum amounts listed in paragraphs (c) and (d) of this section include any amount borrowed previously by that student under title IV, part E of the HEA at any institution, including any amounts that may have been repaid to the Fund at any institution.

(f) The institution shall deposit into its Fund an amount required under paragraph (a)(1) of this section whether or not the institution makes loans in the amount authorized under paragraphs (b) and (c) of this section.

(Authority: 20 U.S.C. 1087cc, 1087dd)

7. Section 674.8 is amended by revising paragraph (a)(2); by redesignating paragraphs (a)(3) through (a)(6) as paragraphs (a)(4) through (a)(7) respectively; by adding a new paragraph (a)(3); and by revising paragraph (c) to read as follows:

§ 674.8 Program participation agreement.

* * * * *

(a) * * *

(2) Except as provided in paragraph (a)(1) of § 674.7—

(i) ICC equal to at least three-seventeenths of the FCC described in paragraph (a)(1) of this section in award year 1993–94; and

(ii) ICC equal to at least one-third of the FCC described in paragraph (a)(1) of this section in award year 1994–95 and succeeding award years;

(3) ICC equal to the amount of FCC described in paragraph (a)(1) of § 674.7 for an institution that has been granted permission by the Secretary to participate in the ELO under the Federal Perkins Loan program;

* * * * *

(c) The institution shall submit an annual report to the Secretary containing information that determines its cohort default rate that includes—

(1) For institutions in which 30 or more of its current or former students first entered repayment in an award year—

(i) The total number of borrowers who first entered repayment in the award year; and

(ii) The number of those borrowers in default by the end of the following award year; or

(2) For institutions in which less than 30 of its current or former students entered repayment in an award year—

(i) The total number of borrowers who first entered repayment in any of the three most recent award years; and

(ii) The number of those borrowers in default before the end of the award year immediately following the year in which they entered repayment.

* * * * *

8. Section 674.9 is amended by revising paragraph (b); by removing the word "and" after the semicolon in paragraph (d)(2); by removing the period at the end of paragraph (e) and adding, in its place, a semicolon; and by adding new paragraphs (f), (g), (h), and (i) to read as follows:

§ 674.9 Student eligibility.

* * * * *

(b) Is enrolled or accepted for enrollment as an undergraduate, graduate, or professional student at the institution, whether or not engaged in a program of study abroad approved for credit by the home institution;

* * * * *

(f) Provides to the institution a driver's license number, if any, at the time of application for the loan;

(g) Reaffirms any Federal Perkins, Direct, or Defense loan amount that previously was cancelled due to the borrower's total and permanent disability, or discharged in bankruptcy, or written off (if the amount of the write-off exceeded $25); and

(h)(1) In the case of a borrower whose previous loan was cancelled due to total and permanent disability, obtains a certification from a physician that the borrower's condition has improved and that the borrower is able to engage in substantial gainful activity; and

(2) Signs a statement acknowledging that any new Federal Perkins, Direct, or Defense loan the borrower received cannot be cancelled in the future on the basis of any present impairment, unless that condition substantially deteriorates.

(i) For purposes of this section, reaffirmation means the acknowledgment of the loan by the borrower in a legally binding manner. The acknowledgement may include, but is not limited to, the borrower—

(1) Signing a new promissory note or new repayment agreement; or

(2) Making a payment on the loan.

(Authority: 20 U.S.C. 1087aa, 1087dd, and 1091)

9. Section 674.10 is amended by revising paragraph (b) to read as follows:

§ 674.10 Selection of students for loans.

* * * * *

(b) If an institution's allocation of FCC is directly or indirectly based in part on the financial need demonstrated by students who are attending the institution as less-than-full-time students, or who are independent students, and the total financial need of all the less-than-full-time or independent students at the institution exceeds 5 percent of the total financial need of all students at the institution, at least 5 percent of those loans shall be made available to those less-than-full-time or independent students.

* * * * *

10. Section 674.12 is revised to read as follows:

§ 674.12 Loan maximums.

(a) The maximum annual amount of Federal Perkins Loans and Direct Loans an eligible student who attends an institution that does not participate in the ELO may borrow in any academic year is—

(1) $3,000 for a student who has not successfully completed a program of undergraduate education; and

(2) $5,000 for a graduate or professional student.

(b) The aggregate maximum amount of Federal Perkins Loans and Direct Loans an eligible student who attends an institution that does not participate in the ELO may borrow is—

(1) $15,000 for a student who has not successfully completed a program of undergraduate education; and

(2) $30,000 for a graduate or professional student.

(c) The maximum annual amounts described in paragraph (a) of this section and the aggregate maximum amounts described in paragraph (b) of this section may be exceeded by 20 percent if the student is engaged in a program of study abroad that is approved for credit by the home institution at which the student is enrolled and that has reasonable costs in excess of the home institution's cost of attendance.

(d) For each student, the maximum annual amounts described in paragraphs (a) and (c) of this section and the aggregate maximum amounts described in paragraphs (b) and (c) of this section, include any amounts borrowed previously by the student under title IV, part E of the HEA at any institution, including any amounts that may have been repaid to the Fund at any institution.

* * * * *

§ 674.13 [Amended]

11. Section 674.13 is amended by removing the words "or endorser" after the word "borrower" in paragraph (b)(1)(ii).

12. Section 674.14 is amended by removing the words "Guaranteed Student Loans" and adding, in its place, the words "Federal Family Education Loan" in paragraph (b)(1)(ii); by removing the words "and need-based ICLs" after the words "Direct Loans" in paragraph (b)(1)(x); by adding the words "or Federal" before the word "PLUS", by removing the comma after the words "PLUS loan", and by removing the words "or non-need-based ICL" before the word "as" in paragraph (b)(3); and by revising paragraphs (c) introductory text, (c)(1), (c)(2), and (c)(3) to read as follows:

§ 674.14 Overaward.

* * * * *

(c) *Treatment of resources in excess of need.* An institution shall take the following steps if it learns that a student has received additional resources not included in the calculation of Direct or

Federal Perkins Loan eligibility that would result in the student's total resources exceeding his or her financial need by more than $200, or $300 if employed under the FWS program:

(1) The institution shall decide whether the student has increased financial need that was unanticipated when it awarded financial aid to the student. If the student demonstrates increased financial need and the total resources do not exceed this increased need by more than $200, or $300 if employed under the FWS program, no further action is necessary.

(2) If no increased need is demonstrated, or the student's total resources still exceed his or her need by more than $200, or $300 if employed under the FWS program, as recalculated pursuant to paragraph (c)(1) of this section, the institution shall cancel any undisbursed loan or grant (other than a Federal Pell Grant).

(3) If the student's total resources still exceed his or her need by more than $200, or $300 if employed under the FWS program, after the institution takes the steps required in paragraphs (c)(1) and (2) of this section, the institution shall consider the amount by which the resources exceed the student's financial need by more than the applicable amount as an overpayment.

13. Section 674.16 is amended by revising paragraph (a)(1)(ii); by revising paragraph (a)(1)(x); by revising paragraph (d); by redesignating paragraphs (g) and (h) as paragraphs (h) and (i) respectively; by adding a new paragraph (g); by adding the word "Federal" before the words "Perkins Loan program" in redesignated paragraph (h); and by adding a new paragraph (j) to read as follows:

§ 674.16 Making and disbursing loans.

(a)(1) * * *

(ii) The principal amount of the loan and a statement that the institution will report the amount of the loan to a national credit bureau organization with which the Secretary has an agreement at least annually.

* * * * *

(x) A definition of default and the consequences to the borrower, including a statement that the institution may report the default to any one national credit bureau organization with which the Secretary has an agreement.

* * * * *

(d)(1) The institution may advance the loan proceeds to the borrower directly by check or by crediting his or her account with the institution. The institution shall notify the student of the amount he or she can expect to receive and of how and when that amount will be paid. In either case, the borrower must sign for each advance of funds on the promissory note, except as provided in paragraph (d)(2) of this section.

(2)(i) In the case of a borrower enrolled in a study-abroad program approved for credit by the home institution in which the borrower is enrolled, the borrower may not be required to sign for any advance of funds made while the borrower is studying abroad if obtaining the borrower's signature would pose an undue hardship on the institution.

(ii) The institution shall properly document the reason for not obtaining the borrower's signature.

* * * * *

(g)(1) An institution may disburse Federal Perkins Loan funds in accordance with paragraphs (g)(2) and (3) of this section after the student has ceased to be enrolled.

(2) A disbursement described in paragraph (g)(1) of this section may be made—

(i) Only if the loan was awarded to the student while he or she was still an eligible student; and

(ii) Only if the loan funds will be used to cover documented educational costs to the student that are normally included in a borrower's cost of attendance under section 472 of the HEA for the payment period for which the loan was intended and the student was actually enrolled.

(3) The institution shall document in the student's file the reason for the late disbursement.

* * * * *

(j) An institution shall report to any one national credit bureau organization with which the Secretary has an agreement—

(1) The amount of each disbursement;

(2) The date the disbursement was made; and

(3) Information as specified in section 430A of the Act.

* * * * *

14. Section 674.18 is amended by adding a new paragraph (c) to read as follows:

§ 674.18 Use of funds.

* * * * *

(c) *Transfer of funds.* An institution may transfer up to 25 percent of the sum of its initial and supplemental Federal Perkins Loan allocations for an award year to the Federal Work-Study program or Federal Supplemental Educational Opportunity Grant program, or to both.

* * * * *

15. Section 674.19 is amended by revising paragraph (e)(2)(ii) to read as follows:

§ 674.19 Fiscal procedures and records.

* * * * *

(e) * * *

(2) * * *

(ii) The history must also show the date, nature, and result of each contact with the borrower in the collection of an overdue loan. The institution shall include in the repayment history copies of all correspondence to or from the borrower, except bills, routine overdue notices, and routine form letters.

* * * * *

16. Section 674.31 is amended by removing paragraph (a)(2); by redesignating paragraphs (a)(3)(i) and (a)(3)(ii)(A) and (B) as paragraphs (a)(2)(i) and (a)(2)(ii)(A) and (B) respectively; by revising redesignated paragraph (a)(2)(ii)(A); by adding a new paragraph (a)(2)(iii); and by revising paragraphs (b)(6) and (b)(10) to read as follows:

§ 674.31 Promissory note.

(a) * * *

(2) * * *

(ii) * * *

(A) The note requires the signature of the borrower on each page; or

* * * * *

(iii) The promissory note must state the exact amount of the minimum monthly repayment amount if the institution chooses the option under § 674.33(b).

(b) * * *

(6) *Security and endorsement.* The promissory note must state that the loan shall be made without security and endorsement.

* * * * *

(10) *Disclosure of information.* The promissory note must state that—

(i) The institution shall disclose to any one national credit bureau organization with which the Secretary has an agreement, the amount of the loan made to the borrower, along with other relevant information;

(ii) If the borrower defaults on the loan, the institution shall disclose to any one national credit bureau organization with which the Secretary has an agreement that the borrower has defaulted on the loan, along with other relevant information; and

(iii) If the borrower defaults on the loan and the loan is assigned to the Secretary for collection, the Secretary may disclose to a national credit bureau organization, that the borrower has defaulted on the loan, along with other relevant information.

* * * * *

17. Section 674.33 is amended by redesignating paragraph (a)(3) as paragraph (a)(4); by adding a new

paragraph (a)(3); by revising paragraph (b); by revising paragraph (c)(1); and by adding new paragraphs (d) and (e) to read as follows:

§ 674.33 Repayment.

(a) * * *

(3) If the installment payment for all loans made to a borrower by an institution is not a multiple of $5, the institution may round that payment to the next highest dollar amount that is a multiple of $5.

* * * * *

(b) *Minimum monthly repayment*—(1) *Minimum monthly repayment option.* (i) An institution may require a borrower to pay a minimum monthly repayment if—

(A) The promissory note includes a minimum monthly repayment provision specifying the amount of the minimum monthly repayment; and

(B) The monthly repayment of principal and interest for a 10-year repayment period is less than the minimum monthly repayment; or

(ii) An institution may require a borrower to pay a minimum monthly repayment if the borrower has received loans with different interest rates at the same institution and the total monthly repayment would otherwise be less than the minimum monthly repayment.

(2) *Minimum monthly repayment of loans from more than one institution.* If a borrower has received loans from more than one institution, the following rules apply:

(i) If the total of the monthly repayments is equal to at least the minimum monthly repayment, no institution may exercise a minimum monthly repayment option.

(ii) If only one institution exercises the minimum monthly repayment option when the monthly repayment would otherwise be less than the minimum repayment option, that institution receives the difference between the minimum monthly repayment and the repayment owed to the other institution.

(iii) If each institution exercises the minimum repayment option, the minimum monthly repayment must be divided among the institutions in proportion to the amount of principal advanced by each institution.

(3) *Minimum monthly repayment of both Defense and Direct or Federal Perkins loans from one or more institutions.* If the total monthly repayment is less than $30 and the monthly repayment on a Defense loan is less than $15 a month, the amount attributed to the Defense loan may not exceed $15 a month.

(4) *Minimum monthly repayment of loans with differing grace periods and deferments.* If the borrower has received loans with different grace periods and deferments, the institution shall treat each note separately, and the borrower shall pay the applicable minimum monthly payment for a loan that is not in the grace or deferment period.

(5) *Hardship.* The institution may reduce the borrower's scheduled repayments for a period of not more than one year at a time if—

(i) It determines that the borrower is unable to make the scheduled repayments due to hardship (see § 674.33(c)); and

(ii) The borrower's scheduled repayment is the minimum monthly repayment described in paragraph (b) of this section.

(6) *Minimum monthly repayment rates.* For the purposes of this section, the minimum monthly repayment rate is—

(i) $15 for a Defense loan;

(ii) $30 for a Federal Perkins loan made before October 1, 1992, or for a Federal Perkins loan made on or after October 1, 1992, to a borrower who, on the date the loan is made, has an outstanding balance of principal or interest owing on any loan made under this part; or

(iii) $40 for a Federal Perkins loan made on or after October 1, 1992, to a borrower who, on the date the loan is made, has no outstanding balance of principal or interest owing on any loan made under this part.

(7) The institution shall determine the minimum repayment amount under paragraph (b) of this section for loans with repayment installment intervals greater than one month by multiplying the amounts in paragraph (b) of this section by the number of months in the installment interval.

(c) *Extension of repayment period*—(1) *Hardship.* The institution may extend a borrower's repayment period due to prolonged illness or unemployment.

* * * * *

(d) *Forbearance.* (1) Forbearance means the temporary cessation of payments, allowing an extension of time for making payments, or temporarily accepting smaller payments than previously were scheduled.

(2) Upon written request and receipt of supporting documentation, the institution shall grant the borrower forbearance of principal and, unless otherwise indicated by the borrower, interest renewable at intervals of 12 months for a period not to exceed three years.

(3) The terms of forbearance must be agreed upon, in writing, by the borrower and the institution.

(4) In granting a forbearance under this section, an institution shall grant a temporary cessation of payments, unless the borrower chooses another form of forbearance subject to paragraph (d)(1) of this section.

(5) An institution shall grant forbearance if—

(i) The amount of the payments the borrower is obligated to make on title IV loans each month (or a proportional share if the payments are due less frequently than monthly) is collectively equal to or greater than 20 percent of the borrower's monthly disposable income;

(ii) The institution determines that the borrower should qualify for the forbearance due to poor health or for other acceptable reasons; or

(iii) The Secretary authorizes a period in the event of a national military mobilization or other national emergency.

(6) Before granting a forbearance to a borrower under paragraph (d)(4)(i) of this section, the institution shall require the borrower to submit at least the following documentation:

(i) Evidence showing the amount of the borrower's most recent monthly disposable income.

(ii) A copy of the borrower's federal income tax return if the borrower filed a tax return within eight months prior to the date the forbearance is requested.

(iii) Evidence showing the most recent monthly amount due on the borrower's title IV loans.

(7) Interest accrues during any period of forbearance.

(e) *Compromise of repayment.* (1) An institution may compromise on the repayment of a defaulted loan if—

(i) The institution has fully complied with all due diligence requirements specified in subpart C of this part; and

(ii) The student borrower pays in a single lump-sum payment—

(A) 90 percent of the outstanding principal balance on the loan under this part;

(B) The interest due on the loan; and

(C) Any collection fees due on the loan.

(2) The Federal share of the compromise repayment must bear the same relation to the institution's share of the compromise repayment as the Federal capital contribution to the institution's loan Fund under this part bears to the institution's capital contribution to the Fund.

* * * * *

18. Sections 674.34 through 674.39 are redesignated as §§ 674.35 through 674.40 respectively and a new § 674.34 is added to read as follows:

§ 674.34 Deferment of repayment—Federal Perkins loans and Direct loans made on or after July 1, 1993.

(a) The borrower may defer making scheduled installment repayment on a Federal Perkins loan or a Direct loan made on or after July 1, 1993, during the periods described in this section.

(b)(1) The borrower need not repay principal, and interest does not accrue, during a period after the commencement or resumption of the repayment period on a loan, when the borrower is—

(i) Enrolled and in attendance as a regular student in at least a half-time course of study at an eligible institution;

(ii) Enrolled and in attendance as a regular student in a course of study that is part of a graduate fellowship program approved by the Secretary;

(iii) Engaged in graduate or post-graduate fellowship-supported study (such as a Fulbright grant) outside the United States; or

(iv) Enrolled in a course of study that is part of a rehabilitation training program for disabled individuals approved by the Secretary as described in paragraph (g) of this section.

(2) No borrower is eligible for a deferment under paragraph (b)(1) of this section while serving in a medical internship or residency program.

(3) The institution of higher education at which the borrower is enrolled does not need to be participating in the Federal Perkins Loan program for the borrower to qualify for a deferment.

(4) If a borrower is attending an institution of higher education as at least a half-time regular student for a full academic year and intends to enroll as at least a half-time regular student in the next academic year, the borrower is entitled to a deferment for 12 months.

(5) If an institution no longer qualifies as an institution of higher education, the borrower's deferment ends on the date the institution ceases to qualify.

(c)(1) The borrower of a Federal Perkins loan need not repay principal, and interest does not accrue, for any period during which the borrower is engaged in service described in §§ 674.53, 674.54, 674.56, 674.57, 674.58, 674.59, and 674.60.

(2) The borrower of a Direct loan need not repay principal, and interest does not accrue, for any period during which the borrower is engaged in service described in §§ 674.53, 674.54, 674.56, 674.57, 674.58, and 674.59.

(d) The borrower need not repay principal, and interest does not accrue, for any period not to exceed 3 years during which the borrower is seeking and unable to find full-time employment

(e)(1) The borrower need not repay principal, and interest does not accrue, for any period not to exceed 3 years during which the borrower is suffering an economic hardship. To qualify for this deferment, the borrower must be—

(i) Employed full-time and earning an amount that does not exceed the greater of—

(A) The minimum wage rate described in section 6 of the Fair Labor Standards Act of 1938; or

(B) An amount equal to 100 percent of the poverty line for a family of 2 as determined in accordance with section 673(2) of the Community Service Block Grant Act; or

(ii) Not receiving monthly disposable income from all sources that is more than four times the amount specified in paragraph (e)(1)(i) of this section, and the amount of the borrower's payments due each month (or a proportional share if the payments are due less frequently than monthly) on the borrower's nondefaulted education loans that were obtained through a Federal program is collectively equal to or greater than 20 percent of the borrower's monthly disposable income.

(2) The institution shall require the borrower to submit at least the following documentation to qualify for a deferment under paragraph (e) of this section:

(i) Evidence showing the amount of the borrower's most recent monthly disposable income from all sources.

(ii) A copy of the borrower's Federal income tax return if the borrower filed a tax return within eight months prior to the date the deferment is requested.

(iii) Evidence showing the most recent monthly amount due on the borrower's nondefaulted education loans that were obtained through Federal programs, or the borrower's defaulted education loans obtained through Federal programs if the holders of the loans provide written statements that the borrower has made satisfactory arrangements to repay the loans.

(f) To qualify for a deferment for study as part of a graduate fellowship program pursuant to paragraph (b)(1)(ii) of this section, a borrower must provide the institution certification that the borrower has been accepted for or is engaged in full-time study in the institution's graduate fellowship program.

(g) To qualify for a deferment for study in a rehabilitation training program, pursuant to paragraph (b)(1)(iv) of this section, the borrower must be receiving, or be scheduled to receive, services under a program designed to rehabilitate disabled individuals and must provide the institution with the following documentation:

(1) A certification from the rehabilitation agency that the borrower is either receiving or scheduled to receive rehabilitation training services from the agency.

(2) A certification from the rehabilitation agency that the rehabilitation program—

(i) Is licensed, approved, certified, or otherwise recognized by one of the following entities as providing rehabilitation training to disabled individuals—

(A) A State agency with responsibility for vocational rehabilitation programs;

(B) A State agency with responsibility for drug abuse treatment programs;

(C) A State agency with responsibility for mental health services programs;

(D) A State agency with responsibility for alcohol abuse treatment programs; or

(E) The Department of Veterans Affairs; and

(ii) Provides or will provide the borrower with rehabilitation services under a written plan that—

(A) Is individualized to meet the borrower's needs;

(B) Specifies the date on which the services to the borrower are expected to end; and

(C) Is structured in a way that requires a substantial commitment by the borrower to his or her rehabilitation. The Secretary considers a substantial commitment by the borrower to be a commitment of time and effort that would normally prevent an individual from engaging in full-time employment either because of the number of hours that must be devoted to rehabilitation or because of the nature of the rehabilitation.

(h) The institution may not include the deferment periods described in paragraphs (b), (c), (d), (e), (f) and (g) of this section when determining the 10-year repayment period.

(i) The borrower need not pay principal and interest does not accrue until six months after completion of any period during which the borrower is in deferment under paragraphs (b), (c), (d), (e), (f), and (g) of this section.

(j) For purposes of this section, full-time employment means at least 35 hours of work per week.

(Authority: 20 U.S.C. 1087dd)

19. Redesignated § 674.35 is amended by revising the heading of the section; by revising paragraph (a); by adding the word "Federal" before the words "Perkins Loan" in paragraph (b)(2); and by revising paragraph (c)(5)(iii) to read as follows:

§ 674.35 Deferment of repayment—Federal Perkins loans made before July 1, 1993.

(a) The borrower may defer repayment on a Federal Perkins Loan made before July 1, 1993, during the periods described in this section.

* * * * *

(c) * * *

(5) * * *

(iii) The borrower does not receive compensation that exceeds the rate prescribed under section 6 of the Fair Labor Standards Act of 1938 (the Federal minimum wage), except that the tax-exempt organization may provide health, retirement, and other fringe benefits to the volunteer that are substantially equivalent to the benefits offered to other employees of the organization.

* * * * *

20. Redesignated § 674.36 is amended by revising the heading of the section; by revising paragraph (a); by adding the word "Federal" before the words "Perkins Loan program" in paragraph (b)(2); and by revising paragraph (c)(4)(iii) to read as follows:

§ 674.36 Deferment of repayment—Direct loans made on or after October 1, 1980, but before July 1, 1993.

(a) The borrower may defer repayment on a Direct Loan made on or after October 1, 1980, but before July 1, 1993, during the periods described in this section.

* * * * *

(c) * * *

(4) * * *

(iii) The borrower does not receive compensation that exceeds the rate prescribed under section 6 of the Fair Labor Standards Act of 1938 (the Federal minimum wage), except that the tax-exempt organization may provide health, retirement, and other fringe benefits to the volunteer that are substantially equivalent to the benefits offered to other employees of the organization.

* * * * *

21. Redesignated § 674.38 is amended by revising paragraph (b)(2) and by adding a new paragraph (d) to read as follows:

§ 674.38 Deferment procedures.

* * * * *

(b) * * *

(2) As a condition for a deferment under this paragraph, the institution shall require the borrower to make satisfactory arrangements to repay the loan.

* * * * *

(d) The institution shall determine the continued eligibility of a borrower for a deferment at least annually.

* * * * *

22. Redesignated § 674.39 is amended by adding the word "Federal" before the word "Perkins" in paragraph (b) and by revising the heading of the section to read as follows:

§ 674.39 Postponement of loan repayments in anticipation of cancellation—loans made before July 1, 1992.

* * * * *

23. Section 674.41 is amended by removing the words "or any endorser" after the words "the borrower" in paragraph (a)(2); by removing paragraph (b); and by redesignating paragraph (c) as (b).

24. Section 674.42 is amended by revising paragraph (a)(1)(ii); by redesignating paragraphs (a)(3) and (a)(4) as paragraphs (a)(4) and (a)(5) respectively; and by adding a new paragraph (a)(3) to read as follows:

§ 674.42 Contact with the borrower.

(a) * * *

(1) * * *

(ii) The borrower's rights to forbearance, deferment, cancellation or postponement of repayment and the procedures for filing for those benefits.

* * * * *

(3) The institution shall require the borrower to provide to the institution, during the exit interview—

(i) The borrower's expected permanent address after leaving the institution, regardless of the reason for leaving;

(ii) The name and address of the borrower's expected employer after leaving the institution;

(iii) The name and address of the borrower's next of kin; and

(iv) Any corrections in the institution's records relating to the borrower's name, address, social security number, personal references, and driver's license number.

* * * * *

25. Section 674.43 is amended by adding a new paragraph (a)(3) to read as follows:

§ 674.43 Billing procedures.

(a) * * *

(3) Notwithstanding paragraph (a)(2)(ii) of this section, if the borrower elects to make payment by means of an electronic transfer of funds from the borrower's bank account, the institution shall send to the borrower a statement of account each quarter, if payments are made monthly, or semi-annually, if payments are made on other than a monthly basis.

* * * * *

26. Section 674.44 is amended by revising paragraph (a)(3) and by revising paragraph (d)(1) to read as follows:

§ 674.44 Address searches.

(a) * * *

(3) If, after following the procedures in paragraph (a) of this section, an institution is still unable to locate a borrower, the institution may use the Internal Revenue Service skip-tracing service.

* * * * *

(d) * * *

(1) The loan is recovered through litigation;

* * * * *

27. Section 674.45 is amended by revising paragraph (a)(1); by revising paragraph (b); by revising paragraph (d); and by adding a new paragraph (g) to read as follows:

§ 674.45 Collection procedures.

(a) * * *

(1) Report the defaulted account to any one national credit bureau organization with which the Secretary has an agreement; and

* * * * *

(b) An institution shall report to any one national credit bureau organization with which the Secretary has an agreement, according to the reporting procedures of the national credit bureau organization, any changes in account status and shall respond within one month of its receipt to any inquiry from any credit bureau regarding the information reported on the loan amount.

* * * * *

(d) If the institution is unable to place the loan in repayment as described in paragraph (c)(1) of this section after following the procedures in paragraphs (a), (b), and (c) of this section, the institution shall continue to make annual attempts to collect from the borrower until—

(1) The loan is recovered through litigation;

(2) The account is assigned to the United States; or

(3) The account is written off under § 674.47(g).

* * * * *

(g) *Preemption of State law.* The provisions of this section preempt any State law, including State statutes, regulations, or rules, that would conflict with or hinder satisfaction of the requirements or frustrate the purposes of this section.

* * * * *

28. Section 674.46 is amended by revising paragraph (a)(1) introductory text to read as follows:

§ 674.46 Litigation procedures.

(a)(1) If the collection efforts described in § 674.45 do not result in the repayment of a loan, the institution shall determine at least annually whether—

* * * * *

29. Section 674.48 is amended by revising paragraph (c)(4)(iii) and by revising paragraph (d)(1)(iii) to read as follows:

§ 674.48 Use of contractors to perform billing and collection or other program activities.

* * * * *

(c) * * *

(4) * * *

(iii) Deposits those funds received directly from the borrower immediately in an institutional trust account that must be an interest-bearing account if those funds will be held for longer than 45 days; and

* * * * *

(d) * * *

(1) * * *

(iii) Deposits those funds received directly from the borrower immediately in an institutional trust account that must be an interest-bearing account if those funds will be held for longer than 45 days, after deducting its fees if authorized to do so by the institution; and

* * * * *

30. Section 674.49 is amended by revising paragraph (a); by removing paragraph (g); by redesignating paragraph (h) as paragraph (g); by removing redesignated paragraph (g)(3); and by revising redesignated paragraph (g)(1) introductory text to read as follows:

§ 674.49 Bankruptcy of borrower.

(a) *General.* If an institution receives notice that a borrower has filed a petition for relief in bankruptcy, usually by receiving a notice of meeting of creditors, the institution and its agents shall immediately suspend any collection efforts outside the bankruptcy proceeding against the borrower.

* * * * *

(g) *Termination of collection and write-off.* (1) An institution shall terminate all collection action and write off a loan if it receives—

* * * * *

31. Section 674.50 is amended by revising paragraph (c)(10) to read as follows:

§ 674.50 Assignment of defaulted loans to the United States.

* * * * *

(c) * * *

(10) Documentation that the institution has complied with all of the due diligence requirements described in paragraph (a)(1) of this section if the institution has a cohort default rate that is equal to or greater than 20 percent as of June 30 of the second year preceding the submission period.

* * * * *

Subpart D—Loan Cancellation

32. Section 674.51 is amended by redesignating paragraphs (g), (h), and (i) as paragraphs (o), (p), and (q) respectively; by redesignating paragraph (f) as paragraph (j); by redesignating paragraphs (d) and (e) as paragraphs (f) and (g) respectively; by revising redesignated paragraph (q)(3); and by adding new paragraphs (d), (e), (h), (i), (k), (l), (m), (n), and (r) to read as follows:

§ 674.51 Special definitions.

* * * * *

(d) *Children and youth with disabilities:* Children and youth from ages 3 through 21, inclusive, who require special education and related services because they have disabilities as defined in section 602(a)(1) of the Individuals with Disabilities Education Act.

(e) *Early intervention services:* Those services defined in section 672(2) of the Individuals with Disabilities Education Act that are provided to infants and toddlers with disabilities.

* * * * *

(h) *High-risk children:* Individuals under the age of 21 who are low-income or at risk of abuse or neglect, have been abused or neglected, have serious emotional, mental, or behavioral disturbances, reside in placements outside their homes, or are involved in the juvenile justice system.

(i) *Infants and toddlers with disabilities:* Infants and toddlers from birth to age 2, inclusive, who need early intervention services for specified reasons, as defined in section 672(1) of the Individuals with Disabilities Education Act.

* * * * *

(k) *Low-income communities:* Communities in which there is a high concentration of children eligible to be counted under chapter 1 of title I of the Elementary and Secondary Education Act of 1965.

(l) *Medical technician:* An allied health professional who is certified, registered, or licensed by the appropriate State agency in the State in which he or she provides specialized medical services.

(m) *Nurse:* An individual who is licensed by the appropriate State agency in the State in which he or she is providing nursing care.

(n) *Qualified professional provider of early intervention services:* A provider of services as defined in section 672(2) of the Individuals with Disabilities Education Act.

* * * * *

(q) * * *

(3) * * *

(i) Speech and language pathology and audiology;

(ii) Physical therapy;

(iii) Occupational therapy;

(iv) Psychological and counseling services; or

(v) Recreational therapy.

(r) *Teaching in a field of expertise:* The majority of classes taught are in the borrower's field of expertise.

* * * * *

33. Section 674.52 is amended by revising paragraph (d) to read as follows:

§ 674.52 Cancellation procedures.

* * * * *

(d) The Secretary considers a borrower's loan deferment under §§ 674.35, 674.36, and 674.37 to run concurrently with any period for which a cancellation for military, Peace Corps, or ACTION program service is granted.

* * * * *

34. Sections 674.55 through 674.60 are redesignated as §§ 674.58 through 674.63 respectively; §§ 674.53 and 674.54 are redesignated as §§ 674.54 and 674.55 respectively; and a new § 674.53 is added to read as follows:

§ 674.53 Teacher cancellation—Federal Perkins loans and Direct loans made on or after July 23, 1992.

(a) *Cancellation for full-time teaching in an elementary or secondary school serving low-income students.* (1) An institution shall cancel up to 100 percent of the outstanding loan balance on a Federal Perkins loan or a Direct loan made on or after July 23, 1992, for full-time teaching in a public or other nonprofit elementary or secondary school that—

(i) Is in a school district that qualified for funds, in that year, under Chapter 1 of the Education Consolidation and Improvement Act of 1981; and

(ii) Has been selected by the Secretary based on a determination that more than 30 percent of the school's total enrollment is made up of Chapter 1 children.

(2) For each academic year, the Secretary notifies participating

institutions of the schools selected under paragraph (a) of this section.

(3) If a list of eligible institutions in which a teacher performs services under paragraph (a)(1) of this section is not available before May 1 of any year, the Secretary may use the list for the year preceding the year for which the determination is made to make the service determination.

(4) The Secretary considers all elementary and secondary schools operated by the Bureau of Indian Affairs (BIA) or operated on Indian reservations by Indian tribal groups under contract with BIA to qualify as schools serving low-income students.

(5) A teacher, who performs service in a school that meets the requirement of paragraph (a)(1) of this section in any year and in a subsequent year fails to meet these requirements, may continue to teach in that school and will be eligible for loan cancellation pursuant to paragraph (a) of this section, in subsequent years.

(b) *Cancellation for full-time teaching in special education.* An institution shall cancel up to 100 percent of the outstanding balance on a borrower's Federal Perkins loan or Direct loan made on or after July 23, 1992, for the borrower's service as a full-time special education teacher of infants, toddlers, children, or youth with disabilities, in a public or other nonprofit elementary or secondary school system;

(c) *Cancellation for full-time teaching in fields of expertise.* An institution shall cancel up to 100 percent of the outstanding balance on a borrower's Federal Perkins loan or Direct loan made on or after July 23, 1992, for full-time teaching in mathematics, science, foreign languages, bilingual education, or any other field of expertise where the State education agency determines that there is a shortage of qualified teachers.

(d) *Cancellation rates.* (1) To qualify for cancellation under paragraphs (a), (b), or (c) of this section, a borrower shall teach full-time for a complete academic year or its equivalent.

(2) Cancellation rates are—

(i) 15 percent of the original principal loan amount plus the interest on the unpaid balance accruing during the year of qualifying service, for each of the first and second years of full-time teaching;

(ii) 20 percent of the original principal loan amount, plus the interest on the unpaid balance accruing during the year of qualifying service, for each of the third and fourth years of full-time teaching; and

(iii) 30 percent of the original principal loan amount, plus the interest on the unpaid balance accruing during the year of qualifying service, for the fifth year of full-time teaching.

(e) *Teaching in a school system.* The Secretary considers a borrower to be teaching in a public or other nonprofit elementary or secondary school system only if the borrower is directly employed by the school system.

(f) *Teaching children and adults.* A borrower who teaches both adults and children qualifies for cancellation for this service only if a majority of the students whom the borrower teaches are children.

(Authority: 20 U.S.C 1087ee.)

35. Redesignated § 674.54 is amended by revising the heading of the section; by revising paragraph (a)(1) introductory text; by removing paragraph (a)(2); by redesignating paragraphs (a)(3) and (a)(4) as paragraphs (a)(2) and (a)(3) respectively; and by revising paragraph (b)(1) to read as follows:

§ 674.54 Teacher cancellation—Federal Perkins loans and Direct loans made before July 23, 1992.

(a) *Cancellation for full-time teaching in an elementary or secondary school serving low-income students.* (1) An institution shall cancel up to 100 percent of the outstanding loan balance on a Federal Perkins loan or a Direct loan made before July 23, 1992, for full-time teaching in a public or other nonprofit elementary or secondary school that—

* * * * *

(b) *Cancellation for full-time teaching of the handicapped.* (1) An institution shall cancel up to 100 percent of the outstanding balance on a borrower's Federal Perkins loan or Direct loan made before July 23, 1992, for full-time teaching of handicapped children in a public or other nonprofit elementary or secondary school system.

* * * * *

(Authority: 20 U.S.C 1087ee.)

36. A new § 674.56 is added to read as follows:

§ 674.56 Employment cancellation—Federal Perkins loans and Direct loans made on or after July 23, 1992.

(a)(1) *Cancellation for full-time employment as a nurse or medical technician.* An institution shall cancel up to 100 percent of the outstanding balance on a borrower's Federal Perkins or Direct loan made on or after July 23, 1992, for full-time employment as a nurse or medical technician by a public or private nonprofit health care facility.

(b) *Cancellation for full-time employment in a public or private nonprofit child or family service agency.* An institution shall cancel up to 100 percent of the outstanding balance on a borrower's Federal Perkins loan or Direct loan made on or after July 23, 1992, for service as a full-time employee in a public or private nonprofit child or family service agency who is providing, or supervising the provision of, services to high-risk children who are from low-income communities and the families of such children.

(c) *Cancellation for service as a qualified professional provider of early intervention services.* An institution shall cancel up to 100 percent of the outstanding balance on a borrower's Federal Perkins loan or Direct loan made on or after July 23, 1992, for the borrower's service as a full-time qualified professional provider of early intervention services in a public or other nonprofit program under public supervision by the lead agency as authorized in section 676(b)(9) of the Individuals With Disabilities Education Act.

(d) *Cancellation rates.* (1) To qualify for cancellation under paragraphs (a), (b), and (c) of this section, a borrower must work full-time for a 12 consecutive months.

(2) Cancellation rates are—

(i) 15 percent of the original principal loan amount plus the interest on the unpaid balance accruing during the year of qualifying service, for each of the first and second years of full-time employment;

(ii) 20 percent of the original principal loan amount plus the interest on the unpaid balance accruing during the year of qualifying service, for each of the third and fourth years of full-time employment; and

(iii) 30 percent of the original principal loan amount plus the interest on the unpaid balance accruing during the year of qualifying service, for the fifth year of full-time employment.

(Authority: 20 U.S.C. 1087ee.)

37. A new § 674.57 is added to read as follows:

§ 674.57 Cancellation for law enforcement or corrections officer service—Federal Perkins and Direct loans for loans made on or after November 29, 1990.

(a)(1) An institution shall cancel up to 100 percent of the outstanding balance on a borrower's Federal Perkins loan or Direct loan made on or after November 29, 1990, for full-time service as a law enforcement or corrections officer for an eligible employing agency.

(2) An eligible employing agency is an agency—

(i) That is a local, State, or Federal law enforcement or corrections agency;

(ii) That is public-funded; and

(iii) The principal activities of which pertain to crime prevention, control, or reduction or the enforcement of the criminal law.

(3) Agencies that are primarily responsible for enforcement of civil, regulatory, or administrative laws are ineligible employing agencies.

(4) A borrower qualifies for cancellation under this section only if the borrower is—

(i) A sworn law enforcement or corrections officer; or

(ii) A person whose principal responsibilities are unique to the criminal justice system.

(5) To qualify for a cancellation under this section, the borrower's service must be essential in the performance of the eligible employing agency's primary mission.

(6) The agency must be able to document the employee's functions.

(7) A borrower whose principal official responsibilities are administrative or supportive does not qualify for cancellation under this section.

(b)(1) To qualify for cancellation under paragraph (a) of this section, a borrower shall work full-time for 12 consecutive months.

(2) Cancellation rates are—

(i) 15 percent of the original principal loan amount plus the interest on the unpaid balance accruing during the year of qualifying service, for each of the first and second years of full-time employment;

(ii) 20 percent of the original principal loan amount plus the interest on the unpaid balance accruing during the year of qualifying service, for each of the third and fourth years of full-time employment; and

(iii) 30 percent of the original principal loan amount plus the interest on the unpaid balance accruing during the year of qualifying service, for the fifth year of full-time employment.

(Authority: 20 U.S.C. 465.)

38. Redesignated § 674.58 is amended by adding the word "Federal" before the words "Perkins loan" in paragraph (a).

39. Redesignated § 674.61 is amended by revising paragraph (b)(2) to read as follows:

§ 674.61 Cancellation for death or disability.

* * * * *

(b) * * *

(2) Permanent and total disability is the inability to work and earn money or to attend an institution because of an impairment that is expected to continue indefinitely or result in death.

* * * * *

40. Redesignated § 674.63 is amended by revising paragraphs (a)(1) and (b) to read as follows:

§ 674.63 Reimbursement to institutions for loan cancellation.

(a) *Reimbursement for Defense loan cancellation.* (1) The Secretary pays an institution each award year its share of the principal and interest cancelled under §§ 674.55 and 674.59(a).

* * * * *

(b) *Reimbursement for Direct and Federal Perkins loan cancellation.* The Secretary pays an institution each award year the principal and interest cancelled from its student loan fund under §§ 674.53, 674.54, 674.56, 674.57, 674.58, 674.59(b), and 674.60. The institution shall deposit this amount in its Fund.

* * * * *

41. Appendix A to Part 674—Promissory Note—Perkins Loan is removed.

42. Appendix B to Part 674—Promissory Note—Direct Loan is removed.

43. Appendix C to Part 674—Promissory Note—Perkins Loan—Less Than Half-Time Student Borrower is removed.

44. Appendix D to Part 674—Promissory Note—Direct Loan—Less Than Half-Time Student Borrower is removed.

45. In 34 CFR part 674 add the word "Federal" before the word "Perkins" in the following places:

(a) Section 674.1 (a) and (b)(1).

(b) Section 674.2 (a) and (b) definitions.

(c) Section 674.3 (a) and (b).

(d) Section 674.4 (a) and (b).

(e) Section 674.8 introductory text.

(f) Section 674.9 introductory text.

(g) Section 674.14 (a)(1), (a)(2) introductory text, (b)(1)(x).

(h) Section 674.17 (a) and (b)(1) introductory text.

(i) Section 674.18 (a), (b)(1), (b)(2)(i), (b)(3), and (b)(4).

(j) Section 674.19 (a)(1), (a)(3)(i), (b), (b)(1), (b)(1)(ii), (b)(3), (b)(4) introductory text, (d)(4), and (e)(4)(iv).

(k) Section 674.20(b).

(l) Section 674.31 (b)(2)(i)(B), (b)(5)(ii)(A), and (b)(7)(ii).

(m) Section 674.33(c)(2)(i).

(n) Section 674.42(b)(1)(i).

(o) Section 674.46(a)(1)(i).

46. In 34 CFR part 674 remove the term "College Work-Study (CWS) Program" and add, in its place, the term "Federal Work-Study (FWS) Program" in § 674.2(a).

47. In 34 CFR part 674 remove the term "CWS" and add, in its place, the term "FWS" in the following places:

(a) Section 674.18 (b)(2)(i), (b)(3), and (b)(4).

(b) Section 674.19(d)(4).

48. In 34 CFR part 674 remove the term "Supplemental Educational Opportunity Grant (SEOG) Program" and add, in its place, the term "Federal Supplemental Educational Opportunity Grant (FSEOG) Program" in § 674.2(a).

49. In 34 CFR part 674 remove the term "SEOG" and add, in its place, the term "FSEOG" in the following places:

(a) Section 674.18 (b)(2)(i) and (b)(4).

(b) Section 674.19(d)(4).

50. In 34 CFR part 674 remove the term "SEOGs" and add, in its place, the term "FSEOGs" in § 674.14(b)(1)(iv).

51. In 34 CFR part 674 remove the term "Guaranteed Student Loan (GSL) Program" and add, in its place, the term "Federal Family Education Loan (FFEL) programs" in § 674.2(a).

52. In 34 CFR part 674 add the term "Federal" before the term "Pell Grant" in the following places:

(a) Section 674.2(a).

(b) Section 674.9(d)(1) and (d)(2).

(c) Section 674.14(b)(1)(i).

(d) Section 674.15(c)(2).

53. In 34 CFR part 674 remove the term "Income Contingent Loan (ICL) Program" in § 674.2(a).

54. In 34 CFR part 674 add the term "Federal" before the term "PLUS" Program" and the term "SLS Program" in § 674.2(a).

55. In 34 CFR part 674 add the term "Federal" before the term "Supplemental Loan for Students (SLS)" in § 674.14(b)(3).

PART 675—FEDERAL WORK-STUDY PROGRAMS

1. The authority citation for part 675 continues to read as follows:

Authority: 42 U.S.C. 2571–2756b, unless otherwise noted.

2. The heading of part 675 is revised to read as set forth above.

3. The heading for subpart A is amended by removing the term "College Work-Study Program" and adding, in its place, the term "Federal Work-Study Program".

4. Section 675.1 is amended by revising paragraph (a) to read as follows:

§ 675.1 Purpose and identification of common provisions.

(a) The Federal Work-Study (FWS) program provides part-time employment to students attending institutions of higher education who need the earnings to help meet their costs of postsecondary education and encourages students receiving FWS assistance to participate in community service activities.

* * * * *

5. Section 675.2, paragraph (b) is amended by adding, in alphabetical order, the definition of "Low-income individual" and by revising the definition of "Undergraduate student" to read as follows:

§ 675.2 Definitions.

* * * * *

(b) * * *

Low-income individual. (1)(i) An individual without dependents whose total income for the preceding calendar year did not exceed 45 percent of the income protection allowance for the current award year for a family of four with one in college; or

(ii) An individual with a family that includes the individual and any spouse or legal dependents whose total family income for the preceding calendar year did not exceed 125 percent of the Income Protection Allowance for the current award year for a family with one in college and equal in size to that of the individual's family.

(2) The institution shall use the income protection allowance published annually in accordance with section 478 of the HEA in making this determination.

* * * * *

Undergraduate student: A student enrolled at an institution of higher education who is in an undergraduate course of study which usually does not exceed 4 academic years, or is enrolled in a 4 to 5 academic year program designed to lead to a first degree. A student enrolled in a program of any other length is considered an undergraduate student for only the first 4 academic years of that program.

* * * * *

6. Section 675.4 is amended by revising the introductory text of paragraph (d) and adding new paragraph (e) to read as follows:

§ 675.4 Allocation and reallocation.

* * * * *

(d) *Authority to expend funds.* Except as specifically provided in § 675.18, paragraphs (c), (d), and (g), an institution may not use funds allocated or reallocated for an award year—

* * * * *

(e) *Unexpended funds.* (1) If an institution does not expend its FWS allocation during an award year and returns more than 10 percent of the allocation, the Secretary reduces its allocation for the next fiscal year by the amount returned.

(2) The Secretary may waive the provision of paragraph (e)(1) of this section for a specific institution if the Secretary finds that enforcement would be contrary to the interests of the program.

(3) The Secretary considers enforcement of paragraph (e)(1) of this section to be contrary to the interest of the program only if the institution returns more than 10 percent of its allocation due to circumstances beyond the institution's control that are not expected to recur.

* * * * *

7. Section 675.8 is amended by removing the word "and" after paragraph (d); by removing the period after paragraph (e) and adding, in its place, a semicolon; and adding new paragraphs (f) and (g) to read as follows:

§ 675.8 Program participation agreement.

* * * * *

(f) Assure that employment under this part may be used to support programs for supportive services to students with disabilities; and

(g) Inform all eligible students of the opportunity to perform community services and consult with local nonprofit, governmental, and community-based organizations to identify those opportunities.

* * * * *

8. Section 675.10 is amended by revising the heading of the section and by revising paragraph (c) to read as follows:

§ 675.10 Selection of students for FWS employment.

* * * * *

(c) *Part-time and independent students.* If an institution's allocation of FWS funds is directly or indirectly based in part on the financial need demonstrated by students attending the institution as less than full-time students or independent students, and if the total financial need of those students exceeds 5 percent of the total financial need of all students at the institution, the institution shall make available at least 5 percent of its allocation, under this part, to those students.

* * * * *

9. Section 675.14 is amended by removing the words "Guaranteed Students Loans" and adding, in its place, the words "Federal Family Education Loan" in paragraph (b)(1)(ii); by removing the words "and need-based ICLs" after the words "Direct Loans" in paragraph (b)(1)(x); by adding the words "or Federal" before the word "PLUS", by removing the comma after the words "PLUS loan", and by removing the words "or non-need-based ICL" before the word "as" in paragraph (b)(3); by removing the dollar figure "$200" and adding, in its place, the dollar figure "$300" in paragraphs (c) introductory text, (c)(1), and (c)(2); and by revising paragraph (d)(2) to read as follows:

§ 675.14 Overaward.

* * * * *

(d) * * *

(2) Notwithstanding the provisions of paragraph (d)(1) of this section, an institution may provide additional FWS funding to a student whose need has been met until that student's cumulative earnings from all need-based employment occurring subsequent to the time his or her financial need has been met exceed $300.

* * * * *

10. Section 675.18 is amended by redesignating paragraphs (a)(3) and (a)(4) as paragraphs (a)(4) and (a)(5) respectively; by removing paragraph (f)(4); by adding a new paragraph (a)(3); by revising paragraphs (b)(3), (b)(5), and (f)(1); and by adding new paragraphs (g) and (h) to read as follows:

§ 675.18 Use of funds.

(a) * * *

(3) Meeting the cost of a Work-Colleges program under subpart C;

* * * * *

(b) * * *

(3) However, the institution shall not include, when calculating the allowance in paragraph (b)(1) of this section, the amount of loans made under the Federal Perkins Loan program it assigns to the Secretary under section 463(a)(6) of the HEA.

* * * * *

(5) An institution may use up to 10 percent of the allowance in paragraph (b) of this section, that is attributable to the institution's expenditures under the FWS program, to pay the administrative costs of conducting its program of community service. These costs may include the costs of—

(i) Developing mechanisms to assure the academic quality of a student's experience;

(ii) Assuring student access to educational resources, expertise, and supervision necessary to achieve community service objectives; and

(iii) Collaborating with public and private nonprofit agencies and programs assisted under the National and Community Service Act of 1990, in the planning, development, and administration of these programs.

* * * * *

(f) *Transfer funds to FSEOG.* (1) Beginning with the 1993–94 award year, an institution may transfer up to 25 percent of the sum of its initial and supplemental FWS allocations for an award year to its FSEOG program.

* * * * *

(g) *Carry back funds for summer employment.* An institution may carry back and expend in the previous award year its initial and supplemental FWS allocations for the current award year to pay student wages earned on or after May 15 of the previous award year but prior to the beginning of the current award year.

(h) *Community service.* (1) For the 1994–95 and subsequent award years, an institution shall use at least 5 percent of the sum of its initial and supplemental FWS allocations for an award year to compensate students employed in community service activities.

(2) If an institution is unable to comply with this requirement, the institution may request a waiver of this requirement.

(3) A request for a waiver must be in writing to the Secretary and is approved if the Secretary determines that enforcing this requirement would create a hardship for students at the institution.

11. Section 675.21 is amended by revising paragraph (b) to read as follows:

§ 675.21 Institutional employment.

* * * * *

(b) A proprietary institution may employ a student to work for the institution, but only in jobs that—

(1) Are in community services as defined in § 675.2; or

(2) Are on campus and that—

(i) Involve the provision of student services as defined in § 675.2;

(ii) To the maximum extent possible, complement and reinforce the educational program or vocational goals of the student; and

(iii) Do not involve the solicitation of potential students to enroll at the proprietary institution.

12. Section 675.26 is amended by revising paragraphs (a)(1), (a)(2), and (a)(3) to read as follows:

§ 675.26 FWS Federal share limitations.

(a)(1) The Federal share of FWS compensation paid to a student employed other than by a private for-profit organization, as described in § 675.23, may not exceed 75 percent for the 1993–94 award year and subsequent award years unless the Secretary approves a higher share under paragraph (d) of this section.

(2) The Federal share of the compensation paid to a student employed by a private for-profit organization may not exceed 50 percent.

(3) An institution may not use FWS funds to pay a student after he or she has, in addition to other resources, earned $300 or more over his or her financial need.

* * * * *

13. Section 675.28 is removed.

14. The heading for subpart B is amended by removing the "s" from the word "Programs".

15. Section 675.31 is revised to read as follows:

§ 675.31 Purpose.

The purpose of the Job Location and Development program is to expand off-campus job opportunities for students who are enrolled in eligible institutions of higher education and want jobs, regardless of their financial need, and to encourage students to participate in community service activities.

(Authority: 42 U.S.C. 2756)

16. Section 675.32 is revised to read as follows:

§ 675.32 Program description.

An institution may expend up to the lesser of $50,000 or 10 percent of its FWS allocation and reallocation for an award year to establish or expand a program under which the institution, separately or in combination with other eligible institutions, locates and develops jobs, including community service jobs, for currently enrolled students.

(Authority: 42 U.S.C. 2756)

17. Section 675.34 is amended by revising the heading of the section; by revising paragraph (a); and by revising paragraph (c) to read as follows:

§ 675.34 Multiinstitutional job location and development programs.

(a) An institution participating in the FWS program may enter into a written agreement to establish and operate job location programs for its students with other participating institutions.

* * * * *

(c) Each institution shall retain responsibility for the proper disbursement of the Federal funds it contributes under an agreement with other eligible institutions.

* * * * *

18. Section 675.35 is amended by adding the word "in" before the word "accordance" in paragraph (b)(1) and by revising paragraph (b)(3)(i) to read as follows:

§ 675.35 Agreement.

* * * * *

(b) * * *

(3) * * *

(i) The institution will not use program funds to locate and develop jobs at an eligible institution;

* * * * *

19. A new subpart C is added to part 675 to read as follows:

Subpart C—Work-Colleges Program

§ 675.41 Special definitions.

The following definitions apply to this subpart:

(a) *Work-college:* The term "work-college" means an eligible institution that—

(1) Is a public or private nonprofit institution with a commitment to community service;

(2) Has operated a comprehensive work-learning program for at least two years;

(3) Requires—

(i) All resident students who reside on campus to participate in a comprehensive work-learning program; and

(ii) The provision of services as an integral part of the institution's educational program and as part of the institution's educational philosophy; and

(4) Provides students participating in the comprehensive work-learning program with the opportunity to contribute to their education and to the welfare of the community as a whole.

(b) *Comprehensive student work-learning program:* A student work/service program that—

(1) Is an integral and stated part of the institution's educational philosophy and program;

(2) Requires participation of all resident students for enrollment, participation, and graduation;

(3) Includes learning objectives, evaluation, and a record of work performance as part of the student's college record;

(4) Provides programmatic leadership by college personnel at levels comparable to traditional academic programs;

(5) Recognizes the educational role of work-learning supervisors; and

(6) Includes consequences for nonperformance or failure in the work-learning program similar to the consequences for failure in the regular academic program.

(Authority: 42 U.S.C. 2756b)

§ 675.42 Purpose.

The purpose of the Work-Colleges program is to recognize, encourage, and promote the use of comprehensive work-learning programs as a valuable educational approach when it is an integral part of the institution's educational program and a part of a financial plan that decreases reliance on grants and loans and to encourage students to participate in community service activities.

(Authority: 42 U.S.C. 2756b)

§ 675.43 Program description.

(a) An institution that satisfies the definition of "work-college" in § 675.41(a) and wishes to participate in the Work-Colleges program must apply to the Secretary at the time and in the manner prescribed by the Secretary.

(b) An institution may expend funds separately, or in combination with other eligible institutions, to provide work-learning opportunities for currently enrolled students.

(c) For any given award year, Federal funds allocated for that award year under sections 442 and 462 of the HEA may be transferred for the purpose of carrying out the Work-Colleges program to provide flexibility in strengthening the self-help-through-work element in financial aid packaging.

(Authority: 42 U.S.C. 2756b)

§ 675.44 Allowable costs, Federal share, and institutional share.

(a) *Allowable costs.* An institution participating in the Work-Colleges program may use appropriated funds to carry out the following activities:

(1) Support the educational costs of qualified students through self-help payments or credits provided under the work learning program within the limits of part F of title IV of the HEA.

(2) Promote the work-learning-service experience as a tool of postsecondary education, financial self-help, and community service-learning opportunities.

(3) Carry out activities in sections 443 or 446 of the HEA.

(4) Administer, develop, and assess comprehensive work-learning programs including—

(i) Community-based work-learning alternatives that expand opportunities for community service and career-related work; and

(ii) Alternatives that develop sound citizenship, encourage student persistence, and make optimum use of assistance under the Work-Colleges program in education and student development.

(b) *Federal share of allowable costs.* An institution, in addition to the funds allocated for this program, may transfer allocations provided under its Federal Perkins Loan or its Federal Work-Study program to pay allowable costs.

(c) *Institutional share of allowable costs.* An institution must match Federal funds made available for this program on a dollar-for-dollar basis from non-Federal sources. The institution shall keep records documenting the amount and source of its share.

(Authority: 42 U.S.C. 2756b)

§ 675.45 Unallowable costs.

An institution may not use funds appropriated to carry out the Work-Colleges program to pay costs related to the purchase, construction, or alteration of physical facilities or indirect administrative costs.

(Authority: 42 U.S.C. 2756b)

§ 675.46 Multiinstitutional work-colleges arrangements.

(a) An institution participating in the Work-Colleges program may enter into a written agreement with another participating institution to promote the work-learning-service experience.

(b) The agreement described in paragraph (a) of this section must—

(1) Designate the administrator of the program; and

(2) Specify the terms, conditions, and performance standards of the program.

(c) Each institution shall retain responsibility for the proper disbursement of the Federal funds it contributes under an agreement with other eligible institutions.

(Authority: 42 U.S.C. 2756b)

§ 675.47 Agreement.

To participate in the Work-Colleges program, an institution shall enter into an agreement with the Secretary. The agreement provides that, among other things, the institution shall—

(a) Assure that it will comply with all the appropriate provisions of the HEA and the appropriate provisions of the regulations;

(b) Assure that it satisfies the definition of "work-college" in § 675.41(a);

(c) Assure that it will match the Federal funds according to the requirements in § 675.44(c); and

(d) Assure that it will use funds only to carry out the activities in § 675.44(a).

(Authority: 42 U.S.C. 2756b)

§ 675.48 Procedures and records.

In administering a Work-Colleges program under this subpart, an institution shall comply with the applicable provisions of this part 675.

(Authority: 42 U.S.C. 2756b)

§ 675.49 Termination and suspension.

Procedures for termination and suspension under this subpart are governed by applicable provisions found in 34 CFR part 668, subpart G of the Student Assistance General Provisions regulations.

(Authority: 42 U.S.C. 2756b)

* * * * *

20. In 34 CFR part 675 remove the term "College Work-Study" before the word "program" and add, in its place, the term "FWS" in § 675.4(a).

21. In 34 CFR part 675 remove the term "CWS" and add, in its place, the term "FWS" in the following places:

(a) Section 675.3(a) and (b).

(b) Section 675.4(d)(1).

(c) Section 675.8 introductory text, (b), (c), and (e).

(d) Section 675.9 introductory text.

(e) Section 675.10(a).

(f) Section 675.14 (a)(1), (a)(2) introductory text, (a)(2)(i), (a)(3), (c) introductory text, and (d)(1).

(g) Section 675.15(a) introductory text.

(h) Section 675.16(a)(3), (a)(4), (b)(1), (b)(2), and (b)(3).

(i) Section 675.17.

(j) Section 675.18(a) introductory text, (a)(1), redesignated (a)(5), (b)(1), (b)(2)(i), (b)(4), (c)(1) and (2), and (d).

(k) Section 675.19(a)(1), (a)(3)(i) introductory text, (a)(3)(ii), and (b)(4).

(l) Section 675.20(a) heading and introductory text, (b)(1), (c) heading, and (c)(2) introductory text.

(m) Section 675.22(b) introductory text heading.

(n) Section 675.23(a), and (b)(2)(ii).

(o) Section 675.24 heading, (a)(1), and (b).

(p) Section 675.25(a)(1) and (2), and (b).

(q) Section 675.26 heading and (d)(2)(ii).

(r) Section 675.27(a)(1), redesignated (a)(4), and (b).

(s) Section 675.33(b).

(t) Section 675.35(a).

(u) Section 675.37(a).

22. In 34 CFR part 675 remove the term "SEOGs" and add, in its place, the term "FSEOGs" in § 675.14(b)(1)(iv).

23. In 34 CFR part 675 remove the term "SEOG" and add, in its place, the term "FSEOG" in the following places:

(a) Section 675.18 redesignated (a)(5), (b)(2)(i), and (b)(4).

(b) Section 675.19(b)(4).

24. In § 675.2, paragraph (a) is amended by removing the term "Supplemental Educational Opportunity Grant (SEOG) program" and adding, in its place, the term "Federal Supplemental Educational Opportunity Grant (FSEOG) program".

25. Appendix B to 34 CFR part 675 is amended by removing the term "College Work-Study program" and adding, in its place, "Federal Work-Study program", and removing the term "CWS" and adding, in its place, the term "FWS" each place these terms appear.

26. In 34 CFR part 675 add the word "Federal" before the word "Perkins" in the following places:

(a) Section 675.2(a).

(b) Section 675.14(b)(1)(x).

(c) Section 675.18(b)(2)(i) and (b)(4).
(d) Section 675.19(b)(4).

27. In 34 CFR part 675 add the word "Federal" before the word "Pell" in the following places:
(a) Section 675.2(a).
(b) Section 675.14(b)(1)(i) and (c)(2).
(c) Section 675.15(c)(2).
(d) Section 675.18(b)(4).

28. In 34 CFR part 675 remove the term "Guaranteed Student Loan (GSL) Program" and add, in its place, the term "Federal Family Education Loan (FFEL) programs" in § 675.2(a).

29. In 34 CFR part 675 remove the term "Income Contingent Loan Program" in § 675.2(a).

30. In 34 CFR part 675 add the word "Federal" before the term "PLUS Program" and the term "SLS Program" in § 675.2(a).

31. In 34 CFR part 675 add the word "Federal" before the term "Supplemental Loan for Students (SLS)" in § 675.14(b)(3).

32. In 34 CFR part 675 change the word "Programs" to "Program" after the word "Development" in § 675.17. The Secretary proposes to amend part 676 of title 34 of the Code of Federal Regulations as follows:

PART 676—FEDERAL SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANT PROGRAM

1. The authority citation for part 676 continues to read as follows:

Authority: 20 U.S.C. 1070b–1070b–3, unless otherwise noted.

2. Section 676.1 is amended by removing the term "Supplemental Educational Opportunity Grant (SEOG) Program" and replacing it with the term "Federal Supplemental Educational Opportunity Grant (FSEOG) program" in paragraph (a).

3. Section 676.4 is amended by redesignating paragraphs (b), (c), and (d) as paragraphs (c), (d), and (e) respectively; by adding the words "Except as specifically provided in § 676.16(f), an" before the word "institution" in the introductory text of redesignated paragraph (e); revising paragraph (a); and by adding new paragraphs (b) and (f) to read as follows:

§ 676.4 Allocation and reallocation.

(a) The Secretary allocates funds to institutions participating in the FSEOG program in accordance with section 413D of the HEA.

(b) The Secretary reallocates funds to institutions participating in the FSEOG program in a manner that best carries out the purposes of the FSEOG program.

* * * * *

(f) *Unexpended funds.* (1) If an institution does not expend its FSEOG allocation during an award year and returns more than 10 percent of the allocation, the Secretary reduces its allocation for the next fiscal year by the amount returned.

(2) The Secretary may waive the provision of paragraph (f)(1) of this section for a specific institution if the Secretary finds that enforcement would be contrary to the interests of the program.

(3) The Secretary considers enforcement of paragraph (f)(1) of this section to be contrary to the interest of the program only if the institution returned more than 10 percent of its allocation due to circumstances beyond the institution's control that are not expected to recur.

* * * * *

4. Section 676.10 is amended by revising paragraph (b) to read as follows:

§ 676.10 Selection of students for FSEOG awards.

* * * * *

(b) *Part-time and independent students.* If an institution's allocation of FSEOG funds is directly or indirectly based in part on the financial need demonstrated by students attending the institution as less than full-time or independent students and if the total financial need of those students exceeds 5 percent of the total financial need of all students at an institution, the institution shall make available at least 5 percent of its allocation under this part to those students.

* * * * *

5. Section 676.14 is amended by removing the words "Guaranteed Student Loans" and adding, in its place, the words "Federal Family Education Loan" in paragraph (b)(1)(ii); by removing the words "and need-based ICLs" after the words "Direct Loans" in paragraph (b)(1)(x); by adding the words "or Federal" before the word "PLUS", by removing the comma after the words "PLUS loan", and by removing the words "or non-need-based ICL" before the word "as" in paragraph (b)(3); and by revising paragraphs (c) introductory text, (c)(1), (c)(2), and (c)(3) to read as follows:

§ 676.14 Overaward.

* * * * *

(c) *Treatment of resources in excess of need.* An institution shall take the following steps when it learns that a student has received additional resources not included in the calculation of FSEOG eligibility that would result in the student's total resources exceeding his or her financial need by more than $200, or $300 if employed under the FWS program:

(1) The institution shall decide whether the student has increased financial need that was unanticipated when it awarded financial aid to the student. If the student demonstrates increased financial need and the total resources do not exceed this increased need by more than $200, or $300 if employed under the FWS program, no further action is necessary.

(2) If no increased need is demonstrated, or the student's total resources still exceed his or her need by more than $200, or $300 if employed under the FWS program, as recalculated pursuant to paragraph (c)(1) of this section, the institution shall cancel any undisbursed loan or grant (other than a Federal Pell Grant).

(3) If the student's total resources still exceed his or her need by more than $200, or $300 if employed under the FWS program, after the institution takes the steps required in paragraphs (c)(1) and (2) of this section, the institution shall consider the amount by which the resources exceed the student's financial need by more than the applicable amount as an overpayment.

* * * * *

6. Section 676.16 is amended by redesignating paragraphs (f) and (g) as paragraphs (g) and (h) respectively and a new paragraph (f) is added to read as follows:

§ 676.16 Payment of an FSEOG.

* * * * *

(f)(1) An institution may disburse FSEOG funds after the student has ceased to be enrolled in accordance with paragraphs (f)(2) and (3) of this section.

(2) A disbursement described in paragraph (f)(1) of this section may be made—

(i) Only if the FSEOG was awarded to the student while he or she was still an eligible student; and

(ii) Only if the FSEOG funds will be used to cover documented educational costs to the student that are normally included in a student's cost of attendance under section 472 of the HEA for the payment period for which the FSEOG was intended and the student was actually enrolled.

(3) The institution shall document in the student's file the reason for the late disbursement.

* * * * *

7. Section 676.18 is amended by removing paragraph (a)(3); by adding the word "and" after the semicolon in paragraph (a)(1); by removing the word "and" after the semicolon in paragraph (a)(2); by removing the semicolon in paragraph (a)(2) and adding, in its place,

a period; and by revising paragraph (c) to read as follows:

§ 676.18 Use of funds.

* * * * *

(c) *Transfer back of funds to FWS.* An institution shall transfer back to the FWS program any funds unexpended at the end of the award year that it transferred to the FSEOG program from the FWS program.

* * * * *

8. Section 676.20 is amended by revising paragraph (a) and by adding a new paragraph (c) to read as follows:

§ 676.20 Minimum and maximum FSEOG award.

(a) An institution may award an FSEOG for an academic year in an amount it determines a student needs to continue his or her studies. However, except as provided in paragraph (c) of this section, an FSEOG may not be awarded for a full academic year that is—

(1) Less than $100; or

(2) More than $4,000.

* * * * *

(c) The maximum amount of the FSEOG may be increased from $4,000 to as much as $4,400 for a student participating in a program of study abroad that is approved for credit by the home institution, if reasonable costs for the study abroad program exceed the cost of attendance at the home institution.

* * * * *

9. Section 676.21 is amended by removing the words "Beginning with the 1989–90 award year", by removing the comma before the words "the Secretary", and by capitalizing the letter "t" in the word "the" before the word "Secretary" in paragraph (b) introductory text and by revising paragraph (a) to read as follows:

§ 676.21 FSEOG Federal share limitations.

(a) Except as provided in paragraph (b) of this section, for the 1993–94 award year and subsequent award years, the Federal share of the FSEOG awards made by an institution may not exceed 75 percent of the amount of FSEOG awards made by that institution.

* * * * *

10. In 34 CFR part 676 remove the term "SEOG" and add, in its place, the term "FSEOG" in the following places:

(a) Section 676.3(a) and (b).

(b) Section 676.4 redesignated (e)(1).

(c) Section 676.8 introductory text and (b).

(d) Section 676.9 introductory text.

(e) Section 676.10 heading, (a)(1), and (a)(2).

(f) Section 676.14(a)(1), (a)(2) introductory text, (a)(2)(i), (a)(3), and (d)(1) and (2).

(g) Section 676.15(a) introductory text.

(h) Section 676.16 heading, paragraph (a)(1), (a)(2), (b), (d)(1), (e)(1) introductory text, redesignated paragraphs (g) and (h).

(i) Section 676.17.

(j) Section 676.18(a) introductory text, (b)(1), (b)(2)(i), and (b)(4).

(k) Section 676.19(a)(1), (a)(2)(i) introductory text and (ii), and (b)(3).

(l) Section 676.20(b).

(m) Section 676.21 heading, (b)(2), and (c).

11. In 34 CFR part 676 remove the term "SEOGs" and add, in its place, the term "FSEOGs" in the following places:

(a) Section 676.14 (b)(1)(iv).

(b) Section 676.21(b) introductory text.

12. In 34 CFR part 676 add the word "Federal" before the word "Perkins" in the following places:

(a) Section 676.2(a).

(b) Section 676.14(b)(1)(x).

(c) Section 676.18(b)(2)(i), (b)(3), and (b)(4).

(d) Section 676.19(b)(3).

13. In 34 CFR part 676 add the word "Federal" before the word "Pell" in the following places:

(a) Section 676.2(a)

(b) Section 676.10(a)(1) and (2).

(c) Section 676.14(b)(1)(i).

(d) Section 676.15(c)(2).

(e) Section 676.18(b)(4).

14. In 34 CFR part 676 remove the term "CWS" and add, in its place, the term "FWS" in the following places:

(a) Section 676.18(b)(2)(i), (b)(3), and (b)(4).

(b) Section 676.19(b)(3).

15. In 34 CFR part 676 remove the term "College Work-Study (CWS) Program" and add, in its place, the term "Federal Work-Study (FWS) Program" in § 676.2(a).

16. In 34 CFR part 676 remove the term "Guaranteed Student Loan (GSL) Program" and add, in its place, the term "Federal Family Education Loan (FFEL) programs" in § 676.2(a).

17. In 34 CFR part 676 remove the term "Income Contingent Loan Program" in § 676.2(a).

18. In 34 CFR part 676 add the word "Federal" before the term "PLUS Program" and the term "SLS Program" in § 676.2(a).

19. In 34 CFR part 676 add the word "Federal" before the term "Supplemental Loan for Students (SLS)" in § 676.14(b)(3).

[FR Doc. 94–14629 Filed 6–21–94; 8:45 am]

BILLING CODE 4000–01–P

federal register

Wednesday
June 22, 1994

Part III

Office of Personnel Management

Request for Clearance of Information Collection To Replace SF 171, Application for Federal Employment; Notice

OFFICE OF PERSONNEL MANAGEMENT

Request for Clearance of Information Collection To Replace SF 171, Application for Federal Employment

AGENCY: Office of Personnel Management

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), this document announces the Office of Personnel Management's (OPM) request to the Office of Management and Budget (OMB) for clearance of proposed job application procedures. These procedures would replace the SF 171, Application for Federal Employment, which is being discontinued as recommended by the National Performance Review. The proposed procedures described in this notice were recommended by an interagency task force.

To allow time to implement the proposed procedures, OMB has approved an extension of the authorization of SF 171 and related forms through September 30, 1994. OPM has further requested that authorization for these forms be extended through December 31, 1994. The procedures proposed in this notice would take effect on January 1, 1995.

OPM estimates that the public reporting burden to file a Federal job application would vary from 10 minutes to 240 minutes with an average of 40 minutes. OPM estimates that the public reporting burden to file the Declaration for Federal Employment would vary from 5 minutes to 60 minutes with an average time of 15 minutes.

DATES: Written comments will be considered if received no later than July 22, 1994.

ADDRESSES: Send or deliver written comments to Leonard R. Klein, Associate Director for Career Entry, Office of Personnel Management, Washington, DC 20415, AND Joseph Lackey, OPM Desk Officer, Officer of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3002, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Concerning the application procedures: Lee Edwards on 202–606–0830. Concerning the Declaration for Federal Employment: Kenneth Smith on 202–376–3800.

Office of Personnel Management.

James B. King,

Director.

SUPPLEMENTARY INFORMATION:

Summary of Process To Replace SF 171

The SF 171, Application for Federal Employment, has been the primary form used by individuals to apply for Federal jobs since 1968. However, the National Performance Review (NPR) recommended eliminating standard application forms, such as the SF 171, which is considered a barrier to attracting workers to the Federal service because it is long and complex. Therefore, the Office of Personnel Management (OPM) proposes to replace the SF 171 with an approach that allows applicants to use a resume or other form of written application they choose.

OPM and agencies need to collect information on education, work experience, and personal background that is necessary to determine an applicant's qualifications, eligibility, and fitness for Federal employment. OPM and agency authority to collect this information is primarily in sections 1104, 1302, 3301, 3304, 3320, 3361, 3393, and 3394 of Title 5, United States Code, covering employment in the competitive service, excepted service, and Senior Executive Service, including selection from among current and former Federal employees.

To implement the NPR recommendation, OPM convened an interagency task force, representing 16 agencies, which recommended new application procedures described in this notice. OPM sought comments on implementing these recommendations from the National Partnership Council, the Interagency Advisory Group (personnel directors from more than 90 agencies), unions holding national consultation rights with OPM, and organizations representing major constituent groups. The resulting approach provides:

- Alternative methods for agencies to collect information from job applicants (written, telephone, and automated techniques);
- Applicant choices in how they submit written applications;
- Two new optional forms and an information flyer for use beginning in 1995; and
- The separation of qualifications and suitability information in applications.

Temporary Extension of SF 171 and Related Forms

1. To allow sufficient time to implement the proposed application procedures, OMB has extended the authorization for the following standard forms through September 30, 1994, and is considering OPM's request for extension through December 31, 1994:

SF 171, Application for Federal Employment (OMB Control No. 3206–0012)

SF 171–A, Continuation Sheet for SF 171 (OMB Control No. 3206–0012)

SF 172, Amendment to Application for Federal Employment (OMB Control No. 3206–0002

OMB also has extended authorization for a related form, the *SF 61–B, Declaration of Appointee (OMB Control No. 3206–0182)*, through December 31 1994.

Proposed Procedures for Federal Job Applications

2. Overview

The goal of these proposed application procedures is to make it easier for individuals to apply for Federal jobs and to present their qualifications in a manner they believe will enhance their job opportunities. At the same time, the proposal would provide methods for agencies to obtain sufficient information to evaluate job applicants. So that the public reporting burden may be reduced and agencies may better protect privacy of individuals by restricting access to more sensitive background data, qualifications information would be collected separately from suitability information.

3. Agency Options

Agencies could request and collect applicant data electronically or through printed vacancy/examination announcements (and supplements to them), and paper resume/applications. Electronic media include (but are not limited to) applications filed by telephone as well as data that applicants provide on computer scannable forms. (See paragraph 6 on agency specific forms for use with electronic systems.)

Regardless of the method used, agencies would be authorized to collect necessary information of the type they currently collect from job applicants, for example: Identification, including name, address, social security number, date of birth, phone numbers. Job related qualifications, such as work experience, education, minimum college credits for professional positions, training, licenses, accomplishments, evidence of specialized knowledge, skills, and abilities.

Personal information to satisfy general legal requirements, when applicable, such as citizenship, veterans'

preference, minimum and maximum age requirements, and proof of competitive status.

Applicant preferences, where applicable, such as work location, work schedule, type of employment (permanent or temporary).

To tell applicants what information to include in their resumes/applications, we propose to issue a flyer called Applying for a Federal Job. The flyer also alerts applicants that fraudulent statements can be punished by fine or imprisonment, job finalists will be asked to certify the accuracy of their statements, and in some instances all applicants may be required to provide this certification. (A copy of the flyer is appended to this notice.)

The flyer would be widely available through OPM's field offices, agency personnel offices, State Employment Service offices, and other organizations that deal with Federal job seekers. Printed versions could be purchased through the General Services Administration or could be obtained from OPM's electronic bulletin boards without charge.

Agencies could incorporate in their vacancy announcements the information requested in the flyer and could request any other job-related information required by the position(s) to be filled.

Disposition of incomplete applications would be subject to individual agency policy, as is currently the case. Each agency determines whether incomplete applications will be rejected, evaluated to the extent possible, or subject to follow up for additional information.

4. Applicant Options

Beginning January 1, 1995, applicants could choose the format of their written applications, for example, a resume, the optional application discussed in paragraph 5, or any other written application an individual chooses. Individuals may have a supply of SF 171 forms or SF 171 computer software; such applications would be acceptable if applicants chose to use them (but an agency could not require SF 171).

To assist applicants in preparing their resumes/applications, the proposed flyer, Applying for a Federal Job, shows the types of information agencies require for evaluating job applicants (see paragraph 3). For applicants who prefer a more structured approach, the proposed optional application form would be available, as discussed in paragraph 5.

5. New Optional Forms

Two new optional forms are proposed:

a. "Optional Application for Federal Employment" is a simplified application for individuals who prefer a form. It would be particularly useful for applicants who do not have extensive job-related qualifications, such as recent graduates or applicants for entry or wage grade positions. (The form would have a short tear-off sheet with brief instructions and the Privacy Act and Public Burden Statements). This optional application contains information considered to be the minimum necessary to determine an applicant's qualifications. (The information requested parallels the contents of the flyer described in paragraph 3.)

Since the intent of this proposal is to give applicants flexibility in preparing job applications, Federal agencies could not require all applicants to use the optional application form, except where the agency had developed a computer-compatible version of the optional application. This exception is necessary because automated systems usually can operate only with specific formats and questions.

The optional application would be widely available through OPM field offices, agency personnel offices, Statement Employment Service offices, and other organizations that deal with Federal job seekers. Printed versions could be purchased through the General Services Administration or the form could be obtained without charge on a computer file from OPM's electronic bulletin boards.

b. "Declaration for Federal Employment" would be used primarily to collect information on conduct and suitability, and also on other matters, such as receipt of a government annuity. (The form would have a short tear-off sheet with brief instructions and the Privacy Act and Public Burden Statements.) Agencies would have the option of asking applicants to complete this optional form at any time during the hiring process, but it would be required of all appointees. We anticipate that, in most cases, only the final few applicants who have a good chance of receiving a job offer would complete the form.

Another important purpose of the Declaration for Federal Employment would be to warn applicants of the consequences of submitting fraudulent information and to ask them to certify the accuracy of all their application materials. At the time of appointment, individuals would again be asked to sign a certification so that they could indicate any changes that occurred between the date of the initial certification and date of appointment.

(This certification for appointees is a part of the existing SF 61–B, Declaration of Appointee. The SF 61–B, which also contains suitability and insurance questions, would be replaced in 1995 by the proposed Declaration for Federal Employment.)

OPM has proposed a 3-year expiration date (the maximum permitted under the Paperwork Reduction Act) for both the optional application and declaration form. We also propose that the expiration date not be displayed on the forms because of the anticipated large volume that would be in circulation at any time. Samples of both forms are appended to this notice.

Agency Variations

6. Agency-Specific Forms

To prevent a proliferation of government application forms and the resulting burden to the public, OMB and OPM would encourage agencies to use the process described in this notice. We anticipate that only rarely would agencies need an agency-specific form, for example, when necessary for an electronic application system or for unique occupations with highly specialized requirements.

Agencies are required by the Paperwork Reduction Act to obtain OMB approval of any agency-specific application form required from ten or more persons who are not agency employees. The Act does not preclude an agency, however, from developing its own form for required use by its current employees. Also, agencies would not need OMB approval to develop a computer-compatible (but otherwise identical) version of the Optional Application for Federal Employment and require its use by all applicants. Use of a non-identical computer-compatible application would require OMB approval.

7. Agency-Specific Questions

In addition to the information items listed in paragraph 3, agencies would be permitted to add any of the following three items, if applicable, to the information they request for applicants. These items are unique to certain agencies or positions and, therefore, are not included on the proposed optional forms.

a. Spouse Preference

Under section 806 of the Defense Authorization Act, 1986 (Pub. L. 99–145), the Department of Defense must

give preference in hiring to military spouses. To determine eligibility and extend preference, the Department of Defense may ask the following question. Without this information, Defense could not comply with the preference requirement. The question may be included in any document of Defense's choosing, for example, a vacancy announcement or as an addition to one of the proposed forms.

Are you applying to exercise Spouse Preference?
( ) Yes ( ) No
If yes, attach a copy of your sponsor's active duty military orders of assignment to the geographic location of the position vacancy or written evidence or documentation that verifies eligibility.

b. Child Care Workers

Section 231 of the Crime Control Act of 1990 (Pub. L. 101–647) requires that employment applications for Federal child care positions contain a question asking whether the individual has ever been arrested for or charged with a crime involving a child and for the disposition of the arrest or charge. Also, the application containing this information must state that it is being signed under penalty of perjury, and identify the penalty. The law requires the hiring agency to obtain the applicant's signed receipt of notice that a criminal record check will be conducted and that the applicant has a right to review and challenge the accuracy of the report.

To assure compliance with this law, agencies may add the following question to the Declaration for Federal Employment for applicants for child care positions:

Have you ever been arrested for or charged with a crime involving a child? If "Yes," provide the date, explanation of the violation, disposition of the arrest or charge, place of occurrence, and the name and address of the police department or court involved.

Note: A Federal agency is required by law to conduct a criminal check. In addition to the purposes explained in blocks 16 and 18, your signature also certifies that (1) your response to this question is made under penalty of perjury, which is punishable by (insert Federal punishment for perjury); and (2) you have received notice that a criminal check will be conducted, of your right to obtain a copy of the criminal history report made available to the employing Federal agency, and of your right to challenge the accuracy and completeness of any information contained in the report.

c. Indian Child Care Workers

Section 408 of the Miscellaneous Indian Legislation (Pub. L. 101–630) contains a related requirement for positions at the Departments of Interior and Health and Human Services that involve regular contact with or control over Indian children. The agencies must ensure that persons hired for these positions have not been found guilty of or pleaded nolo contendere to violet crimes.

To assure compliance with both Pub. L. 101–630 and Pub. L. 101–647, Interior and Health and Human Services may add the following question to the Declaration for Federal Employment, for positions that involve regular contact with or control over Indian children:

Have you ever (1) been arrested for or charged with a crime involving a child, and/or (2) been found guilty of, or entered a plea of nolo contendere or guilty to, any offense under Federal, State, or tribal law involving crimes of violence; sexual assault, molestation, explanation, contact or prostitution; or crimes against persons? If "Yes," provide the date, explanation of the violation, disposition of the arrest or charge, place of occurrence, and the name and address of the police department or court involved.

Note: A Federal agency is required by law to conduct a criminal check. In addition to the purposes explained in blocks 16 and 18, your signature also certifies that (1) your response to this question is made under penalty of perjury, which is punishable by (insert Federal punishment for perjury); and (2) you have received notice that a criminal check will be conducted, of your right to obtain a copy of the criminal history report made available to the employing Federal agency, and of your right to challenge the accuracy and completeness of any information contained in the report.

OPM Computer-Based Applicant Systems

8. OPM Form 1203

OPM uses computer-assisted techniques to rate job applicants. Applicants are asked to complete OPM Form 1203, optical scan forms designed to collect applicant information and qualifications in a format suitable for automated processing. Different but very similar versions of the form are used, depending on the occupation or automated system being used.

The 1203 forms are essential to operation of our automated application processing systems and their use is consistent with recommendations of the National Performance Review. However, the current version of Form 1203 contains suitability questions that parallel questions 38–43 of the SF 171. OPM proposes to revise Form 1203 to remove all suitability questions.

OPM has requested that OMB approve the revised OPM Form 1203 series for a 3-year period beginning January 1, 1995. The expiration date of the current form is March 31, 1995. Because of the high level of current stock and the possibility that a supply of the revised form may not be available by January 1995, OPM plans to continue using the current version of Form 1203 until supplies are exhausted on March 31, 1995, whichever occurs first. Beginning January 1, 1995, OPM would instruct applicants not to answer the suitability questions and would not enter any responses in our automated systems. A representative sample of OPM Form 1203 is appended to this notice.

9. TAPS

OPM also requests OMB approval of its telephone application system, the Telephone Application Processing System (TAPS). OPM has been evaluating TAPS as an NPR reinvention laboratory project. TAPS will greatly expedite the application process by utilizing the latest in telephone and microcomputer technology.

Through TAPS, applicants will be able to apply directly over the telephone for Federal employment. They will be instructed to provide answers to questions using a combination of voice recordings and the keys of a touch-tone telephone. The questions cover minimum qualification requirements, that is, education and/or experience, citizenship, job interest, etc. These responses will be transcribed and computer-rated within a day. The names of applicants who are rated eligible will be placed immediately on a referral list for consideration when Federal agencies have jobs to fill.

Currently, Professional Nurse and Border Patrol Agent positions are operating under TAPS. A representative script (Nurse) of the TAPS application is appended to this notice.

BILLING CODE 6325–01–M

APPLYING FOR A FEDERAL JOB

The Federal Government does not require a standard application form for most jobs, but we need certain information to evaluate your qualifications. You can apply using a resume, the *Optional Application for Federal Employment*, or any other application form you choose. For a copy of the optional form, call 912-757-3000.

Your application or resume speaks for you, so be sure it gives the hiring agency everything it needs to make an employment decision. **You may lose consideration for a job if your resume or application does not provide ALL the information requested on this form and in the job vacancy announcement.**

THE FEDERAL GOVERNMENT IS AN EQUAL OPPORTUNITY EMPLOYER

JOB INFORMATION

- ☐ Announcement number, title, and grade of the job you are applying for.

PERSONAL INFORMATION

- ☐ Full name, mailing address *(include ZIP Code)*, and home and work telephone numbers *(include area codes)*.
- ☐ Social Security Number and birth date.
- ☐ Citizenship. *(Most Federal jobs require United States citizenship.)*
- ☐ Veterans' preference. *(See reverse.)*
- ☐ Competitive status. *(If job requires status, send a copy of your SF 50, Notification of Personnel Action, that shows you have status.)*

EDUCATION

- ☐ High school--name, city, and State *(ZIP code if known)* of school where you earned diploma or GED. *(Give date.)*
- ☐ College
  - name, city, and State *(ZIP code if known)*,
  - majors,
  - type and year of any degrees, or
  - if no degree, show credit hours earned *(indicate semester or quarter)*.

If you believe your education will help you qualify, send a copy of your transcript.

WORK EXPERIENCE

- ☐ Give the following for each paid or non-paid work experience **related to the job** you are applying for. *(Do not send job descriptions.)*
  - job title *(and series and grade if Federal job)*,
  - duties and accomplishments,
  - employer's name and address,
  - supervisor's name and telephone number,
  - starting and ending dates,
  - hours worked per week, and
  - salary.
- ☐ Indicate if we may contact your current supervisor.

OTHER QUALIFICATIONS

- ☐ **Job-related** skills, for example, computer software/hardware, tools, machinery, other languages, typing speed.
- ☐ **Job-related** licenses *(current only.)*
- ☐ **Job-related** honors, awards, and special accomplishments, for example, publications, memberships in professional or honorary societies, public speaking, leadership activities, performance awards. *(Give dates but do not send copies.)*
- ☐ **Job-related** training courses *(title and date.)*

SPECIMEN

OMB No. XXXXX

U.S. Office of Personnel Management

⇨ OTHER IMPORTANT INFORMATION ⇦

CONDITIONS OF EMPLOYMENT

- The hiring agency will ask job finalists, or in some cases all applicants, to sign and certify the accuracy of all information provided and to authorize a background investigation.

  If you make a false statement in any part of your application, you may not be hired, or you may be fired after you begin work. Also, you may be fined or sent to jail.

- If you are a male, over age 18, and born after December 31, 1959, you must be registered with the Selective Service System (or have an exemption) to be eligible for a Federal job.

- If you receive a Federal annuity (military or civilian), your salary or annuity may be reduced if you take a Federal job.

- Also, if you take a Federal job, you must pay any delinquent debts, or your agency may garnish your salary.

VETERANS' PREFERENCE IN HIRING

- If you served on active duty in the United States Military and received an honorable or general discharge, you may be eligible for veterans' preference. Service starting after October 15, 1976, requires a Campaign Badge, or Expeditionary Medal, or service-connected disability. For information about eligibility requirements, call **912-757-3000** and request *Veterans' Preference for Federal Jobs: CE-101.*

- Veterans' preference is not a factor when competition is limited to status candidates (current or former Federal career or career-conditional employees.).

- To claim veterans' preference, attach a copy of your DD-214, *Certificate of Release or Discharge from Active Duty,* or other proof of eligibility.

- If you claim 10-point veterans' preference, attach an SF 15, *Application for 10-Point Veterans' Preference*, plus the proof required by that form.

⇨ Send your application to the agency announcing the job. Call them if you have any questions. ⇦

PREVIEW

PRIVACY ACT AND PUBLIC BURDEN STATEMENTS

- Federal agencies are authorized to rate applicants for Federal jobs under sections 1104, 1302, 3301, 3304, 3320, 3361, 3393, and 3394 of title 5 of the U.S. Code. We need the information requested on this form and associated vacancy announcements to see how well your education and work skills qualify you for a Federal job. We also need information on citizenship, military service, etc., because of laws on who may be employed by the Federal Government.
- We must have your Social Security Number (SSN) to keep your records straight; other people may have the same name and birth date. The SSN has been used to keep records since 1943, when Executive Order 9397 asked agencies to do so. OPM may also use your SSN to make requests for information about you from employers, schools, banks, and others who know you, but only as allowed by law or Presidential directive. The information we collect by using your SSN be used for employment purposes and also may be used for studies, statistics, and computer matching to benefit and payment files.
- We may give information we have about you to Federal, State, and local agencies for checking on law violations or for other lawful purposes. We may send your name and address to State and local Government agencies, Congressional and other public offices, and public international organizations, if they request names of people to consider for employment. We may also notify your school placement office if you are selected for a Federal job.
- Giving us your SSN or any of the other information is voluntary. However, we cannot process your application, which is the first step toward getting a job, if you do not give us the information we request. Incomplete addresses and ZIP Codes will also slow processing.

- We estimate the public burden reporting for collecting this information will vary from 10 to 240 minutes with an average of 40 minutes per response, including time for reviewing instructions, searching existing data sources, gathering data, and completing and reviewing the information. Send comments regarding the burden estimate or any other aspect of the collection of information, including sugges- tions for reducing this burden, to Reports and Forms Management Officer, U.S. OPM,, Washington, D.C. 20415; and to the Office of Management and Budget, Paperwork Reduction Project (3206-0012), Washington, D.C. 20503. Do not send your application to these agencies.

U.S. Office of Personnel Management
Optional Form X1 (Draft 5/94)

Form Approved
OMB No. XXXXXX

OPTIONAL APPLICATION FOR FEDERAL EMPLOYMENT - OF X1

GENERAL INFORMATION

You may apply for most Federal jobs with a resume, the attached *Optional Application for Federal Employment (OF X1)* or other application form. **You may lose consideration for a job if your resume or application does not provide ALL the information requested on this form and in the job vacancy announcement.**

- Most Federal jobs require United States citizenship and, that males over age 18, born after December 31, 1959, be registered with the Selective Service System or have an exemption.
- If you served on active duty in the United States Military and received an honorable or general discharge, you may be eligible for veterans' preference. Service starting after October 15, 1976, also requires a Campaign Badge or Expeditionary Medal or a service-connected disability. For information on eligility requirements call **912-757-3000**, and request *Veterans' Preference for Federal Jobs (CE-101)*. *Veterans' preference is not a factor when competition is limited to STATUS applicants (current or former Federal career or career-conditional employees).*
- If you take a Federal job, you must pay any delinquent debts or your agency may garnish your salary.
- If you receive a Federal annuity (military or civilian), your salary or annuity may be reduced.
- Send your application to the agency office announcing the vacancy. If you have questions, contact that office.

THE FEDERAL GOVERNMENT IS AN EQUAL OPPORTUNITY EMPLOYER

THIS IS A 1/2 PAGE TEAR OFF. PERFORATION AT TOP OF FACE ▲. REVERSE ▼

PRIVACY ACT AND PUBLIC BURDEN STATEMENTS

- Federal agencies are authorized to rate applicants for Federal jobs under sections 1104, 1302, 3301, 3304, 3320, 3361, 3393 and 3394 of title 5 of the U.S. Code. We need the information requested on this form and associated vacancy announcements to see how well your education and work skills qualify you for a Federal job. We also need information on citizenship, military service, etc. because of laws on who may be employed by the Federal Government.
- We must have your Social Security Number (SSN) to keep your records straight; other people may have the same name and birth date. The SSN has been used to keep records since 1943, when Executive Order 9397 asked agencies to do so. OPM may also use your SSN to make requests for information about you from employers, schools, banks, and others who know you, but only as allowed by law or Presidential directive. The information we collect by using your SSN will be used for employment purposes and also may be used for studies, statistics, and computer matching to benefit and payment files.
- We may give information we have about you to Federal, State, and local agencies for checking on law violations or for other lawful purposes. We may send your name and address to State and local Government agencies, Congressional and other public offices, and public international organizations, if they request names of people to consider for employment. We may also notify your school placement office if you are selected for a Federal job.
- Giving us your SSN or any of the other information is voluntary. However, we cannot process your application, which is the first step toward getting a job, if you do not give us the information we request. Incomplete addresses and ZIP Codes will also slow processing.
- Public burden reporting for this collection of information is estimated to vary from 20 to 120 minutes with an average of 60 minutes per response, including time for reviewing instructions, searching existing data sources, gathering the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of the collection of information, including suggestions for reducing this burden to Reports and Forms Management Officer, U.S. OPM,, Washington, D.C. 20415; and to the Office of Management and Budget, Paperwork Reduction Project (3206-0012), Washington, D.C. 20503. Do not send your application to these addresses.

DRAFT

Form Approved
OMB No. xxxx-xxxx

OPTIONAL APPLICATION FOR FEDERAL EMPLOYMENT -- OF X1

For most jobs you may apply using a resume or other application form. **You may lose consideration for a job if your resume or application does not provide ALL the information requested below and in the job vacancy announcement.**

PERSONAL INFORMATION

1 Job and Grade Desired ►

2 Announcement Number ►

3 Full Name ►

4 Social Security Number ►

5 Mailing Address (Include ZIP Code)
►
►
►

6 Birth Date (MM/DD/YY) ►

7 Phone Numbers (Include Area Code)
Daytime ►
Evening ►

8 Are you a U.S. citizen? [ ]YES. [ ]NO ► Enter the country of your citizenship ►

9 Do you claim Veterans' Preference? [ ]NO ► Go to **10.** [ ]YES ► Mark your claim below **and attach proof.**
[ ]**5 points** ► Attach your DD 214. [ ]**10 points** ► Attach SF 15, Application for 10-Point Preference, and proof required.

10 Do you claim STATUS based on Federal civilian employment? [ ]NO. [ ]YES ► Attach a copy of your SF 50 that shows you have STATUS.

EDUCATION

11 Highest level completed (Circle) 9 10 11 12/GED College: 1 2 AA 3 4 BA/BS Masters Doctorate

12 High School Diploma or GED - Give the school's name, city, state, ZIP Code (if known), and the year received.
►

13 Colleges attended - Give the name, city, state, ZIP Code (if known), majors, and either type and year of degree awarded or credits earned (indicate quarter or semester hours). If you believe your education will help you qualify, attach a copy of your transcript.

DRAFT

OTHER JOB-RELATED QUALIFICATIONS

14 **Job-related** training - Give title of training and date completed. (Do NOT attach certificates, unless specifically requested.)

15 **Job-related** skills (computer software/hardware, tools, machinery, other languages, typing speed), current licenses, honors, awards, and special accomplishments (publications, honorary and professional societies, public speaking and leadership activities) - List and give dates, but do NOT attach copies.

WORK EXPERIENCE

16 Paid and non-paid work experience - Describe **job-related** work experiences you want considered. You may attach additional pages. Do **NOT** attach job descriptions.

A Job Title (If Federal, give series and grade) ▸

From ▸ To ▸ Salary ▸ $ per Hours per Week ▸

Employer's Name and Address ▸

Supervisor's Name and Telephone Number ▸

Describe Your Duties and Accomplishments ▸

B Job Title (If Federal, give series and grade) ▸

From ▸ To ▸ Salary ▸ $ per Hours per Week ▸

Employer's Name and Address ▸

Supervisor's Name and Telephone Number ▸

Describe Your Duties and Accomplishments ▸

DRAFT

17 May we contact your current supervisor? [ ]YES. [ ]NO.

18 Attach items requested in the announcement that are **not** collected on this form.

19 Applicant's Certification - **I certify** that, to the best of my knowledge and belief, all of the information on and attached to this application is true, correct, complete and made in good faith. **I understand** that false or fraudulent information on or attached to this application may be grounds for not hiring me, or for firing me after I begin work, and may be punishable by fine or imprisonment. **I understand** that any information I give may be investigated.

SIGNATURE ▸ DATE SIGNED ▸

Optional Form X2 (DRAFT)
U.S. Office of Personnel Management

Declaration for Federal Employment

Form Approved:
O.M.B. No. 3206-XXXX
NSN 7540-XX-XXX-XXXX
XX-XXX

INSTRUCTIONS

The information requested on this form is needed to determine whether you meet the basic requirements for Federal employment. The Office of Personnel Management is authorized to request this information under sections 1302, 3301, and 3304 of title 5 of the U.S. Code. Section 1104 of title 5 allows the Office of Personnel Management to delegate personnel management functions to other Federal agencies.

Because agencies have their own hiring procedures, the information on this form may be requested at different times during the hiring process. Follow the instructions that the agency provides. If you are hired, you will be asked to update your responses on this form and on other materials submitted during the application process, and then to recertify that your answers are true.

Your Social Security Number is needed to keep our records accurate, because people may have the same name and birthdate. Executive Order 9397 also asks Federal agencies to use this number to help identify individuals in agency records. Giving us your SSN or any other information is voluntary. However, in most cases agencies cannot consider your application if you do not provide the information. Incomplete addresses and ZIP Codes may also slow processing.

Your prospects for employment are much better if you answer all questions truthfully and completely. A false statement on any part of this declaration or attached forms or sheets may be grounds for not hiring you, or for firing you after you begin work. Also, you may be punished by fine or imprisonment (U.S. Code, title 18, section 1001).

Either type your responses to this form or print clearly in dark ink. If you need additional space, attach sheets that are the same size as this form, including your name, Social Security Number, and item number on each sheet.

DRAFT

FACING

TEAR-OFF INSTRUCTIONS

REVERSE

PRIVACY ACT AND PUBLIC BURDEN STATEMENT

The information we collect will be used to determine your suitability for employment and for some other lawful purposes. These other purposes include release to Federal, State, and local agencies for checking on law violations and/or verifying other information on this form, and for studies and statistical purposes.

Public burden reporting for this collection of information is estimated to vary from 5 to 10 minutes with an average of 15 minutes per response, including time for reviewing instruction, searching existing data sources, gathering the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of the collection of information, including suggestions for reducing this burden, to Reports and Forms Management Officer, U.S. Office of Personnel Management, 1900 E Street, N.W., Washington, D.C. 20415; and to the Office of Management and Budget, Paperwork Reduction Project (3206-XXXX), Washington, D.C. 20503.

Optional Form X2 (DRAFT)
U.S. Office of Personnel Management

Declaration for Federal Employment

Form Approved:
O.M.B. No. 3206-XXXX
NSN 7540-XX-XXX-XXXX
XX-XXX

GENERAL INFORMATION

1 FULL NAME ▶

2 DATE OF BIRTH *(MM/DD/YY)* ▶

3 PLACE OF BIRTH *(Include City and State or Country)* ▶

4 SOCIAL SECURITY NUMBER ▶

5 OTHER NAMES EVER USED *(For example, maiden name, nickname, etc.)* ▶

▶

6 PHONE NUMBERS *(Include Area Codes)*

DAY ▶

NIGHT ▶

MILITARY SERVICE

7 Have you served in the United States Military Service? *If your only active duty was training in the Reserves or National Guard, answer "NO".* ..... Yes ☐ No ☐

If you answered "YES", list the branch, dates (MM/DD/YY), and type of discharge for all active duty military service.

BRANCH	FROM	TO	TYPE OF DISCHARGE

BACKGROUND INFORMATION

For questions 9, 10, and 11, your answers should include convictions resulting from a plea of nolo contendere *(no contest)*, but omit (1) traffic fines of $300 or less, (2) any violation of law committed before your 16th birthday, (3) any violation of law committed before your 18th birthday if finally decided in juvenile court or under a Youth Offender law, (4) any conviction set aside under the Federal Youth Corrections Act or similar State law, and (5) any conviction whose record was expunged under Federal or State law. **For all questions,** provide all additional requested information under item 15 or on attached sheets. We will consider the circumstances of each event you list. In most cases, you can still be considered for Federal jobs.

	Yes	No
8 During the last 5 years, were you fired from any job for any reason, did you quit after being told that you would be fired, did you leave any job by mutual agreement because of specific problems, or were you debarred from Federal employment by the Office of Personnel Management? *If "Yes", use item 15 to provide the date, an explanation of the problem and reason for leaving, and the employer's name and address.*	☐	☐
9 During the last 10 years, have you forfeited collateral, been convicted, been imprisoned, been on probation, or been on parole? (Includes felonies, firearms or explosives violations, misdemeanors, and all other offenses.) *If "Yes", use item 15 to provide the date, explanation of the violation, place of occurrence, and the name and address of the police department or court involved.*	☐	☐
10 Have you been convicted by a military court-martial in the past 10 years? (If no military service, answer "NO".) *If "Yes", use item 15 to provide the date, explanation of the violation, place of occurrence, and the name and address of the military authority or court involved.*	☐	☐
11 Are you now under charges for any violation of law? *If "Yes", use item 15 to provide the date, explanation of the violation, place of occurrence, and the name and address of the police department or court involved.*	☐	☐
12 Are you delinquent on any Federal debt? (Includes delinquencies arising from Federal taxes, loans, overpayment of benefits, and other debts to the U.S. Government, plus defaults of Federally guaranteed or insured loans such as student and home mortgage loans.) *If "Yes", use item 15 to provide the type, length, and amount of the delinquency or default, and steps that you are taking to correct the error or repay the debt.*	☐	☐

ADDITIONAL QUESTIONS

	Yes	No
13 Do any of your relatives work for the agency or organization to which you are submitting this form? (Includes father, mother, husband, wife, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, and half sister.) *If "Yes", use item 15 to provide the name, relationship, and the Department, Agency, or Branch of the Armed Forces for which your relative works.*	☐	☐
14 Do you receive, or have you ever applied for, retirement pay, pension, or other pay based on military, Federal civilian, or District of Columbia Government service?	☐	☐

DRAFT

CONTINUATION SPACE / AGENCY OPTIONAL QUESTIONS

15 Provide details requested in items 8 through 14 in the continuation space below or on attached sheets. Be sure to identify each explanation with its item number, and to include ZIP Codes in all addresses. If any questions are printed below, please answer as instructed (these questions are specific to your position, and your agency is authorized to ask them).

DRAFT

APPLICANT'S CERTIFICATION *(Complete if you have not yet been selected for the position.)*

16 **I certify** that, to the best of my knowledge and belief, all of the information on and attached to this Declaration for Federal Employment is true, correct, complete, and made in good faith. **I understand** that a false or fraudulent answer to any question on any part of this declaration or its attachments may be grounds for not hiring me, or for firing me after I begin work, and may be punishable by fine or imprisonment. **I understand** that any information I give may be investigated for purposes of determining eligibility for Federal employment as allowed by law or Presidential order. **I consent** to the release of information about my ability and fitness for Federal employment by *employers, schools, law enforcement agencies,* and *other individuals and organizations* to *investigators, personnel specialists,* and *other authorized employees of the Federal Government.* **I understand** that for financial or lending institutions, medical institutions, hospitals, health care professionals, and some other sources of information, a separate specific release may be needed, and I may be contacted for such a release at a later date.

Applicant's Signature ▶ *(Sign in ink)* **Date** ▶

APPOINTEE'S CERTIFICATION / ADDITIONAL QUESTIONS

Complete these items only if you are being appointed. Carefully review your answers on this form and on any of your other application materials that your agency has attached to this form. If any information requires correction to be accurate as of the date you are signing, make changes on this form or the attachments and/or provide updated information on additional sheets, initialing and dating all changes and additions. When this form and all attached materials are accurate, complete items 17 and 18 below.

17 Do you now have in effect an uncancelled waiver of Basic Life Insurance, or of any optional insurance, related to your previous employment by the Federal government? (If no previous Federal employment, answer "NO.") *If "Yes," use the space below to identify the coverage(s) waived and provide the date(s) of the waiver(s).*

Yes	No

18 **I certify** that, to the best of my knowledge and belief, all of the information on and attached to this Declaration for Federal Employment, including any attached application materials, is true, correct, complete, and made in good faith. **I understand** that a false or fraudulent answer to any question on any part of this declaration or its attachments may be grounds for not hiring me, or for firing me after I begin work, and may be punishable by fine or imprisonment. **I understand** that any information I give may be investigated for purposes of determining eligibility for Federal employment as allowed by law or Presidential order. **I consent** to the release of information about my ability and fitness for Federal employment by *employers, schools, law enforcement agencies,* and *other individuals and organizations* to *investigators, personnel specialists,* and *other authorized employees of the Federal Government.* **I understand** that for financial or lending institutions, medical institutions, hospitals, health care professionals, and some other sources of information, a separate specific release may be needed, and I may be contacted for such a release at a later date.

Appointee's Signature ▶ *(Sign in ink)* **Date** ▶

APPOINTING OFFICER ENTER
Date of Appointment or Conversion
▶

U.S. OFFICE OF PERSONNEL MANAGEMENT

QUALIFICATIONS & AVAILABILITY FORM

FORM APPROVED
OMB No. 3206-0040

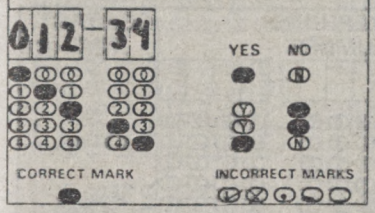
FORM **C**

PRINT YOUR RESPONSE IN THE BOXES AND BLACKEN IN THE APPROPRIATE OVALS.

USE A NO. 2 PENCIL

DO NOT FOLD, STAPLE, TEAR OR PAPER CLIP THIS FORM.
DO NOT SUBMIT PHOTOCOPIES OF THIS FORM.
We can process this form only if you
- Use a number 2 lead pencil.
- Completely blacken each oval you choose.
- Completely erase any mistakes or stray marks

EXAMPLES



1 YOUR NAME: _____

2 JOB APPLYING FOR: _____

3 ANNOUNCEMENT NUMBER: _____

FOLLOW THE DIRECTIONS ON THE "FORM C INSTRUCTION SHEET"

4 OCCUPATION (OCC)

5 CASE NO. (CNO)

6 LOWEST GRADE (LAG)

7 EMPLOYMENT AVAILABILITY

ARE YOU AVAILABLE FOR:

	YES	NO	
A) full-time employment -40 hours per week?	Y	N	(FTE)
B) part-time employment of			(PTE)
-16 or fewer hrs/week?	Y	N	
-17 to 24 hrs/week?	Y	N	
-25 to 32 hrs/week?	Y	N	
C) temporary employment lasting			(TMP)
-less than 1 month?	Y	N	
-1 to 4 months?	Y	N	
-5 to 12 months?	Y	N	

	YES	NO	
D) jobs requiring travel away from home for			(TRV)
-1 to 5 nights/month?	Y	N	
-6 to 10 nights/month?	Y	N	
-11 plus nights/month?	Y	N	
E) other employment questions (see directions)			(OEM)
Question 1?	Y	N	
Question 2?	Y	N	
Question 3?	Y	N	
Question 4?	Y	N	

8 OCCUPATIONAL SPECIALTIES (OSP)

1 2 3 4 5 6 7 8 9 10

9 GEOGRAPHIC AVAILABILITY (GEO)

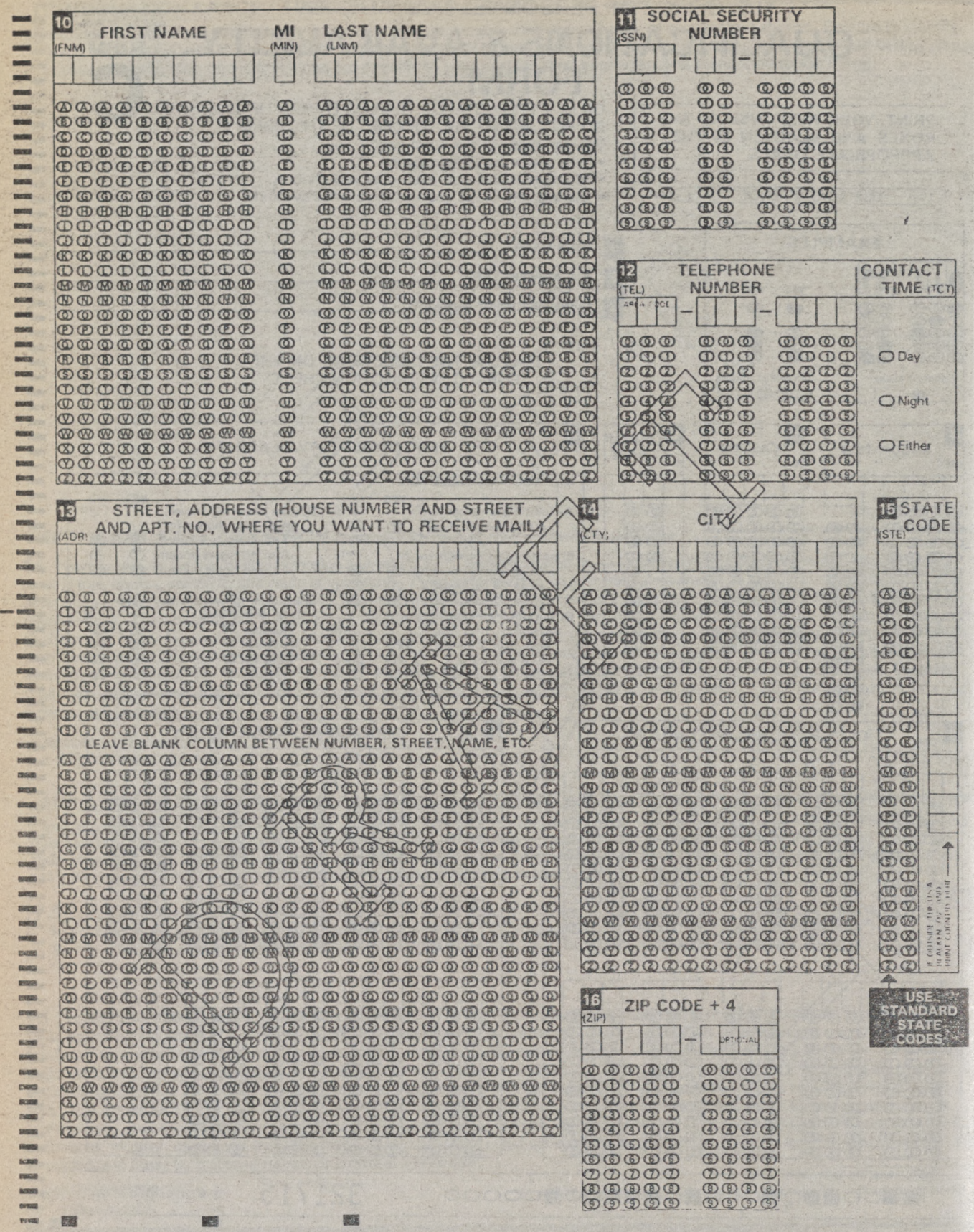
1 2 3 4 5 6 7 8 9

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OPM FORM 1203-AW (9-92)

Page 1

* U.S. GOVERNMENT PRINTING OFFICE 1993—342-700/40062


10 FIRST NAME (FNM)
MI (MIN)
LAST NAME (LNM)
11 SOCIAL SECURITY NUMBER (SSN)
12 TELEPHONE NUMBER (TEL)
CONTACT TIME (TCT)
Day
Night
Either
13 STREET, ADDRESS (HOUSE NUMBER AND STREET AND APT. NO., WHERE YOU WANT TO RECEIVE MAIL) (ADR)
LEAVE BLANK COLUMN BETWEEN NUMBER, STREET, NAME, ETC.
14 CITY (CTY)
15 STATE CODE (STE)
USE STANDARD STATE CODES
16 ZIP CODE + 4 (ZIP)
OPTIONAL

17 (OCQ) **OCCUPATIONAL QUESTIONS**

1 A B C D E F G H I	41 A B C D E F G H I	81 A B C D E F G H I	121 A B C D E F G H I
2 A B C D E F G H I	42 A B C D E F G H I	82 A B C D E F G H I	122 A B C D E F G H I
3 A B C D E F G H I	43 A B C D E F G H I	83 A B C D E F G H I	123 A B C D E F G H I
4 A B C D E F G H I	44 A B C D E F G H I	84 A B C D E F G H I	124 A B C D E F G H I
5 A B C D E F G H I	45 A B C D E F G H I	85 A B C D E F G H I	125 A B C D E F G H I
6 A B C D E F G H I	46 A B C D E F G H I	86 A B C D E F G H I	126 A B C D E F G H I
7 A B C D E F G H I	47 A B C D E F G H I	87 A B C D E F G H I	127 A B C D E F G H I
8 A B C D E F G H I	48 A B C D E F G H I	88 A B C D E F G H I	128 A B C D E F G H I
9 A B C D E F G H I	49 A B C D E F G H I	89 A B C D E F G H I	129 A B C D E F G H I
10 A B C D E F G H I	50 A B C D E F G H I	90 A B C D E F G H I	130 A B C D E F G H I
11 A B C D E F G H I	51 A B C D E F G H I	91 A B C D E F G H I	131 A B C D E F G H I
12 A B C D E F G H I	52 A B C D E F G H I	92 A B C D E F G H I	132 A B C D E F G H I
13 A B C D E F G H I	53 A B C D E F G H I	93 A B C D E F G H I	133 A B C D E F G H I
14 A B C D E F G H I	54 A B C D E F G H I	94 A B C D E F G H I	134 A B C D E F G H I
15 A B C D E F G H I	55 A B C D E F G H I	95 A B C D E F G H I	135 A B C D E F G H I
16 A B C D E F G H I	56 A B C D E F G H I	96 A B C D E F G H I	136 A B C D E F G H I
17 A B C D E F G H I	57 A B C D E F G H I	97 A B C D E F G H I	137 A B C D E F G H I
18 A B C D E F G H I	58 A B C D E F G H I	98 A B C D E F G H I	138 A B C D E F G H I
19 A B C D E F G H I	59 A B C D E F G H I	99 A B C D E F G H I	139 A B C D E F G H I
20 A B C D E F G H I	60 A B C D E F G H I	100 A B C D E F G H I	140 A B C D E F G H I
21 A B C D E F G H I	61 A B C D E F G H I	101 A B C D E F G H I	141 A B C D E F G H I
22 A B C D E F G H I	62 A B C D E F G H I	102 A B C D E F G H I	142 A B C D E F G H I
23 A B C D E F G H I	63 A B C D E F G H I	103 A B C D E F G H I	143 A B C D E F G H I
24 A B C D E F G H I	64 A B C D E F G H I	104 A B C D E F G H I	144 A B C D E F G H I
25 A B C D E F G H I	65 A B C D E F G H I	105 A B C D E F G H I	145 A B C D E F G H I
26 A B C D E F G H I	66 A B C D E F G H I	106 A B C D E F G H I	146 A B C D E F G H I
27 A B C D E F G H I	67 A B C D E F G H I	107 A B C D E F G H I	147 A B C D E F G H I
28 A B C D E F G H I	68 A B C D E F G H I	108 A B C D E F G H I	148 A B C D E F G H I
29 A B C D E F G H I	69 A B C D E F G H I	109 A B C D E F G H I	149 A B C D E F G H I
30 A B C D E F G H I	70 A B C D E F G H I	110 A B C D E F G H I	150 A B C D E F G H I
31 A B C D E F G H I	71 A B C D E F G H I	111 A B C D E F G H I	151 A B C D E F G H I
32 A B C D E F G H I	72 A B C D E F G H I	112 A B C D E F G H I	152 A B C D E F G H I
33 A B C D E F G H I	73 A B C D E F G H I	113 A B C D E F G H I	153 A B C D E F G H I
34 A B C D E F G H I	74 A B C D E F G H I	114 A B C D E F G H I	154 A B C D E F G H I
35 A B C D E F G H I	75 A B C D E F G H I	115 A B C D E F G H I	155 A B C D E F G H I
36 A B C D E F G H I	76 A B C D E F G H I	116 A B C D E F G H I	156 A B C D E F G H I
37 A B C D E F G H I	77 A B C D E F G H I	117 A B C D E F G H I	157 A B C D E F G H I
38 A B C D E F G H I	78 A B C D E F G H I	118 A B C D E F G H I	158 A B C D E F G H I
39 A B C D E F G H I	79 A B C D E F G H I	119 A B C D E F G H I	159 A B C D E F G H I
40 A B C D E F G H I	80 A B C D E F G H I	120 A B C D E F G H I	160 A B C D E F G H I

18 (JBP) **JOB PREFERENCE**

01	06	11	16	21	26	31	36	41	46	51	56	61	66
02	07	12	17	22	27	32	37	42	47	52	57	62	67
03	08	13	18	23	28	33	38	43	48	53	58	63	68
04	09	14	19	24	29	34	39	44	49	54	59	64	69
05	10	15	20	25	30	35	40	45	50	55	60	65	70

19 **LANGUAGES** (LNG)

20 **DATE BLOCK** (SDF)

M M D D Y Y

21 **OTHER INFORMATION** (MSC)

22 **SPECIAL KNOWLEDGE** (SPK)

23 VETERAN PREFERENCE CLAIM

- ○ No preference claimed
- ○ 5 points preference claimed

10 POINT PREFERENCE- You must enclose a completed Standard Form 15.

- ○ 10 points preference claimed (award of a Purple Heart or noncompensable service-connected disability)
- ○ 10 points compensable disability preference claimed (disability rating of less than 30%)
- ○ 10 points other (wife, widow, husband, widower, mother preference claimed)
- ○ 10 points compensable disability preference claimed (disability rating of 30% or more)

24 BACKGROUND INFORMATION

	YES	NO
1. Are you a citizen of the United States?	Y	N

25 DATES OF ACTIVE DUTY MILITARY SERVICE

(ASD) FROM	MM	DD	YY
	01	01	01

(ETS) TO	MM	DD	YY
	01	01	01

26 SIGNATURE/DATE

I certify that the information on this form is true and correct to the best of my knowledge. **NOTE:** A false statement on any part of your application may be grounds for not hiring you, or for firing you after you begin work. Also, you may be punished by fine or imprisonment (U.S. Code, title 18, section 1001).

Signature

Date signed

PRIVACY ACT

The Office of Personnel Management is authorized to rate applicants for Federal jobs under sections 1302, 3301, and 3304 of title 5 of the U.S. Code. Section 1104 of title 5 allows the Office of Personnel Management to authorize other Federal agencies to rate applicants for Federal jobs. We need the information you put on this form to see how well your education and work skills qualify you for a Federal job. We also need information on matters such as citizenship and military service to see whether you are affected by laws we must follow in deciding who may be employed by the Federal Government.

We must have your Social Security (SSN) to identify your records because other people may have the same name and birthdate. The Office of Personnel Management may also use your SSN to make requests for information about you from employers, schools, banks, and others who know you, but only as allowed by law or Presidential directive. The information we collect by using your SSN will be used for employment purposes and also for studies and statistics that will not identify you.

Information we have about you may also be given to Federal, State and local agencies for checking on law violations or for other lawful purposes. We may send your name and address to State and local Government agencies, Congressional and other public offices, and public international organizations, if they request names of people to consider for employment. We may also notify your school placement office if you are selected for a Federal job.

Giving us your SSN or any of the other information is voluntary. However, we cannot process your application, which is the first step toward getting a job, if you do not give us the information we request.

PUBLIC REPORTING BURDEN

The public reporting burden of information is estimated to vary from 20 minutes to 45 minutes to complete this form including time for reviewing instructions, gathering the data needed, and completing and reviewing entries. The average time to complete this form is 30 minutes. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: US Office of Personnel Management, Office of Information Management, 1900 E Street, NW, CHP 500, Washington, DC 20415; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project 3206-0040, Washington, DC 20503.

OFFICE USE ONLY - DO NOT MARK BELOW

STOP

AVP	ASB	MM	DD	YY	EIC	OR	RAT
○ NV ○ TP ○ XPP ○ CP ○ XPO ○ CPS	○ OK ○ Hold	01	01	01	E N		01

321715

Telephone Script for Professional Nurse

"Welcome. You have reached the U.S. Government's telephone application processing system. We are pleased that you have contacted us about nursing positions with the Federal Government. This application system will ask you a series of questions about your qualifications and career preferences. You will need to record your answers, either verbally or by using the keys of your touch-tone telephone. This will take approximately 15 minutes.

To complete this application process, you will need to know your undergraduate degree grade-point average and the number of months of experience, education or training you obtained beyond your basic degree program for each specialization. If you make an error during this process, you will be given an opportunity at the end of this call to cancel your responses and start over. If you are not sure of the information at this time, you may hang-up and call again.

You will be rated for all grade levels GS–05, 07, 09, 11 and 12. If you are interested in any grade level not covered by this system, please contact the U.S. Office of Personnel Management's Federal Employment Information Center nearest you.

If you are calling from a touch tone telephone and would like to continue with the application process, press 1. If you are calling from a rotary or pulse dial telephone, please wait for further instructions.

1=Touch tone callers go to I.1 Citizenship.

For Rotary Callers

After 5 seconds, the applicant will hear the following message.

"This system will recognize the words "yes" and "no". When answering a question, please wait for the tone and speak clearly and distinctly."

1. Citizenship:

"Are you a citizen of the United States? Please say 'YES' or 'NO'."

Yes, continue

No, Play non-citizen message and end call.

"We appreciate your interest in applying for nursing positions in the Federal government. However, to be considered for employment, you must be a U.S. citizen. Thank you for your time."

2. First name, middle initial, last name and address:

"So that we can send you an application form by mail, please say your first time name, middle initial, last name, and address including city, state and zip code, when you hear the tone. Please spell any necessary words. If this is an overseas address, please give the city and country. Also, please say your telephone number, including area code. When you finish recording, you will be given an opportunity to review your message."

"You will receive the necessary application form within a few days. Thank you for your interest in nursing positions with the U.S. Government."

End recording for rotary and pulse dial callers.

For Touch Tone Callers

"For your convenience, each question will be automatically repeated if you do not respond within five seconds. If you do not respond the second time, the system will disconnect and you must redial.

I. Personal Information

"This begins your application for nursing positions with the U.S. Government.

1. Citizenship:

"Are you a citizen of the United States?". "For yes, press 1. For no, press 2."	1=yes, (GO to I.2) 2=non-citizen. Play non-citizen message and end call.

"We appreciate your interest in applying for nursing positions in the Federal government. However, to be considered for employment, you must be a U.S. citizen. Thank you for your time."

2. Social Security No.:

"We need your Social Security Number to maintain your records. Executive Order 9397 authorizes the Office of Personnel Management to use this number in keeping records. We may also use this number to make requests for information about you from employers, schools, banks and others. Giving us your Social Security Number is voluntary, however, we cannot process your application without it."

"Now enter your Social Security Number using the telephone keypad."

(PLAY BACK FOR VERIFICATION. "If correct, press 1. If incorrect, press 2." Caller can re-enter until SSN is correct. If SSN is all zeros, play following message before requiring re-entry.)

"You have entered all zeros, this is an invalid value for Social Security Number."

3. First Name, Middle Initial, Last Name and Address:

"At the sound of the tone, please say your first name, middle initial, last name and address including city and state, spelling any necessary words. You will be asked to enter your zip code separately. If this is an overseas address, please give the city and country. When you finish recording, press 9."

(ALLOW CALLER TO PLAY BACK FOR VERIFICATION. Caller can re-record until it is correct.)

a. Is the address you have recorded located overseas?	KEYED BY CALLER
For Yes, press 1.	If a response, (GO TO 4.2.)
For no, press 2	If a response, (GO TO 3.b.)
b. Enter your 5 digit zip code using the telephone keypad.	KEYED BY CALLER If a response, (GO TO 4.a.)

4. Telephone:

a. "Please enter your work or home telephone number, including area code. If you wish to bypass this item, press the "#" key.	KEYED BY CALLER If a response, (GO TO 4.b.) If # is keyed, (GO TO III.)
b. "When is the best time to contact you at this number? For daytime hours, press 1. For evening hours, press 2. For either time, press 3."	KEYED BY CALLER

II. Moved to I.2. Social Security No.

PLAY THE FOLLOWING MESSAGE BEFORE BEGINNING III.

"Unless otherwise instructed, record your responses to the following questions by pressing '1' if your answer is 'YES' or '2' if your answer is 'NO'."

III. Professional Registration

A. "Do you have a current license as a professional nurse in a state, the District of Columbia, Puerto Rico or a U.S. Territory?"	1=(GO TO B.) 2=(GO TO C.)
B. "You will need to provide your license number at a later date. Please enter the year and month that your current license expires. For example, enter 'nine', 'five', for 1995 and 'zero', 'one', for January."	KEYED BY CALLER If a response, (GO TO IV.A.) Repeat question after 5 seconds. If no response, default to III.A.=2. (GO TO C.)
C. "Did you graduate from an accredited school of nursing within the past 12 months?"	1=(GO TO IV.A.) 2=(GO TO D.)
D. "Will you graduate from an accredited school of nursing within the next 9 months?"	1=YES, (GO TO IV.A.) 2=NO. INELIGIBLE. PLAY THE FOLLOWING MESSAGE AND END CALL.

"To be eligible for professional nursing positions, you must be currently licensed as a professional nurse unless you will graduate

within 9 months or have graduated within 12 months from an accredited school of nursing. Thank you for considering a position with the Federal Government."

IV. Basic Nursing Preparation

A. "Do you have or will you receive in 9 months a bachelor's or higher degree in professional nursing from an accredited school of nursing?"	1=(GO TO V.) 2=GO TO IV. B.)
B. "Have you graduated or will you graduate within 9 months from a state approved professional nurse diploma program of 30 months or more?"	1=(GO TO VII.) 2=(GO TO IV.C.)
C. "Have you graduated or will you graduate within 9 months from a state approved professional two year nursing diploma or an Associate degree program from an accredited school of nursing?"	1=(CO TO IV.D.) 2=NO. INELIGIBLE. PLAY THE FOLLOWING MESSAGE AND END CALL.

"To be eligible for professional nursing positions, you must be a graduate or will graduate from a professional school of nursing. Thank you for considering a position with the Federal Government."

D. "Do you have any combination of practical nurse or nursing assistant or professional nursing experience totaling over 12 months of full-time work?"	1=(GO TO VII.) 2=NO. INELIGIBLE. PLAY THE FOLLOWING MESSAGE AND END CALL.

"To be eligible for professional nursing positions, you must have at least 12 months of full-time work experience in addition to a two year nurse diploma or an Associate degree. Thank you for considering a position with the Federal Government."

V. Grade Point Average (for Callers With Bachelor's Degree Only)

A. "For all undergraduate nursing courses in your basic nursing degree, enter your 3 digit grade point average based on a 4.0 scale. For example, if your GPA was 2.90, enter 'two, nine, zero'. To bypass this item, press the pound key."	KEYED BY CALLER IF EQUAL TO OR GREATER THAN 3.5, (GO TO VII.) IF # IS KEYED, (GO TO VI.)

VI. Superior Academic Achievement (for Callers With Bachelor's Degree Only)

ACCEPT FIRST AFFIRMATIVE ANSWER. ELSE, PROCEED WITH NEXT QUESTION.

A. "Do you have a grade point average of 3.0 in all undergraduate courses or in courses completed in the last 2 years of undergraduate study?"	1=SAC, (GO TO VII.) 2=(GO TO B.)
B. "Do you have a grade point average of 3.5 for all undergraduate nursing courses or for all nursing courses completed in the last 2 years of undergraduate study?"	1=SAC, (GO TO VII.) 2=(GO TO C.)
C. "Did you rank in upper third of graduating class?"	1=SAC, (GO TO VII.) 2=(GO TO D.)
D. "Are you a member of a scholastic honorary society?"	1=SAC, (GO TO VII.) 2=(GO TO VII.)

VII. Graduate Education

"Have you taken graduate level courses in nursing?"	1=(GO TO VII. A.) 2=(GO TO VIII.)
A. "Do you have a master's degree in nursing?"	1=MASTERS. (GO TO B.) 2=(GO TO C.)
B. "Do you have a doctorate degree in nursing?"	1=DOCTORATE (GO TO VIII.) 2=(GO TO C.)
C. "Have you taken graduate courses in nursing equivalent to two or more complete years of full-time graduate study?"	1=(GO TO VIII.) 2=(GO TO D.)
D. "Have you taken graduate courses in nursing equivalent to one or more complete years of full-time graduate study?"	1=(GO TO VIII.) 2=(GO TO VIII.)

VIII. Veteran Preference

ACCEPT FIRST AFFIRMATIVE RESPONSE AFTER A. ELSE, CONTINUE WITH QUESTIONS.

A. "Do you claim any veteran preference?"	1=(GO TO B.) 2=(GO TO IX.)
B. "If you claim 5 points preference based on active duty in the U.S. Armed Forces, press 1. If you claim 10 points based on a service connected disability, purple heart, or are a spouse, widow, widower or mother of a deceased or disabled veteran, press 2."	1=TP, (GO TO IX.) 2=(GO TO C.)
C. "Do you claim 10 points preference for non-compensable disability or a purple heart?"	1=XPP, (GO TO IX.) 2=(GO TO D.)
D. "Do you claim 10 points preference based on a compensable disability of more than 10 percent but less than 30 percent?"	1=CP, (GO TO IX.) 2=(GO TO E.)
E. "Do you claim 10 points based on wife, widow, or widower preference?"	1=XPO, (GO TO IX.) 2=(GO TO F.)
F. "Do you claim 10 points preference based on a compensable service connected disability of 30 percent or more?"	1=CPS, (GO TO IX.) 2=DEFAULT TO NON-VETERAN AND (GO TO IX.)

IX. Salary/Grade Level

APPLICANTS ARE AUTOMATICALLY RATED FOR ALL GRADE LEVELS, GS–05, 07, 09, 11, AND 12.

X. Occupational Specialty

"If you do not have experience, education or training beyond your basic degree program in any of the following nursing specialties, press 2; if you do, press 1 and you will be asked to enter the number of months of full time equivalent work experience, education and training you have beyond your basic degree program. For example, if your experience in the specialty totals 9 months, enter 'zero', 'nine'. If you have no experience but you do have education or training, enter 'zero', 'zero' for your experience and enter the appropriate months of education or training. You may enter a maximum of 99 months."

1. "General nursing"
2. "Clinical nursing"
3. "Community Health"
4. "Operating Room"
5. "Occupational Health"
6. "Psychiatric nursing'/'
7. "Nurse Anesthetist"*
8. "Nurse Midwife"*
9. "Nurse Practitioner"
10. "Nurse Educator"
11. "Other nursing"

CALLERS WILL RESPOND TO THE FOLLOWING QUESTIONS FOR EACH

OSP. IF CALLERS DO NOT MAKE A RESPONSE, THE QUESTION WILL BE REPEATED.

"Do you have any education, training or experience beyond your basic degree program in '*NAME OF SPECIALTY*'?

FOR AFFIRMATIVE ANSWERS ONLY, CALLERS WILL BE PROMPTED TO ENTER NUMBER OF MONTHS OF EXPERIENCE AND TRAINING AND WHETHER CALLER POSSESSES ADVANCED OR SPECIAL CERTIFICATION.

A. "Please enter the number of months of work experience."

B. "Please enter the number of months of education or training."

C. "Do you have a special or advanced certification for this speciality?"

* Special question for Specialty:

7. "Have you graduated from an 18 month or longer anesthesia course for nurses accredited by the American Association of Nurse Anesthetists?"

8. "Have you completed a program of study and clinical experience recognized by the American College of Nurse Midwives?"

D. Nursing Specialty Selections:

"You may select up to five specialties in which you are interested in working. The specialties you select should be ones in which you believe you are qualified and have experience or education.

For each specialty listed, press 1 if you are applying for positions in this specialty, or press 2 if you *are not* applying for this specialty. Remember you may select no more than 5 specialties."

STATE EACH OF THE 11 SPECIALTIES. CALLER MUST RESPOND WITH "1" OR "2". AFTER RESPONSE GO TO THE NEXT SPECIALTY LISTED. WHEN CALLER HAS SELECTED 5 SPECIALTIES, GO TO XI. IF CALLER FAILS TO MAKE A SELECTION, GO BACK TO BEGINNING AND REPEAT: "You may select up to five specialties. . . ."

XI. Recency

"Do you have experience, education or training in any of the specialties within the past 2 years?"	1=YES 2=NO

XII. Highest Level of Nursing Experience

"Have you had at least 1 year of experience that demonstrates accomplishment, professional competence, leadership, and recognition in the profession as in the planning, organizing, directing, and coordinating of nursing projects, or service as an expert and consultant?"	1=YES 2=NO

XIII. Geographic Availability

"Using the letters on your telephone keypad, enter the numbers that correspond to the first three letters of the state where you are willing to work. For overseas positions, enter 6 8 7."	KEYED BY CALLER
"You have selected '*state name*'".	PARAMETER FILE LOOKUP
"Opportunities are best for individuals who do not restrict their geographic availability. If you are willing to work anywhere in the state, press 1. If you wish to restrict your availability to a particular county or city, press 2."	1=STATE WIDE CONSIDERATION 2=TRANSCRIBE FROM RECORDING ALLOW CALLER TO STATE PREFERENCE. ADDED TO RECORD BY KEY ENTRY PRIOR TO LOAD. (GO TO XIV.)

XIV. Employment Availability

A. "Are you available for part-time work?"	(GO TO B.)
B. "Are you available for shift work?"	(GO TO C.)
C. "Are you available for temporary work?"	(GO TO XV.)

XV. Review and Process

"This completes your application. To process your application, press 1. To make any corrections to your entries, you must start over by pressing 2. To cancel all your entries and end this call, press 3."	1=PROCESS REQUEST, PLAY THANK YOU MESSAGE AND END CALL. 2=ABORT AND BEGIN AGAIN AT III. 3=CANCEL ENTRIES PLAY CANCEL MESSAGE AND END CALL.

Thank You Message

"We appreciate your interest and time in using the U.S. Government's Telephone Application Processing System. You will receive a Notice of Results within the next few days. The Notice of Results will contain instructions about how you can change the information you have entered. If you are eligible, your name will immediately be added to the inventory for employment referral. Thank you very much."

Cancel Message

"Your call will not be processed. Thank you for interest and time in using the U.S. Government's Telephone Application Processing System."

[FR Doc. 94–15066 Filed 6–21–94; 8:45 am]

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Reader Aids

Federal Register

Vol. 59, No. 119

Wednesday, June 22, 1994

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	202–523–5227
Public inspection announcement line	523–5215
Corrections to published documents	523–5237
Document drafting information	523–3187
Machine readable documents	523–3447

Code of Federal Regulations

Index, finding aids & general information	523–5227
Printing schedules	523–3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523–6641
Additional information	523–5230

Presidential Documents

Executive orders and proclamations	523–5230
Public Papers of the Presidents	523–5230
Weekly Compilation of Presidential Documents	523–5230

The United States Government Manual

General information	523–5230

Other Services

Data base and machine readable specifications	523–3447
Guide to Record Retention Requirements	523–3187
Legal staff	523–4534
Privacy Act Compilation	523–3187
Public Laws Update Service (PLUS)	523–6641
TDD for the hearing impaired	523–5229

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FEDERAL REGISTER PAGES AND DATES, JUNE

28207–28458.....1
28459–28758.....2
28759–29184.....3
29185–29350.....6
29351–29534.....7
29535–29710.....8
29711–29936.....9
29937–30276.....10
30277–30500.....13
30501–30662.....14
30663–30862.....15
30863–31106.....16
31107–31502.....17
31503–31916.....20
31917–32074.....21
32075–32308.....22

CFR PARTS AFFECTED DURING JUNE

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:

6695.....28459
6696.....28461
6697.....28463
6698.....28757
6699.....30663
6700.....30665
6701.....31101

Administrative Orders:

Presidential Determinations:

No. 94–24 of May 16, 1994.....28759
No. 94–26 of June 2, 1994.....31103
No. 94–27 of June 2, 1994.....31105
No. 94–28 of June 6, 1994.....31107

Executive Orders:

3406 (Revoked in part by PLO 7048).....29661
4257 (Revoked in part by PLO 7056).....29206
8248 (Superseded or revoked in part by EO 12919).....29525
10222 (Superseded or revoked by EO 12919).....29525
10480 (Superseded or revoked by EO 12919).....29525
10647 (Superseded or revoked by EO 12919).....29525
10789 (Amended by EO 12919).....29525
11179 (Superseded or revoked by EO 12919).....29525
11355 (Superseded or revoked by EO 12919).....29525
11790 (Amended by EO 12919).....29525
11912 (Superseded or revoked in part by EO 12919).....29525
12148 (Superseded or revoked in part by EO 12919).....29525
12521 (Superseded or revoked by EO 12919).....29525
12649 (Superseded or revoked by EO 12919).....29525
12773 (Superseded or revoked in part by EO 12919).....29525
12775 (See EO 12920).....30501
12779 (See EO 12920).....30501
12864 (Amended by EO 12921).....30667
12920).....30501
12914 (See EO 12920).....30501
12917 (See EO 12920).....30501
12918 (See State Dept. notice of May 27).....28583
12919.....29525
12920.....30501
12921.....30667

5 CFR

532.....30503
591.....29351
1201.....30863, 31109
1209.....31109
2100.....30669
Ch. XIV.....30503

Proposed Rules:

300.....30717, 32042
532.....30533
870.....31171
871.....31171
872.....31171
873.....31171
874.....31171
890.....31171
1320.....29738

7 CFR

2.....31917
51.....31503
271.....29711
272.....29711, 30864
273.....29711, 30864
275.....29711
276.....29711
278.....29711
279.....29711
658.....31110
723.....28207
801.....31505
911.....29535
915.....30866
916.....31118
917.....31118
922.....30672
923.....31917
926.....30872
932.....30873
944.....30866
1735.....29536
1753.....31120
1755.....30505, 31120
1980.....28465

Proposed Rules:

0.....32138

6.....28495
1.....32138
7.....32138
47.....32138
50.....32138
51.....32138
52.....32138
53.....32138
54.....32138
180.....32138
210.....30218
220.....30218
246.....29549
301.....31561
319.....29557
372.....28814
400.....30533
406.....30536
457.....30537
1250.....31174
1530.....28286
1710.....28495
1726.....28924
1942.....30717
1948.....30717
1951.....30717
1980.....30717

8 CFR

103.....30516

Proposed Rules:

1.....29386
3.....29386
103.....29386
208.....29386
242.....29386

9 CFR

77.....29185, 31921
78.....31922
92.....28214, 29186, 31923
94.....28216, 28218
317.....30875
381.....30875

Proposed Rules:

91.....31956
94.....31957
202.....32138

10 CFR

2.....29187
40.....28220

Proposed Rules:

9.....30308
20.....30724
30.....32138
35.....30724
40.....32138
52.....29965
70.....32138
72.....28496, 32138

12 CFR

27.....31924
34.....29482
201.....29537
208.....28761
225.....29482
323.....29482
327.....29714
412.....31136
545.....29482
563.....29482
564.....29482
574.....28468
701.....29066

Proposed Rules:

26.....29740
203.....30310
304.....29965
327.....29965
333.....30316
362.....29559
563b.....29480, 29975
567.....30538, 32143
575.....29480, 29975
617.....31562

13 CFR

107.....28471
121.....28231

14 CFR

25.....28234, 28762, 29538, 32050
29.....32050
39.....28475, 28763, 29351, 29353, 29354, 29355, 29540, 30277, 30278, 30282, 30283, 30285, 30673, 31507, 31508, 31512, 31516, 31517
71.....28245, 28449, 28476, 28477, 28478, 29189, 29190, 29542, 29937, 29938, 29939, 29944, 29945, 29946, 29947, 29948, 29949, 30288, 30832, 31518, 32075, 32076
91.....29716, 32050
97.....28479, 30675, 30676, 30680
121.....32050
125.....32050
135.....32050

Proposed Rules:

Ch. I.....29210, 29561
13.....29880
16.....29800
27.....29976
29.....29976
39.....29210, 29212, 29391, 29744, 29745, 30543, 32144
71.....28498, 28499, 29213, 29215, 29562, 30832, 32146
91.....31098, 31886
135.....31886
189.....29934

15 CFR

770.....30682
771.....30682, 30684
773.....30684
775.....30682
779.....30684
785.....30684
786.....30684
799.....30684

Proposed Rules:

990.....32148

16 CFR

1014.....32077

Proposed Rules:

423.....30733
600.....31176
803.....30545
1640.....30735

17 CFR

Proposed Rules:

1.....30885
240.....29393, 29398
249.....29393, 29398
270.....28286
402.....32155
404.....32155

18 CFR

284.....29716

Proposed Rules:

35.....28297
803.....29563
804.....29563
805.....29563

19 CFR

10.....30289
12.....31519
101.....30289
111.....30289
123.....30289
128.....30289
141.....30289
143.....30289
145.....30289
148.....30289
159.....30289

Proposed Rules:

191.....31177

20 CFR

200.....28764
404.....30389

21 CFR

5.....31138
16.....29950
73.....28765
101.....28480
131.....32078
270.....29950
341.....29172
346.....28766
347.....28767
510.....28768, 31138, 31139
520.....28768
522.....31139
524.....28768
529.....31139
821.....31138
1270.....29950
1306.....30832

Proposed Rules:

Ch. I.....29977
333.....31402
352.....29706
369.....31402
600.....28821
601.....28821
606.....28822
607.....28822
610.....28821
640.....28822
660.....28822
810.....30656
1301.....30555, 30738

22 CFR

123.....29950
124.....29950
126.....29950
220.....28769
222.....28769

23 CFR

657.....30392
658.....30392
660.....30296
710.....30302
712.....30302
713.....30302
720.....30302
1260.....30695

24 CFR

9.....31036
42.....29326
200.....31521
207.....28246, 31140
213.....28246, 31140
215.....29326
220.....28246
221.....28246, 29326, 31140
232.....28246
236.....29326
241.....28246
242.....28246, 31140
244.....28246
291.....29506
510.....29326
850.....29326
881.....29326
882.....29326
883.....29326
884.....29326
900.....29326
905.....31521, 31927
941.....29326, 31521
965.....31927
968.....30472, 31521

Proposed Rules:

880.....30557
881.....30557
883.....30557
884.....30557
886.....30557

25 CFR

Proposed Rules:

256.....30276

26 CFR

1.....30100, 32078
20.....30100
25.....30100
301.....29356, 29359
602.....29359, 30100, 32078

Proposed Rules:

1.....30180, 32160
20.....30180
25.....30180

27 CFR

70.....29366

Proposed Rules:

4.....30560
6.....29215
8.....29215
10.....29215
11.....29215

28 CFR

0.....29717
16.....29717
65.....30520
549.....31882
552.....30468

Proposed Rules:

16.....29747
35.....31808
36.....31808
37.....31808

29 CFR

70.....29900

2619.....30698
2676.....30698
Proposed Rules:
103.....28501
417.....31056
452.....30834
1910.....28594, 30389, 30560
1915.....30560
1917.....28594, 30389
1918.....28594, 30389
1926.....30560
1928.....30560
2609.....29661

30 CFR

756.....29719
906.....28248
914.....30875
916.....28769
Proposed Rules:
701.....28744
773.....28744
785.....28744
816.....28744
817.....28744
901.....28302
917.....28823
935.....29748
Ch. II.....28304

31 CFR

10.....31523
205.....28260
356.....28773
515.....31142
550.....31143

32 CFR

251.....29368
367.....29952
552.....31144
701.....29721
Proposed Rules:
701.....28304

33 CFR

100.....28775, 30523, 30832, 31529, 31530, 31531
117.....28776, 28778, 30524, 31931
165.....28262, 28263, 28778, 28780, 29368, 29369, 29370, 29371, 30523, 31532, 31533, 31534, 31535, 31536, 31537, 31932, 31933, 31933, 31934, 31935, 31936, 31937
167.....28499
209.....31146
Proposed Rules:
100.....29403, 31567
117.....28324, 29405, 29406
151.....31959
165.....28824, 30389

34 CFR

75.....30258
386.....31060
600.....32081
682.....29543, 31084
Proposed Rules:
Ch. VI.....28502
668.....32264
674.....32264
675.....32264
676.....32264

36 CFR

242.....28922, 29032
261.....31146
290.....31146
292.....30492
1191.....31676
1220.....28781
1252.....29191
1254.....29191
1260.....29191
Proposed Rules:
1.....31886
2.....31886
3.....31886
4.....31886
5.....31886
6.....31886
7.....31886

38 CFR

3.....29723
17.....28264

39 CFR

111.....30701
233.....31154
241.....29724
946.....29372
953.....31538
Proposed Rules
Ch. I.....31178
111.....31178, 32165
262.....30739
266.....30739

40 CFR

9.....31306, 31540, 32082
52.....28785, 29730, 29731, 29732, 29953, 29956, 29957, 30302, 30702, 31154, 31544, 31548
61.....31157
63.....29196
81.....28326, 28480
89.....31306
144.....29958
170.....30264
180.....28482, 29543, 32083, 32084
260.....28484
261.....31551
264.....29958
268.....31551
270.....29372
271.....29734, 30525
272.....30528
280.....29958
281.....29201
302.....31551
710.....30652
721.....29202, 29203, 29204
Proposed Rules:
Ch. I.....29750
52.....28503, 29977, 30326, 30562, 30564, 30741, 30742, 31568, 31962
63.....29196, 29750, 32165
70.....31183
81.....29977, 30326
124.....28680
180.....29576, 30746, 30748, 30750, 32167, 32169, 32170, 32172, 32173
185.....32172
260.....31568
261.....31568
262.....31568
264.....28504, 31568
265.....28504, 31568
266.....31964
268.....31568
270.....28504, 28680, 31568
271.....28504
273.....31568
280.....30448
281.....30448
300.....30752
372.....29252
435.....31186
455.....30753
721.....29255, 29258

42 CFR

405.....32086
489.....32086
1003.....32086
412.....30389
Proposed Rules:
412.....31303
413.....29578, 31303
435.....31569
436.....31569
482.....31303
485.....31303
489.....31303

43 CFR

1720.....29205
2070.....29205
2510.....29205
4700.....28275
8350.....29205
Proposed Rules:
11.....32175
Public Land Orders:
1800 (Revoked in part by PLO 7062).....28791
7048.....29661
7056.....29206
7057.....28788
7058.....28789
7059.....28789
7060.....28790
7061.....29545
7062.....28791
7063.....29544
Proposed Rules:
3160.....29407

44 CFR

64.....30705
65.....28484, 28485, 32127, 32128
67.....32130
Proposed Rules
67.....28505

45 CFR

46.....28276
95.....30707
205.....30707
2525.....30709
2526.....30709
2527.....30709
2528.....30709
2529.....30709
Proposed Rules:
1607.....30885

46 CFR

12.....28791
16.....28791
Proposed Rules:
40.....29259
67.....31580
154.....29259
502.....31584
540.....30567

47 CFR

0.....30984, 32131
1.....30984, 31009
73.....29272, 29273, 31161, 31162, 31552, 32133
74.....31552
90.....30304, 31557
Proposed Rules:
2.....31966
22.....30890, 31186
61.....30754
64.....30754
69.....30754
73.....29408, 30331, 30891, 32176, 32177

48 CFR

533.....29480
1501.....32133
1801.....29960
1802.....29960
1804.....29960
1805.....29960
1807.....29960, 29962
1809.....29960
1810.....29962
1815.....29960
1822.....29960
1823.....29960
1825.....29960
1839.....29960
1843.....29963
1852.....29960, 29963
Proposed Rules:
7.....29696
10.....29696
37.....29696
211.....31584
215.....31189
227.....31584
245.....28327
252.....28327, 31584
1601.....28487
1602.....28487
1609.....28487
1615.....28487
1632.....28487
1642.....28487
1646.....28487
1652.....28487

49 CFR

1.....32134
107.....30530
171.....28487
172.....28487, 30530, 31822
173.....28487
174.....28487
176.....30530
178.....28487
179.....28487
195.....29379
214.....30879
541.....31162
591.....31558
592.....31558
826.....30531
Proposed Rules:
27.....31818

37.....31818
192.....30567
194.....30755, 32178
195.....30567
571.....30756
1002.....29586
1023.....32178

50 CFR

17.....30254, 31094
100.....28922, 29032
216.....30305, 31165
217.....29545
222.....31094
226.....28793, 30715
227.....29545
229.....31165
301.....29207, 30307
625.....28809, 29207
630.....32136
649.....31938
651.....32134
661.....31170
663.....29736
671.....28276
672.....28811, 29208, 29548
675.....28811, 29208, 29737, 29964, 30307
676.....28281
685.....28499

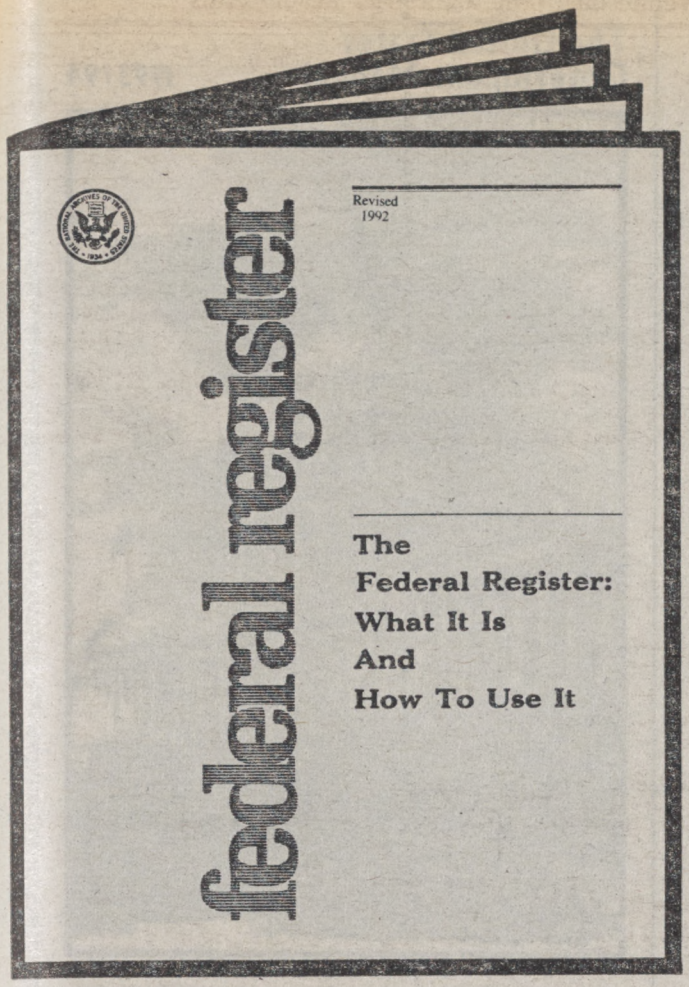
Proposed Rules:

15.....28826
17.....28328, 28329, 28508, 29778, 31620, 31970, 32178
20.....29700
22.....30892
285.....30896, 31621
630.....29779
641.....30389
642.....28330
644.....30903
671.....28827
672.....28827
675.....28827
676.....28827, 31189
Ch. II.....28838

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

Last List June 21, 1994



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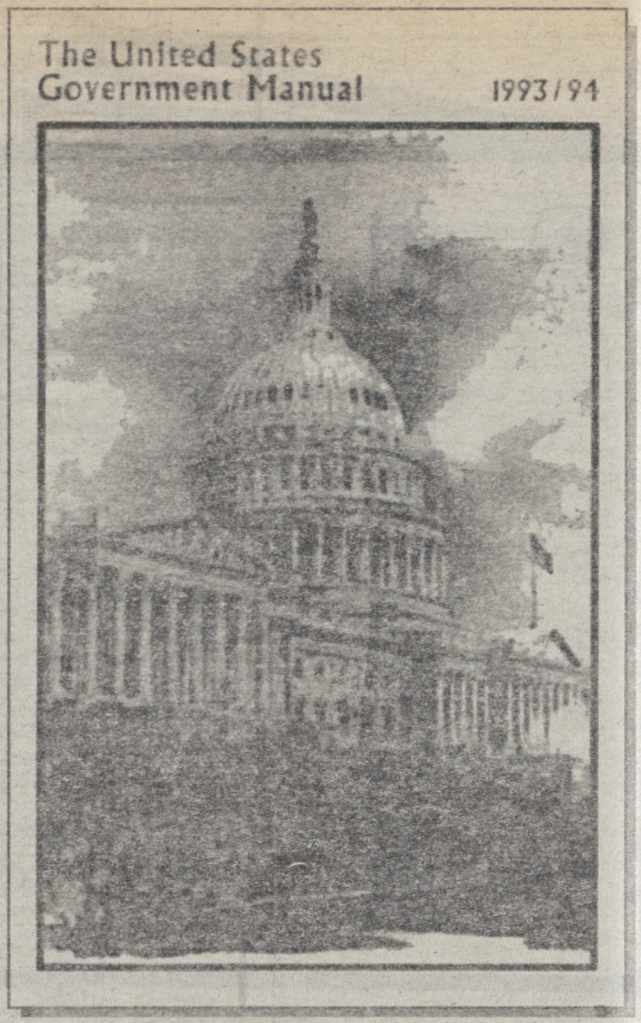
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