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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92–ASW–49; Amendment 39–8683; AD 93–17–12]

Airworthiness Directives; Bell Helicopter Textron, Inc. Model 204B, 205A, 205A–1, 205B, 212, and 412 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to Bell Helicopter Textron, Inc. (BHTI) Model 205B, 212, and 412 helicopters, that currently requires a repetitive magnetic particle inspection of the main transmission lower planetary spider. This amendment expands the applicability to include the BHTI Model 204B, 205A, and 205A–1 helicopters. This amendment is prompted by the need to apply the magnetic particle inspections required by that AD to additional BHTI model helicopters, as well as more clearly state the applicable compliance times for these inspections. The actions specified by this AD are intended to prevent a fatigue failure of the main transmission lower planetary spider, which could result in failure of the main transmission, and subsequent loss of control of the helicopter.

EFFECTIVE DATE: July 29, 1994.

ADDRESSES: This AD and any related information may be examined in the Rules Docket at the Federal Aviation Administration, Office of the Assistant Chief Counsel, 2601 Meacham Blvd., Room 663, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. Uday Garadi, Aerospace Engineer, Rotorcraft Directorate, Rotorcraft Certification Office, ASW–170, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0170, telephone (817) 222–5157, fax (817) 222–5959.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 92–11–07, Amendment 39–8257 (57 FR 30392, July 9, 1992), which is applicable to Bell Helicopter Textron, Inc. (BHTI) Model 205B, 212, and 412 helicopters, was published in the **Federal Register** on March 23, 1993 (58 FR 15444). That action proposed to apply the current requirements for a repetitive magnetic particle inspection (MPI) of the main transmission lower planetary spider (spider), part number (P/N) 204–040–785–003, to BHTI Model 204B, 205A, and 205A–1 helicopters.

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

One comment was received. The commenter states that a 3,100 hours' time-in-service MPI interval is redundant for the Model 204B since an MPI is required at overhaul. The FAA does not agree. An MPI is not required at overhaul for all operators. The manufacturer's overhaul time and associated inspection requirements are mandatory only for those operators whose maintenance program is based on the BHTI program. Therefore, this is not a redundant requirement for those operators who do not perform their overhauls in accordance with the manufacturer's suggestions.

The same commenter states that BHTI Models 204B and 205A–1 should not be included in the AD because the torque applied to the spider when installed in the Models 204B and 205A–1 is lower than when the spider is installed in the Models 212 and 412. The FAA does not concur with this comment. Since parts can be swapped from Models 212 and 412 with higher torque or power requirements to the Models 204B and 205A–1 with lower torque requirements, the FAA concludes that the required MPI is essential for safety.

This commenter also states that the Models 205A and 205A–1 have different transmission overhaul intervals than the Model 212 and 412 helicopters and indicates that this AD inspection interval should consider these different overhaul intervals. The FAA has considered this in arriving at the MPI inspection interval. The MPI interval of 3,100 hours' time-in-service is based on the amount of time it takes a crack to propagate from initiation to failure under typical flight conditions and is also compatible with typical overhaul intervals. The MPI interval of 3,100 hours' time-in-service will provide for crack detection before failure without imposing an undue burden on operators.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed, except for editorial and address changes. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 1,207 helicopters of U.S. registry will be affected by this AD, that it will take approximately 6 work hours per helicopter if performed during transmission overhaul, or 32 work hours if not performed during overhaul, to accomplish the required actions, and that the average labor rate is $55 per work hour. It is estimated that one-half of the affected helicopter fleet may be affected each year by the requirements of this AD. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to range from $199,155 to $1,062,160.

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

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is

contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation Safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 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 removing Amendment 39–8257 (57 FR 30392, July 9, 1992) and by adding a new airworthiness directive (AD), Amendment 39–8683, to read as follows:

AD 93–17–12 Bell Helicopter Textron, Inc. (BHTI): Amendment 39–8683. Docket No. 92–ASW–49. Supersedes AD 92–11–07, Amendment 39–8257.

Applicability: Model 204B, 205A, 205A–1, 205B, 212, and 412 helicopters, with main rotor transmission lower planetary spider (spider), part number (P/N) 204–040–785–003, installed, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue failure of the spider, which could result in failure of the main transmission and subsequent loss of control of the helicopter, accomplish the following:

(a) Within the next 600 hours' time-in-service (TIS) after the effective date of this AD, unless previously accomplished within the last 2,500 hours' TIS, and thereafter at intervals not to exceed 3,100 hours' TIS from the last magnetic particle inspection (MPI), remove the spider and perform an MPI for cracks in accordance with the pertinent BHTI maintenance, repair, and overhaul manuals.

(b) Replace any cracked spider with an airworthy part prior to further flight.

(c) 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, Rotorcraft Certification Office, FAA, Rotorcraft Directorate. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Manager, Rotorcraft Certification Office.

(d) 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.

(e) This amendment becomes effective on July 29, 1994.

Issued in Fort Worth, Texas, on May 13, 1994.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 94–15408 Filed 6–23–94; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 215, 236, 813, and 913

[Docket No. R–94–1576; FR–3025–F–01]

RIN 2501–AB20

Definition of Annual Income

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: The Omnibus Budget Reconciliation Act of 1990 (1990 OBR Act) (Pub. L. 101–508, approved November 5, 1990) excludes, for taxable years beginning after December 31, 1990, the earned income tax credit (EITC) refund from being considered as income for purposes of HUD's assisted housing programs. Because HUD regulations promulgated before the 1990 OBR Act specifically include in annual income any earned income tax credit to the extent it exceeds income tax liability, they are being amended to remove this requirement.

EFFECTIVE DATE: July 25, 1994.

FOR FURTHER INFORMATION CONTACT: Issues related to part 813 and programs administered by the Assistant Secretary for Housing—Federal Housing Commissioner, including parts 215 and 236: Barbara D. Hunter, Acting Director, Planning and Procedures Division, Office of Multifamily Housing Management, Room 6182, 451 Seventh Street, S.W., Washington, D.C. 20410, Telephone (202) 708–4162. A telecommunications device (TDD) for speech or hearing impaired persons is available at (202) 708–4594. (These are not toll-free telephone numbers.)

Issues related to part 913 and programs administered by the Assistant Secretary for Public and Indian Housing, including part 813 as it relates to Section 8 certificates, vouchers, and moderate rehabilitation: Casimir Bonkowski, Director, Office of Management and Policy, Office of Public and Indian Housing, Room 4224, 451 Seventh Street, SW., Washington, D.C. 20410, Telephone (202) 708–0444. A telecommunications device (TDD) for speech or hearing impaired persons is available at (202) 708–0850. (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION: The earned income tax credit refund is a payment from the Internal Revenue Service to low income workers with children. Eligible workers must apply for this credit. The refund may be received over the year as a regular addition to a worker's pay, or as a single sum after filing a tax return, at the option of the worker. Under either option, no EITC refund payment received on or after January 1, 1991 is considered as income for the Department's assisted housing programs, in accordance with section 11111(b) of the Omnibus Budget Reconciliation Act of 1990 (1990 OBR Act) (Pub. L. 101–508, approved November 5, 1990).

Because existing HUD regulations at 24 CFR 215.21(b)(9), 236.3(b)(9), 813.106(b)(9) and 913.106(b)(9) specifically include in annual income any earned income tax credit to the extent it exceeds income tax liability, they are being amended to remove this requirement.

The Department has determined that the changes made by this rule should be adopted without the delay occasioned by requiring prior notice and comment. These changes simply construe statutory language and do not seek to impose obligations that are not in the statute. As such, the rule is exempt, as an interpretive rule under 24 CFR Part 10, from notice and comment requirements.

Findings and Certifications

Environmental Impact

This action is categorically excluded from the NEPA requirements at 24 CFR Part 50 in accordance with 24 CFR 50.20(l) because it relates to a statutorily required establishment of a HUD-determined rate which does not constitute a development decision that affects the physical condition of specific project areas or building sites.

Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this rule do not have federalism implications and, thus, are not subject to review under the Order. This rule

only implements a statutory requirement that adjusts the way annual income is determined, and it will not have substantial, direct effects on States, on their political subdivisions, or on their relationships with the Federal government, or on the distribution of power and responsibilities between them and other levels of government.

Family Impact

The General Counsel, as the Designated Official under Executive Order 12606, *the Family*, has determined that this rule does not have a potentially significant impact on family formation, maintenance, and general well-being, since it implements a statutory requirement that affects a single factor in how annual income is determined, and thus, is not subject to review under the Order.

This rule was listed as item No. 1544 in the Department's Semiannual Agenda of Regulations published on April 25, 1994 (59 FR 20424, 20438) under Executive Order 12866 and the Regulatory Flexibility Act.

List of Subjects

24 CFR Part 215

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 236

Grant programs—housing and community development, Low and moderate income housing, Mortgage insurance, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 813

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements, Utilities.

24 CFR Part 913

Grant programs—housing and community development, Public housing, Reporting and recordkeeping requirements.

Accordingly, the Department amends 24 CFR Parts 215, 236, 813, and 913 as set forth below:

PART 215—RENT SUPPLEMENT PAYMENTS

1. The authority citation for 24 CFR part 215 continues to read as follows:

Authority: 12 U.S.C. 1701s; 42 U.S.C. 3535(d).

§ 215.21 [Removed]

2. In § 215.21, paragraph (b)(9) is removed.

PART 236—MORTGAGE INSURANCE AND INTEREST REDUCTION PAYMENT FOR RENTAL PROJECTS

3. The authority citation for 24 CFR part 236 continues to read as follows:

Authority: 12 U.S.C. 1715b and 1715z–1; 42 U.S.C. 3535(d).

§ 236.3 [Removed]

4. In § 236.3, paragraph (b)(9) is removed.

PART 813—DEFINITION OF INCOME, INCOME LIMITS, RENT AND REEXAMINATION OF FAMILY INCOME FOR THE SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAMS AND RELATED PROGRAMS

5. The authority citation for 24 CFR part 813 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 1437n and 3535(d).

§ 813.106 [Removed]

6. In § 813.106, paragraph (b)(9) is removed.

PART 913—DEFINITION OF INCOME, INCOME LIMITS, RENT AND REEXAMINATION OF FAMILY INCOME FOR THE PUBLIC HOUSING PROGRAM

7. The authority citation for 24 CFR part 913 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437d, 1437n and 3535(d).

§ 913.106 [Removed]

8. In § 913.106, paragraph (b)(9) is removed.

Dated: June 20, 1994.

Henry G. Cisneros,

Secretary.

[FR Doc. 94–15432 Filed 6–23–94; 8:45 am]

BILLING CODE 4210–32–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1952

Approved State Plans for Enforcement of State Standards Approval of Supplements to the South Carolina and North Carolina State Plans

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

ACTION: Final rule.

SUMMARY: This document gives notice of Federal approval of State Plan supplements concerning the South Carolina "Palmetto" STAR and North Carolina "Carolina" STAR Voluntary Protection Programs (VPP). These programs are modeled after the OSHA STAR VPP, which recognize excellence in worksite safety and health. Employers participating in VPP can realize lower workers' injury rates, lower workers' compensation costs and greater employee productivity.

EFFECTIVE DATE: June 24, 1994.

FOR FURTHER INFORMATION CONTACT: James Foster, Director, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, room N3647, 200 Constitution Avenue NW., Washington, DC 20210, Telephone (202) 219–8148.

SUPPLEMENTARY INFORMATION:

A. Background

The South Carolina Occupational Safety and Health Plan was approved under section 18(c) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667(c)) (hereinafter referred to as the Act) and Part 1902 of this chapter on December 6, 1972 (37 FR 25932). A determination of final approval was made under section 18(e) of the Act on December 18, 1987 (57 FR 48103).

The North Carolina Occupational Safety and Health Plan was approved under section 18(c) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667(c)) (hereinafter referred to as the Act) and Part 1902 of this chapter on February 1, 1973 (38 FR 3041).

Part 1953 of this chapter provides procedures for the review and the approval of State change supplements by the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter referred to as the Assistant Secretary).

B. Description of Supplements

On November 10, 1993, Virgil W. Duffie, Jr., Commissioner, South Carolina Department of Labor (redesignated Director of the Department of Labor, Licensing, and Regulation), submitted a plan change supplement concerning South Carolina "Palmetto" STAR Voluntary Protection Program (VPP). After Federal review of the South Carolina "Palmetto" STAR VPP, South Carolina's "Palmetto" STAR program was found to be generally identical to the Federal STAR Voluntary Protection Program, as described in the **Federal Register** on July 12, 1988 (53 FR 26339). South Carolina's VPP is limited to the STAR Program in general industry, excludes the Merit and Demonstration Programs and excludes the construction industry. Additionally, the State's "Palmetto" STAR Program

will use State injury rates rather than National injury rates and applicant's injury rate must be at or below 50 percent of the State industry average.

On January 28, 1994, Steven Sykes, State Plan Coordinator, North Carolina Division of Occupational Safety and Health, submitted a plan change supplement concerning North Carolina's "Carolina" STAR Voluntary Protection Program (VPP). After Federal review of the North Carolina "Carolina" STAR VPP, North Carolina's "Carolina" STAR program was found to be generally identical to the Federal STAR Voluntary Protection Programs. North Carolina's VPP is limited to the STAR Program, and excludes the Merit and Demonstration Programs. (These Programs, F and G under Federal VPP, are indicated as Reserved by North Carolina.) Additionally, the State's "Carolina" Star Program will use State injury rates rather than National injury rates and the applicant's injury rate must be at or below 50 percent of the State industry average.

C. Location of Supplements for Inspection and Copying

A copy of the State plan supplement on the South Carolina "Palmetto" STAR VPP may be inspected and copied during normal business hours at the following locations: U.S. Department of Labor, Occupational Safety and Health Administration, Office of the Regional Administrator, Suite 587, 1375 Peachtree Street, N.E., Atlanta, Georgia 30367; South Carolina Department of Labor, Licensing, and Regulation, 3600 Forest Drive, Post Office Box 11329, Columbia, South Carolina 29211–1329.

A copy of the State plan supplement on the North Carolina "Carolina" STAR VPP may be inspected and copied during normal business hours at the following locations: U.S. Department of Labor, Occupational Safety and Health Administration, Office of the Regional Administrator, Suite 587, 1375 Peachtree Street NE., Atlanta, Georgia 30367; North Carolina Department of Labor, 413 North Salisbury Street, Raleigh, North Carolina 27603–5942.

Copies of the South Carolina and North Carolina supplements also are available at the U.S. Department of Labor, Occupational Safety and Health Administration, Directorate of Federal-State Operations, 200 Constitution Avenue NW., Room N3700, Washington, D.C. 20210.

D. Public Participation

Under 29 CFR 1953.2(c) of this chapter, the Assistant Secretary may prescribe alternative procedures to expedite the review process or for any other good cause which may be consistent with applicable law. The Assistant Secretary finds that South Carolina's "Palmetto" and North Carolina's "Carolina" STAR Voluntary Protection Programs are generally identical to the Federal STAR Voluntary Protection Program, meet Federal requirements and were adopted by the States in accordance with State procedural requirements. Good cause is therefore found for approval of these supplements and further public participation would be necessary.

E. Decision

After careful consideration and review by the Regional and National Offices, the South Carolina and North Carolina plan supplements described above are found to meet OSHA requirements and are hereby approved under Part 1953 of this chapter. The decision incorporates the requirements of the Act and implementing regulations applicable to State plans generally.

List of Subjects in 29 CFR Part 1952

Intergovernmental relations, Law enforcement, Occupational safety and health, Reporting and recordkeeping requirements.

Signed at Washington, DC, this 20th day of June, 1994.

Joseph A. Dear,

Assistant Secretary of Labor.

Accordingly, for the reasons set forth in the preamble, 29 CFR Part 1952 is hereby amended as follows:

PART 1952—[AMENDED]

1. The authority citation for part 1952 continues to read as follows:

Authority: Sec. 18, 84 Stat. 1608 (29 U.S.C. 657); 29 CFR part 1902, Secretary of Labor's Order No. 1–90 (55 FR 9033).

2. Subpart C-South Carolina, is amended by adding § 1952.97 to read as follows:

§ 1952.97 Changes to approved plans.

(a) *The Voluntary Protection Program.* On June 20, 1994, the Assistant Secretary approved South Carolina's plan supplement, which is generally identical to the Federal Star Voluntary Protection Program. South Carolina's "Palmetto" VPP is limited to the Star Program in general industry, excludes the Merit and Demonstration Programs and excludes the construction industry. Also, injury rates must be at or below 50 percent of the State industry average rather than the National industry average.

3. Subpart I-North Carolina is amended by adding § 1952.157 to read as follows:

§ 1952.157 Changes to approved plans.

(a) *The Voluntary Protection Program.* On June 20, 1994, the Assistant Secretary approved North Carolina's plan supplement, which is generally identical to the Federal Star Voluntary Protection Program. North Carolina's "Carolina" VVP is limited to the Star Program, and excludes the Merit and Demonstration Programs. Also, injury rates must be at or below 50 percent of the State injury average rather than the National injury average.

[FR Doc. 94–15346 Filed 6–23–94; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD01–94–070]

RIN 2115–AA97

Safety Zone; Budweiser Jet Sports Tour, Seaside Heights, Barnegat Bay, NJ

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The annual Budweiser Jet Sports Tour is a jetski race held in Barnegat Bay, Seaside Heights, New Jersey. The race will be held on Friday through Sunday, July 15–17, 1994, in the waters of the Toms River, in Barnegat Bay, Seaside Heights, New Jersey. This regulation is necessary to control vessel traffic within the immediate vicinity of the event due to the confined nature of the waterway and anticipated congestion at the time of the event, thus providing for the safety of life and property on the affected navigable water.

EFFECTIVE DATES: This regulation is effective from 8 a.m. July 15 through 5 p.m. July 17, 1994.

FOR FURTHER INFORMATION CONTACT: Lieutenant (Junior Grade) Benjamin M. Algeo, Chief Boating Safety Affairs Branch, First Coast Guard District, (617) 223–8310.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are LTJG B.M. Algeo, project officer, Chief, Boating Safety Affairs Branch, First Coast Guard District and LCDR F.J. Kenney, project attorney, First Coast Guard District Legal Office.

Regulatory History

Pursuant to 5 U.S.C. 553, a Notice of Proposed Rulemaking (NPRM) was not

published for this regulation, and good cause exists for making it effective without publication of an NPRM in the **Federal Register.** The Budweiser Jet Sports Tour, now in its third year, has proven to be a popular local event. Increased participation and spectators have necessitated regulation of the waterway, however, the date of notification to the Coast Guard did not allow time for publication of a Notice of Proposed Rulemaking. The Coast Guard believes canceling the race would be contrary to the public interest, and that regulation is necessary to ensure safety of life, thereby good cause exists for publishing this final rule without an NPRM. Little commercial traffic is known to transit the area. However, sufficient notice will be provided for any affected party to alter plans with minimal impact. Vessels will be allowed to transit the affected area under escort between race heats.

Background and Purpose

The sponsor, International Jet Sports Association has previously conducted this event in Barnegat Bay in 1992 and 1993. This year's race will follow a similarly marked course, however, the number of race participants and spectators has grown substantially since the race's inception. Therefore, it is necessary to establish special local regulations to control vessel movement within this confined area.

This event will include up to 200 jetskis competing on a rectangular course at high speeds. Due to the inherent dangers of a race of this type, vessel traffic will be temporarily restricted to provide for the safety of the spectators and participants.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation, under paragraph 10e of the regulatory policies and procedures of DOT, is unnecessary. Commercial traffic on the affected portion of the Toms River is infrequent. The race is popular and is anticipated to draw business to the local merchants. Local commercial entities have been notified of the race schedule. Vessel traffic may be allowed to transit the regulated area between race heats at the discretion of the Patrol Commander.

Small Entities

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

Collection of Information

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

Federalism

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

Environment

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

List of Subjects in 33 CFR Part 100

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

Regulations

For reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

PART 300—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary section, 100.35–T01070 is added to read as follows:

§ 100.35–T01070 Budweiser Jet Sports Tour, Seaside Heights, NJ.

(a) *Regulated area.* The regulated area will include all waters within the following points:

Latitude	*Longitude*
39°56.7′ N	074°04.7′ W
39°56.7′ N	074°04.9′ W
39°56.5′ N	074°05.0′ W
39°56.5′ N	074°05.1′ W
39°56.6′ N	074°05.1′ W

(b) *Special local regulations.*

(1) Commander, U.S. Coast Guard Group Sandy Hook reserves the right to delay, modify or cancel the race as conditions or circumstances require.

(2) No person or vessel may enter, transit, or remain in the regulated area during the effective period of regulation unless participating in the event as authorized by the sponsor or the Coast Guard.

(3) Vessels awaiting passage through the regulated area will be required to wait at one of the three boundary areas: 1) west entrance to the Lavallette Channel, 2) Route 37 Causeway entrance on the east end of Pelican Island, or 3) north entrance of Lavallette Channel. A Coast Guard Auxiliary patrol vessel will be stationed at each boundary area. Vessels will be allowed to transit the regulated area between race heats only after obtaining permission from the patrol commander. Vessels allowed to transit between race heats will be required to remain as close to the western side of the regulated area as prevailing weather conditions and water depths permit.

(4) All persons and vessels shall comply with the instructions of the Commander, U.S. Coast Guard Group Sandy Hook or the designated on scene patrol personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Upon hearing five or more blasts from a U.S. Coast Guard vessel, the operator of a vessel shall stop immediately and proceed as directed. Members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation and other applicable laws.

(c) *Effective period.* This section will be effective from 8 a.m. July 15 through 5 p.m. July 17, 1994.

Dated: June 9, 1994.

J. L. Linnon,

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

[FR Doc. 94–15394 Filed 6–23–94; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 117

[CGD07–93–114]

RIN 2115–AE47

Drawbridge Operation Regulations; Gulf Intracoastal Waterway, Treasure Island, FL

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the City of Treasure Island (the bridge owner), the Coast Guard is modifying the regulations governing the Treasure Island drawbridge over the Gulf Intracoastal Waterway, mile 119.0, Pinellas County, Florida. This modification is being made to relieve highway congestion caused by back-to-back openings, while still meeting the reasonable needs of navigation.

EFFECTIVE DATE: August 8, 1994.

FOR FURTHER INFORMATION CONTACT: Ian MacCartney, Project Manager, Bridge Section, at (305) 536–4103.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are Ian MacCartney, Project Manager, and LT. J.M. Losego, Project Counsel.

Regulatory History

On December 23, 1993, the Coast Guard published a notice of proposed rulemaking entitled Drawbridge Operation Regulations in the **Federal Register** (58 FR 68093). The Coast Guard received 2 letters commenting on the proposal. A public hearing was not requested and one was not held.

Background and Purpose

This drawbridge presently opens on signal except that from 3 p.m. to 6 p.m. Monday through Friday, and from 11 a.m. to 6 p.m. Saturdays, Sundays and federal holidays, the draw need be opened only on the hour, quarter hour, half hour and three quarter hour. From 11 p.m. to 7 a.m. the draw shall open on signal if at least 10 minutes advance notice is given. The City of Treasure Island requested that the bridge open only on the hour and half hour during certain periods of each day to help reduce traffic delays, particularly during morning and afternoon commuter hours and on weekends. Although highway traffic use of this bridge does not justify the change requested by the city, the change implemented by this final rule will relieve highway congestion while still meeting the reasonable needs of navigation.

Discussion of Comments and Changes

In response to our public notice, we received 2 comments. Both commenters were in favor of maintaining the existing 15 minute schedule. One felt that the only solution to vehicular congestion would be a high level fixed bridge. The other believed that increasing the number of openings would expose navigation to intensified danger. Both comments were considered, however, neither provided any additional data to support their opinions. A test of the proposed 15 minute schedule was conducted from January 1, 1994, to February 23, 1994. The results confirmed highway traffic delays were reduced because the back to back openings were eliminated. Waterway holding conditions near the bridge were sufficient to maintain the safety of navigation under this expanded 15 minute schedule.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT (44 FR 11040; February 26, 1979) is unnecessary. We conclude this because the rule exempts tugs with tows.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this rule will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). Since tugs with tows are exempt from this rule, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), that this rule will not have a significant impact on a substantial number of small entities.

Collection of Information

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

Federalism

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

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under section 2.B.2.g.(5) of Commandant Instruction M16475.1B, promulgation of operating requirements or procedures for drawbridges is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. In § 117.287, paragraph (g) is revised to read as follows:

§ 117.287 Gulf Intracoastal Waterway.

* * * * *

(g) The draw of the Treasure Island Causeway bridge, mile 119.0, shall open on signal, except that from 7 a.m. to 7 p.m. the draw need open only on the hour, quarter hour, half hour and three quarter hour. From 11 p.m. to 7 a.m. the draw shall open on signal if at least 10 minutes advance notice is given.

* * * * *

Dated: June 3, 1994.

W.P. Leahy,

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

[FR Doc. 94–15388 Filed 6–23–94; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[CGD 09–94–015]

RIN 2115–AA97

Safety Zone Regulations; Lower Lake Huron, St. Clair River and Black River, Port Huron, MI

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a Safety Zone for portions of Lower Lake Huron, the St. Clair River and Black River during the festivities surrounding the beginning of the annual Port Huron to Mackinac Island Race on July 16, 1994. This regulation establishes a "Caution Area" from the lower part of the Black River to the International Boundary in the St. Clair River northward to the Lake Huron Cut Buoys 5 and 6, Lake Huron, in United States waters. Due to a dramatic increase in boating traffic, which could pose hazards to navigation in the area, this regulation is needed to provide for the safety of life, limb, and property on navigable waters during the beginning of the event.

EFFECTIVE DATE: This regulation becomes effective from 10 p.m. (edst) on July 15, 1994 until 4 p.m. (edst) July 16, 1994.

FOR FURTHER INFORMATION CONTACT: William A. Thibodeau, Marine Science Technician Second Class, U.S. Coast Guard, Aids to Navigation and Waterways Management Branch, Ninth Coast Guard District, 1240 East 9th Street, Cleveland, Ohio 44199–2060, (216) 522–3990.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a Notice of Proposed Rulemaking has not been published for this regulation and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. The application to hold this event was not received by the Commander, Ninth Coast Guard District, until May 23, 1994, and there was not sufficient time remaining to publish a proposed rule in advance of the event or to provide for a delayed effective date.

Drafting Information

The drafters of this regulation is Scott J. Smith, Lieutenant Junior Grade, U.S. Coast Guard, Project Officer, Aids to Navigation & Waterways Management Branch and Karen E. Lloyd, Lieutenant, U.S. Coast Guard, Project Attorney, Ninth Coast Guard District Legal Office.

Discussion of Regulations

The circumstances requiring this regulation result from past experiences with congestion and confrontations before, during, and after the start of the annual Port Huron to Mackinac Island Race. This event, based on past records, has drawn in excess of 100,000 people and dramatically increased boating traffic in the general vicinity. This regulation requires that all vessels in the designated "Caution Area" from the lower part of the Black River to the International Boundary in the St. Clair River northward to the Lake Huron Cut Buoys 5 and 6, Lake Huron, in United States waters, be operated at NO–WAKE speed, meaning that all vessels transiting the area be operated at bare steerageway, keeping the vessel's wake at a minimum, and exercise a high degree of caution in the area.

There will be no restrictions imposed by the Canadian authorities in their waters. This regulation is necessary to ensure the protection of life, limb, and property prior to and until approximately six hours after the start of the race.

This regulation is issued pursuant to 33 U.S.C. 1233, 1225 and 1231 as set out in the authority citation for all of Part 165.

Federalism Implications

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

Environment

The Coast Guard has considered the environmental impact of this regulation and concluded that, under section 2.B.2.c of Coast Guard Commandant Instruction M16475.1B, they are categorically excluded from further environmental documentation.

Economic Assessment and Certification

This regulation is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this regulation to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of the DOT is unnecessary.

Collection of Information

This regulation will impose no collection of information requirements under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

List of Subjects in 33 CFR Part 165

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

Regulations

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

PART 165—[AMENDED]

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

Authority: 33 U.S.C. 1233; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. A temporary § 165.T09–015 is added to read as follows:

§ 165.T09–015 Safety Zone: Lower Lake Huron, St. Clair River and Black River, Port Huron, MI.

(a) *Regulated area.* That portion of the Black River, St. Clair River, and Lower Lake Huron from:

Latitude	*Longitude*
42°58.8′ N	082°26.0′ W, to
42°58.4′ N	082°24.8′ W, thence northward along the International Boundary to
43°02.8′ N	082°23.8′ W, to
43°02.8′ N	082°26.8′ W, thence southward along the U.S. shoreline to
42°58.9′ N	082°26.0′ W, thence to
42°58.8′ N	082°26.0′ W.

(b) *Regulation.* The above regulated area is designated as a "Caution Area." All vessels transiting the above listed area will operate at bare steerageway, keeping the vessel's wake at a minimum, and exercise a high degree of caution in the area.

(c) *Patrol commander.*

(1) The Coast Guard will patrol the regulated area under the direction of a designated Coast Guard Patrol Commander, (Officer in Charge, U.S. Coast Guard Station Port Huron, MI). The Patrol Commander may be contacted on channel 16 (156.8 MHZ) by the call sign "Coast Guard Patrol Commander."

(2) The Patrol Commander may direct the anchoring, mooring, or movement of any boat or vessel within the regulated area. A succession of sharp, short signals by whistle or horn from vessels patrolling the area under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Any vessel so signaled shall stop and shall comply with the orders of the Patrol Commander. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(3) The Patrol Commander may establish vessel size and speed limitations and operating conditions.

(4) The Patrol Commander may restrict vessel operation within the regulated area to vessels having particular operating characteristics.

(5) The Patrol Commander may terminate the marine event or the operation of any vessel at any time it is deemed necessary for the protection of life, limb, or property.

(6) All persons in the area shall comply with the orders of the Coast Guard Patrol Commander.

(d) *Effective date.* This section is effective from 10 p.m. (EDST) on July 15, 1994 until 4 p.m. (EDST) on July 16, 1994, unless otherwise terminated by the Coast Guard Patrol Commander (Officer in Charge, U.S. Coast Guard Station Port Huron, MI).

Dated: June 9, 1994.

Rudy K. Peschel,

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

[FR Doc. 94–15389 Filed 6–23–94; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[CGD13–94–015]

RIN 2115–AA97

Safety Zone Regulations; Kennewick Fourth of July Fireworks Display, Columbia River, Kennewick, WA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone for the Independence Day Fireworks Display to be held on July 4, 1994. The zone will be located on the Columbia River from river mile 330.5 to 331.5. This safety zone is needed to protect persons, facilities, and vessels from safety hazards associated with a fireworks display. Entry into this safety zone is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATE: This regulation becomes effective on July 4, 1994, at 9:30 p.m. (PDT) and terminates on July 4, 1994 at 11 p.m. (PDT).

FOR FURTHER INFORMATION CONTACT: LTJG R.S. Croke, c/o Captain of the Port Portland, 6767 N. Basin Ave, Portland, Oregon 97217–3992, (503) 240–9327.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 60 days after **Federal Register** publication. Publishing a NPRM and delaying its effective date would be contrary to the public interest since immediate action is necessary to ensure the safety of structures and vessels operating in the regulated area. Due to the complex planning and coordination involved, notice of the final details for the show were not available to the Coast Guard from the Kennewick Chamber of Commerce until 30 days prior to the show. Therefore, sufficient time was not available to publish the proposed rules in advance of the event or to provide a delayed effective date. Following normal rulemaking procedures would be impracticable.

Drafting Information

The drafters of this regulation are LTJG R.S. Croke, project officer for the Captain of the Port, and LT L.J. Argenti, project attorney, Thirteenth Coast Guard District Legal Office.

Discussion of Regulations

The event requiring this regulation will begin on July 4, 1994 at 9:30 p.m. Upon request of the Kennewick Chamber of Commerce, the Coast Guard is establishing a safety zone from Columbia River mile 330.5 to river mile 331.5. This transit may result in a large number of vessels congregating near the fireworks launch barge. Concern is justified due to the possibility of debris and unexploded fireworks falling into the Columbia River in the vicinity of the launch barge. This safety zone will be enforced by representatives of the Captain of the Port Portland, Oregon. The Captain of the Port may be assisted by other federal agencies.

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

Regulatory Evaluation

This temporary final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Federalism

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

Environmental Assessment

This final rule has been thoroughly reviewed by the Coast Guard and determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.c. of Commandant Instruction M16475.1B. A Categorical Exclusion Determination statement has been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 165

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

Regulation

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

PART 165—[AMENDED]

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

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. A temporary § 165.T13–012 is added to read as follows:

§ 165.T13–012 Safety Zone: Columbia River, Kennewick, Washington.

(a) *Location.* The following area is a safety zone: All waters on the Columbia River from river mile 330.5 to river mile 331.5, Kennewick, Washington.

(b) *Definitions.* The designated representative of the Captain of the Port is any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port Portland, to act on his behalf. The following officers have or will be designated by the Captain of the Port: The Coast Guard Patrol Commander, the senior boarding officer on each vessel enforcing the safety zone, and the Duty Officer at Coast Guard Group Portland, Oregon.

(c) *Regulations.*

(1) In accordance with the general regulations in Section 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port or his designated representatives.

(2) A succession of sharp, short signals by whistle, siren, or horn from vessels patrolling the area under the direction of the Patrol Commander shall serve as a signal to stop. Vessels or persons signalled shall stop and comply

with the orders of the patrol vessels; failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(d) *Effective Dates.* This section becomes effective on July 4, 1994, at 9:30 p.m. (PDT) and terminates on July 4, 1994, at 11 p.m. (PDT) unless sooner terminated by the Captain of the Port.

Dated: June 13, 1994.

N.S. Porter,

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

[FR Doc. 94–15393 Filed 6–23–94; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 165

[CGD01–94–059]

RIN 2115–AA97

Safety Zone; Fireworks on the Navesink '94, Navesink River, Red Bank, NJ

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the Fireworks on the Navesink '94 program that will take place in the Navesink River. This event will occur on July 3, 1994, from 8 p.m. until 11 p.m. with a rain date of July 4, 1994 from 8 p.m. until 11 p.m. and will temporarily close all waters between the north and south shores of the Navesink River, extending approximately 300 yards east and 300 yards west of two fireworks barges anchored together off of Red Bank, NJ. This safety zone will preclude vessels from transiting the Navesink River and is needed to protect the boating public from the hazards associated with fireworks exploding in the area.

EFFECTIVE DATES: This rule is effective from 8 p.m. until 11 p.m. on July 3, 1994 with a rain date from 8 p.m. until 11 p.m. on July 4, 1994 unless terminated sooner by the Captain of the Port, NY.

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

SUPPLEMENTARY INFORMATION:

Drafting Information

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

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation and good cause exists for not publishing an NPRM as well as making it effective less than 30 days after **Federal Register** publication. Due to the date this application was received, there was insufficient time to draft and publish a notice of proposed rulemaking that allows for a reasonable comment period prior to the event. There was also insufficient time for publication of this temporary final rule 30 days prior to the event. The delay encountered if normal rulemaking procedures were followed would effectively cancel this event. Cancellation of this event is contrary to public interest.

Background and Purpose

The Red Bank Fireworks Committee submitted an application to hold a fireworks program in the Navesink River, Red Bank, NJ. This regulation establishes a temporary safety zone in the waters of the Navesink River, and will temporarily close all waters between the north and south shores of the Navesink River (including the Red Bank Reach), extending approximately 300 yards east and 300 yards west of two fireworks barges anchored together off of Red Bank, NJ, at or near 40°21′20″ N latitude, 074°04′10″ W longitude. This safety zone will preclude vessels from transiting the Navesink River and Red Bank Reach in the Navesink River during the effective time of this regulation, and is needed to protect boaters from the hazards associated with fireworks exploding in the area.

Regulatory Evaluation

This regulation is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this regulation to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This safety zone will close a portion of the Navesink River that will preclude the transit of vessel traffic between 8 p.m. and 11 p.m. on July 3, 1994, with a rain date of July 4, 1994 at the same time, unless terminated sooner by the Captain of the Port, NY. Although this regulation will prevent traffic from transiting this area, the effect of this regulation will not be significant for several reasons. This has been an annual event and mariners are accustomed to this temporary closure of the Navesink River. Due to the fact that the event is limited in duration, that the event is at a late hour, and that extensive, advance advisories will be made to the maritime community to allow mariners to adjust their schedules to transit the area before or after the event, the impact of this regulation is expected to be minimal.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this regulation will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under Section 3 of the Small Business Act (15 U.S.C. 632).

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

Collection of Information

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

Federalism

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

Environment

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

List of Subjects in 33 CFR Part 165

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

Regulations

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

PART 165—[AMENDED]

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

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

2. A temporary § 165.T01–059, is added to read as follows:

§ 165.T01–059 Fireworks on the Navesink '94, Navesink River, Red Bank, New Jersey.

(a) *Location.* All waters between the north and south shores of the Navesink River (including the Red Bank Reach), extending approximately 300 yards east and 300 yards west of two fireworks barges anchored together off of Red Bank, New Jersey, at or near 40°21′20″ N latitude, 074°04′10″ W; also defined as an area bounded by the following points: 40°21′15″ N latitude, 074°03′57″ W longitude; to 40°21′43″ N latitude, 074°03′57″ W longitude; and 40°21′20″ N latitude, 074°04′25″ W longitude; to 40°21′30″ N latitude, 074°04′25″ W longitude.

(b) *Effective period.* This section is effective from 8 p.m. until 11 p.m. on July 3, 1994, with a rain date of 8 p.m. until 11 p.m. on July 4, 1994, unless terminated sooner by the Captain of the Port, New York.

(c) *Regulations.*

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

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

Dated: June 13, 1994.

T.H. Gilmour,

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

[FR Doc. 94–15395 Filed 6–23–94; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF EDUCATION

34 CFR Parts 21, 75, 81, 219, 232, 303, 346, 347, 354, 355, 356, 357, 358, 359, 360, 363, 369, 371, 373, 374, 375, 376, 377, 378, 379, 380, 381, 385, 387, 389, 390, 462, 472, 600, 602, 608, 609, 610, 614, 631, 632, 633, 634, 635, 636, 642, 643, 644, 645, 646, 648, 649, 650, 653, 654, 655, 656, 657, 658, 660, 661, 667, 668, 669, 671, 674, 675, 676, 682, 685, 690, 692, 693, 698, 776, 777, 778, 779, 785, 786, and 787

Announcement of Effective Dates

AGENCY: Department of Education.

ACTION: Notice of effective dates.

SUMMARY: Section 431(d) of the General Education Provisions Act requires that most Department of Education regulatory documents be published in the **Federal Register** for forty-five (45) calendar days, or longer if Congress takes certain adjournments, before they take effect. Since future congressional adjournments cannot be predicted with certainty when a document is published, the Department cannot announce a specific effective date at the time of publication. This notice announces the effective dates for certain regulatory documents subject to the delayed effective date requirement of section 431(d).

DATES: For effective dates, see **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Kenneth C. Depew, U.S. Department of Education, 400 Maryland Avenue SW., room 5125, FOB–6, Washington, DC 20202–2241. Telephone: (202) 401–2884.

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 effective date provision for each of the regulatory documents included in this notice stated that the effective date would be announced in a notice published in the **Federal Register**. Accordingly, this notice announces the following effective dates:

1. 34 CFR Parts 655, 656, 657, 658, 660, 661, 669, and 671, final regulations for the International Education Programs, published June 10, 1993 (58 FR 32574).

DATES: *Effective date:* July 25, 1993.

2. 34 CFR Parts 785, 786, and 787, final regulations for the National Diffusion Network, published June 30, 1993 (58 FR 35354).

DATES: *Effective date:* September 6, 1993.

3. 34 CFR Part 378, final regulations for Projects for Initiating Recreational Programs for Individuals with Disabilities, published July 1, 1993 (58 FR 35762).

DATES: *Effective date:* September 6, 1993.

4. 34 CFR Part 685, final regulations for the Federal Direct Student Loan Program, published July 2, 1993 (58 FR 36088).

DATES: *Effective date:* September 6, 1993.

5. 34 CFR Parts 608 and 609, final regulations for Strengthening Historically Black Colleges and Universities Program and Strengthening Historically Black Graduate Institutions Program, published July 20, 1993 (58 FR 38711).

DATES: *Effective date:* September 6, 1993.

6. 34 CFR Parts 600 and 668, final regulations for Institutional Eligibility Under the Higher Education Act of 1965, as Amended and Student Assistance General Provisions, published July 23, 1993 (58 FR 39618).

DATES: *Effective date:* September 6, 1993.

7. 34 CFR Parts 777, 778, and 779, final regulations for the Library Research and Demonstration Program, the Improving Access to Research Library Resources Program, and the College Library Technology and Cooperation Grants Program, published July 27, 1993 (58 FR 40246).

DATES: *Effective date:* September 10, 1993.

8. 34 CFR Part 377, final regulations for the Demonstration Projects to Increase Client Choice Program, published July 29, 1993 (58 FR 40706).

DATES: *Effective date:* September 12, 1993.

9. 34 CFR Part 303, final regulations for the Early Intervention Program for Infants and Toddlers with Disabilities, published July 30, 1993 (58 FR 40958).

DATES: *Effective date:* September 13, 1993.

10. 34 CFR Part 614, final regulations for the College Facilities Loan Program, published August 10, 1993 (58 FR 42626).

DATES: *Effective date:* September 24, 1993.

11. 34 CFR Parts 631, 632, 633, 634, and 635, final regulations for the Cooperative Education Program, published August 11, 1993 (58 FR 42651).

DATES: *Effective date:* September 25, 1993.

12. 34 CFR Part 636, final regulations for the Urban Community Service Program, published August 11, 1993 (58 FR 42662).

DATES: *Effective date:* September 25, 1993.

13. 34 CFR Part 654, final regulations for the Robert C. Byrd Honors Scholarship Program, published August 11, 1993 (58 FR 42665).

DATES: *Effective date:* September 25, 1993.

14. 34 CFR Part 653, final regulations for the Paul Douglas Teacher Scholarship Program, published August 11, 1993 (58 FR 42824).

DATES: *Effective date:* September 25, 1993.

15. 34 CFR Part 649, final regulations for the Patricia Roberts Harris Fellowship Program, published August 12, 1993 (58 FR 42860).

DATES: *Effective date:* September 26, 1993.

16. 34 CFR Part 381, final regulations for Protection and Advocacy of Individual Rights, published August 12, 1993 (58 FR 43018).

DATES: *Effective date:* September 26, 1993.

17. 34 CFR Part 698, final regulations for the Campus Sexual Offenses Education and Prevention Program, published August 16, 1993 (58 FR 43265).

DATES: *Effective date:* September 30, 1993.

18. 34 CFR Part 81, final regulations for the General Education Provisions Act (Enforcement), published August 16, 1993 (58 FR 43472).

DATES: *Effective date:* September 30, 1993.

19. 34 CFR Part 776, final regulations for the Library Education and Human Resource Development Program, published August 26, 1993 (58 FR 45210).

DATES: *Effective date:* October 10, 1993.

20. 34 CFR Part 232, final regulations for the Drug-Free Schools and Communities Emergency Grants Program, published September 2, 1993 (58 FR 46756).

DATES: *Effective date:* October 17, 1993.

21. 34 CFR Part 21, final regulations for Equal Access to Justice, published September 7, 1993 (58 FR 47192).

DATES: *Effective date:* October 22, 1993.

22. 34 CFR Parts 346, 347, 354, 355, 356, 357, 358, 359, and 360, final regulations for the National Institute on Disability and Rehabilitation Research, published September 22, 1993 (58 FR 49418).

DATES: *Effective date:* November 6, 1993.

23. 34 CFR Part 610, final regulations for School, College, and University Partnerships, published September 24, 1993 (58 FR 50166).

DATES: *Effective date:* November 8, 1993.

24. 34 CFR Parts 642, 645, and 646, final regulations for the Training Program for Federal TRIO Programs, the Upward Bound Program, and the Student Support Services Program, published October 1, 1993 (58 FR 51518).

DATES: *Effective date:* November 15, 1993.

25. 34 CFR Parts 668, 674, 675, 676, 682, and 690, final regulations providing relief from certain regulatory provisions, published October 6, 1993 (58 FR 52194).

DATES: *Effective date:* November 20, 1993.

26. 34 CFR Part 650, final regulations for the Jacob K. Javits Fellowship Program, published October 28, 1993 (58 FR 58084).

DATES: *Effective date:* December 25, 1993.

27. 34 CFR Part 643, final regulations for the Talent Search Program, published November 5, 1993 (58 FR 59144).

DATES: *Effective date:* December 25, 1993.

28. 34 CFR Part 648, final regulations for Graduate Assistance in Areas of National Need, published December 16, 1993 (58 FR 65838).

DATES: *Effective date:* January 30, 1994.

29. 34 CFR Parts 462 and 472, final regulations for the State-Administered Workplace Literacy Program and the National Workplace Literacy Program, published January 10, 1994 (59 FR 1439).

DATES: *Effective date:* March 3, 1994.

30. 34 CFR Part 644, final regulations for Educational Opportunity Centers, published January 18, 1994 (59 FR 2658).

DATES: *Effective date:* March 4, 1994.

31. 34 CFR Part 692, final regulations for the State Student Incentive Grant Program, published January 28, 1994 (59 FR 4220).

DATES: *Effective date:* March 14, 1994.

32. 34 CFR Parts 363, 369, 371, 373, 374, 375, 376, 377, 378, 379, 380, 381, 385, 387, 389, and 390, final regulations for Rehabilitation Services Administration programs, published February 18, 1994 (59 FR 8330).

DATES: *Effective date:* April 20, 1994.

33. 34 CFR Part 219, final regulations for Assistance for School Expenditures and Construction in Cases of Certain Disasters, published March 25, 1994 (59 FR 14306).

DATES: *Effective date:* May 9, 1994.

34. 34 CFR Parts 668, 674, 675, 676, 682, 685, and 690, final regulations providing relief from certain regulatory provisions, published April 13, 1994 (59 FR 17648).

DATES: *Effective date:* June 15, 1994.

35. 34 CFR Part 602, final regulations for the Secretary's Procedures and Criteria for Recognition of Accrediting Agencies, published April 29, 1994 (59 FR 22250).

DATES: *Effective date:* July 1, 1994.

36. 34 CFR Part 667, final regulations for the State Postsecondary Review Program, published April 29, 1994 (59 FR 22286).

DATES: *Effective date:* July 1, 1994.

37. 34 CFR Part 600, final regulations for Institutional Eligibility Under the Higher Education Act of 1965, as Amended, published April 29, 1994 (59 FR 22324).

DATES: *Effective date:* July 1, 1994.

38. 34 CFR Parts 668, 682, and 690, final regulations for the Student Assistance General Provisions, the Federal Family Education Loan Programs, and the Federal Pell Grant Program, published April 29, 1994 (59 FR 22348).

DATES: *Effective date:* July 1, 1994.

39. 34 CFR Parts 75 and 693, final regulations for Direct Grant Programs and the National Early Intervention Scholarship and Partnership Program, published May 12, 1994 (59 FR 24868).

DATES: *Effective date:* June 26, 1994.

Dated: June 20, 1994.

Judith A. Winston,

General Counsel.

[FR Doc. 94-15418 Filed 6-23-94; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket No. 910764–1306]

RIN 0651–AA27

Duty of Disclosure

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Final rule; correcting amendment.

SUMMARY: This document contains corrections to the final regulations which were published in the **Federal Register** on Friday, January 17, 1992 (57 FR 2021). The regulations related to changes regarding the duty of disclosure contained in parts 1 and 10.

EFFECTIVE DATE: March 16, 1992.

FOR FURTHER INFORMATION CONTACT: Charles E. Van Horn by telephone at (703) 305–9054, or by facsimile transmission at (703) 305–8825, or by mail marked to his attention and addressed to Office of the Assistant Commissioner for Patents, Box DAC, Washington, DC 20231.

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections, make changes to the rules of practice relating to the duty of disclosure and the procedures for submitting information disclosure statements to the Office.

Need for Correction

As published, the final regulations contain an error, which may be misleading and is in need of clarification.

List of Subjects in 37 CFR Part 1

Administrative practice and procedure, Inventions and patents, Reporting and recordkeeping requirements, Small businesses.

PART 1—RULES OF PRACTICE IN PATENT CASES

Accordingly, 37 CFR Part 1 is amended by making the following amendment:

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

Authority: 35 U.S.C. 6, unless otherwise noted.

§ 1.97 [Amended]

2. In § 1.97(c)(2), the phrase "paragraph (3) of this section" is revised to read "paragraph (e) of this section".

Dated: June 17, 1994.

Charles E. Van Horn,

Deputy Assistant Commissioner for Patent Policy and Projects.

[FR Doc. 94–15345 Filed 6–23–94; 8:45 am]

BILLING CODE 3510–16–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AG53

Continuous Cohabitation

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) has amended its adjudication regulations concerning continuous cohabitation in order to establish entitlement to death benefits as the surviving spouse of a deceased veteran. This amendment is necessary because the United States Court of Veterans Appeals (the Court) invalidated a portion of the regulations as exceeding the regulation-prescribing authority of the Secretary of Veterans Affairs. The intended effect of this amendment is to bring the regulations into conformance with the Court decision.

EFFECTIVE DATE: This amendment is effective May 13, 1993, the date that the Court rendered the decision.

FOR FURTHER INFORMATION CONTACT: John Bisset, Jr., Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233–3005.

SUPPLEMENTARY INFORMATION: 38 U.S.C. 101(3) requires that in order to establish entitlement to death benefits as a "surviving spouse" of a veteran, the spouse must have lived with the veteran continuously from the date of marriage to the date of the veteran's death, except where there was a separation which was due to the misconduct of, or procured by, the veteran without the fault of the spouse. VA implemented this statutory provision at 38 CFR 3.50(b)(1) utilizing language identical to that of the statute.

The Secretary has also prescribed at 38 CFR 3.53(a) that the requirement of 38 U.S.C. 101(3) concerning continuous cohabitation from the date of marriage to the date of death of the veteran will be considered as having been met when the evidence shows there was "no separation due to the fault of the surviving spouse." In *Gregory* v. *Brown*, U.S. Vet. App. No. 91–912, the Court noted the inconsistency between 38 U.S.C. 101(3) and § 3.53(a) and invalidated that portion of § 3.53(a) that it found inconsistent with the governing statute. The Court found that 38 U.S.C. 101(3) establishes a two-part test to determine whether a spouse will be deemed to have continuously cohabited with the veteran when there has been a separation: (1) the spouse must be free of fault at the time of the separation, and (2) the separation must be due to the misconduct of, or procured by, the veteran. The Court held that given the plain meaning of the statute, the language in the first sentence of § 3.53(a) which requires that the separation not be due to the fault of the surviving spouse, in essence eliminates the second part of the test and is therefore unlawful because it exceeds the authority of the Secretary provided by 38 U.S.C. 501(a). We have amended § 3.53(a) to remove that inconsistency effective May 13, 1993, the date of the Court's decision.

VA is issuing a final rule to implement the decision of the Court in *Gregory* v. *Brown*. Because this amendment simply deletes the invalidated portion of a regulation and makes the regulatory language track the words of the statute, publication as a proposal for public notice and comment is unnecessary.

Since a notice of proposed rulemaking is unnecessary and will not be published, this amendment is not a "rule" as defined in and made subject to the Regulatory Flexibility Act (RFA), 5 U.S.C. 601(2). In any case, this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the RFA, 5 U.S.C. 601–612. This amendment will not directly affect any small entity.

The Catalog of Federal Domestic Assistance program numbers are 64.104 and 64.110.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

Approved January 13, 1994.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 3 is amended as set forth below:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A, continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

§ 3.53 [Amended]

2. In § 3.53(a), in the first sentence, remove the words "there was no separation due to" and insert, in their place, the words "that any separation was due to the misconduct of, or procured by, the veteran without."

[ER Doc. 94–15351 Filed 6–23–94; 8:45 am]

BILLING CODE 8320–01–P

Proposed Rules

Federal Register
Vol. 59, No. 121
Friday, June 24, 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

Farmers Home Administration

7 CFR Part 1980

RIN 0575–AB84

Business and Industrial Loan Program

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Farmers Home Administration (FmHA) proposes to amend its Business and Industry loan servicing regulations. The action is necessary to clarify the procedure for categorizing & classifying loans according to payment frequency criteria. The intended effect is to clarify procedures for classifying and categorizing loan payment history.

DATES: Comments must be submitted on or before August 23, 1994.

ADDRESSES: Submit written comments in duplicate to the Office of the Chief, Regulations Analysis and Control Branch, Farmers Home Administration, U.S. Department of Agriculture, room 6348, South Agriculture Building, 14th and Independence Avenue SW., Washington, DC 20250–0700. All written comments made pursuant to this notice will be available for public inspection during regular working hours at the above address.

FOR FURTHER INFORMATION CONTACT: Kenneth E. Hennings, Senior Loan Specialist, Business and Industry Division, Rural Development Administration, U.S. Department of Agriculture, room 6337, South Agriculture Building, 14th Street and Independence Avenue, SW., Washington, DC 20250–0700, Telephone: (202) 690–3809.

SUPPLEMENTARY INFORMATION:

Classification

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

Programs Affected

The Catalog of Federal Domestic Assistance program impacted by this action is: 10.768, Business and Industrial Loans.

Intergovernmental Review

The Business and Industrial Loan programs are subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. FmHA and RDA conduct intergovernmental consultation in the manner delineated in FmHA Instruction 1940–J, "Intergovernmental Review of Farmers Home Administration Programs and Activities."

Civil Justice Reform

This document has been reviewed in accordance with Executive Order 12778. It is the determination of RDA and FmHA that this action does not unduly burden the Federal Court System in that it meets all applicable standards provided in section 2 of the Executive Order.

Paperwork Reduction Act

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB control number 0575–0029 in accordance with the Paperwork Reduction Act of 1980. This proposed rule does not revise or impose any new information collection or recordkeeping requirement from those approved by OMB.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR Part 1940, subpart G, "Environmental Program." FmHA and RDA have determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

Background

The regulations for Business and Industrial guaranteed loans require the lender to classify each loan in accordance with specific criteria set out in the regulations. It has been discovered that loans that are in compliance with requirements and have been current for more than 23 months but still have an outstanding balance of more than two-thirds of the original loan amount do not fit the criteria provided for in any classification. This action is to revise the criteria so that those loans will be included in the current non-problem classification.

List of Subjects in 7 CFR Part 1980

Loan programs—Business and Industry, rural development assistance, rural areas.

Accordingly, part 1980 of chapter XVIII, title 7 of the Code of Federal Regulations is proposed to be amended as follows:

PART 1980—GENERAL

1. The authority citation for Part 1980 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 7 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart E—Business and Industrial Loan Program

2. Section 1980.469 is amended by revising paragraph (c)(3) to read as follows:

§ 1980.469 Loan servicing.

* * * * *

(c) * * *

(3) *Current Non-problem classification.* Those loans that are current and are in compliance with all loan conditions and B&I regulations but do not meet all the criteria for a seasoned loan classification. All loans not classified as Seasoned or Current Non-problem will be reported on the quarterly status report with documentation of the details of the reason(s) for the assigned classification.

* * * * *

Dated: June 6, 1994.

Bob J. Nash,

Under Secretary, Small Community and Rural Development.

[FR Doc. 94–15365 Filed 6–23–94; 8:45 am]

BILLING CODE 3410–32–U

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 366

RIN 3064–AB39

Contractor Conflicts of Interest

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Board of Directors of the Federal Deposit Insurance Corporation (FDIC) is proposing to adopt a new regulation which will implement provisions of the Resolution Trust Corporation Completion Act (the Completion Act). The Completion Act amended section 12 of the Federal Deposit Insurance Act (FDI Act) to prohibit certain persons and companies from entering into contracts or providing services to the FDIC, and directed the Board of Directors of the FDIC to prescribe regulations for those who enter into contracts with the FDIC governing conflicts of interest, ethical responsibilities, and the use of confidential information.

DATES: Written comments must be received on or before August 23, 1994.

ADDRESSES: All comments should be addressed to Robert E. Feldman, Acting Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429, or delivered to room F–400, 1776 F Street NW., Washington, DC, between the hours of 8:30 a.m. and 5 p.m. on business days [FAX number (202) 898–3838]. Comments will be available for inspection and photocopying in the FDIC's reading room, room 7118, 550 17th Street NW., Washington, DC 20429, between 9:00 a.m. and 4:30 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Joanna Lyckberg, Senior Policy Analyst, Office of Corporate Services, (202) 942–3217; or Debra Slater, Counsel, Regional Affairs Section, Legal Division, (202) 736–0738, FDIC, 550 17th Street NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION: Pursuant to section 12(f)(3) of the FDI Act the FDIC is required to obtain the concurrence of the Office of Government Ethics (OGE) in prescribing regulations pertaining to conflicts of interest, ethical responsibilities and the use of confidential information. The proposed regulation addresses, among other things, conflicts of interest and use of confidential information, and, as to these portions of the regulation, OGE's concurrence is required prior to the regulation becoming final. In order that the proposed regulation be published for comment expeditiously, OGE consents to the publishing of this proposed regulation without having provided its formal concurrence as to the substance of those sections requiring OGE concurrence. Prior to the publication of the regulation as a final rule, the FDIC will obtain OGE's concurrence, as necessary, to those portions of the regulation requiring OGE's concurrence pursuant to section 12(f)(3) of the FDI Act.

I. Paperwork Reduction Act

The FDIC's contract and procurement information requirements constitute a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). This collection has been reviewed and approved by the Office of Management and Budget (OMB) under control number 3064–0072. After reviewing the comments received in response to this proposed rule, the FDIC may change the Representations and Certifications forms that are part of that collection. If such a change is needed, it will be submitted to OMB for review and approval pursuant to the Paperwork Reduction Act.

II. Regulatory Flexibility Act

The Board hereby certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Therefore, the provisions of that Act relating to an initial and final regulatory analysis (5 U.S.C. 603 and 604) do not apply.

III. Background

The Resolution Trust Corporation Completion Act (Pub. L. 103–204, enacted on December 17, 1993), amended section 12 of the Federal Deposit Insurance Act, 12 U.S.C. 1822, to prohibit certain persons and companies from entering into contracts or providing services to the FDIC. In addition, the Completion Act required the Board of Directors of the FDIC to prescribe regulations governing conflicts of interest, ethical responsibilities and the use of confidential information by contractors. Congress required that contractors doing business with the FDIC must meet certain minimum standards of fitness and integrity.

The statute prohibits certain contractors from entering into contracts with the FDIC or performing services on behalf of the FDIC. These mandatory disqualifications apply to any person who: has been convicted of any felony; has been removed from, or prohibited from participating in the affairs of any insured depository institution pursuant to a final enforcement action by any appropriate Federal banking agency; has demonstrated a pattern or practice of defalcation regarding obligations to insured depository institutions; or has caused a substantial loss to the Federal deposit insurance funds. In addition, the statute requires the collection of certain information from prospective contractors concerning any instances of default on material obligations to insured depository institutions during the preceding five (5) years. The FDIC will use that information to determine if the contractor is statutorily or otherwise barred from contracting. The statute also gives the FDIC the authority to abrogate contracts with any contractor who fails to disclose a material fact to the FDIC, would be statutorily prohibited from providing services to the FDIC, or has been subject to a final enforcement action by any Federal banking agency. Finally, the statute requires the FDIC to promulgate regulations governing conflicts of interest, ethical responsibilities, and the use of confidential information consistent with the goals and purposes of titles 18 and 41 of the U.S. Code.

A. Scope of the Proposed Regulation

Section 366.1 discusses the scope of the proposed regulation. The FDIC will apply this part to all contracts for services which it awards in its receivership and corporate capacities. This will include situations where the FDIC is acting as manager of the Federal Savings and Loan Insurance Corporation (FSLIC) Resolution Fund. The FDIC, however, when acting as a conservator of a financial institution, or under its bridge bank authority, will not be subject to this regulation. In order to comply with its statutory obligation to resolve failed institutions at the least possible cost to the Federal deposit insurance funds, the FDIC oversees the operation of bridge banks and conservatorships in a manner designed to minimize costs and preserve franchise value. As such, bridge banks and conservatorships are typically controlled by the FDIC for a short period of time and, to the extent possible, are operated as private sector entities. The contracting activities of these entities, which, to a large extent involve contracts that pre-date FDIC control, are conducted as part of the day-to-day operations of these open and operating financial institutions rather than by the FDIC itself. Thus, bridge banks and conservatorships will not be subject to this regulation.

The FDIC wishes to make it clear that the regulation applies to all of its activities with independent contractors who are providing services to the FDIC in its receivership and corporate capacities. This includes contracts with law firms to provide outside counsel services to the FDIC's Legal Division as well as leases of real property, including office space for FDIC facilities. Contracts which are purely for the acquisition of goods will not be covered by the proposed regulation. Contracts which provide for the acquisition of both goods and services, however, will be covered by the regulation. For example, a procurement of computer equipment would not be subject to the regulation, but a contract for the purchase and installation of computer equipment would be subject to the regulation.

The regulation does not apply to contractors who are deemed under 12 U.S.C. 1822(f)(1)(B), to be employees of the FDIC for purposes of 18 U.S.C. 202. These contractors are subject to other requirements set out at 5 CFR part 2635, regarding standards of ethical conduct for employees of the Executive Branch.

This regulation is applicable to the activities of subcontractors; that is, companies which have entered into contracts with FDIC contractors. Only the first tier of subcontractors is subject to the regulation. The information which is required from the subcontractor will be submitted to the FDIC's prime contractor, and the FDIC will hold its prime contractors responsible for ensuring that first tier subcontractors are in compliance with the regulation.

The FDIC will apply the regulation to all contracts subject to this regulation which are executed after the effective date of this part. In addition, the FDIC will apply the regulation to any contract subject to this part which is already in existence on the effective date of the regulation for which contractual activity, such as a modification, extension or exercise of an option, takes place after the effective date of the regulation. Such contractual activities are tantamount to creating new contracts and therefore these existing contractors should be subject to the same ethical standards which will be applied to new contractors.

B. Resolution Trust Corporation Transition

Section 366.1(d) of the proposed regulation addresses the termination of the Resolution Trust Corporation (RTC) and the transition of RTC contracts to the FDIC. The RTC is expected to terminate, by statute, no later than December 31, 1995. At that time, RTC functions and responsibilities will be assumed by the FDIC. The FDIC may choose to continue some of the contracts which the RTC entered into with private sector contractors. Some of these RTC contracts will have a duration which extends beyond the RTC's termination date, and the FDIC may assume these contracts. In other cases, the FDIC may enter into modifications of RTC contracts in order to continue them beyond the RTC termination date. In either case, the regulation will apply to any RTC contracts to which the FDIC succeeds. This should present little hardship to RTC contractors, as the RTC's statutorily mandated bars are identical to those contained in the Completion Act.

C. Previous Policies

Section 366.1(e) of the proposed regulation discusses the FDIC's previous policies on contractor conflicts of interest. The FDIC issued a statement of policy on contracting with outside firms, which was published in the **Federal Register** on May 17, 1993 (58 FR 28866). This policy statement, which was applicable to all FDIC acquisitions of goods and services, with the exception of legal services, limited the ability of the FDIC to contract with firms in litigation with the FDIC, the RTC, FSLIC and any successors to FSLIC, and firms in default on financial obligations to the FDIC, the RTC, FSLIC or any successors to FSLIC, as well as the affiliated business entities of those firms.

The policy statement did not apply to the acquisition of outside counsel services for the FDIC's Legal Division because the Legal Division has been following the RTC's regulation, 12 CFR part 1606, entitled Qualification of, Ethical Standards of Conduct for, and Restrictions on the Use of Confidential Information by Independent Contractors. Because the statutorily mandated bars in the proposed regulation are identical to those in the RTC's regulation, the Legal Division will follow the proposed regulation. Applicability of the proposed regulation to the acquisition of outside counsel services for the Legal Division should provide the FDIC with increased uniformity in its contractual relationships.

The proposed regulation will supersede and replace the May 17, 1993, policy statement on contracting with outside firms. In general, the regulation tracks the statutory bars which prohibit certain contractors from performing services on behalf of the FDIC. In addition, contractors which have conflicts of interest are prohibited from performing under FDIC contracts. The FDIC recognizes, however, that in certain cases it may be in the FDIC's best interest to waive certain conflicts of interest. Therefore, the regulation sets forth procedures which contractors must follow if they seek a waiver or resolution of a conflict of interest in order to enter into a new contract with the FDIC or be permitted to continue performance under an existing contract.

D. Definitions

Section 366.2 contains definitions of terms used throughout the regulation.

Company: The proposed definition of company has been expanded from that used in section 2(b) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(b)) to include individuals, partners, and joint ventures. These entities were included because the FDIC believes that it can best meet the congressional intent contained in the Completion Act by including all possible business organizations and ventures.

Conflict of Interest: In arriving at this proposed definition, the FDIC considered separate definitions of organizational conflicts of interest, personal conflicts of interest, and unfair competitive advantage. The umbrella definition included in the regulation is intended to cover all three aspects of a conflict of interest. Further, it allows for flexibility and, with regard to a particular offer, allows the FDIC to identify with more specificity the conditions that might create a conflict of interest or an appearance thereof.

Contractor: This proposed definition includes companies which enter into contracts with the FDIC as well as those which enter into contractual and other relationships with an FDIC contractor in order to fulfill the contractor's obligation under an FDIC contract. Thus, this definition includes first tier subcontractors. The FDIC has elected to adopt a broad definition of "contractor" in order to have the latitude to review the fitness and integrity of those who actually perform services under FDIC contracts. For example, under this definition, if an FDIC contractor obtained temporary employees from a temporary agency, those individuals would fall within the definition of contractor.

Default on a Material Obligation: The FDIC proposes to define this term to mean a delinquency of 90 or more days as to payment of principal or interest, or a combination thereof, on a loan or advance from an insured depository institution in an amount in excess of $50,000. As required by the statute, the regulation requires that all offerors

submit a list and description of defaults on material obligations incurred by their company or by any persons proposed to work on the contract. It should be noted that such defaults are to be listed regardless of whether or not they have been cured.

Insider: The definition of insider in the proposed regulation is based on the definition of the term as set forth in § 215.2 of Regulation O, 12 CFR 215.2, but has been extended to include the insider's affiliated business entities. The FDIC believes that insiders, acting alone or with others, who received nonrecourse loans which constitute unsafe and unsound lending practices should be specifically addressed in the regulations, even if the insider loans did not result in a loss to a federally insured depository institution. The FDIC concluded that it was important, in order to effectuate congressional intent, that these individuals not benefit, through FDIC contracts, from their practices and their positions.

Pattern or Practice of Defalcation: This proposed definition addresses two situations: two or more instances of loans or advances from an insured depository institution that are or have been delinquent for 90 or more days as to payment of principal, interest, or a combination thereof, on which there remains a legal obligation to pay an amount in excess of $50,000; and loans or advances from an insured depository institution where there has been a failure to comply with the terms to such an extent that the collateral securing the loan or advance was foreclosed upon resulting in a loss in excess of $50,000. The last part of the definition is based on section 11(p) of the Federal Deposit Insurance Act, 12 U.S.C. 1821.

Person: This proposed definition comprises both a company's management officials and any partners or employees of a company who are performing or are proposed to perform services pursuant to an FDIC contract. The proposed regulation requires that the FDIC obtain, with every offer, a list and description of every instance during the preceding ten (10) years in which persons in the company defaulted on material obligations to an insured depository institution. The FDIC considered limiting the definition of person to include only a company's management officials and the key personnel who would work on the FDIC contract, but determined that it can best carry out the intent of Congress by gathering this information on all individuals employed by the company who would work on the FDIC contract.

Substantial Loss to Federal Deposit Insurance Funds: This proposed definition incorporates $50,000 as the threshold for establishing a substantial loss. This loss must have inured to one of the Federal deposit insurance funds, or the FDIC, the RTC, FSLIC, or their successors. Four types of losses are addressed: those resulting from delinquent loans, outstanding unsatisfied final judgments, nonrecourse loans obtained by insiders, and secured loans where the collateral has been foreclosed. In contrast to a pattern or practice of defalcation, which requires two or more occurrences in order to invoke the statutory prohibition on contracting with the FDIC, a substantial loss requires only a single occurrence of loss in excess of the $50,000 threshold.

E. Prohibited Contracting Activities

Section 366.3(b) of the proposed regulation reflects the statutory mandates which have been imposed on the FDIC in its contracting activities. These include the statutory bars which restrict with whom the FDIC may enter into contracts: those who have been convicted of felonies; those who have been removed from or prohibited from participating in the affairs of any insured depository institution pursuant to any final enforcement action by any appropriate Federal banking agency; those who have demonstrated a pattern or practice of defalcation; and those who have caused a substantial loss to Federal deposit insurance funds. While the statute only applies these mandatory bars to actions of persons, the FDIC has concluded that companies should also be prohibited from contracting with the FDIC if they meet the described criteria. The FDIC recognizes, for example, that a company cannot be removed from participating in the affairs of an insured financial institution. However, companies which employ persons to perform work on FDIC contracts who were so removed may therefore be barred themselves from contracting with the FDIC. Of particular note is the fact that companies that have been convicted of felonies are not qualified to enter into contracts with the FDIC. This is in contrast to the RTC regulation, which only bars individuals who have been convicted of a felony. In addition to those prohibitions mandated by statute, the FDIC will not contract with those who have a conflict of interest which has not been resolved or waived by the FDIC.

Section 366.4, entitled "Disqualification of Contractors", requires a) that offerors notify the FDIC of any disqualifying events which occur between the time that they submit their offers and contract award, and b) that contractors notify the FDIC of any disqualifying events which occur during their performance of an FDIC contract. The Contractor Fitness and Integrity Compliance Officer, or a designee or the General Counsel, or a designee, shall then notify the contractor in writing of his or her finding as to whether or not the contractor is still qualified to continue performing under the contract, the basis for such determination, and, when applicable, a description of the actions, if any, which the contractor must take in order to eliminate the disqualifying factor. The contractor must complete such corrective actions not later than 30 days after notification, unless the Contractor Fitness and Integrity Compliance Officer or the General Counsel, at his or her sole discretion, determines that it will be in the best interest of the FDIC to grant the contractor a longer period.

F. Conflicts of Interest

Section 366.5 of the proposed regulation, entitled "Conflicts of Interest", states that it is the FDIC's preference to avoid awarding contracts which have associated conflicts of interest. For that reason, the FDIC generally will not actively solicit offers from companies which the FDIC knows have one or more conflicts of interest associated with a proposed contract. This section contains several examples of conflicts of interest.

Section 366.5 also contains the procedure which companies must follow if they have conflicts of interest regarding a proposed contract which they are requesting the FDIC to waive or resolve. In the case of contracts for legal services, the requests for waivers or resolutions will be considered by the General Counsel or his or her designee. Requests for waivers or resolutions of conflicts of interest in all other cases will be considered by the Contractor Fitness and Integrity Compliance Officer or his or her designee.

Section 366.5 requires: (1) That offerors notify the FDIC if they learn, after submission of an offer, that their company, or any person in the company, has a conflict of interest; and (2) that contractors notify the FDIC of any conflicts of interest arising during their performance of an FDIC contract. The Contractor Fitness and Integrity Compliance Officer, or a designee or the General Counsel, or a designee, shall then notify the contractor in writing of his or her finding as to whether or not the contractor is still qualified to continue performing under the contract, the basis for such determination, and, when applicable, a description of the actions which the contractor must take

in order to resolve a conflict of interest. The contractor must complete such corrective actions not later than 30 days after notification, unless the Contractor Fitness and Integrity Compliance Officer or the General Counsel, at his or her sole discretion, determines that it will be in the best interest of the FDIC to grant the contractor a longer period.

Lawyers and law firms providing legal services to the FDIC are required to follow, in addition to the conflicts of interest requirements proposed by this regulation, the applicable Code(s) of Professional Responsibility and the contractual conflict of interest provisions set out in the FDIC Legal Division's Guide for Outside Counsel and its Statement of Policies Concerning Outside Counsel Conflicts of Interest. These additional requirements are provided to legal services contractors as part of the Legal Division's solicitation process.

If the FDIC determines that the contractor is no longer able to meet the minimum standards, as a result of a disqualifying factor or a conflict of interest, the FDIC may rescind or terminate the contract pursuant to § 366.8 of the regulation.

G. Information Required To Be Submitted

Section 366.6(a) of the proposed regulation requires that offerors submit with their offers: (1) Certifications regarding the statutory bars as well as any conflicts of interest the offeror may have which relate to the proposed contract; and (2) a list and description of any instances during the ten (10) years preceding the submission of the offer that the offeror, or anyone that the offeror plans to assign to work on the FDIC contract, defaulted on a material obligation to an insured depository institution in an amount in excess of $50,000. While the statute required that the latter information be collected only for the five (5) years preceding submission of the offer, the FDIC decided that ten (10) years was a more appropriate time period. Ten years will, in many cases, encompass the last several years that a closed institution was open prior to the FDIC's intervention. The FDIC's experience has been that a significant number of loan defaults occurred during this time period. The FDIC also concluded that because the required time period would be calculated from the present rather than from a fixed date in the past, the ten year time period was necessary in order to capture the period when defaults likely would have occurred.

Section 366.6(b) requires that contractors submit the information required in § 366.6(a) regarding anyone they employ, directly or indirectly, after receiving the award, to work on the FDIC contract, and gives the FDIC the right to disapprove the direct or indirect employment of such persons to work on the contract.

H. Confidential Information

Section 366.7 of the proposed regulation prohibits contractors from disclosing confidential information to which they may become privy as a result of their FDIC contracts.

I. Abrogation of Contracts

Section 366.8 of the proposed regulation states that the FDIC may rescind or terminate any contract with a contractor which: (1) Fails to disclose a material fact to the FDIC; (2) would not be qualified under the proposed regulation to provide services to, receive fees from, or contract with the FDIC; (3) has been subject to a final enforcement action by any Federal banking agency; or (4) fails to take the actions required by the FDIC to resolve a conflict of interest.

J. Finality of Determination

Section 366.9 of the proposed regulation tracks the language of the Federal Deposit Insurance Act, 12 U.S.C. 1822(f)(4)(D)(ii).

List of Subjects in 12 CFR Part 366

Conflict of interests, Government contracts, Reporting and recordkeeping requirements, Resolution Trust Corporation.

For the reasons set forth in the preamble, pursuant to its authority under section 19 of the Resolution Trust Corporation Completion Act, the Board of Directors of the FDIC hereby proposes to amend title 12, Chapter III of the Code of Federal Regulations by adding part 366 as follows:

PART 366—CONTRACTOR CONFLICTS OF INTEREST

Sec.

366.1 Authority, purpose, and scope.
366.2 Definitions.
366.3 Qualification of contractors.
366.4 Disqualification of contractors.
366.5 Contractor conflicts of interest and ethical responsibilities.
366.6 Information required to be submitted.
366.7 Confidentiality of information.
366.8 Abrogation of contracts.
366.9 Finality of determination.

Authority: 12 U.S.C. 1819, 1822(f)(3).

§ 366.1 Authority, purpose, and scope.

(a) *Authority.* This part is adopted pursuant to section 12(f)(3) of the Federal Deposit Insurance Act, 12 U.S.C. 1822(f)(3), and the rule-making authority of the Federal Deposit Insurance Corporation (FDIC) found at 12 U.S.C. 1819. Pursuant to those sections, the FDIC is promulgating the regulations in this part applicable to independent contractors governing conflicts of interest, ethical responsibilities, and the use of confidential information consistent with the goals and purposes of titles 18 and 41 of the U.S. Code. The FDIC will apply this part to all contractual activities it undertakes, including situations in which it is acting as manager of the Federal Savings and Loan Insurance Corporation (FSLIC) Resolution Fund (FRF). This part does not apply to the FDIC when acting as a conservator of a failed financial institution or when operating a bridge bank. This part is in addition to, and not in lieu of, any other statute or regulation which may apply to the conduct of such contractors.

(b) *Purpose.* This part seeks to govern conflicts of interest, ethical responsibilities, and the use of confidential information by contractors consistent with the goals and purposes of titles 18 and 41 of the U.S. Code. Its further purpose is to establish official written guidance to contracting personnel who are awarding contracts for services and to contractors bidding on such contracts.

(c) *Scope.* (1) This part applies to private sector contractors, including law firms, which submit offers to provide services to the FDIC in response to FDIC solicitations or which enter into contracts for services with the FDIC. Further, this part applies to companies which enter into contracts or other relationships to provide services to FDIC contractors in order to fulfill the contractors' obligations under FDIC contracts. In addition, this part applies to lessors who seek to lease or who enter into leases of real property for the use of the FDIC. Further, this part applies to contractors who are not deemed, under 12 U.S.C. 1822(f)(1)(B) to be employees of the FDIC for purposes of 18 U.S.C. 202.

(2) For all contractors subject to this part, FDIC will apply this part to contracts which are entered into between the contractors and the FDIC after [the effective date of the final regulation]. In addition, this part applies to contracts between contractors subject to this part and the FDIC which are in existence on [the effective date of the final regulation] for which a contractual action, such as a modification, extension, or exercise of an option, takes place after [the effective date of the final regulation].

(d) *Resolution Trust Corporation transition.* After the termination of the Resolution Trust Corporation (RTC), which will, by statute, occur no later than December 31, 1995, this part shall apply to all RTC contracts which have a term which continues beyond the RTC's termination and to which the FDIC succeeds.

(e) *Previous policies.* This part supersedes and replaces the FDIC's "Statement of Policy on Contracting with Outside Firms", which was published in the Federal Register on May 17, 1993 (58 FR 28866), effective on [the effective date of the final regulation].

§ 366.2 Definitions.

As used in this part:

(a) *Affiliated business entity* means a company that is under the control of the contractor, is in control of the contractor or is under common control with the contractor; or which the FDIC determines, at its sole discretion, and after consideration of the appropriate factors, is affiliated with a specific contractor. In determining whether companies are independently owned and operated and whether or not they are affiliated business entities, consideration is given to appropriate factors, including but not limited to common ownership, common management, and contractual relationships. A subfranchiser shall not be considered an affiliated business entity of its master franchiser if the subfranchiser is independently owned and operated.

(b) *Company* means any individual, corporation, partnership, joint venture, business trust, association or similar organization, or any other trust unless by its terms it must terminate within twenty-five years or not later than twenty-one years and ten months after the death of individuals living on the effective date of the trust, but shall not include any corporation the majority of the shares of which are owned by the United States, any state, or the District of Columbia.

(c) *Confidential information* means all information provided by the FDIC to the contractor and all information which the contractor obtains during and as a result of its performance under an FDIC contract. It does not include information:

(1) Which is generally available to the public;

(2) Which becomes generally available to the public other than as a result of a disclosure by the contractor, its affiliated business entities or its management officials;

(3) Was available to the contractor on a non-confidential basis prior to its disclosure to the contractor by the FDIC; or

(4) Becomes available to the contractor on a non-confidential basis from a source other than the FDIC when such source, insofar as is known to the contractor after reasonable inquiry, is not prohibited from making the disclosure to the contractor.

(d) *Conflict of interest* means a situation in which:

(1) A company, or any of its management officials or affiliated business entities, or any management officials of those affiliated business entities, has one or more personal, business, or financial interests or relationships which:

(i) Would adversely affect that company's ability to impartially fulfill its obligation to provide services to the FDIC under the terms of a proposed or existing contract, or to represent the FDIC; or

(ii) Could cause a reasonable individual with knowledge of the relevant facts to question that company's ability to impartially fulfill its responsibility to provide services to the FDIC under the terms of a proposed or existing contract, or to represent the FDIC; or

(2) Performance of a proposed or existing contract may provide a company with an advantage unintended by the contract which favors the interests of the company or any individual or entity presently or potentially able to confer a benefit on the company, or can be used for the benefit of the company or any individual or entity able to confer a benefit on the company; or

(3) A company, or any of its management officials or affiliated business entities, or any management officials of those affiliated business entities, is an adverse party to a lawsuit in which the FDIC, RTC, FSLIC, or their successors, is seeking recovery in excess of $50,000; or

(4) Any other facts exist which the FDIC determines, at its sole discretion, would give rise to an appearance of a conflict of interest, a loss of impartiality or divided loyalties if the company were to perform under a proposed or existing FDIC contract.

(e) *Contractor* means:

(1) A company which has submitted an offer to perform services for the FDIC or has a contractual arrangement with the FDIC to perform services, but does not include special government employees as described at 18 U.S.C. 202.

(2) Any company with which a contractor has entered or intends to enter into a contractual or other relationship in order to fulfill the contractor's obligations under an FDIC contract.

(f) *Control* means:

(1) The power to vote, directly or indirectly, 25 percent or more of any class of the voting stock of a company, the ability to direct in any manner the election of a majority of a company's directors or trustees, or the ability to exercise a controlling influence over the company's management and policies. For purposes of this definition, a general partner of a limited partnership is presumed to be in control of that partnership.

(2) For purposes of this part, an entity or individual shall be presumed to have control of a company if the entity or individual directly or indirectly, or acting in concert with one or more entities or individuals, or through one or more subsidiaries, owns or controls 25 percent or more of its equity, or otherwise controls or has power to control its management or policies.

(g) *Default on a material obligation* means a loan or advance from an insured depository institution which is or has been delinquent for 90 or more days as to payment of principal or interest, or a combination thereof, in an amount in excess of $50,000.

(h) *Federal banking agency* means the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the Board of Governors of the Federal Reserve System, or the Federal Deposit Insurance Corporation, or their successors.

(i) *Federal deposit insurance fund* means the Bank Insurance Fund, the Savings Association Insurance Fund, the FRF, or the funds maintained by the RTC for the benefit of insured depositors.

(j) *FDIC* means the Federal Deposit Insurance Corporation in its receivership and corporate capacities. It does not mean the FDIC in its conservatorship capacity or when operating a bridge bank.

(k) *Insider* means an officer, director or principal shareholder and includes affiliated business entities of such individuals.

(l) *Insured depository institution* means any bank or savings association the deposits of which are insured by the FDIC.

(m) *Management official* means an individual who controls a company. With respect to partnerships whose management committee or executive committee has responsibility for control, this means only a member of such

committee but, if no such committee exists, this means each of the general partners.

(n) *Offer* means a response submitted by an offeror to an FDIC solicitation. For outside counsel services, "offer" means the application submitted by the law firm to the FDIC.

(o) *Offeror* means a company which submits an offer in response to a solicitation.

(p) *Pattern or practice of defalcation* means two or more instances in which:

(1) A loan or advance from an insured depository institution is or has been delinquent for ninety (90) or more days as to payment of principal, interest, or a combination thereof and there remains a legal obligation to pay an amount in excess of $50,000; or

(2) A loan or advance from an insured depository institution where there has been a failure to comply with the terms to such an extent that the collateral securing the loan or advance was foreclosed upon, resulting in a loss in excess of $50,000 to the insured depository institution.

(q) *Person* means a management official of a company, or any partner or employee of the company who is performing or is proposed to perform services pursuant to an FDIC contract.

(r) *RTC* means the Resolution Trust Corporation in any of its capacities.

(s) *Solicitation* means a document sent to prospective offerors that requests either quotations or offers to provide the services specified therein.

(t) *Substantial loss to Federal deposit insurance funds* means:

(1) A loan or advance from an insured depository institution, which is now owed to the FDIC, RTC, FSLIC or their successors, or any Federal deposit insurance fund, that is or has been delinquent for ninety (90) or more days as to payment of principal, interest, or a combination thereof and on which there remains a legal obligation to pay an amount in excess of $50,000; or

(2) An obligation to pay an outstanding, unsatisfied, final judgment in excess of $50,000 in favor of any Federal deposit insurance fund, the FDIC, RTC, FSLIC, or their successors; or

(3) A nonrecourse loan, advance, or extension of credit in excess of $50,000 made to an insider from an insured depository institution that the insider, acting alone or in concert with others, knew or should have known was an unsafe and unsound action of the insured depository institution or its management; or

(4) A loan or advance from an insured depository institution which is now owed to the FDIC, RTC, FSLIC or their successors, or any Federal deposit insurance fund, where there has been a failure to comply with the terms to such an extent that the collateral securing the loan or advance was foreclosed upon, resulting in a loss in excess of $50,000.

§ 366.3 Qualification of contractors.

(a) *Responsibility.* (1) The General Counsel of the FDIC shall address conflicts of interest relating to contractors for outside counsel services engaged by the FDIC's Legal Division. The General Counsel may delegate authority to one or more individuals to address conflicts of interest which arise under this part. Such delegations must be in writing and may not be redelegated.

(2) The Chairman of the Board of Directors of the FDIC will appoint a Contractor Fitness and Integrity Compliance Officer, who shall address conflicts of interest involving contractors other than those providing outside counsel services for the Legal Division. The Contractor Fitness and Integrity Compliance Officer may delegate authority to one or more individuals to address conflicts of interest which arise under this part. Such delegations must be in writing and may not be redelegated.

(b) *Qualification for service on behalf of the FDIC.* The FDIC shall not permit any person or company to enter into any contract with the FDIC or to perform any service on behalf of the FDIC pursuant to any such contract if that person or company:

(1) Has been convicted of any felony;

(2) Has been removed from, or prohibited from participating in the affairs of, any insured depository institution pursuant to any final enforcement action by any appropriate Federal banking agency;

(3) Has demonstrated a pattern or practice of defalcation;

(4) Has caused a substantial loss to Federal deposit insurance funds; or

(5) Has a conflict of interest which has not been resolved or waived by the FDIC.

§ 366.4 Disqualification of contractors.

(a) *Disqualifying factors in existence prior to submission of an offer.* Offerors who have any of the factors identified in § 366.3(b) (1) through (4) in existence prior to submission of an offer are disqualified. Such offerors are prohibited from entering into contracts with the FDIC or performing services on behalf of the FDIC.

(b) *Addressing disqualifying factors that arise after submission of an offer but prior to award.* (1) If, after submitting its offer, but prior to contract award, an offeror discovers that its company, or any person in the company, has a disqualifying factor identified in § 366.3(b) (1) through (4), the offeror must so notify the FDIC in writing within ten (10) days of discovery of the disqualifying factor.

(2) Offerors that are disqualified from providing services to the FDIC because of the existence of factors identified in § 366.3(b) (1) through (4) are prohibited from entering into contracts with the FDIC or performing services on behalf of the FDIC.

(c) *Addressing disqualifying factors that arise after contract award.* All contractors are required to notify the FDIC in writing within 10 days after discovering that their company has a disqualifying factor, as listed at § 366.3(b) (1) through (4). Such notification shall contain a detailed description of the specific condition and state how the contractor intends to resolve such condition. The Contractor Fitness and Integrity Compliance Officer, or a designee, or the General Counsel, or a designee, shall notify the contractor in writing of the actions, if any, which the contractor must take in order to eliminate the disqualifying factor. Such corrective actions must be completed by the contractor not later than 30 days after notification by the FDIC unless the Contractor Fitness and Integrity Compliance Officer or the General Counsel, at his or her sole discretion, determines that it will be in the best interest of the FDIC to grant the contractor a longer period in which to complete such action.

(d) *Reconsideration of determination.* Decisions issued by the Contractor Fitness and Integrity Compliance Officer, or a designee or the General Counsel, or a designee, may be reconsidered upon application by the affected party(ies) to the deciding official. Such requests must be in writing and contain the bases for the request.

§ 366.5 Contractor conflicts of interest and ethical responsibilities.

(a) *General.* The FDIC's preference is to award contracts which do not have associated conflicts of interest. Therefore, as a general rule, in order to minimize the administrative burden of reviewing all potential conflicts of interest, the FDIC will not actively solicit offers from companies which the FDIC knows have one or more conflicts of interest associated with the proposed contract. Neither a person nor a company which has a conflict of interest will be permitted to enter into any contract with the FDIC or to perform any service on behalf of the FDIC

pursuant to any such contract unless that conflict of interest is resolved or waived by the FDIC. The following are examples of conflicts of interest:

(1) A company, or any of its management officials or affiliated business entities, or any management officials of those affiliated business entities are, or have been insiders of an insured depository institution for which the FDIC or the RTC has been appointed as receiver, and the proposed contract contemplates services related to the assets of that institution.

(2) A company was awarded a contract to review assets acquired by the FDIC and to develop a plan of action for disposing of those assets. To allow the contractor to bid on the subsequent solicitation concerning the disposition of those assets, or to assist another company in the preparation of a bid, would provide the contractor or such other company with an unfair competitive advantage and would constitute a conflict of interest.

(3) A company's affiliated business entity, or any management official of that affiliated business entity, has caused a substantial loss to Federal deposit insurance funds.

(b) *Addressing conflicts of interest in existence prior to submission of an offer*—(1) *Offerors of legal services.* An offeror of legal services that has a conflict of interest may, with its offer, request resolution or waiver of such conflict of interest. The General Counsel, or a designee, at his or her sole discretion, may waive the conflict of interest or enter into a written agreement with the offeror which will resolve the conflict of interest for purposes of the specific contract.

(2) *Offerors of all other types of services.* (i) In all other cases, an offeror that has a conflict of interest may, with its offer, request resolution or waiver of such conflict of interest. The Contractor Fitness and Integrity Compliance Officer, or a designee, at his or her sole discretion, may waive the conflict of interest or enter into a written agreement with the offeror which will resolve the conflict of interest for purposes of the specific contract.

(ii) Waivers or resolutions of conflicts of interest will only be considered when the FDIC determines, at its sole discretion, that the offer is the most advantageous of all received.

(iii) In very limited circumstances a company may request a pre-bid review of a conflict of interest. The request shall be in writing, and shall describe in detail the conflict of interest and a recommended resolution. The FDIC will perform a pre-bid review when it determines, at its sole discretion, that the participation of that company in the bidding process is necessary to ensure adequate competition.

(c) *Addressing conflicts of interest arising after submission of an offer but prior to award*—(1) *Offerors of legal services.* If, after submitting its offer, but prior to contract award, an offeror of legal services discovers that its company, or any person in the company has a conflict of interest, it must so notify the FDIC in writing within ten (10) days of discovery of the conflict of interest. The offeror may include with such notification a request for resolution or waiver of such conflict of interest. The General Counsel, or a designee, at his or her sole discretion, may waive the conflict of interest or enter into a written agreement with the offeror which will resolve the conflict of interest for purposes of the specific contract.

(2) *Offerors of all other types of services.* (i) If, after submitting its offer, but prior to contract award, an offeror discovers that its company, or any person in the company has a conflict of interest, it must so notify the FDIC in writing within ten (10) days of discovery of the conflict of interest. The offeror may include with such notification a request for resolution or waiver of such conflict of interest. The Contractor Fitness and Integrity Compliance Officer, or a designee, at his or her sole discretion, may waive the conflict of interest or enter into a written agreement with the offeror which will resolve the conflict of interest for purposes of the specific contract.

(ii) Waivers of conflicts of interest will only be considered if the FDIC, at its sole discretion, determines that the offer is the most advantageous of all received.

(d) *Addressing conflicts of interest that arise after contract award.* All contractors are required to notify the FDIC in writing within 10 days after discovering that their company has a conflict of interest. Such notification shall contain a detailed description of the conflict of interest and state how the contractor intends to resolve such condition. The Contractor Fitness and Integrity Compliance Officer, or a designee or the General Counsel, or a designee, shall notify the contractor in writing of his or her finding as to whether the contractor is still qualified to continue performing under the contract with the FDIC, the basis for such determination, and, when applicable, a description of the actions which the contractor must take in order to resolve the conflict of interest. Such corrective actions must be completed by the contractor not later than 30 days after notification by the FDIC unless the Contractor Fitness and Integrity Compliance Officer or the General Counsel, at his or her sole discretion, determines that it will be in the best interest of the FDIC to grant the contractor a longer period in which to complete such action.

(e) *Reconsideration of determination.* Decisions issued by the Contractor Fitness and Integrity Compliance Officer, or a designee or the General Counsel, or a designee, may be reconsidered upon application by the affected party(ies) to the deciding official. Such requests must be in writing and contain the bases for the request.

§ 366.6 Information required to be submitted.

(a) *Initial submission.* Every offer submitted to the FDIC by any company shall include the following, in a format to be provided by the FDIC in the solicitation:

(1) Certifications that the company or any person in the company, is not disqualified from service on behalf of the FDIC because of the existence of any of the factors identified in § 366.3(b) (1) through (4), or conflicts of interest as defined in § 366.2(d) (1) through (3), subject to the contractor's request for resolution or waiver of a conflict of interest as described in § 366.5;

(2) A list and description of any instance during the ten (10) years preceding the submission of the offer in which the company, or any person in the company, or any company under such person's control defaulted on a material obligation to any insured depository institution; and

(3) Any other information which the FDIC may deem appropriate.

(b) *Subsequent submissions.* (1) No offer submitted to the FDIC may be accepted unless the offeror agrees that no person will be employed, directly or indirectly, by the offeror to work on any contract with the FDIC unless the information required in paragraph (a) of this section regarding such person is submitted to the FDIC and the FDIC does not disapprove of the direct or indirect employment of that person.

(2) During the term of any contract, contractors shall submit the information described in paragraph (a) of this section at any time that the FDIC so requests.

(c) *Failure to provide information.* Any contractor who fails to provide any information described in this part will not be eligible for the award of an FDIC contract or be qualified to contract with the FDIC.

§ 366.7 Confidentiality of information.

(a) Contractors are prohibited from:

(1) Disclosing confidential information to anyone except as required to perform the contractor's obligations pursuant to the contract; or

(2) Using or allowing the use of any confidential information to further any private interest other than as contemplated by the contract.

(b) Contractors shall take appropriate measures to ensure the confidentiality of confidential information and to prevent its disclosure and inappropriate use.

§ 366.8 Abrogation of contracts.

(a) *Circumstances permitting abrogation of contracts.* The FDIC may rescind or terminate any contract with a contractor who:

(1) Fails to disclose a material fact to the FDIC;

(2) Would not be qualified under this regulation to provide services to, receive fees from, or contract with the FDIC;

(3) Has been subject to a final enforcement action by any Federal banking agency; or

(4) Fails to take the actions required by the FDIC to resolve a conflict of interest.

(b) *Liability for rescission or termination.* The FDIC may seek its actual, direct, and consequential damages from a contractor whose actions were the basis for rescission or termination of a contract between the FDIC and the contractor. This right to terminate or rescind and these remedies are cumulative and in addition to any other remedies or rights the FDIC may have under the terms of the contract, at law, or otherwise.

§ 366.9 Finality of determination.

Any determination made by the FDIC pursuant to this part shall be at the FDIC's sole discretion and shall not be subject to further review.

By Order of the Board of Directors.

Dated at Washington, D.C. this 14th day of June, 1994.

Federal Deposit Insurance Corporation

Leneta G. Gregorie,

Acting Assistant Executive Secretary.

[FR Doc. 94–15103 Filed 6–23–94; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Chapter I

[Summary Notice No. PR–94–14]

Petition for Rulemaking; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for rulemaking received.

SUMMARY: Pursuant to FAA's provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR Part 11), this notice contains a summary of a petition filed by the Air Transport Association of America to amend Federal Aviation Regulations concerning airline compensation for collection, handling, and remittance of passenger facility charges (PFCs). The purpose of this notice is to seek the public's participation in FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number and must be received on or before July 25, 1994.

ADDRESSES: Send comments on the petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket No. 27791, 800 Independence Avenue SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Sheryl A. Scarborough, Management and Program Analyst, Passenger Facility Charge Branch (APP–530), Airports Financial Assistance Division, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–8825.

This notice is published pursuant to paragraph (b) of section 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC on June 17, 1994.

Cynthia Rich,

Assistant Administrator for Airports.

Petition for Rulemaking

Docket No.: 27791.

Petitioner: Air Transport Association of America (ATA).

Regulations Affected: 14 CFR 158.53.

Description of Rulechange Sought: Section 158.53(a) provides, as compensation for collecting, handling, and remitting the PFC revenue, that the collecting air carrier shall be entitled to retain $0.12 of each PFC remitted on or before June 28, 1994. Thereafter, air carriers shall be entitled to $0.08 of each PFC remitted. The petition requests that § 158.53(a) be modified to extend the $0.12 handling fee for an additional three years, at which time the petitioner would file comments as to whether or not the airline industry, as a whole, has fully recovered the costs of implementing, operating, and maintaining the PFC collection system. Further, the petitioner requests that § 158.53 be amended to allow air carriers to retain a handling fee for a refunded PFC.

Petitioner's Reason for this Request: The petitioners assert that the economic health of the airline industry depends, in part, upon the full cost recovery of programs which the carriers implement. This includes the PFC program, which the carriers are required, by law, to carry out on behalf of airport operators. Further, the petitioner asserts that service to passengers may ultimately be harmed if airlines are required to cut costs elsewhere to compensate for unrecovered costs associated with the PFC program.

FAA request for information: In order that the FAA may consider and fully evaluate this petition for rulemaking, interested parties are asked to provide the following information;

For air carriers, please provide the following data:

1. To date, number of PFCs collected, refunded, and remitted.
2. Average numbers of airport public agencies to whom PFCs are remitted monthly.
3. Average numbers of PFCs collected, refunded, and remitted monthly.
4. One time collection start-up costs, broken out by cost centers.
5. Monthly, on-going collection costs, broken out by cost centers.
6. Monthly, on-going refund costs, broken out by cost centers.
7. Monthly, on-going remittance costs, broken out by cost centers.
8. Annual auditing costs.

9. Average monthly PFC interest income earned.

For public agencies, please provide the following data:

1. What impact, if any, would adopting the petition's request to maintain airline compensation at $.12 per PFC remitted have on existing PFC project schedules.

2. What impact, if any, would adopting the petition's request to maintain airline compensation at $.12 per PFC remitted have on existing PFC project costs.

3. What measures would public agencies expect to take to compensate for lost PFC income if (1) the petition's request to maintain airline compensation at $.12 per PFC remitted were adopted, or if (2) the airline compensation basis were changed to PFCs collected, rather than PFCs remitted.

[FR Doc. 94–15405 Filed 6–23–94; 8:45 am]
BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 94–AWP–16]

Proposed Establishment of Class E Airspace; Inyokern, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at Inyokern, CA. A Global Positioning System (GPS) standard instrument approach procedure (SIAP) has been developed for the Inyokern Municipal Airport. Controlled airspace extending from 700 feet above the surface is needed for aircraft executing the approach. The intended effect of this proposal is to provide adequate Class E airspace for instrument flight rules (IFR) operations at Inyokern Municipal Airport .

DATES: Comments must be received on or before August 15, 1994.

ADDRESSES: Send comments on the proposal in triplicate to Manager, System Management Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, Docket No. 94–AWP–16, 15000 Aviation Boulevard, Lawndale, California, 90261. The official docket may be examined in the Office of the Assistant Chief Counsel for the Western-Pacific Region at the same address. An informal docket may also be examined during normal business hours in the Office of the Manager, System Management Branch, Air Traffic Division, at the address shown above.

FOR FURTHER INFORMATION CONTACT:

Scott Speer, Airspace Specialist, System Management Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California, 90261; telephone (310) 297–0697.

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 the comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 94–AWP–16." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the System Management Branch, Air Traffic Division, at 15000 Aviation Boulevard, Lawndale, California 90261, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application 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 Inyokern, CA. This proposal would provide adequate Class E airspace for IFR operators executing the GPS–½ Runway 2, Inyokern, CA. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designated as transition areas for airports 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 10034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a route 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

Aviation safety, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

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

September 16, 1993, is amended as follows:

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

* * * * *

AWP CA E5 Inyokern, CA [New]

Inyokern Municipal Airport, CA
(lat. 35°39'32" N, long. 117°49'46" W)

That airspace extending upward from 700 feet above the surface within a 2-mile radius of Inyokern Municipal Airport and within 2 miles each side of the 211° (T) bearing extending from the 2-mile radius to 10.3 miles southwest of the Inyokern Municipal Airport.

* * * * *

Issued in Los Angeles, California, on June 9, 1994.

Richard R. Lien,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 94–15407 Filed 6–23–94; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[PS–29–94]

RIN 1545–AS77

Amortization of Goodwill and Certain Other Intangibles

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: This notice invites written comments from the public on issues that the IRS may address in proposed regulations under section 197 relating to the amortization of goodwill and certain other intangibles. This notice is intended to help develop guidance to assist taxpayers in applying the rules relating to section 197.

DATES: Written comments concerning the regulations must be received by August 23, 1994.

ADDRESSES: Send comments to: CC:DOM:CORP:T:R (PS–29–94), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, comments may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:T:R (PS–29–94), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: John Huffman or Susan Reaman (202) 622–3110 (not a toll-free number).

SUPPLEMENTARY INFORMATION: Section 13261 of the Omnibus Budget Reconciliation Act of 1993 (OBRA '93) added section 197 to the Internal Revenue Code. Section 197 establishes a uniform 15-year amortization period for acquired goodwill and certain other intangibles. In developing guidance to assist taxpayers in applying the rules of section 197, the IRS has identified certain issues that should be addressed by proposed regulations for section 197.

The IRS invites comments (signed original and eight (8) copies) from the public on these and any other issues for which taxpayers believe guidance is particularly needed. All materials submitted will be available for public inspection and copying. The identified issues are as follows:

Section 197 Intangibles—Definitions

(1) What types of licenses, permits, or other rights should be covered by section 197(d)(1)(D)?

(2) What should constitute "an interest in a trade or business or a substantial portion thereof" for purposes of section 197(d)(1)(E) (covenants not to compete)?

Intangibles Excepted From Section 197 Treatment

(3) What types of software should be excluded from section 197 treatment under sections 197(e)(3)(A)(i) and (ii)?

(4) Under what circumstances should intangibles described in section 197(e)(4) (A), (B), or (C) be considered as not acquired in a transaction (or series of transactions) involving the acquisition of assets constituting a trade or business or substantial portion thereof?

(5) What rights, whether under a contract or granted by a governmental unit or agency or instrumentality thereof, should be excluded from section 197 treatment under the regulatory authority of section 197(e)(4)(D)?.

Anti-Churning Rules

(6) What specific rules are needed to clarify the application of the anti-churning rules of section 197(f)(9)?

Stuart Brown,

Associate Chief Counsel. (Domestic)

[FR Doc. 94–15356 Filed 6–22–94; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 241

Flood Control Cost-Sharing Requirements Under the Ability to Pay Provision

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Proposed Rule.

SUMMARY: The Department of the army is proposing to amend the procedures contained in 32 CFR Part 241 for ability to pay determinations for flood control projects. The proposed amendment will establish an eligibility for reductions in the non-Federal cost share using high cost criteria. A final rule for flood control projects implementing Section 103(m) of Public Law 99–662, 33 U.S.C. 2213m, was published in the Federal Register on October 2, 1989 (54 FR 40578). This proposal will amend these guidelines in accordance with the discretionary language in Section 201 of Public Law 102–580. The proposed rule modifies the ability to pay determination for flood control project to include consideration for projects with a combination of high local sponsor cost shares and high local sponsor per capita project costs.

DATES: August 23, 1994.

ADDRESSES: HQUSACE, Director of Civil Works, ATTN: CECW–AA, Washington, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Donald L. Barnes (202) 272–0120.

SUPPLEMENTARY INFORMATION: The proposed amendment will establish an eligibility for reductions in the non-Federal cost share using high cost criteria. In accordance with direction prescribed by Section 201 of the Water Resources Development Act of 1992, the Department of the Army conducted a study of the current ability to pay regulations for flood control projects. This study found, that while non-Federal cost shares for most structural flood control projects were less than 35 percent, in some cases (16 percent of the projects in a sample group studied), the non-Federal shares exceeded 35 percent, due to the high costs for lands, easements, rights-of-way, relocations, and disposal areas (LERRD). In addition, while for a majority of projects, the non-Federal per capita cost of construction (total non-Federal share of construction costs divided by the population included within the geographic jurisdiction of the non-Federal project sponsor) was less than $300, a significant number (34 percent of the

sample studied) had per capita non-Federal costs that exceeded that amount. Given these circumstances, it is proposed that when the normal non-Federal share is high (i.e. exceeding 35 percent) and when the normal per capita non-Federal cost of construction exceeds $300, adjustments should be made to the standard non-Federal share based on "ability to pay" considerations. Specifically, when both criteria are exceeded, the non-Federal share under the ability to pay provision will be either LERD's (i.e., no cash requirement) or 35 percent, whichever is greater. If LERRD's exceed 50 percent, the non-Federal share remains at 50 percent. This procedure does not change the benefits and income tests of the existing rule. Projects which would qualify for a reduction under the existing final rule, will receive a reduction from the high cost criteria, only if it provides a greater reduction than the benefits and income tests.

E.O. 12866 and Regulatory Flexibility Act

This rule is not a major rule within the meaning of Executive Order 12866, because it is not likely to result in: (1) An annual effect on the economy of $100 million or more: (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions: or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete with foreign based enterprises in domestic or export markets.

Pursuant to 5 U.S.C. Section 605(b) I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. Furthermore, the number of entities affected by this rule is small, and it imposes few, if any, administrative burdens of any sort on small entities.

List of Subjects in 33 CFR 241

Community facilities, Flood control, Intergovernmental relations, Water resources.

For reasons set out in the preamble, 33 CFR part 241 is proposed to be amended as follows:

PART 241 FLOOD CONTROL COST SHARING REQUIREMENTS UNDER THE ABILITY TO PAY PROVISION

1. The authority for part 241 is revised to read as follows:

Authority: Sec. 103(m), Water Resources Development Act of 1986 Pub. L. 99–662, 100 Stat. 4082, 33 U.S.C. 2201 *et seq.*, as amended by Sec. 201, Water Resources Development Act of 1992 Pub. L. 102–580, 106 Stat. 4797, U.S.C. 2201 *et seq.*

2. Sections 241.1 through 241.3 are revised to read as follows:

§ 241.1 Purpose.

This regulation gives general instructions on the implementation of section 103(m) of Public Law 99–662, as amended by section 201 of Public Law 102–588, for application to flood control projects.

§ 241.2 Applicability.

This regulation applies to all U.S. Army Corps of Engineers Headquarters (HQUSACE) elements and Major Subordinate Commands and District Commands of the Corps of Engineers having Civil Works responsibilities.

§ 241.3 References.

(a) Water Resources Development Act, 1986, Public Law 99–662, 100 Stat. 4082 33 U.S.C. 2201 *et seq.*

(b) Water Resources Development Act, 1992, Public law 102–580, 106 Stat. 4797, 33 U.S.C. 2201 *et seq.*

(c) U.S. Water Resources Council, *Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies,* March 10, 1983.

(d) Office of Personnel Management, *FPM Bulletin* 591–30.

(e) Office of Personnel Management, *FPM Bulletin* 591–32.

(f) U.S. Army Corps of Engineers, *Engineer Regulation* 1165–2–29.

(g) U.S. Army Corps of Engineers, *Engineer Regulation* 1165–2–121.

(h) U.S. Army Corps of Engineers, *Engineer Regulation* 1165–2–131.

(i) U.S. Army Corps of Engineers, *Engineer Regulation* 405–1–12.

§ 241.5 Procedures for estimating the alternative cost share.

3. Section 241.5 is amended by adding paragraph (d):

* * * * *

(d) *Additional consideration for high cost projects.* For any project where the normal non-Federal share exceeds 35 percent, and the per capita non-Federal cost (i.e., normal non-Federal share of total construction costs divided by the population in the sponsor's geographic jurisdiction) exceeds $300, the non-Federal share under the ability to pay provision will be either LERRD's (i.e., no cash requirement) or 35 percent, whichever is greater. If LERRD's exceed 50 percent, the non-Federal share remains at 50 percent. Projects which qualify under the benefits and income tests will receive the reduction under the high cost criteria, if it results in a greater reduction in the non-Federal cost share.

§ 241.6 [Amended]

4. In § 241.6(a), the term "LCA" is revised to read "Project Cooperation Agreement (PCA)."

5. All references in § 241.7 to the term "LCA" are revised to read "PCA". In addition this section is amended by revising paragraph (c)(2) and the first sentence of paragraph (e)(2), as follows:

§ 241.7 Application of test.

* * * * *

(c) * * *

(2) An exhibit attached to the PCA will include the Benefits Based Floor (BBF) determined in § 241.5(a), the Eligibility Factor (EF) determined in § 241.5(b), if the Eligibility Factor is greater than zero but less than one, the estimated standard non-Federal share, the formula used in determining the ability to pay share as described in § 241.5 (c)(1) through (c)(4), and a display of the non-Federal cost share under the high cost criteria described in § 241.5(d).

* * * * *

(e) * * *

(2) The non-Federal sponsor will be required to provide a cash payment equal to the minimum of five percent of estimated project costs, regardless of the outcome of the ability to pay test, unless any or all of the five percent cash requirement is waived by application of the high cost criteria described in § 241.5(d).

* * * * *

Dated: June 17, 1994.

John A. Mills,

COL, General Staff, Executive Officer, Office of the Assistant Secretary of the Army (Civil Works).

[FR Doc. 94–15197 Filed 6–27–94; 8:45 am]

BILLING CODE 3710–92–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900–AG63

Dependents and Veterans Education: Mitigating Circumstances and Other Miscellaneous Amendments

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rules.

SUMMARY: These proposed regulations standardize the rules concerning submission of mitigating circumstances justifying a withdrawal from a course or

courses or receipt of a nonpunitive grade for a course or courses for which an individual receives VA education benefits. This submission applies to eligible persons receiving Dependents' Educational Assistance and veterans and servicemembers receiving educational assistance under the Post-Vietnam Era Veterans' Educational Assistance Program (VEAP) and the Montgomery GI Bill—Active Duty, but the rules for doing this differ. Having different rules concerning an identical action required of VA beneficiaries is confusing not only to those beneficiaries, but also to other users of the regulations. This may result in erroneous awards. This proposal should serve to eliminate that confusion and thus result in more accurate awards of educational assistance. The proposed regulations also make additional, miscellaneous amendments.

DATES: Comments must be received on or before August 23, 1994. Comments will be available for public inspection until September 2, 1994.

ADDRESSES: All written comments concerning these proposed regulations should be addressed to: Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 170 of the above address between the hours of 8 a.m. to 4:30 p.m., Monday through Friday (except holidays) until September 2, 1994.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer, Assistant Director for Policy and Program Administration, Education Service, Veterans Benefits Administration, 202–233–2092.

SUPPLEMENTARY INFORMATION: Veterans and eligible persons who discontinue a course or courses are not entitled to education benefits paid or payable for any portion of the course(s) unless they submit a description of the mitigating circumstances which caused the discontinuance. The regulations covering this matter for eligible people receiving dependents' educational assistance (§ 21.4137(h)) and veterans and servicemembers receiving educational assistance under VEAP (§ 21.4136(k)) provide time limits for both the submission of the description of those circumstances and the submission of any supporting evidence. The time limit for submission of a description of mitigating circumstances may be extended for good cause shown, but the time limit for submitting supporting evidence is inflexible.

However, the parallel regulation for individuals receiving educational assistance under the Montgomery GI Bill—Active Duty (§ 21.7139(b)) provides a time limit for the submission of descriptions of the mitigating circumstances and is silent as to the time limits for submitting supporting evidence. This proposal would provide flexible time limits for all groups of beneficiaries and would impose a time limit for everyone for submission of supporting evidence. The provision of flexible time limits will bring both these paragraphs into agreement with other regulations VA has concerning time limits to submit other evidence.

VA intends to propose similar regulations for those receiving educational assistance under the Montgomery GI Bill—Selected Reserve.

This proposal also eliminates the requirement that schools maintain attendance records for all veterans enrolled in courses not leading to a standard college degree. Schools no longer have to report absences for these veterans to VA if the absences occurred after December 17, 1989. Hence, there is no longer any independent VA program requirement that schools offering accredited courses which do not lead to a standard college degree maintain attendance records, unless the school has adopted its own attendance standard.

Title 38 U.S.C. 3474 requires that a school report to VA when a student fails to meet any attendance standard the school may have. It would be impossible to verify that a school is doing this unless it maintained adequate attendance records. Hence, the proposal still requires maintenance of adequate records to show that the school is enforcing its own attendance standard.

In addition, the department is making minor corrections to various regulations. These corrections include eliminating a reference to another regulation that does not exist; inserting an omitted word into a sentence, etc. These are not substantive changes.

The Secretary of Veterans Affairs has certified that these amended regulations, if promulgated, will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), the amended regulations, therefore, are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made even though the amendment to § 21.4253 affects some small entities. However, VA does not think that the cost savings for some schools which will result from no longer having to maintain attendance records will have a significant economic impact on those small entities.

The remainder of the amended regulations directly affect only individuals. They will have no significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

These regulations have been reviewed by OMB (the Office of Management and Budget) under provisions of E.O. 12866.

The Catalog of Federal Domestic Assistance numbers for the programs affected by this proposal are 64.117, 64.120 and 64.124.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: March 14, 1994.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 21, subparts D and K are proposed to be amended as set forth below.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart D—Administration of Educational Benefits; 38 U.S.C. Chapters 34, 35, and 36

1. The authority citation for part 21, subpart D continues to read as follows:

Authority: 38 U.S.C. 501(a).

2. In § 21.4136 paragraph (k)(1)(ii)(C) is revised to read as follows:

§ 21.4136 Rates; educational assistance allowance; 38 U.S.C. Chapter 34.

* * * * *

(k) *Mitigating circumstances.* (1) * * *

(ii) * * *

(C) The veteran submits evidence supporting the existence of mitigating circumstances within one year of the date that evidence is requested by VA, or at a later date if the veteran is able to show good cause why the onmemberyear time limit should be extended to the date on which he or she submitted the evidence supporting the existence of mitigating circumstances.

* * * * *

3. In § 21.4137 paragraph (h)(1)(ii)(C) is revised to read as follows:

§ 21.4137 Rates; educational assistance allowance; 38 U.S.C. Chapter 35.

* * * * *

(h) *Mitigating circumstances.* (1)

* * *

(ii) * * *

(C) The eligible person submits evidence supporting the existence of mitigating circumstances within one year of the date that evidence is requested by VA, or at a later date if the eligible person is able to show good cause why the onmemberyear time limit should be extended to the date on which he or she submitted the evidence supporting the existence of mitigating circumstances.

* * * * *

§ 21.4234 [Amended]

4. In § 21.4234(d)(2)(iii) remove the phrase "§§ 21.4230 and 21.4231", and add, in its place, the phrase "§ 21.4230".

5. In § 21.4253 paragraph (d)(5) is revised and an authority citation is added for paragraph (d) to read as follows:

§ 21.4253 Accredited courses.

* * * * *

(d) *School qualification.* * * *

(5) If the school has a standard of attendance, it maintains records of attendance for veterans and eligible persons enrolled in resident courses which are adequate to show the student meets the school's standard of attendance.

(Authority: 38 U.S.C. 3474, 3675)

* * * * *

§ 21.4262 [Amended]

6. In § 21.4262(c)(10) remove the phrase "as by" and add, in its place, the phrase "as approved by".

7. The authority citation for part 21, subpart K continues to read as follows:

Authority: 38 U.S.C. chapter 30, Pub. L. 98–525; 38 U.S.C 501(a).

§ 21.7042 [Amended]

8. In § 21.7042(b)(9) remove the phrase "subparagraph (8) of this subparagraph", and add, in its place, the phrase "paragraph (b)(8) of this section".

9. In § 21.7042(d)(2)(i)(A) remove the phrase "paragraph (b)(b)" and add, in its place, the phrase "paragraph (b)".

10. In § 21.7139 paragraphs (b)(2) introductory text and (b)(2)(ii) are revised and paragraph (b)(2)(iii) is added to read as follows:

§ 21.7139 Conditions which result in reduced rates.

* * * * *

(b) *Withdrawals and nonpunitive grades.* * * *

(2) All of the following exist.

(i) * * *

(ii) The veteran or servicemember submits a description of the mitigating circumstances in writing to VA within one year from the date VA notifies the veteran or servicemember that he or she must submit a description of the mitigating circumstances, or at a later date if the veteran or servicemember is able to show good cause why the onmemberyear time limit should be extended to the date on which he or she submitted the description of the mitigating circumstances; and

(iii) The veteran or servicemember submits evidence supporting the existence of mitigating circumstances within one year of the date that evidence is requested by VA, or at a later date if the veteran or servicemember is able to show good cause why the onmemberyear time limit should be extended to the date on which he or she submitted the evidence supporting the existence of mitigating circumstances.

* * * * *

[FR Doc. 94–15352 Filed 6–23–94; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–4998–4]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete the North U Drive Well Contamination Site from the National Priorities List: request for comments.

SUMMARY: The Environmental Protection Agency (EPA) Region 7 announces its intent to delete the North U Drive Well Contamination Site from the National Priorities List (NPL) and requests public comment on this action. The NPL constitutes Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended. This action is being taken because EPA and the Missouri Department of Natural Resources (MDNR) have determined that the contaminant releases do not pose a significant threat to human health, welfare, or the environment. Therefore, no further response action is appropriate.

DATES: Comments concerning this site may be submitted on or before July 25, 1994.

ADDRESSES: Comments may be mailed to: Steve Sturgess, Missouri Department of Natural Resources, Hazardous Waste Program, Superfund Section, P.O. Box 176 Jefferson City, Missouri 65102.

ADDITIONAL INFORMATION: Comprehensive information on this site is available for public review at the Missouri Department of Natural Resources (MDNR) Hazardous Waste Program File Room (205 Jefferson Street) in Jefferson City, Missouri; at EPA Region 7 Waste Management Division Records Center, 726 Minnesota Avenue, Kansas City, Kansas; and at the Kearney Branch Library, 630 W. Kearney, Springfield, Missouri 65801.

To obtain copies of documents in the public docket contact: Barry Thierer, U.S. Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, (913) 551–7515.

FOR FURTHER INFORMATION CONTACT: Steve Sturgess, Missouri Department of Natural Resources, Hazardous Waste Program, Superfund Section, P. O. Box 176, Jefferson City, Missouri 65102, (314) 751–1807.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Intended Site Deletion

I. Introduction

The Environmental Protection Agency (EPA), Region 7 announces its intent to delete the North U Drive Well Contamination site, Greene County, Missouri, from the National Priorities List (NPL), appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300, as amended, and requests comments on this proposed deletion. Pursuant to the requirements of the Comprehensive Environmental Response, Compensation and Liability Act, as amended (CERCLA) and the NCP, the EPA collects data and evaluates releases of hazardous substances, pollutants or contaminants to identify sites that present a threat to public health, welfare or the environment. The NPL is a list of priority releases for long-term remedial evaluation and response. Sites included on the NPL may be the subject of remedial actions financed by the

Hazardous Substances Response Trust Fund (Fund). Pursuant to § 300.425(e)(3) of the NCP, any site deleted from the NPL remains eligible for Fund-financed remedial actions if conditions at the site warrant such action.

The EPA, in consultation with Missouri Department of Natural Resources (MDNR), will accept comments on the proposed deletion of the North U Drive Well Contamination site from the NPL for thirty days after publication of this notice in the **Federal Register.**

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the North U Drive Well Contamination site and explains how the site meets the deletion criteria.

II. NPL Deletion Criteria

Section 300.425(e) of the NCP sets forth the criteria that EPA uses to delete sites from the NPL. Sites may be deleted from the NPL where no further response is appropriate. In making this determination, EPA will consider, in consultation with the State, whether any of the following criteria have been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required; or

(ii) All appropriate Fund-financed response under CERCLA has been implemented and no further response action by responsible parties is appropriate; or

(iii) The remedial investigation has determined that the release poses no significant threat to public health or the environment; and therefore, taking of remedial measures is not appropriate.

III. Deletion Procedures

The EPA Region 7 will accept and evaluate public comments on its proposal to delete the site from the NPL before making a final decision. The Agency believes that deletion procedures should focus on notice and comment at the local level. Comments from the local community are often the most pertinent to deletion decisions. The following procedures were used for the intended deletion of this site:

1. The EPA Region 7 has recommended deletion and in conjunction with the State of Missouri has prepared the relevant documents.

2. The State of Missouri has concurred with the proposed deletion decision.

3. Concurrent with this National Notice of Intent to Delete, a local notice has been published in a major local newspaper of general circulation at or near the site and has been distributed to appropriate federal, state and local officials and other interested parties. The local notice announces a thirty (30) day public comment period on the deletion package, which starts June 24, 1994 and will conclude on July 25, 1994.

4. The Region has made all information supporting the proposed deletion available for public inspection and copying in the EPA Regional Office, MDNR and a local site information repository (Kearney Branch Library).

5. The EPA, in consultation with MDNR, will respond to each significant comment and all significant new data submitted during the comment period and will include this response document (Responsiveness Summary) in the final deletion package.

6. A deletion occurs after the EPA Regional Administrator places a final notice of deletion in the **Federal Register.** The final deletion package will be placed in the local information repository once the notice of final deletion has been published in the **Federal Register.** The NPL will reflect any deletions in the next final update.

IV. Basis for Intended Site Deletion

The following summary provides the Agency's rationale for recommending deletion of the North U Drive Well Contamination site, Greene County, Missouri, from the NPL.

The North U Drive Well Contamination site is located approximately 1.25 miles north of Springfield, Greene County, Missouri. Land use adjacent to the site is mostly residential, woodlands, manufacturing and commercial businesses.

In 1983, the residents near the North U Drive Well Contamination site became concerned over the taste of their water. When MDNR investigated, it was discovered that twelve wells were contaminated.

Sampling by MDNR identified benzene, toluene, ethylbenzene, xylene, and methyl tertiary butyl ether (MTBE) as the primary contaminants in the groundwater. These compounds are constituents of gasoline. MTBE is used as an additive in gasoline, and was not commercially available until 1979.

Water lines were installed in 1985 to provide Springfield city water to all affected residents. In addition, 62 wells were plugged to control the spread of contamination and to prevent residents from drinking contaminated water.

The North U Drive site was placed on the National Priorities List in 1985 and a Remedial Investigation (RI) was performed by MDNR. The RI included sampling of site soil, sediments, air, ground water and surface water. Dye trace studies were also conducted as part of the RI. The RI concluded that the original contamination at the site was related to a release of gasoline. The RI identified three main contaminants—petroleum-related contaminants, metals and non-petroleum-related organic contaminants.

Petroleum-related contaminants, the original contaminants of concern, decreased significantly in concentration between the time of site discovery and the remedial investigation. In many areas contaminant concentrations dropped below detection limits. The site is situated in a karst region, and dye traces documented very rapid ground water flow rates. The reduction in petroleum-related contaminant concentrations may be a result of the relatively rapid discharge of these light non-aqueous phase liquid (LNAPL) contaminants through the karst system.

Metals were not included as contaminants of concern at the site at the time the site was listed on the NPL. During the RI, however, it became apparent that metal concentrations were elevated in some water samples.

The RI concluded that this was a natural phenomenon. First, no evidence exists to suggest a release of metals has occurred at the site, and the types of metals found are inconsistent with industrial/commercial activities at the site. Metals in groundwater samples were found to correlate with turbidity, indicating a natural phenomenon.

A variety of non-petroleum-related organic contaminants were identified during the RI, but none are considered to be of significant concern. Most of these contaminants were found in very low concentrations in isolated soil samples. This suggests the contaminants are not related to a significant release, but are a result of small-scale, localized surface releases. The site risk assessment did not identify any significant risks associated with non-petroleum-related organic contaminants.

Past releases of contaminants at this site do not appear to present a current or future threat to the environment. Throughout the history of the site, the only significant contamination was found in the groundwater. All area residents were supplied with a permanent alternative water source so that private wells are no longer used for drinking. Furthermore, concentrations of contaminants in groundwater dropped dramatically between the time of site discovery and the RI, indicating that natural processes are attenuating contaminant levels. Additionally, risks posed by all manmade contaminants at this site, including petroleum

contaminants, do not warrant further cleanup.

Community relations activities have included issuance of fact sheets and public meetings at various phases of the project in order to keep the public informed of ongoing activities.

Therefore, EPA, with concurrence of the State of Missouri, has determined that the North U Drive site poses no significant threat to public health and the environment, and therefore, taking of further remedial measures is not appropriate.

Dated: May 27, 1994.

Dennis Grams,

Regional Administrator, Region VII.

[FR Doc. 94–15309 Filed 6–23–94; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 59, No. 121
Friday, June 24, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 94–056–1]

Availability of Environmental Assessments and Findings of No Significant Impact

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that nine environmental assessments and findings of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of permits to allow the field testing of genetically engineered organisms. The environmental assessments provide a basis for our conclusions that the field testing of these genetically engineered organisms will not present a risk of introducing or disseminating a plant pest and will not have a significant impact on the quality of the human environment. Based on its findings of no significant impact, the Animal and Plant Health Inspection Service has determined that environmental impact statements need not be prepared.

ADDRESSES: Copies of the environmental assessments and findings of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect those documents are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Foudin, Deputy Director, Biotechnology Permits, BBEP, APHIS, USDA, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7612. For copies of the environmental assessments and findings of no significant impact, write to Mr. Clayton Givens at the same address. Please refer to the permit numbers listed below when ordering documents.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340 (referred to below as the regulations) regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article may be introduced into the United States. The regulations set forth the procedures for obtaining a limited permit for the importation or interstate movement of regulated articles and for obtaining a permit for the release into the environment of a regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

In the course of reviewing each permit application, APHIS assessed the impact on the environment that releasing the organisms under the conditions described in the permit application would have. APHIS has issued permits for the field testing of the organisms listed below after concluding that the organisms will not present a risk of plant pest introduction or dissemination and will not have a significant impact on the quality of the human environment. The environmental assessments and findings of no significant impact, which are based on data submitted by the applicants and on a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field tests.

Environmental assessments and findings of no significant impact have been prepared by APHIS relative to the issuance of permits to allow the field testing of the following genetically engineered organisms:

Permit No.	Permittee	Date issued	Organisms	Field test location
93–362–01	Monsanto Agricultural Company	05–04–94	Potato plants genetically engineered to express resistance to potato leaf roll virus.	Idaho, Maine, Oregon, Washington.
94–006–01	U.S. Department of Agriculture, Agricultural Research Service	05–05–94	*Fusarium graminearum* genetically engineered to block synthesis of trichothecene toxins.	Illinois.
94–027–01	DuPont Agricultural Products	05–05–94	Canola plants genetically engineered to express altered fatty acid composition.	Idaho.
94–025–01	VanderHave, USA	05–06–94	Sunflower plants genetically engineered to express marker genes.	North Dakota.
94–054–02	Upjohn Company	05–06–94	Squash plants genetically engineered to express resistance to cucumber mosaic virus, watermelon mosaic virus 2, and zucchini yellow mosaic virus.	Delaware, New Jersey, Pennsylvania, South Carolina, Virginia.
94–055–03	Upjohn Company	05–06–94	Watermelon plants genetically engineered to express resistance to watermelon mosaic virus 2 and zucchini yellow mosaic virus.	Michigan.

Permit No.	Permittee	Date issued	Organisms	Field test location
94–027–03	Pioneer Hi-Bred International, Incorporated.	05–10–94	Alfalfa plants, genetically engineered to express resistance to alfalfa mosaic virus.	California, Iowa, Pennsylvania, Washington, Wisconsin.
94–063–01	Agracetus, Incorporated	05–10–94	Peanut plants genetically engineered to express resistance to tomato spotted wilt virus.	Hawaii.
94–076–01	Rutgers University	05–10–94	*Agrostis palustris* plants genetically engineered to express tolerance to the phosphinothricin class of herbicides.	New Jersey.

The environmental assessments and findings of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384, August 28, 1979, and 44 FR 51272–51274, August 31, 1979).

Done in Washington, DC, this 20th day of June 1994.

Alex B. Thiermann,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94–15403 Filed 6–23–94; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Producing Firms for Determination of Eligibility to Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration (EDA).

ACTION: To give firms an opportunity to comment.

Petitions have been accepted for filing on the dates indicated from the firms listed below.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD 05/17/94–06/15/94

Firm name and address	Date petition accepted	Product
Systematix Controls Incorporated, 11217 Fifteenth Avenue Southwest, Seattle, WA 98146.	05/25/94	Automatic pulp analyzers, chemical mixers & brightness control sensor parts.
Micro Engineering Company, 1120 Eagle Road, Fenton, MO 63026	06/07/94	Landscape.
Payhauler Corp., 1333 N. Kirk Road, Batavia, IL 60510	06/07/94	Dump trucks.
Mahoney Foundries, Inc., 209 W. Ohio, Kendallville, IN 46755	05/25/94	Cast copper-based plumbing and pump components and cast aluminum marine engines components.
Machine Technology, Inc., 25 Eastmans Road, Parsippany, NJ 07054	05/27/94	Manufacture of photoresist processing systems for use in semiconductor wafer processing industry.
Eason & Waller Aerospace & Grinding, Inc., 2010 North 22nd Ave., Phoenix, AZ 85009.	06/01/94	Aircraft body and engine parts.
Inex, Inc. d.b.a. Inex Vision System, 13327 U.S. 19 North, Clearwater, FL 34624.	06/01/94	Glass, bottles, laser gauges, beverage glasses and container base inspection systems.
Tobin-Hamilton Company, Inc., 101 Klick Avenue, Mansfield, MO 65104	06/07/94	Children's athletic shoes and women's casual shoes.
Montgomery Wire Corporation, Littleton Industrial Park, Littleton, NH 03561–0227.	06/07/94	Commodities and stranded conductors, knitted mesh, single end, tinsel and flat wire.
Joray Corporation, 3027 East Washington, Phoenix, AZ 85034	06/07/94	Chemical surface treatments of parts: i.e. aerospace engine parts, and auto parts.
Birting Salmon L.P., 121 5th Ave. N., Suite 302, Edmonds, WA 98020	06/07/94	Salmon farming.
Ackerman Johnson Fastening Systems, Inc., 136 Official Road, Addison, IL 60101.	06/07/94	Bolts of steel, for structural anchoring to concrete.
Maui Floral, Inc., P.O. Box 126, 310 Copp Road, Kula, HI 96790	06/08/94	Tropical flowers.
J.&H. Smith Light Corp., 499 Little Britain Road, Newburgh, NY 12553–6117.	06/13/94	Electronics—indicater lights and switch boxes for navigation and communications systems.
Associated Fruit Company, Incorporated, 3721 Colver Road, Phoenix, OR 97535.	06/10/94	Food & Bevg.—pears.
Eureka Foundry Company, P.O. Box 6039/1601 Carter Street, Chattanooga, TN 37401.	06/10/94	Metal products—parts for metal rolling mills, cast iron/steel architectural & ornamentalwork, etc.

The petitions were submitted to section 251 of the Trade Act of 1974 (19 U.S.C. 2341). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof,

and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by the Trade Adjustment Assistance Division, room 7023, Economic Development Administration, U.S. Department of Commerce, Washington, D.C. 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: June 20, 1994.

Daniel F. Harrington,

Director, Trade Adjustment Assistance Division.

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International Trade Administration

[A–421–805]

Antidumping Duty Order and Amended Final Determination: Aramid Fiber Formed of Poly-Phenylene Terephthalamide From The Netherlands

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: June 24, 1994.

FOR FURTHER INFORMATION CONTACT: Jennifer Katt or Lori Way, Office of Antidumping Duty Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–0498 or (202) 482–0656, respectively.

Amended Final Determination

In accordance with section 735(a) of the Tariff Act of 1930, as amended (the Act), on May 2, 1994, the Department made its final determination that aramid fiber formed of poly-phenylene terephthalamide from the Netherlands (PPD–T aramid) is being, or is likely to be, sold in the United States at less than fair value (59 FR 23684, May 6, 1994).

After publication of this determination, we determined that a ministerial error was committed regarding currency conversions in our calculations of constructed value. We are amending the final result of the antidumping duty investigation of PPD–T aramid to correct this ministerial error in the calculation for Aramide Maatschappij V.O.F. and Akzo Fibers Inc. (collectively Akzo), the sole respondent in this investigation. The correct margin percentage for Akzo and the "all others" rate is 66.92.

Scope of Investigation and Order

The products covered by this order are all forms of poly para-phenylene terephthalamide aramid fiber (PPD–T aramid) from the Netherlands. These consist of PPD–T aramid in the form of filament yarn (including single and corded), staple fiber, pulp (wet or dry), spun-laced and spun-bonded nonwovens, chopped fiber and floc. Tire cord fabric is excluded from the class or kind of merchandise under investigation. PPD–T aramid fiber is classifiable under subheadings 5402.10.3020, 5402.10.3040, 5402.32.3000, 5503.10.0000 and 5601.30.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS numbers are provided for convenience and customs purposes, our written description of the scope of this order is dispositive.

The description above reflects a revision from the scope of investigation published in our Notice of Final Determination of Sales at Less Than Fair Value: Aramid Fiber Formed of Poly-Phenylene Terephthalamide from the Netherlands, 59 FR 23684, May 6, 1994. We deleted the words "spun-based nonwovens" and replaced them with the words "spun-bonded nonwovens" and we excluded HTSUS number 5902.10.0000. (See the Memorandum to the File dated June 14, 1994 on file in Room B–099 of the Main Commerce Building.)

Antidumping Duty Order

On June 15, 1994, in accordance with section 735(d) of the Act, the U.S. International Trade Commission (ITC) notified the Department that imports of PPD–T aramid from the Netherlands materially injure a U.S. industry. Therefore, in accordance with section 736 of the Act, the Department will direct United States Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act, antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of PPD–T aramid from the Netherlands. These antidumping duties will be assessed on all unliquidated entries of PPD–T aramid from the Netherlands entered, or withdrawn from warehouse, for consumption on or after December 16, 1993, the date on which the Department published its preliminary determination notice in the **Federal Register** (58 FR 65699).

On or after the date of publication of this notice in the **Federal Register**, U.S. Customs officers must require, at the same time as importers would normally deposit estimated duties, the following cash deposits for the subject merchandise:

Manufacturer/producer/exporter	Weighted-average margin percentage
Akzo	66.92
All Others	66.92

This notice constitutes the antidumping duty order with respect to PPD–T aramid from the Netherlands, pursuant to section 736(a) of the Act. Interested parties may contact the Central Records Unit, Room B–099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Act and 19 CFR 353.21.

Dated: June 21, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–15523 Filed 6–23–94; 8:45 am]

BILLING CODE 3510–DS–P

[Docket No. 940411–4111]

RIN: 0625-ZA01

Commerce Trade Fair Privatization: Private Sector Organization and Management of Overseas Trade Fairs

AGENCY: International Trade Administration, Commerce.

ACTION: Requesting proposals from qualified U.S. firms (organizers) to assume U.S. pavilion recruitment, promotion, organization and management functions in selected overseas trade fairs.

SUMMARY: This notice sets forth the objectives, applicant criteria, and procedures for qualified U.S. firms to assume responsibility for recruiting, promoting, organizing, and managing a U.S. exhibitor presence abroad in select overseas trade fairs which previously have been organized and managed by Commerce. In this context and throughout this notice, this transfer of responsibilities is referred to as the "privatization process."

DATES: This privatization process is effective on June 24, 1994. The deadline for receipt of applications from U.S. firms wishing to assume responsibility

for recruitment, promotion, construction, and management of a U.S. pavilion or grouping of U.S. exhibitors is August 15, 1994.

ADDRESSES: Trade Fair Certification Program, Room 2116, Export Promotion Services, International Trade Administration, U S Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Paul Bucher or Ann Watts, U.S. Department of Commerce, Room 2116, 14th and Constitution Avenue, N.W., Washington, D.C. 20230. Tel: (202) 482–2525 and (202) 482–6029, respectively. Fax: (202) 482–0115 (for communication purposes only; facsimile applications will not be accepted).

SUPPLEMENTARY INFORMATION: As part of its focus to increase exports, the National Export Strategy, dated September 30, 1993, calls for the Administration to reduce the number of trade events the U.S Government (USG) organizes, encourage more private sector participation in the trade event process, and on a pilot basis, invite qualified private sector firms to bid for those events they desire to handle. While this strategy refers to all USG-organized events, this notice is concerned only with the privatization of 50 International Trade Administration (ITA)-organized and managed trade shows that, with one exception, occur between July 1, 1995, and September 30, 1996. These trade shows are listed at the end of this Notice.

As with shows under the Trade Fair Certification Program, private sector organizers in this privatization process assume the responsibilities of organizing and managing a U.S. pavilion in designated overseas trade fairs, in lieu of Commerce. Certification, via the privatization process, assures Commerce's recognition and support of these private sector efforts.

The principal differences between this privatization process and the Trade Fair Certification process are summarized below. Organizers wishing to continue to have Commerce support for the events listed herein in future years are expected to apply for Trade Fair Certification. (See **Federal Register** notice dated April 30, 1993, 58 FR 26116, for application criteria and procedures).

* Unless circumstances dictate otherwise, formation of a U.S. pavilion within the overseas fair is required.

* Production of a catalog of U.S. exhibitors is required.

* Selected organizers are expected to recruit a minimum number of participants. This number will vary according to the specific event. 1994.

* Applications submitted by American Chambers of Commerce located in the country where the show is being held will be considered, in addition to applications submitted by U.S. persons. Applications will not be accepted from other foreign-based persons or entities.

* A show consisting solely of U.S. products must continue to be recruited as such. Such shows are noted accordingly.

* Selected organizers are required to send a representative to the show for its duration and staff an office or booth within the show.

Commerce does not provide any financial assistance to organizers or to exhibitors at these shows. As with the existing Trade Fair Certification Program, the selected organizer contributes $1,500 to assist in defraying Commerce expenses incurred in supporting the organizer and exhibitors. Certification indicates that the fair and the organizer have met basic criteria and that the organizer is qualified to perform in a manner supportive of Commerce's objectives.

Commerce believes that these events offer opportunities to both the organizer and exhibitors. Certification does not constitute a guarantee of the fair's success or of the organizer's performance, however. Commerce is not responsible for an organizer's financial or other losses stemming from its organization and management of a U.S. presence in any of these shows, nor for any participating exhibitor's losses arising from a private sector organizer's misrepresentations, withdrawal from the event, omissions, or monetary defaults in conjunction with carrying out its stated activities and responsibilities. Organizers selected by Commerce are not representatives of the Department or the U.S. Government and are prohibited from making statements to that effect.

Commerce's selection of one organizer does not prohibit another organizer from recruiting U.S. firms if it so chooses. The intent of the privatization process, however, is to provide the Commerce support specified in this Notice to one organizer only.

Applicant Eligibility

The applicant must be a U.S. person. For purposes of this paragraph, "U.S. person" means (1) a U.S. citizen, or an entity (such as a corporation, partnership, association or other entity) created under the laws of the United States or of any state, (2) the U.S. branch or agent of a foreign person, and (3) an American Chamber of Commerce located in the country where the applicable show is being held.

Application and Selection Procedures

1. An original and five copies of each complete application, in the form indicated below, must be received by the Trade Fair Certification Program, U.S. Department of Commerce, room 2116, 14th and Constitution Avenue, N.W., Washington, D.C. 20230, no later than August 15, 1994.

2. Complete applications received by the deadline will be considered concurrently. To be considered complete, an application must respond fully to each item in the application. Faxed applications will not be considered. A separate application must be submitted for each event for which Certification is sought.

3. Commerce will select not more than one applicant for each event.

4. Commerce plans to notify applicants directly of their selection on or about August 31, 1994. Subsequently, Commerce also will place a notice of event and Applicant selection in the **Federal Register**. The notice will contain a list of events for which there were no applicants, or for which no applicant was considered qualified. Commerce will continue to accept new applications for such shows, but no later than 365 days prior to the first day of the subject show. Commerce may opt to directly recruit a U.S. presence for such shows if no applicant is selected before 365 days prior to the occurrence of the show. It is incumbent upon organizers to contact Commerce to inquire which shows have not been privatized after the appearance of the **Federal Register** notice.

Form of Application

Applications must be in the form of the following (the collection of this information has been approved by the Office of Management and Budget, OMB Control Number 0625–0222):

[Name of applicant] hereby applies for certification to promote, recruit and manage a U.S. Pavilion or exhibitor group at the following overseas trade event. In connection with this application, the following information is submitted:

1. Name of event.
2. Date and Location of event.
3. Name, business and mailing address of the applicant.
4. Contact name, title and telephone and fax numbers.
5. The event's major industry or product themes.
6. Name of overseas event organizer or authority ("overseas fair authority").

7. Name, title, address and telephone and fax numbers of the overseas fair authority's principal contact.

8. A detailed description of the applicant's experience in trade fair and pavilion management. Please cite specific examples of successful recruitment of a minimum of 20 U.S. exhibitors for domestic and/or international trade shows with the same industry theme(s) as the show for which Certification is sought (international trade show experience is preferred).

9. A detailed description of the Applicant's ability to provide personnel resources sufficient to plan, implement, and organize a successful U.S. pavilion or exhibitor group and the capability to provide exhibition and sundry trade services to exhibitors.

10. A detailed description of the promotional campaign to be conducted by the Applicant to attract exhibitors of U.S. products. Please cite specific steps organizer will take to target and recruit small, medium-sized and new-to-market firms.

11. A detailed description of the promotional campaign to be conducted by the Applicant to attract importers, distributors, agents, buyers and end-users to the event.

12. Net area for exhibit space for U.S. pavilion or group of U.S. exhibitors. Please include satisfactory documentation, in English, from the overseas fair authority of a lease or an option to lease the necessary exhibition space if selected as the organizer of a U.S. pavilion within one or more of the venue's halls, and a letter indicating the Applicant's acceptance of the terms, if selected. If unable to provide the above documentation, please explain why you are unable to do so. (Note: Certification will be withdrawn and the $1,500 contribution forfeit if this documentation is not received within 30 days of notification of selection.)

13. Which (if any) of the Applicant's services and responsibilities will be contracted out to another party.

14. The Applicant's proposed fee schedule in U.S. dollars, including the amount to be charged for "turnkey" booths and for raw exhibit space, the basic services to be included in these fees, and any fees for additional services to be provided.

15. Specific support services, including expert staff support, to be requested of Commerce.

[Name of Applicant] agrees to abide by the attached Conditions of Participation, which are incorporated into this application by reference and are expressly made a part hereof. We certify that the information contained in this application is true and correct to the best of our knowledge and will inform Commerce promptly of any material changes. We understand that our non-refundable $1,500 contribution is due not more than 14 days after receipt of notice of our selection. We also understand that, if we fail to recruit the minimum number of firms for, or withdraw from, the event, we may be deemed ineligible for future Commerce support for the event in subsequent years.

Name of Applicant

By:

(Signature)

Title

Date

Approved by the Department of Commerce

Signature

Title

Date

Conditions of Participation

[Name of firm] (the "organizer") has applied for certification to recruit, promote, organize, and manage a U.S. Pavilion at [name of event]. The organizer understands and, if its application is approved, agrees to comply with the following Conditions of Participation. Variances may be mutually agreed upon depending on the specific needs of the organizer and of Commerce, and the size of the U.S. exhibitor presence.

A. Responsibilities of Commerce in the United States

Commerce will provide the following support in the United States:

1. Authorize use of Commerce's Trade Fair Certification logo and other Commerce-approved references that indicate that Commerce recognizes and supports the pavilion and/or show, pursuant to and in accordance with such terms and conditions as Commerce may prescribe. Please note that—

(a) Use of the Trade Fair Certification logo is conditioned on it being the dominant logo to promote the show to U.S. exhibitors.

(b) A copy of Commerce guidelines for use of the Trade Fair Certification logo will be supplied to the organizer upon selection. Failure to abide by these guidelines may result in withdrawing Commerce support for the organizer, the pavilion and/or event.

(c) All promotional material using the Trade Fair Certification logo should be sent to the project officer for file-keeping purposes.

2. Provide a designated DOC project officer to assist the organizer.

3. Make a general announcement to appropriate Commerce units (District Offices, US&FCS overseas, TD, IEP, etc.) that Commerce supports the show and the U.S. organizer's recruitment efforts.

4. Place an ongoing announcement about the fair in Commerce's monthly export promotion magazine *Business America*, the *Export Promotion Calendar*, and relevant ITA newsletters up to the date of the event.

5. Provide a suggested news release designating the show as a Commerce-endorsed event for the organizer to use in its recruitment campaign.

6. Provide the organizer, upon request, with relevant existing international marketing reports, *i.e.*, National Trade Data Bank (NTDB) documents.

7. To the extent resources allow, provide, on a one-time basis only, relevant mailing lists or mailing labels in support of the organizer's recruitment and promotional activities related to the specific fair.

8. Encourage potential exhibitors, through Commerce's normal course of counseling or through contacts with business and trade associations, to consider participation in the show and refer inquiries to the show organizer.

9. Upon request and to the extent available, arrange counseling for exhibitors by District Office Trade Specialists, International Economic Policy country desk officers, and/or Trade Development industry officers.

10. Immediately following the event, mail a "User Satisfaction Survey" [OMB No. 0625–0217/ITA–4124P] to each U.S. exhibitor recruited by the organizer. Aggregate results will be shared with the US&FCS Commercial Office (post) and organizer upon compilation of the surveys for each show. The survey results will be a factor in determining subsequent Certification of the show and organizer should the organizer wish to have the show considered for the same.

B. Responsibilities of Commerce Overseas

In most instances, the post located in the city where the event is being held takes lead responsibility to work with the organizer and support the U.S. participants in the event.

Subject to individual post resources for each show, the post will provide as part of the standard fee paid by the organizer the following:

1. Furnish the organizer with a list of key local government entities, associations, distributors, agents, and other relevant information.

2. Provide the organizer with names of U.S. firms that may be potential exhibitors.

3. Promote the fair locally by including an announcement of the event in its commercial newsletter or equivalent.

4. Provide staff at a Business Information Office ("BIO") to counsel U.S. exhibitors, facilitate contacts between exhibitors and visitors, and promote the services of the individual post. The BIO cannot be used for any other purpose unless agreed to by the post.

5. Conduct an exhibitor briefing, if a sufficient number of exhibitors are interested, as determined by the organizer.

6. Advise and monitor the organizer's in-country promotion activities and U.S. pavilion management to ensure that the organizer's actions are compatible with the Department's general practice and standards for trade fairs overseas.

7. Subject to the availability of post resources and the number of U.S. exhibitors, posts can provide additional services including, but not limited to the following: advertising in post publications; exhibitor welcoming kits; providing additional staff at the show; regional promotion of the event; Ambassador or Consul General walk-through; hosting or organizing a reception; promotional mailing; ribbon-cutting ceremony; press conference, etc. Any cost for these additional services and over and above the post's use of the Certification fee shall be assumed by the organizer. Such costs will be determined by the Senior Commercial Officer ("SCO"), subject to review by the ITA Trade Events Board.

8. Upon request and as appropriate, provide expert staff support at the event by a U.S.-based Commerce industry officer or trade specialist, at the organizer's expense. Commerce will make every effort to accommodate such requests in order to enhance the success of the event for U.S. exhibitors.

9. Upon request and as appropriate, advise the overseas show organizer of Commerce's decision to transfer the U.S. pavilion management to a qualified private-sector firm. Commerce will not recommend any one or more firms to the overseas show organizer or make recommendations on behalf of any U.S. firm until such time as an organizer is selected.

C. Responsibilities of the Organizer

The organizer will—

1. Make a non-refundable contribution of $1,500 to Commerce within 14 days of notice of selection.

2. Use best efforts to recruit the minimum number of firms specified by Commerce for the event.

3. Develop a contiguous area that is readily identified as a U.S. pavilion or grouping of U.S. exhibitors unless, in the judgment of the SCO at the post, the event does not lend itself to formation of national pavilions, *i.e.* fairs that have individual industry-specific or thematic exhibition halls.

4. Ensure that recruited firms or entities exhibit U.S. products exclusively. U.S. products are either (a) manufactured or produced in the United States; or (b) if manufactured or produced outside of the United States, marketed under the name of a U.S. firm with U.S. content representing at least 51 percent of the value of the finished good or service.

5. Provide a list of recruited exhibitors to the Commerce project officer and to the appropriate US&FCS Commercial Officer abroad 60 days prior to commencement of the show.

6. Send a representative to the show and staff an office, for the duration of the event, in or around the U.S. pavilion or group of exhibitors. This representative must be on-site during exhibition hours and be available to answer U.S. pavilion exhibitors' inquiries and to render assistance to them as appropriate and as needed.

7. Ensure that each U.S. exhibitor's booth is appropriately numbered in accordance with the fair's overall numbering system, or in the absence thereof, in a manner designed by the U.S. pavilion organizer.

8. Print and distribute a catalog of U.S. pavilion participants, and other firms exhibiting U.S. products recruited by the organizer, prior to and during the event. At a minimum, the catalog must contain the individual U.S. participant's name, firm, address, phone and fax numbers, product line, and booth number. If possible, an indication if the firm is seeking sales or representation should be included. The organizer will be expected to print a minimum of two catalogs for each firm listed in the catalog, plus an amount equal to the number of registered business visitors at the last show. The organizer should consult with the appropriate SCO to determine the actual number of catalogs to be printed. The organizer must indicate in the application how it will distribute the catalogs. The organizer should arrange a stand drop for each of the firms listed in the catalog.

9. Provide, at no cost to the post, a standard-sized furnished booth for use as a BIO. If a U.S. pavilion is utilized, the BIO should be co-located with the exhibitors in the U.S. pavilion.

10. Provide an after-show report, "Show Organizer Survey" [OMB No. 0625–0217/ITA–4103P] supplied by Commerce, and a complete list of recruited exhibitors of U.S. products to the SCO at post and to the Commerce project officer within 14 days of the show's closing.

11. Undertake a comprehensive U.S. pavilion or exhibitor group recruitment campaign, including measures to target and recruit small, medium-sized and new-to-market firms. Such measures should include, but are not limited to, organizer's own direct mail campaigns, engaging the assistance of trade associations, using mailings to such firms whose names Commerce trade promotion units may provide, etc. For purposes of this paragraph, the following definitions are provided:

Small Firm: U.S. company with less than 500 employees.

Medium-sized Firm: U.S. company with between 500 and 1,000 employees.

New-to-Market Firms: U.S. companies that have not directly exported to the market (country where show occurs) during the past 24 months.

12. Undertake, as appropriate, a comprehensive promotional campaign, such as in-country pre-show press conferences and meetings, to reach importers, distributors, agents, buyers and end-users. (Note: The local U.S. and Foreign Commercial Service office can assist the organizer in identifying such contacts as part of its support of the event.)

13. Provide, at a minimum and depending on the show's norm, a 3x3 or 3x4 square meter booth or raw space equivalent for each recruited firm, plus one booth for Commerce, and additional space for common areas and (if offered), a business lounge and conference rooms. Applicant should seek guidance from the relevant SCO to determine space requirements based on post's experience in structuring previous U.S. pavilions. Unless circumstances dictate otherwise, the organizer is encouraged to secure the same area to house the U.S. pavilion as that previously used by Commerce for its U.S. pavilion. The selected organizer should coordinate this effort with the resident SCO.

14. Offer, either as part of its basic fee package or at additional (specified) charge, the following services:

(a) Installation of booth display, chairs, tables, standard company identification and standard agent identification signs;

(b) Normal utilities and hook-up services;

(c) Booth and pavilion cleaning services;

(d) Security;

(e) Exhibitors' entry passes for all stand personnel; and

(f) Production and distribution of U.S. participants' catalog.

15. Indicate if the following services or facilities will be provided, and, if so, quote charges, if any, in U.S. dollars:

(a) Forwarding and exhibit set-up services, including unloading exhibitors' equipment at the exhibition site, delivery to the exhibitors' booths, unpacking, placement in display area, storing packing crates, repacking and loading for onward shipment, customs clearance, and any other services required to assure the prompt and orderly receipt and dispatch of materials in and out of the exhibition site;

(b) Interpreters, clerical personnel or booth attendants required by participants;

(c) Business Center (phones, fax, PCs, printers, etc.);

(d) Press Center;

(e) Exhibitor's lounge;

(f) Private meeting rooms;

(g) Food and beverage service;

(h) Catalog space over and above basic company information;

(i) Parking passes for exhibitor stand personnel; and

(j) Audio/Visual equipment.

16. Reimburse Commerce for all event-specific travel and per diem costs (at standard U.S. Government rates) incurred in providing expert staff support requested by the organizer for the event over and above those standard services indicated above. (Note: Please indicate with the Application whether such support will be requested.)

D. Non-Performance

Commerce reserves the right to withdraw its support of the organizer at any time if, in the opinion of Commerce, the organizer has not met or is not likely to meet its obligations under these Conditions of Participation. In such an event, the organizer shall remain solely responsible for its obligations to its recruited exhibitors. Commerce then may opt to directly recruit the event.

E. Disclaimer of Liability

The organizer is not a representative of the Department or the U.S. Government and is prohibited from making any representation to that effect.

While Commerce believes that the subject event offers opportunities to both the organizer and exhibitors, Commerce expressly disclaims any liability, and the organizer expressly agrees to hold Commerce harmless, for the organizer's financial or other losses stemming from its organization and management of a U.S. presence in the subject event, and for any loss of monies, lack of results, or lack of other measures of success arising from exhibitors' involvement with the subject event.

Commerce's Selection of Events for Privatization

1. In selecting trade shows eligible for privatization, Commerce used the following criteria:

(a) The show is a known and good market opportunity for the featured industry or industries.

(b) The show provides promise of foreign market exposure for the latest U.S. technology or techniques in an industry or in a commercially recognized category of goods or services.

(c) The show conforms with Commerce's overall export promotion program and its priorities for allocation of its resources and endorsement.

(d) Commerce's role in the show has been either to recruit and manage a U.S. pavilion within an existing overseas trade show, or to recruit and manage the entire event with exhibitors restricted to U.S. firms only.

(e) The number of anticipated U.S. exhibitors is 20 or more firms.

(f) The show occurs between July 1995 and September 1996.

(g) The show is a recurring event.

Candidate Events for Privatization; 4th Quarter FY95 and FY96

The following list provides the type, name of event (actual name of show or Commerce's name associated with organizing a U.S. pavilion within an existing overseas fair (TFO or TFW), or the name given to a fair exclusively organized by Commerce (SFO or SFW)), the industry designation (consult index following list of shows), number of firms applicant is required to recruit, show date/month and year (contact Commerce for specific dates—some show dates are tentative and may occur at a time different than listed), city and country, (city is site of event's last occurrence, in some instances city may change), and frequency of the event.

Type	Name	Industry	Ex No.	Show Date	City/Country	FRE
TFO	U.S. Pavilion Rural Ex	GIE	40	Jul 1995	Buenos Aires, Argentina	A
TFW	Oil/Gas/Petrochemical	OGM/CON	25	Jul 1995	Kuala Lumpur, Malaysia	B
SFO	Instrument/Productivity	Lab/PCI/BTC	70	Aug 1995	Sao Paulo, Brazil	B
TFO	Pac-Ex	FPP	20	Sep 1995	Toronto, Canada	B
TFO	Seoul Instrument	PCI/LAB	20	Sep 1995	Seoul, Korea+	A
TFW	Offshore Europe	OGM	20	Sep 1995	Aberdeen, UK	B
TFO	Equifair	SPT	20	Sep 1995	Calgary, Canada	A
TFO	Microwave USA	TEL	20	Sep 1995	Tokyo, Japan	A
TFO	Bucharest Int'l Fair	GIE	30	Oct 1995	Bucharest, Romania	A
TFO	Fisa	GIE	90	Oct 1995	Santiago, Chile	A
TFO	Mineria	MIN	50	Oct 1995	Acapulco, Mexico	B
TFO	Cochabamba Int'l	GIE	30	Oct 1995	La Paz, Bolivia	B
TFO	Interfer	GIE	25	Oct 1995	Guatemala City, Guatemala	B
TFO	Singapore Informatics	CPT	20	Oct 1995	Singapore	A
TFO	Plovdiv Int'l Fair	GIE	20	Oct 1995	Plovdiv, Bulgaria	A
TFW	Aimex	MIN	35	Oct 1995	Sydney, Australia	Q
TFO	Mefa	MED	20	Oct 1995	Brno, Czech Republic	A
TFO	Broadcast India	TEL/TES/CPT	20	Oct 1995	New Delhi, India	A
TFO	Polagra Int'l Fair	AGM	20	Oct 1995	Poznan, Poland	A
TFW	Building Materials	BLD	30	Nov 1995	Taipei, Taiwan	A
TFO	Pacific Int'l Fair	GIE	30	Nov 1995	Lima, Peru	B
TFO	Lima	AIR	20	Dec 1995	Kuala Lumpur, Malaysia	B
TFW	Taipei Int'l Book	BOK	20	Jan 1996	Taipei, Taiwan	A
TFO	Wisitex	FPP/ELP/ELC	40	Feb 1996	New Delhi, India	B
TFO	Electronics USA	ELC/ELP	40	Feb 1996	New Delhi, India	A
TFO	Expocomer	GIE	40	Mar 1996	Panama City, Panama	A
TFW	London Int'l Book Fair	BOK	50	Mar 1996	London, UK	A
TFO	Cairo Int'l Fair	BLD/GCG/HCG	35	Mar 1996	Cairo, Egypt	A

Type	Name	Industry	Ex No.	Show Date	City/Country	FRE
TFW	Cosmoprof	COS	70	Apr 1996	Bologna, Italy	A
TFO	Technotron	TEL	40	Apr 1996	Lima, Peru	A
TFO	Inpoco	POL	25	Apr 1996	Seoul, Korea	A
TFO	Interclean	OMS	50	Apr 1996	Amsterdam, Netherlands	B
TFO	Brno Consumer Goods	GCG	20	Apr 1996	Brno, Czech Republic	A
TFO	Telexpo	TEL	30	Apr 1996	Sao Paulo, Brazil	A
SFW	Electro-Electronics	ELC/EIP	30	May 1996	Sao Paulo, Brazil	A
TFO	Fiepag/Graphic Arts	PGA	20	May 1996	Sao Paulo, Brazil	B
TFO	CTO	CPT/TEL	50	May 1996	Lagos, Nigeria	B
TFW	Expomin	MIN/CON	135	May 1996	Santiago, Chile	B
TFW	Interzoo	PET	40	May 1996	Nuremberg, Germany	B
TFO	Expo Salud	MED	35	May 1996	Santiago, Chile	B
TFO	Algiers Int'l Fair	GSV	25	May 1996	Algiers, Algeria	A
TFW	Infosystem	CPT/CSF/TEL	20	May 1996	Poznan, Poland	A
TFO	Eurosatory	DFN	30	Jun 1996	Paris, France	A
SFO	Expo USA	GIE	60	Jun 1996	Santo Domingo, Dominican Rep	A
SFO	Bogota Int'l Fair (HI-Tech Pavilion Only).	TBA	50	Jul 1996	Bogota, Colombia	B
TFO	Offshore Northern Seas	OGM/OGS/PCI	20	Aug 1996	Stavanger, Norway	B
TFO	Santa Cruz Int'l	GIE	30	Sep 1996	Santa Cruz, Bolivia	B
TFO	Int'l Seafood/Vis '96	MFI	20	Sep 1996	Amsterdam, Netherlands	B
TFO	Canadian High Tech	ELC/EIP/CMT	20	Sep 1996	Toronto, Canada	B
TFW	Offshore Southeast Asia	OGM/OGS	60	Dec 1996	Singapore	B*

*Although a FY97 event, Post requested this event be included.

TYPE
TFO=Trade fair recruited by overseas post.
TFW=Trade fair recruited by Commerce in Washington.
SFO=Trade fair of U.S. products only recruited by overseas post.
SFW=Trade fair of U.S. products only recruited by Commerce in Washington.

Frequency
A=Annual
B=Biennial
T=Triennial
Q=Quadrennial

Show Industry Codes
*AGM Agricultural machinery and equipment.
*AIR Aircraft and parts.
*BLD Building products (material, supplies, fixtures).
*BOK Books and periodicals.
*BTC Biotechnology.
*CMT Composite materials.
*CON Contruction machinery.
*COS Cosmetics and toiletries.
*CPT Computers and peripherals.
*CSF Computer software.
*DFN Defense industry equipment.
*EIP Electronic industry production and test equipment.
*ELC Electronic components.
*ELP Electrical power generation and distribution equip.
*FPP Food processing and packaging machinery.
*GCG Consumer goods, appliances, housewares.
*GIE General industrial equipment.
*GSV Services (NEC).
*HCG Household consumer goods, appliances, soap.
*LAB Analytical, scientific and laboratory instruments.
*MED Medical instruments, equipment and supplies.
*MFI Marine fish products.
*MIN Mining and extraction machinery.
*OGM Oil and gas field machinery.
*OGS Oil, gas (other mineral) production/exploration services.
*OMS Operations and maintenance services.
*PCI Process controls—industrial.
*PET Pet supplies.
*PGA Printing and graphic arts equipment.
*POL Pollution control equipment.
*SPT Sporting goods and recreation equipment.
*TBA (to be announced).
*TEL Telecommunications equipment.
*TES Telecommunications services.

Dated: June 24, 1994.

Timothy Hauser,

Deputy Under Secretary, International Trade Administration, U.S. Department of Commerce.

[FR Doc. 94–15327 Filed 6–23–94; 8:45 am]

BILLING CODE 3510–FP–U

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textiles and Textile Products Produced or Manufactured in Malaysia

June 20, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: June 27, 1994.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, 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) 927–6712. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Categories 331/631 is being increased by application of swing, reducing the limit for Categories 300/301 to account for the increase.

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 65580, published on December 15, 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 their provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements.

June 20, 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 9, 1993, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel, produced or manufactured in Malaysia and exported during the twelve-month period which began on January 1, 1994 and extends through December 31, 1994.

Effective on June 27, 1994, you are directed to amend the directive dated December 9, 1993, to adjust the limits for the following categories, as provided under the terms of the Memorandum of Understanding dated August 26, 1992 between the Governments of the United States and Malaysia:

Category	Adjusted twelve-month limit [1]
Other specific limits	
300/301	2,359,165 kilograms.
331/631	1,720,912 dozen pairs.

[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. 94–15374 Filed 6–23–94; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement list.

SUMMARY: This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: July 25, 1994.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On December 27, 1993, April 15, 22, May 2 and 6, 1994, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (58 FR 68398, 59 FR 18104, 19164, 22596 and 23700) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and services, fair market price, and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

Accordingly, the following commodities and services are hereby added to the Procurement List:

Commodities

Sling, Small Arm
1005–01–083–8113
Spray Kit, Self-Pressurized
4940–00–803–6444

Services

Grounds Maintenance
Naval Postgraduate School Annex,
Monterey, California
Janitorial/Custodial

Frank T. Bow Federal Building, 201 Cleveland Avenue, S.E., Canton, Ohio
Janitorial/Custodial
Jennings-Randolph Federal Center, 300 Third Street, Elkins, West Virginia
Laundry Service
McChord Air Force Base, Washington
Mailing Service
U.S. Government Printing Office, Washington, DC

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 94–15423 Filed 6–23–94; 8:45 am]

BILLING CODE 6820–33–P

Procurement List Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Addition to the Procurement List.

SUMMARY: This action adds to the Procurement List a looseleaf binder index sheet set to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: July 25, 1994.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On March 18, 1994, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (59 FR 12895) of proposed addition to the Procurement List. Comments were received from the current contractor for this index sheet set, in response to both the notice of proposed rulemaking for this addition to the Procurement List and earlier Committee inquiries for sales data from this contractor. The contractor indicated that addition of the set to the Procurement List would cause it to lose a sizable part of its sales. The contractor also claimed that the Committee's action would be likely to cause the contractor to lay off the employees producing the set and would cause sufficient operating losses to require default on certain financial obligations and possible liquidation of the business. The contractor also indicated that it has held the Government contract for the set since 1972, except for one contract.

It was because of concern over possible severe adverse impact on this contractor, as manifested in its responses to earlier Committee inquiries, that the Committee decided to add only the requirements of two supply depots to the Procurement List rather than the entire Government requirement for this index sheet set. In addition, to further moderate the impact on this contractor, the Committee has decided to permit the contractor to continue competing for one of the two depots for an additional year. This approach will permit the contractor more time to adjust to the loss of the opportunity to compete for both depots. Even after the nonprofit agency assumes supply responsibility for the two depots, the contractor will continue to have access to approximately 60% of the Government requirement for the set.

Under these circumstances, the Committee does not believe its action will have a severe adverse impact on the contractor, so the harmful effects the contractor has predicted should not occur. In addition, the Committee believes that the creation of jobs for people with severe disabilities outweighs any possible loss of employment for the contractor's employees, as the unemployment rate for people with severe disabilities exceeds 65%, far above the rates for other groups.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodity, fair market price, and impact of the addition on the current or most recent contractors, the Committee has determined that the commodity listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodity.

3. The action will result in authorizing small entities to furnish the commodity to the Government

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity proposed for addition to the Procurement List.

Accordingly, the following commodity is hereby added to the Procurement List:

Index Sheet Set, Looseleaf Binder
7530–00–160–8477
(Requirements for the Palmetto, Georgia and Fort Worth, Texas Depots)

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 94–15424 Filed 6–23–94; 8:45 am]

BILLING CODE 6820–33–M

Procurement List—Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: July 25, 1994.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a) (2) and 41 CFR 51–2–3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action will result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commissary Shelf Stocking and Custodial
Naval Station, San Diego, California
NPA: Mental Health Systems, Inc., San Diego, California
Janitorial/Custodial
Air National Guard Snowbird Operation, Davis-Monthan Air Force Base, Arizona
NPA: Goodwill Industries of Tucson, Tucson, Arizona
Janitorial/Custodial
Air National Guard, Air Force Reserve Center, Tucson, Arizona
NPA: Goodwill Industries of Tucson, Tucson, Arizona
Janitorial/Custodial
Naval Outlying Landing Field, Imperial Beach, California
NPA: Mental Health Systems, Inc., San Diego, California
Janitorial/Custodial
Naval Station and Naval Training Center, San Diego, California
NPA: Mental Health Systems, Inc., San Diego, California
Janitorial/Custodial
Naval Air Station, San Diego, California
NPA: Mental Health Systems, Inc., San Diego, California
Janitorial/Custodial
Naval Air Station, Miramar, San Diego, California
NPA: Mental Health Systems, Inc., San Diego, California

Beverly L. Milkman,

Executive Director.

[FR Doc. 94–15425 Filed 6–23–94; 8:45 am]

BILLING CODE 6820–33–P

Procurement List Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: July 25, 1994.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2–3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the services.

3. The action will result in authorizing small entities to furnish the services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Janitorial/Custodial

National Weather Service, Los Angeles International Airport, 10445 South Sepulveda Blvd., Los Angeles, California
NPA: Harbor Foundation for the Retarded, Harbor City, California
U.S. Army Reserve Center, Santa Rosa, California
NPA: Goodwill Industries of the Redwood Empire, Santa Rosa, California
U.S. Army Reserve Centers, 1130 Arthur Avenue and 185 15th Avenue, Rockford, Illinois
NPA: Omni Business Services, Rockford, Illinois
Building 426, Kirtland Air Force Base, New Mexico
NPA: Adelante Development Center, Inc., Albuquerque, New Mexico
Schultz Maintenance Complex, Wilson Creek Road, Ellensburg, Washington
NPA: Elmview, Ellensburg, Washington

Operation of the Postal Service Center

Randolph Air Force Base, Texas
NPA: Goodwill Industries of San Antonio, San Antonio, Texas

Parts Machining

U.S. Postal Service, National Inventory Control Center, Topeka, Kansas
NPA: Arizona Industries for the Blind, Phoenix, Arizona

Beverly L. Milkman,

Executive Director.

[FR Doc. 94–15426 Filed 6–23–94; 8:45 am]

BILLING CODE 6820–33–M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title: CHAMPUS Mental Health Program Cost Reimbursement.

Type of Request: New collection.

Number of Respondents: 62.

Responses Per Respondent: 1.

Annual Responses: 62.

Average Burden Per Response: 18 hours.

Annual Burden Hours: 1,116.

Needs and Uses: The information collected hereby, consists of cost reports from residential treatment center (RTC) facilities. This information will be used in formulating a change from a charge-based to a cost-based reimbursement system, as recommended by the Comptroller General.

Affected Public: Businesses or other for-profit and Small businesses or organizations.

Frequency: Triennially.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Ms. Shannah Koss. Written comments and recommendations on the proposed information collection should be sent to Ms. Koss at the Office of Management and Budget, Desk Officer for DoD, Room 3001, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce. Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: June 21, 1994.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–15400 Filed 6–23–94; 8:45 am]

BILLING CODE 5000–04–M

Office of the Secretary

Committees; Establishment; Renewal; Termination, etc.

ACTION: Renewal of the Department of Defense Information School Board of Visitors.

SUMMARY: The Department of Defense Information School (DINFOS) Board of Visitors was renewed for a two-year period, effective May 27, 1994, in consonance with the public interest and in accordance with the provisions of Public Law 92–463, the "Federal Advisory Committee Act."

The DINFOS Board of Visitors provides timely and expert advice to the Secretary of Defense and the Assistant to the Secretary of Defense for Public Affairs regarding promoting excellence in public affairs training. The Board is an external source of journalistic and communications media expertise which acts as an important bridge between the DINFOS and the media professional communities, and ensures continued reflection on the objectives, operations, and policies of the School.

Continued efforts are made to ensure that the Board has a well-balanced membership comprised of individuals from the journalistic and communications media fields, and from diverse sectors such as, academic institutions, public media research firms, network news companies, and national newspapers/publications.

For further information on the DINFOS Board of Visitors, contact: Major Q. Byars, Armed Forces Information Service, (703) 274–4897.

Dated: June 21, 1994.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–15399 Filed 6–23–94; 8:45 am]

BILLING CODE 5000–04–M

Joint Advisory Committee on Nuclear Weapons Surety

ACTION: Notice of Advisory Committee meeting.

SUMMARY: The Joint Advisory Committee (JAC) on Nuclear Weapons Surety will meet in closed session on 28–29 July, 1994, in San Diego, California.

The Joint Advisory Committee is charged with advising the Secretary of Defense, Secretary of Energy, and the Joint Nuclear Weapons Council on nuclear weapons systems surety matters. At this meeting, the Joint Advisory Committee will receive classified briefings on maintaining nuclear expertise in the Services, the status of Operational Readiness Inspections and Defense Surety Inspections, the Stockpile Stewardship Program and DoD accommodation of the DOE budget.

In accordance with the Federal Advisory Committee Act (Public Law 92–463, as amended, Title 5, U.S.C. App. II (1988)), this meeting concerns matters, sensitive to the interests of national security, listed in 5 U.S.C. Section 552b(c)(1) and accordingly this meeting will be closed to the public.

Dated: June 21, 1994.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–15398 Filed 6–23–94; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF EDUCATION

Arbitration Panel Decision Under the Randolph-Sheppard Act

AGENCY: Department of Education.

ACTION: Notice of arbitration panel decision under the Randolph-Sheppard Act.

SUMMARY: Notice is hereby given that on February 14, 1991, an arbitration panel rendered a decision in the matter of *George McNabb* v. *Arkansas Department of Human Services, Division of Services for the Blind (Docket No. R–S/81–2).* This panel was reconvened by the Secretary of the U.S. Department of Education to consider prospective damages and attorney's fees pursuant to a decision and court order issued by the United States Court of Appeals for the Eighth Circuit on December 5, 1988. The panel was reconvened as the result of an original complaint filed by petitioner, George McNabb, on April 7, 1981. Mr. McNabb was grieving a State fair hearing decision denying his bid on three vending facility locations on State property and the awarding of two of those facilities to other blind vendors. The Randolph-Sheppard Act authorizes blind individuals to operate vending facilities on State and Federal property. Under the Randolph-Sheppard Act (the Act), a blind licensee dissatisfied with the State's operation or administration of the vending facility program authorized under the Act may request a full evidentiary hearing from the State licensing agency (SLA). If the licensee is dissatisfied with the State agency's decision, the licensee may complain to the Secretary, who then is required to convene an arbitration panel to resolve the dispute.

FOR FURTHER INFORMATION CONTACT: A copy of the full text of the arbitration panel decision may be obtained from George F. Arsnow, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3230, Mary E. Switzer Building, Washington, D.C. 20202–2738. Telephone: (202) 205–9317. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8298.

SUPPLEMENTARY INFORMATION: Pursuant to the Randolph-Sheppard Act (20 U.S.C. 107d–2(c)), the Secretary publishes a synopsis of arbitration panel decisions.

Background

The complainant, George McNabb, is a blind vendor licensed by the respondent, the Arkansas Department of Human Services, Division of Services for the Blind, pursuant to the Randolph-Sheppard Act, 20 U.S.C. 107 *et seq.* The Arkansas Department of Human Services, Division of Services for the Blind, is the SLA responsible for the operation of the Arkansas vending facility program for blind individuals.

This arbitration under the Act involved a complaint by Mr. McNabb against respondent that was filed initially on April 7, 1981, and filed in amended form on or about January 25, 1983. As a result of the complaint, an arbitration hearing was held by the arbitration panel on September 8, 1983, and an Interlocutory Award was made by the panel on December 29, 1983.

The Interlocutory Award provided for the complainant to be given a continuing right of assignment to particular vending facilities when they became available and a continuing right to request additional relief from the arbitration panel. After the complainant accepted an assignment to a new vending facility on October 10, 1985, he requested the Department of Education to reconvene the arbitration panel for

the purpose of awarding him additional relief, such as back pay, attorney's fees, and costs.

In a letter dated March 26, 1986, the Department of Education issued a decision denying the request of Mr. McNabb that an arbitration panel be reconvened, on the basis that there was no additional relief that could be granted by the panel. This decision resulted in the complaint becoming a matter for the courts and on May 22, 1987, the U.S. District Court for the Eastern District of Arkansas, Western Division, concluded that the arbitration panel "has the authority to award compensatory relief and attorney fees." The district court directed the Department of Education to "reconvene an arbitration panel to consider the award of compensatory relief, attorney's fees and costs to the complainant." The Department of Education and the Arkansas Department of Human Services appealed the district court's decision on the grounds that neither compensatory relief nor attorney's fees were contemplated under the Act and that those awards would be contrary to the principle of sovereign immunity.

The Court of Appeals concluded in a per curiam decision, followed by individual concurring and dissenting opinions, that the Act permits an arbitration panel to award prospective damages against a State from the time of the arbitration panel decision until the complainant is placed in an appropriate vending position. The court held, however, that a complainant is not entitled to retroactive money damages against a State involving expenses incurred prior to the decision of the arbitration panel. The court further held that "the question whether the arbitration panel has the authority to award attorney's fees is a question more properly decided in the first instance by the arbitration panel when it reconvenes."

The Court of Appeals affirmed the order of the district court that the Department of Education reconvene the arbitration panel.

A hearing by the arbitration panel was held on July 17, 1990. The parties agreed at the hearing that the matters to be considered by the arbitration panel were the interest that the complainant was entitled to receive on the prospective damages identified by the Court of Appeals, attorney's fees, and costs.

Arbitration Panel Decision

The arbitration panel issued an award on February 14, 1991, which directed the respondent to pay the complainant interest on his loss of profits for the interval of time between the date of the Interlocutory Award by the arbitration panel and the date the complainant was paid his lost profits in full. The panel also directed the Arkansas Department of Human Services to reimburse the attorney's fees and expenses incurred by the complainant because of the litigation concerning the reconvening of the arbitration panel. The panel further found that the complainant was entitled to be reimbursed by the U.S. Department of Education for the attorney's fees and expenses incurred by him in connection with the arbitration that preceded and followed the litigation concerning the reconvening of the arbitration panel.

The Department has appealed this case on the attorney's fees issue and is currently awaiting a decision in the United States Court of Appeals for the Eighth Circuit, *George McNabb* v. *Richard W. Riley, Secretary, Department of Education,* Docket No. 93–2877 EALR.

Dated: June 21, 1994.

Judith E. Heumann,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 94–15417 Filed 6–23–94; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Draft Environmental Impact Statement for Programmatic Spent Nuclear Fuel Management and Idaho National Engineering Laboratory Environmental Restoration and Waste Management Programs; and Announcement of Public Hearings

AGENCY: Department of Energy.

ACTION: Notice of availability.

SUMMARY: Notice is hereby given that the Department of Energy (DOE) has completed a draft environmental impact statement (EIS) for Programmatic Spent Nuclear Fuel Management (SNF) and Idaho National Engineering Laboratory (INEL) Environmental Restoration and Waste Management Programs (DOE/EIS–0203–D). The draft EIS was prepared in accordance with the National Environmental Policy Act (NEPA) of 1969; Council on Environmental Quality regulations implementing NEPA, 40 CFR Parts 1500–1508; and DOE NEPA Implementing Procedures, 10 CFR Part 1021. DOE will conduct public hearings and receive comments on the draft EIS, which addresses Department-wide spent nuclear fuel management strategies for the transportation, receipt, storage, and processing of these fuels. In addition, the draft EIS addresses proposed Environmental Restoration and Waste Management (ER&WM) activities at the INEL. The Department of the Navy is a cooperating agency in preparing this EIS.

This Notice announces that the draft EIS will be available to the public in DOE reading rooms and designated information locations which are identified in this notice. Upon completion of general distribution of the document, DOE will file the draft EIS with the Environmental Protection Agency, which will then publish a Notice in the **Federal Register** to start the formal public comment period.

DATES: DOE invites interested agencies, organizations, and the general public to provide oral and written comments on the draft EIS. All comments on the draft EIS are due by September 30, 1994. Please be advised that the Department will not be able to accommodate any requests for an extension of the public comment period, due to schedule constraints to which DOE agreed and which are contained in a court order under which the EIS is being prepared. Oral comments will be accepted at the public hearings to be held at the times and locations listed below. Persons desiring to make oral comments at a hearing are requested to notify the Point of Contact listed below (see **FOR FURTHER INFORMATION**) no later than one week prior to the hearing. In the interest of cost savings, DOE reserves the right to cancel any hearings for which insufficient interest is indicated through preregistration. However, in such cases, comments could be submitted by calling the telephone number below or writing to the DOE Idaho Operations Office at the address below. More information regarding dates may be found below under **SUPPLEMENTARY INFORMATION.**

ADDRESSES: Comments should be sent to: Public Comments on the SNF and INEL EIS, Attention: Tom Wichmann, DOE Idaho Operations Office, P.O. Box 3189, Idaho Falls, Idaho 83403–3189. Copies of the draft EIS may be obtained by following instructions given below under **SUPPLEMENTARY INFORMATION.** Addresses of DOE Public Reading Rooms, Navy Information Locations, and other locations where the draft EIS will be available for public review are listed below under **SUPPLEMENTARY INFORMATION.**

Hearing Schedule and Locations: Hearings will be held at each of the following locations on the dates indicated:

1. Portsmouth, Virginia, on Monday, July 18, 1994, from 2:00 p.m. to 5:00 p.m. at

Willett Hall, 3701 Willett Drive. Point of Contact: Mr. Steve Milner—804–396–9550.

2. Newport News, Virginia, on Monday, July 18, 1994, from 7:00 p.m. to 11:00 p.m. at Ferguson High School Auditorium, 11 Shoe Lane. Point of Contact: Mr. Steve Milner—804–396–9550.

3. Portsmouth, New Hampshire, on Wednesday, July 20, 1994, from 1:00 p.m. to 5:00 p.m. at Portsmouth City Council Chambers, 1 Junkins Avenue. Point of Contact: Ms. Mary Anne Mascianica—207–438–2325.

4. Kittery, Maine, on Wednesday, July 20, 1994, from 7:00 p.m. to 11:00 p.m. at Traip Academy, Williams Avenue. Point of Contact: Ms. Mary Anne Mascianica—207–438–2325.

5. Ballston Spa, New York, on Friday, July 22, 1994, from 1:00 p.m. to 4:00 p.m. at Ballston Spa High School Auditorium, 480 Garrett Road. Point of Contact: Mr. Alan Muir—518–395–6386.

6. Ballston Spa, New York, on Friday, July 22, 1994, from 6:00 p.m. to 9:00 p.m. at Ballston Spa High School Auditorium, 480 Garrett Road. Point of Contact: Mr. Alan Muir—518–395–6386.

7. Seattle, Washington, on Tuesday, July 26, 1994, from 11:30 a.m. to 3:30 p.m. at the Federal Building, Fourth Floor Auditorium, 915 Second Avenue. Point of Contact: Mr. Robert Minnitti—206–476–7111.

8. Bremerton, Washington, on Tuesday, July 26, 1994, from 7:00 p.m. to 11:00 p.m. at Bremerton High School Auditorium, 1500 13th Street. Point of Contact: Mr. Robert Minnitti—206–476–7111.

9. Pearl City, Hawaii, on Thursday, July 28, 1994, from 12:00 p.m. to 4:00 p.m. at Leeward Community College Theater, 96–045 Ala Ike Street. Point of Contact: Ms. Annette Martin—808–474–0272.

10. Pearl City, Hawaii, on Thursday, July 28, 1994, from 6:00 p.m. to 10:00 p.m. at Leeward Community College Theater, 96–045 Ala Ike Street. Point of Contact: Ms. Annette Martin—808–474–0272.

11. Arlington, Virginia, on Tuesday, August 2, 1994, from 1:30 p.m. to 4:30 p.m. at the Crystal Gateway Marriott, 1700 Jefferson Davis Highway. Point of Contact: Mr. Tom Wichmann—800–682–5583.

12. Arlington, Virginia, on Tuesday, August 2, 1994, from 6:30 p.m. to 9:30 p.m. at the Crystal Gateway Marriott, 1700 Jefferson Davis Highway. Point of Contact: Mr. Tom Wichmann—800–682–5583.

13. Las Vegas, Nevada, on Thursday, August 4, 1994, from 1:30 p.m. to 4:30 p.m. at Cashman Field, 850 Las Vegas Boulevard North. Point of Contact: Mr. Tom Wichmann—800–682–5583.

14. Las Vegas, Nevada, on Thursday, August 4, 1994, from 6:30 p.m. to 9:30 p.m. at Cashman Field, 850 Las Vegas Boulevard North. Point of Contact: Mr. Tom Wichmann—800–682–5583.

15. Portland, Oregon, on Tuesday, August 9, 1994, from 1:30 p.m. to 4:30 p.m. at the Portland Hilton, 921 Southwest Sixth Avenue. Point of Contact: Mr. Tom Wichmann—800–682–5583.

16. Portland, Oregon, on Tuesday, August 9, 1994, from 6:30 p.m. to 9:30 p.m. at the Portland Hilton, 921 Southwest Sixth Avenue. Point of Contact: Mr. Tom Wichmann—800–682–5583.

17. Pasco, Washington, on Thursday, August 11, 1994, from 1:30 p.m. to 4:30 p.m. at the Red Lion Inn Pasco, 2525 North 20th Street. Point of Contact: Mr. Tom Wichmann—800–682–5583.

18. Pasco, Washington, on Thursday, August 11, 1994, from 6:30 p.m. to 9:30 p.m. at the Red Lion Inn Pasco, 2525 North 20th Street. Point of Contact: Mr. Tom Wichmann—800–682–5583.

19. Oak Ridge, Tennessee, on Tuesday, August 16, 1994, from 1:30 p.m. to 4:30 p.m. at the Garden Plaza Hotel, 215 South Illinois Avenue. Point of Contact: Mr. Tom Wichmann—800–682–5583.

20. Oak Ridge, Tennessee, on Tuesday, August 16, 1994, from 6:30 p.m. to 9:30 p.m. at the Garden Plaza Hotel, 215 South Illinois Avenue. Point of Contact: Mr. Tom Wichmann—800–682–5583.

21. Kingston, Tennessee, on Thursday, August 18, 1994, from 6:30 p.m. to 9:30 p.m. at Kingston Elementary School, 2009 Kingston Highway. Point of Contact: Mr. Tom Wichmann—800–682–5583.

22. Moscow, Idaho, on Tuesday, August 23, 1994, from 1:30 p.m. to 4:30 p.m. at the University Inn, 1516 Pullman Road. Point of Contact: Mr. Tom Wichmann—800–682–5583.

23. Moscow, Idaho, on Tuesday, August 23, 1994, from 6:30 p.m. to 9:30 p.m. at the University Inn, 1516 Pullman Road. Point of Contact: Mr. Tom Wichmann—800–682–5583.

24. Savannah, Georgia, on Tuesday, August 23, 1994, from 1:30 p.m. to 4:30 p.m. at the DeSoto Hilton, 15 East Liberty. Point of Contact: Mr. Tom Wichmann—800–682–5583.

25. Savannah, Georgia, on Tuesday, August 23, 1994, from 6:30 p.m. to 9:30 p.m. at the DeSoto Hilton, 15 East Liberty. Point of Contact: Mr. Tom Wichmann—800–682–5583.

26. Boise, Idaho, on Thursday, August 25, 1994, from 1:30 p.m. to 4:30 p.m. at Boise Centre on the Grove, 850 West Front Street. Point of Contact: Mr. Tom Wichmann—800–682–5583.

27. Boise, Idaho, on Thursday, August 25, 1994, from 6:30 p.m. to 9:30 p.m. at Boise Centre on the Grove, 850 West Front Street. Point of Contact: Mr. Tom Wichmann—800–682–5583.

28. North Augusta, South Carolina, on Thursday, August 25, 1994, from 1:30 p.m. to 4:30 p.m. at the North Augusta Community Center, 495 Brookside Avenue. Point of Contact: Mr. Tom Wichmann—800–682–5583.

29. North Augusta, South Carolina, on Thursday, August 25, 1994, from 6:30 p.m. to 9:30 p.m. at the North Augusta Community Center, 495 Brookside Avenue. Point of Contact: Mr. Tom Wichmann—800–682–5583.

30. Twin Falls, Idaho, on Tuesday, August 30, 1994, from 1:30 p.m. to 4:30 p.m. at Weston Plaza, 1350 Blue Lakes Boulevard North. Point of Contact: Mr. Tom Wichmann—800–682–5583.

31. Twin Falls, Idaho, on Tuesday, August 30, 1994, from 6:30 p.m. to 9:30 p.m. at Weston Plaza, 1350 Blue Lakes Boulevard North. Point of Contact: Mr. Tom Wichmann—800–682–5583.

32. Idaho Falls, Idaho, on Thursday, September 1, 1994, from 1:30 p.m. to 4:30 p.m. at the Shilo Inn, 780 Lindsay Boulevard. Point of Contact: Mr. Tom Wichmann—800–682–5583.

33. Idaho Falls, Idaho, on Thursday, September 1, 1994, from 6:30 p.m. to 9:30 p.m. at the Shilo Inn, 780 Lindsay Boulevard Point of Contact: Mr. Tom Wichmann—800–682–5583.

FOR FURTHER INFORMATION CONTACT:

Specific information on the draft EIS may be obtained from Mr. Tom Wichmann, EIS Project Office, DOE Idaho Operations Office, P.O. Box 1625, Idaho Falls, ID 83415, or 800–682–5583.

General information on the DOE NEPA process may be obtained from Ms. Carol Borgstrom, Director, Office of NEPA Oversight (EH–25), U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, D.C. 20585 or 800–472–2756.

SUPPLEMENTARY INFORMATION:

Background

DOE has prepared a draft EIS that addresses the potential environmental impacts associated with alternatives for managing DOE spent nuclear fuel on a national level. The draft EIS also addresses potential environmental impacts related to the management of solid, radioactive, and hazardous wastes, spent nuclear fuel, and environmental restoration activities at the INEL. DOE is conducting these analyses in order to make: (1) programmatic (nationwide) decisions regarding DOE's future spent nuclear fuel management; and (2) site-specific decisions regarding the future direction of the Environmental Restoration and Waste Management Programs at the INEL.

DOE's programmatic decisions will determine the appropriate means of managing existing and projected quantities of spent nuclear fuel from now until the year 2035. During this 40-year timeframe, DOE intends to make a final determination on the ultimate disposition of its spent nuclear fuel.

DOE's site-specific decisions for INEL will determine how to manage environmental restoration and waste management activities and spent nuclear fuel at INEL with a focus on the next 10 years. During that timeframe, DOE's objectives are to mitigate, through environmental restoration, the impacts of previous operations, and to treat, store, and dispose of waste at INEL in a safe and efficient manner.

Alternatives Considered

Management alternatives for spent nuclear fuel are as follows. Alternative 1, no action: perform minimum activities required for safe and secure management at the generation site or current storage location; Alternative 2, decentralization: storage and stabilization of most spent nuclear fuel at or near the generation site with limited shipments from university and non-DOE facilities; Alternative 3, the 1992/1993 planning basis: transport and store newly generated spent nuclear fuel at INEL or the Savannah River Site and consolidate some existing spent nuclear fuel at INEL; Alternative 4, regionalization: distribute existing and projected spent nuclear fuel among DOE sites based on fuel type or distribute existing and projected spent nuclear fuel between an eastern regional site and a western regional site; and Alterntative 5, centralization: manage all existing and projected spent nuclear fuel at one site until ultimate disposition. Five DOE sites have been analyzed for management of all DOE spent nuclear fuel: (1) the Hanford Site at Richland, Washington; (2) the Idaho National Engineering Laboratory in southeastern Idaho; (3) the Savannah River Site in Aiken, South Carolina; (4) the Oak Ridge Reservation in Oak Ridge, Tennessee; and (5) the Nevada Test Site near Mercury, Nevada. In addition, four Naval shipyards and the Kesselring site (near West Milton, New York) are being considered for management of Naval spent nuclear fuel only. The four Naval shipyards are: (1) Norfolk Naval Shipyard, Portsmouth, Virginia; (2) Portsmouth Naval Shipyard, Kittery, Maine; (3) Pearl Harbor Naval Shipyard, Honolulu, Hawaii; and (4) Puget Sound Naval Shipyard, Bremerton, Washington.

The INEL site-specific alternatives related to environmental restoration and waste management are as follows. Alternative A, no action: complete all identified near-term actions and continue to operate most existing facilities; Alternative B, the 10-year plan: complete all identified actions and initiate new projects to enhance cleanup, manage laboratory wastes and spent nuclear fuel; Alternative C, minimum treatment, storage, and disposal: minimize treatment, storage and disposal activities to the extent possible, conduct minimum cleanup and decontamination and decommissioning activities prescribed by regulation and transfer spent nuclear fuel and waste from environmental restoration activities to another site; and Alternative D, maximum treatment, storage, and disposal: maximize treatment, storage and disposal functions at INEL to accommodate waste and spent nuclear fuel from the DOE complex and conduct maximum cleanup and decontamination and decommissioning).

Public Hearings

The purposes of the hearings are to receive comments on the subjects analyzed in the draft EIS; to provide information to the public concerning the content and adequacy of the EIS; and to respond to public questions on the analyses or the EIS process. Hearings will be set up to address these areas. Individuals wishing to speak at hearings may register in advance by contacting the appropriate telephone numbers listed above. To ensure that as many persons as possible have the opportunity to present comments, a maximum of five minutes may be allotted to each speaker. Persons presenting oral comments at the hearings are encouraged to provide DOE with written copies of their comments.

Conduct of Hearings

Rules for the orderly conduct of the hearings will be announced by the presiding officer at the start of the hearings and will be available at the hearing registration table. DOE personnel conducting the hearings may ask clarifying questions regarding statements made at the hearings. There will be no cross-examination of persons presenting statements. Proceedings of the hearings will be prepared and made available at the DOE Reading Rooms and Navy Information locations listed below.

Availability of Copies of the Draft EIS

Copies of the draft EIS are being distributed to interested Federal, State, local agencies, and individuals throughout the country, and to libraries, local planning offices, and civic institutions in potentially affected areas. Distribution of the full draft EIS is expected to be completed on June 30, 1994. At that time, copies of the draft EIS, including all appendices, will be available for public review at the locations listed below. Microfiche copies of selected reference materials will soon be available in DOE Reading Rooms and Navy Information Locations listed below. Copies of the reference material may also be obtained from Mr. Wichmann on request. A list of all individuals and organizations receiving a copy of the draft EIS can be obtained from Mr. Wichmann at the address given above (see **FOR FURTHER INFORMATION**).

Copies of the draft EIS are available on request. Requests for copies should be sent to: EIS Project Office, Attention: Tom Wichmann, DOE Idaho Operations Office, P.O. Box 1625, Idaho Falls, ID 83415, or by calling 800–682–5583. The draft EIS, including appendices, is approximately 4400 pages in length, and is separately bound into the following portions:

Summary of the EIS

Volume I—Programmatic Spent Nuclear Fuel Management EIS (main volume)
Appendix A—Hanford Site Spent Nuclear Fuel Management Program
Appendix B—Idaho National Engineering Laboratory Spent Nuclear Fuel Management Program
Appendix C—Savannah River Site Spent Nuclear Fuel Management Program
Appendix D—Naval Spent Nuclear Fuel Management
Appendix E—Spent Nuclear Fuel Management at Other Sites
Appendix F—Nevada Test Site and Oak Ridge Reservation Spent Nuclear Fuel Management
Volume II—INEL Environmental Restoration and Waste Management Programs EIS (includes Appendices A through E)
Appendix F—Technical Methodologies and Key Data.

The 75-page Summary is available for review for those who do not wish to examine the entire draft EIS. When requesting copies of the draft EIS, please indicate whether you wish to receive only the summary, or the entire draft EIS and all of its associated appendices, or specific volumes or appendices, as listed above.

DOE Public Reading Rooms

U.S. Department of Energy, Oakland Operations Office
Environmental Information Center
1301 Clay Street, Room 700 North
Oakland, CA 94612
(510) 637–1762
Monday–Friday: 8:30 a.m. to 5:00 p.m.

U.S. Department of Energy, Rocky Flats Office
Public Reading Room
Front Range Community
College Library
3645 West 112th Avenue
Level B, Center of the Building
Westminster, CO 80030
(303) 469–4435
Monday & Tuesday: 10:30 a.m. to 6:30 p.m.,
Wednesday: 10:00 a.m. to 4:00 p.m.,
Thursday: 8:00 a.m. to 4:00 p.m.

U.S. Department of Energy, Headquarters
Freedom of Information Reading Room
1E–190 Forrestal Building
1000 Independence Avenue, SW
Washington, D.C. 10585

(202) 586–6020
Monday–Friday: 9:00 a.m. to 4:00 p.m.

U.S. Department of Energy, Idaho Operations Office
Public Reading Room
1776 Science Center Drive
Idaho Falls, ID 83402
(208) 526–9162
Monday–Friday: 8:00 a.m. to 5:00 p.m.

U.S. Department of Energy, Chicago Operations Office
Public Reading Room
University of Illinois at Chicago Library
Government Documents Section
801 South Morgan Street
Chicago, IL 60607
(312) 996–2738
Monday–Friday: 8:00 a.m. to 10:00 p.m., Saturday: 10:00 a.m. to 5:00 p.m.

U.S. Department of Energy, Albuquerque Operations Office
Public Reading Room
National Atomic Museum
20358 Wyoming Boulevard, SE
Albuquerque, NM 87185
(505) 845–4378
Monday–Friday: 9:00 a.m. to 5:00 p.m.

U.S. Department of Energy, Nevada Operations Office
Public Reading Room
Coordination and Information Center
3084 South Highland Drive
Las Vegas, NV 89106
(702) 295–0731
Monday–Friday: 7:00 a.m. to 4:00 p.m.

U.S. Department of Energy, Fernald Field Office
Public Environmental Center
JANTER Building 10845
Hamilton-Cleves Highway
Harrison, OH 45030
(513) 738–0164
Monday, Thursday: 9:00 a.m. to 8:00 p.m., Tuesday, Wednesday, Friday: 9:00 a.m. to 4:30 p.m., Saturday: 9:00 a.m. to 1:00 p.m.

U.S. Department of Energy, Savannah River Operations Office
Public Reading Room
Road 1A, Building 703A, D232
Aiken, SC 29802
(803) 725–1408
Monday–Thursday: 8:00 a.m. to 11:00 p.m., Friday: 8:00 a.m. to 5:00 p.m., Saturday: 10:00 a.m. to 5:00 p.m. Sunday: 2:00 p.m. to 11:00 p.m.

U.S. Department of Energy, Oak Ridge Operations Office
Public Reading Room
55 Jefferson Avenue
Oak Ridge, TN 37831
(615) 576–1216
Monday–Friday: 8:00 a.m. to 11:30 a.m. and 12:30 p.m. to 5:00 p.m.

U.S. Department of Energy, Richland Operations Office
Public Reading Room
Washington State University Tri-Cities
100 Sprout Road, Room 130W
Richland, WA 99352
(509) 376–8583
Monday–Friday: 8:00 a.m. to 12:00 p.m. and 1:00 p.m. to 4:00 p.m.

Navy Information Locations

Norfolk Naval Shipyard

Chesapeake Central Library
298 Cedar Rd.
Chesapeake, VA 23320–5512
(804) 436–8300
Monday–Thursday: 9:00 a.m to 9:00 p.m., Friday–Saturday: 9:00 a.m to 5:00 p.m., Sunday: 1:00 p.m to 5:00 p.m.

Newport News Public Library
Grissom Branch
366 Deshazor Dr.
Newport News, VA 23602
(804) 886–7896
Monday–Thursday: 9:00 a.m. to 9:00 p.m., Friday–Saturday: 9:00 a.m. to 6:00 p.m.

Kirn Library
301 East City Hall Ave.
Norfolk, VA 23510
(804) 441–2429
Monday–Thursday: 9:00 a.m. to 9:00 p.m., Friday: 9:00 a.m. to 5:30 p.m., Saturday: 9:00 a.m. to 5:00 p.m.

Hampton Public Library
4207 Victoria Boulevard
Hampton, VA 23669
(804) 727–1154
Monday–Thursday: 9:00 a.m. to 9:00 p.m., Friday–Saturday: 9:00 a.m. to 5:00 p.m.

Portsmouth Public Library
Main Branch
601 Court St.
Portsmouth, VA 23704
(804) 393–8501
Monday–Thursday: 9:00 a.m to 9:00 p.m, Friday–Saturday: 9:00 a.m to 5:00 p.m.

Virginia Beach Central Library
4100 Virginia Beach Blvd.
Virginia Beach, VA 23452
(804) 431–3001
Monday–Thursday: 10:00 a.m. to 9:00 p.m., Friday–Saturday: 10:00 a.m. to 5:00 p.m., Sunday: 1:00 p.m. to 5:00 p.m.

Puget Sound

Kitsap Regional Library
1301 Sylvan Way
Bremerton, WA 98310
(206) 377–7601
Monday–Thursday: 9:30 a.m to 9:00 p.m., Friday–Saturday: 9:30 a.m to 5:30 p.m., Sunday: 12:30 p.m. to 5:30 p.m.

Kitsap Regional Libary
Downtown Branch
612 5th Ave.
Bremerton, WA 98310
(206) 377–3955
Monday–Friday: 10:00 a.m. to 6:00 p.m.

Suzzallo Library, SM25
University of Washington Libraries
University of Washington
Seattle, WA 98185
(206) 543–9158
Monday–Thursday: 7:30 a.m. to 12:00 midnight, Friday: 7:30 a.m. to 6:00 p.m., Saturday: 9:00 a.m. to 5:00 p.m. Sun 12:00 p.m. to 12:00 midnight

Portsmouth Naval Shipyard

Rice Public Library
8 Wentworth St.
Kittery, ME 03904
(207) 439–1553
Monday–Wednesday, Friday: 10:00 a.m. to 5:00 p.m., Thursday: 10:00 a.m. to 8:00 p.m., Saturday: 10:00 a.m. to 4:00 p.m.

Portsmouth Public Library
8 Islington St.
Portsmouth, NH 03801
(804) 393–8501
Monday–Thursday: 9:00 a.m. to 9:00 p.m., Friday–Saturday: 9:00 a.m. to 5:00 p.m.

Pearl Harbor

Aiea Public Library
99–143 Monalua Rd.
Aiea, HI 96701
(808) 488–2654
Monday, Thursday: 10:00 a.m. to 8:00 p.m., Tuesday, Wednesday, Friday, Saturday: 10:00 a.m. to 5:00 p.m.

Hawaii State Library
478 S. King St.
Honolulu, HI 96813
(808) 586–3535
Monday, Wednesday, Friday, Saturday: 9:00 a.m. to 5:00 p.m., Tuesday, Thursday: 9:00 a.m. to 8:00 p.m.

Pearl City Public Library
1138 Waimano Home Rd.
Pearl City, HI 96782
(808) 455–4134
Monday–Wednesday: 10:00 a.m. to 8:00 p.m., Th–Saturday: 10:00 a.m. to 5:00 p.m., Sunday: 1:00 p.m. to 5:00 p.m.

Pearl Harbor Naval Base Library
Code 90L
1614 Makalapa Dr.
Pearl Harbor, HI 96860–5350
(808) 471–8238
Tuesday–Thursday: 10:00 a.m. to 7:00 p.m., Friday–Saturday: 9:00 a.m. to 5:00 p.m.

Kesselring Site

Albany Public Library
Reference and Adult Services
161 Washington Ave.
Albany, NY 12210
(518) 449–3380
Monday–Thursday: 9:00 a.m. to 9:00 p.m., Friday: 9:00 a.m to 6:00 p.m., Saturday: 9:00 a.m. to 5:00 p.m.

Saratoga Springs Public Library
320 Broadway
Saratoga Springs, NY 12866
Monday–Thursday: 9:00 a.m. to 9:00 p.m., Friday: 9:00 a.m. to 6:00 p.m., Saturday: 9:00 a.m. to 5:00 p.m., Sunday: 1:00 p.m. to 5:00 p.m.

Schenectady County Library
99 Clinton St.
Schenectady, NY 12305
(518) 388–4511
Monday–Thursday: 9:00 a.m. to 9:00 p.m., Friday–Saturday: 9:00 a.m. to 5:00 p.m.

Other Information Locations

Main Library
University of Arizona
Tucson, AZ 85721
(602) 621–6433
School Hours: Sunday–Thursday: 8:00 a.m. to 1:00 a.m., Friday–Saturday: 9:00 a.m. to 5:00 p.m.
Summer Hours: Monday–Thursday: 7:30 a.m to 11:00 p.m., Friday: 7:30 a.m. to 6:00 p.m., Saturday: 10:00 a.m. to 8:00 p.m., Sunday: 12:00 noon to 11:00 p.m.

Main Library
University of California at Irvine
Government Publications Receiving Dock

Irvine, CA 92717
(714) 856–7290
School Hours: Monday–Thursday: 8:00 a.m. to 7:00 p.m., Friday: 8:00 a.m. to 5:00 p.m., Saturday–Sunday: 1:00 p.m. to 5:00 p.m.
Summer Hours: Monday–Friday: 8:00 a.m. to 5:00 p.m., Saturday–Sunday: 1:00 p.m. to 5:00 p.m.

Pleasanton Public Library—Reference Desk
400 Old Bernal Avenue
Pleasanton, CA 94566
(510) 462–3535
Monday, Tuesday: 1:00 p.m. to 8:00 p.m., Wednesday, Thursday: 10:00 a.m. to 6:00 p.m., Saturday: 2:00 p.m. to 6:00 p.m., Sunday: 1:00 p.m. to 5:00 p.m.

San Diego Public Library
820 "E" Street
San Diego, CA 92101
(619) 236–5867
Monday–Thursday: 10:00 a.m. to 9:00 p.m., Friday–Saturday: 9:30 a.m. to 5:30 p.m., Sunday: 1:00 p.m. to 5:00 p.m.

Denver Public Library
1357 Broadway
Denver, CO 80203
(303) 640–8845
Monday–Wednesday: 10:00 a.m. to 9:00 p.m., Thursday–Saturday: 10:00 a.m. to 5:30 p.m., Sunday: 1:00 p.m. to 5:00 p.m.

George A. Smathers Libraries, Library West
University of Florida Library, Room 241
P.O. Box 117001
Gainesville, FL 32611–7001
(904) 392–0367
Monday–Thursday: 8:00 a.m. to 9:30 p.m., Friday: 8:00 a.m. to 5:00 p.m., Sunday: 2:30 p.m. to 9:30 p.m.

Atlanta Public Library
1 Margaret Mitchell Square
Atlanta, GA 30303
(404) 730–1700
Monday: 9:00 a.m. to 6:00 p.m., Tuesday–Thursday: 9:00 a.m. to 8:00 p.m., Friday: 9:00 a.m. to 5:00 p.m., Saturday: 10:00 a.m. to 5:00 p.m.

Reese Library
Augusta College
2500 Walton Way
Augusta, GA 30904–2200
(706) 737–1744
School Hours: Monday–Thursday: 7:45 a.m. to 10:30 p.m., Friday: 7:45 a.m. to 5:00 p.m., Saturday: 9:00 a.m. to 5:00 p.m., Sunday: 1:30 p.m. to 9:30 p.m.
Summer Hours: Monday–Friday: 8:00 a.m. to 5:00 p.m.

Chatham-Effingham-Liberty Regional Library
2002 Bull Street
Savannah, GA 31401
(912) 234–5127
Monday–Thursday: 9:00 a.m. to 9:00 p.m., Friday: 9:00 a.m. to 6:00 p.m., Saturday: 10:00 a.m. to 6:00 p.m.

Parks Library
Iowa State University
Government Publications Department
Ames, IA 50011–2140
(515) 294–3642
School Hours: Monday–Thursday: 7:30 a.m. to 12:00 midnight, Friday: 7:30 a.m. to 10:00 p.m., Saturday: 10:00 a.m. to 10:00 p.m., Sunday: 12:30 p.m. to 12:00 midnight
Summer Hours: Monday–Thursday: 7:30 a.m. to 10:00 p.m., Friday: 7:30 a.m. to 5:00 p.m., Saturday: 12:30 p.m. to 5:00 p.m., Sunday: 12:30 p.m. to 10:00 p.m.

Boise Public Library
715 South Capitol Boulevard
Boise, ID 83702
(208) 384–4023
Monday, Friday: 10:00 a.m. to 6:00 p.m., Tuesday–Thursday: 10:00 a.m. to 9:00 p.m., Saturday: 1:00 p.m. to 5:00 p.m.

Idaho Department of Health and Welfare
Idaho National Engineering Laboratory Oversight Program Library
1410 North Hilton
Boise, ID 83706
(208) 334–0498
Monday–Friday: 8:00 a.m. to 5:00 p.m.

Idaho State Library
325 West State Street
Boise, ID 83702
(208) 334–2152
Monday–Friday: 9:00 a.m. to 5:00 p.m.

Shoshone-Bannock Library
Bannock and Pima Streets, HRDC Building
Fort Hall, ID 83203
(208) 238–3882
Monday–Friday: 8:00 a.m. to 4:30 p.m.

Idaho Falls Public Library
457 Broadway
Idaho Falls, ID 83402
(208) 529–1462
Monday–Thursday: 8:00 a.m. to 7:00 p.m., Friday: 8:00 a.m. to 5:00 p.m., Saturday: 9:00 a.m. to 1:00 p.m.

University of Idaho Library
Rayburn Street
Moscow, ID 83844–2353
(208) 885–6344
Monday–Friday: 8:00 a.m. to 12:00 midnight, Saturday: 9:00 a.m. to 12:00 midnight, Sunday: 10:00 a.m. to 12:00 midnight

Pocatello Public Library
812 East Clark Street
Pocatello, ID 83201
(208) 232–1263
Monday–Thursday: 10:00 a.m. to 9:00 p.m., Friday–Saturday: 10:00 a.m. to 6:00 p.m.

Twin Falls Public Library
434 Second Street East
Twin Falls, ID 83301
(208) 733–2964
Monday–Thursday: 10:00 a.m. to 6:00 p.m., Friday: 10:00 a.m. to 5:00 p.m., Saturday: 12:00 noon to 5:00 p.m.

Main Library, Third Floor
University of Illinois
801 South Morgan, Mail Code 234
Chicago, IL 60607
(312) 413–2594
Monday–Thursday: 7:30 a.m. to 10:00 p.m., Friday: 7:30 a.m. to 5:00 p.m., Saturday: 10:00 a.m. to 5:00 p.m., Sunday: 1:00 p.m. to 9:00 p.m.

Documents Library, 200–D
University of Illinois
1408 W. Gregory Drive
Urbana, IL 61801
(217) 244–2060
School Hours: Monday–Thursday: 8:00 a.m. to 12:00 midnight, Friday: 8:00 a.m. to 6:00 p.m., Saturday: 9:00 a.m. to 6:00 p.m., Sunday: 1:00 p.m. to 12:00 midnight
Summer Hours: Monday–Thursday: 8:00 a.m. to 9:00 p.m., Friday: 8:00 a.m. to 6:00 p.m., Saturday: 9:00 a.m. to 5:00 p.m., Sunday: 1:00 p.m. to 5:00 p.m.

Engineering Library
Purdue University
West Lafayette, IN 47907
(317) 494–2871
School Hours: Monday–Friday: 8:00 a.m. to 12:00 midnight, Saturday: 9:00 a.m. to 5:00 p.m., Sunday: 12:00 noon to 12:00 midnight
Summer Hours: Monday–Friday: 8:00 a.m. to 8:00 p.m.

Manhattan Public Library
Julliette and Poyntz
Manhattan, KS 66502
(913) 776–4741
Monday–Friday: 9:00 a.m. to 9:00 p.m., Saturday: 9:00 a.m. to 6:00 p.m., Sunday: 2:00 p.m. to 6:00 p.m.

Massachusetts Institute of Technology
Science Library
160 Memorial Drive Building 14
Cambridge, MA 02139
(617) 253–5685
Monday–Thursday: 8:00 a.m. to 12:00 midnight, Friday, Saturday: 8:00 a.m. to 8:00 p.m., Sunday: 12:00 noon to 12:00 midnight

O'Leary Library
University of Massachusetts
1 University Ave
Lowell, MA 01854
(508) 934–3205
School Hours: Monday–Thursday: 7:30 a.m. to 11:00 p.m., Friday: 7:30 a.m. to 5:00 p.m., Saturday: 10:00 a.m. to 6:00 p.m.
Summer Hours: Monday–Friday: 8:30 a.m. to 9:00 p.m., Sunday: 2:00 p.m. to 7:00 p.m.

Worcester Public Library
3 Salem Square
Worchester, MA 01608
(508) 799–1655
Monday, Wednesday: 12:00 noon to 9:00 p.m., Tuesday: 10:00 a.m. to 9:00 p.m., Thursday-Saturday: 10:00 a.m. to 5:30 p.m.

Bethesda Public Library
7400 Arlington Road
Bethesda, MD 20814
(301) 986–4300
Monday–Thursday: 10:00 a.m. to 8:30 p.m., Friday: 10:00 a.m. to 5:00 p.m., Saturday: 9:00 a.m. to 5:00 p.m., Sunday: 1:00 p.m. to 5:00 p.m.

Gaithersburg Regional Library
18330 Montgomery Village Avenue
Gaithersburg, MD 20879
(301) 840–2515
Monday–Thursday: 10:00 a.m. to 8:30 p.m., Friday: 10:00 a.m. to 5:00 p.m., Saturday: 9:00 a.m. to 5:00 p.m., Sunday: 1:00 p.m. to 5:00 p.m.

Hyattsville Public Library
6530 Adelphi Road
Hyattsville, MD 20782
(301) 779–9330
Monday–Thursday: 10:00 a.m. to 9:00 p.m., Friday: 10:00 a.m. to 6:00 p.m., Saturday: 10:00 a.m. to 5:00 p.m., Sunday: 1:00 p.m. to 5:00 p.m.

Ann Arbor Public Library
343 South 5th Avenue
Ann Arbor, MI 48104
(313) 994–2333
Monday: 10:00 a.m. to 9:00 p.m., Tuesday–Friday: 9:00 a.m. to 9:00 p.m., Saturday: 9:00 a.m. to 6:00 p.m., Sunday: 1:00 p.m. to 5:00 p.m.

Zanhow Library
Saginaw Valley State University
7400 Bay Road
University Center, MI 48710
(517) 790–4240
School Hours: Monday–Thursday: 8:00 a.m. to 11:00 p.m., Friday: 8:00 a.m. to 4:30 p.m., Saturday: 9:00 a.m. to 5:00 p.m., Sunday: 1:00 p.m. to 9:00 p.m.
Summer Hours: Monday–Thursday: 8:00 a.m. to 10:30 p.m., Friday: 8:00 a.m. to 4:30 p.m., Saturday: 10:00 a.m. to 2:00 p.m., Sunday: 1:00 p.m. to 5:00 p.m.

Ellis Library
University of Missouri
Columbia, MO 65201
(314) 882–0748
School Hours: Monday–Thursday: 7:30 a.m. to 12:00 midnight, Friday: 7:30 a.m. to 11:00 p.m., Saturday: 9:00 a.m. to 9:00 p.m., Sunday: 12:00 noon 1:00 a.m.
Summer Hours: Monday, Thursday: 8:00 a.m. to 8:00 p.m., Tuesday, Wednesday, Friday: 8:00 a.m. to 5:00 p.m., Saturday: 12:00 noon to 5:00 p.m.

Curtis Laws Wilson Library
University of Missouri Library
Rolla, MO 65401–0249
(314) 341–4227
School Hours: Monday–Thursday: 8:00 a.m. to 12:00 midnight, Friday: 8:00 a.m. to 10:30 p.m., Saturday: 8:00 a.m. to 5:00 p.m., Sunday: 2:00 p.m. to 12:00 midnight
Summer Hours: Monday–Friday: 8:00 a.m. to 10:00 p.m., Saturday: 8:00 a.m. to 5:00 p.m., Sunday: 2:00 p.m. to 10:00 p.m.

D.H. Hill Library
North Carolina State University
P.O. Box 7111
Raleigh, NC 27695–7111
(919) 515–3364
School Hours: Monday–Thursday: 7:00 a.m. to 1:00 a.m., Friday: 7:00 a.m. to 6:00 p.m., Saturday: 9:30 a.m. to 5:30 p.m., Sunday: 1:00 p.m. to 1:00 a.m.
Summer Hours: Monday–Thursday: 7:00 a.m. to 11:00 p.m., Friday: 7:00 a.m. to 6:00 p.m., Saturday: 9:30 a.m. to 5:30 p.m., Sunday: 1:00 p.m. to 11:00 p.m.

Omaha Public Library
215 S. 15th Street
Omaha, NE 68102
(402) 444–4800
Monday–Thursday: 9:00 a.m. to 9:00 p.m., Friday, Saturday: 9:00 a.m. to 5:30 p.m., Sunday: 1:00 p.m. to 5:00 p.m.

General Library
University of New Mexico
Albuquerque, NM 87131–1466
(505) 277–5441
School Hours: Monday–Thursday: 8:00 a.m. to 9:00 p.m., Friday: 8:00 a.m. to 5:00 p.m., Saturday: 1:00 p.m. to 5:00 p.m., Sunday: 1:00 p.m. to 5:00 p.m.
Summer Hours: Monday–Friday: 8:00 a.m. to 6:00 p.m., Saturday: 10:00 a.m. to 5:00 p.m.

U.S. DOE Community Reading Room
1450 Central Avenue, Suite 101
MS C314
Los Alamos, NM 87544
(505) 665–2127
Monday–Friday: 8:00 a.m. to 5:00 p.m.

Lockwood Library
State University of New York-Buffalo
Buffalo, NY 14260–2200
(716) 645–2816
School Year: Monday–Thursday: 8:00 a.m. to 10:45 p.m., Friday: 8:00 a.m. to 9:00 p.m., Saturday: 9:00 a.m. to 5:00 p.m., Sunday: 1:00 p.m. to 10:45 p.m.
Summer Hours: Monday, Wednesday, Thursday, Friday: 9:00 a.m. to 6:00 p.m., Tuesday: 9:00 a.m. to 10:00 p.m., Sunday: 1:00 p.m. to 9:00 p.m.

Engineering Library
Cornell University
Carpenter Hall, Main Floor
Ithaca, NY 14853
(607) 255–5762
School Hours: Monday–Thursday: 8:00 a.m. to 11:00 p.m., Friday: 8:00 a.m. to 6:00 p.m., Saturday: 10:00 a.m. to 6:00 p.m., Sunday: 12:00 p.m. to 11:00 p.m.
Summer Hours: Monday–Friday: 8:00 a.m. to 6:00 p.m., Saturday: 12:00 p.m. to 6:00 p.m.

Cardinal Hayes Library
Manhattan College
4531 Manhattan College Parkway
Riverdale, NY 10471
(718) 920–0100
School Hours: Monday–Thursday: 8:00 a.m. to 11:00 p.m., Friday: 8:00 a.m. to 6:30 p.m., Saturday: 10:00 a.m. to 5:00 p.m., Sunday: 1:00 p.m. to 11:00 p.m.
Summer Hours: Monday–Friday: 8:30 a.m. to 6:30 p.m.

Brookhaven National Laboratory
25 Brookhaven Avenue, Building 477 A
P.O. Box 5000
Upton, NY 11973–5000
(516) 282–3489
Monday–Friday 8:30 a.m. to 9:00 p.m., Saturday–Sunday: 10:00 a.m. to 6:00 p.m.

Columbus Metropolitan Library
96 South Grant Avenue
Columbus, OH 43215
(614) 645–2710
Monday–Thursday: 9:00 a.m. to 9:00 p.m., Friday–Saturday: 9:00 a.m. to 6:00 p.m., Sunday: 1:00 p.m. to 5:00 p.m.

Kerr Library
Oregon State University
Corvallis, OR 97331–4905
(503) 737–0123
Monday–Friday: 7:45 a.m. to 2:00 a.m., Saturday–Sunday: 10:00 a.m. to 2:00 a.m.
Summer Hours: Monday–Friday: 7:45 a.m. to 9:00 p.m., Saturday: 10:00 a.m. to 5:00 p.m., Sunday: 10:00 a.m. to 9:00 p.m.

Brantford Price Millar Library
Portland State University
934 S.W. Harrison
Portland, OR 97201
(503) 725–4617
Monday–Friday: 8:00 a.m. to 10:00 p.m., Saturday: 10:00 a.m. to 10:00 p.m., Sunday: 11:00 a.m. to 10:00 p.m.

Pattee Library
Pennsylvania State University
University Park, PA 16801
(814) 865–2112
School Hours: Monday–Thursday: 8:00 a.m. to 12:00 midnight, Friday: 8:00 a.m. to 10:00 p.m., Saturday: 8:00 a.m. to 9:00 p.m., Sunday: 1:00 p.m. to 12:00 midnight
Summer Hours: Monday–Thursday: 7:45 a.m. to 10:00 p.m., Friday: 7:45 a.m. to 9:00 p.m., Saturday: 8:00 a.m. to 9:00 p.m., Sunday: 1:00 p.m. to 10:00 p.m.

Narragansett Public Library
35 Kingston Road
Narragansett, RI 02882
(401) 789–9507
Monday: 10:00 a.m. to 9:00 p.m., Tuesday–Friday: 10:00 a.m. to 6:00 p.m., Saturday: 10:00 a.m. to 5:00 p.m. (Saturday hours September to May only)

Charleston County Main Library
404 King Street
Charleston, SC 29403
(803) 723–1645
Monday–Thursday: 9:30 a.m. to 9:00 p.m., Friday–Saturday: 9:30 a.m. to 6:00 p.m., Sunday: 2:00 p.m. to 6:00 p.m.

South Carolina State Library
1500 Senate Street
Columbia, SC 29201
(803) 734–8666
Monday–Friday: 8:15 a.m. to 5:30 p.m., Saturday: 9:00 a.m. to 1:00 p.m.

Clinton Public Library
118 South Hicks Street
Clinton, TN 37716
(615) 457–0519
Monday, Thursday: 10:00 a.m. to 8:00 p.m., Tuesday, Wednesday, Friday, Saturday: 10:00 a.m. to 5:00 p.m.

Harriman Public Library
601 Walden Street
Harriman, TN 37748
(615) 882–3195
Monday–Thursday: 9:00 a.m. to 5:00 p.m., Friday–Saturday: 9:00 a.m. to 1:00 p.m.

Kingston Public Library
1000 Bradford Way Building #3
Kingston, TN 37763
(615) 376–9905
Monday, Thursday: 10:00 a.m. to 7:30 p.m., Tuesday, Wednesday, Friday: 10:00 a.m. to 5:30 p.m., Saturday: 10:00 a.m. to 2:00 p.m.

Lawson McGhee Public Library
500 West Church Avenue
Knoxville, TN 37902
(615) 544–5750
Monday–Thursday: 9:00 a.m. to 8:30 p.m., Friday: 9:00 a.m. to 5:30 p.m., Saturday–Sunday: 1:00 p.m. to 5:00 p.m.

Oak Ridge Public Library
Civic Center
Oak Ridge, TN 37830
(615) 482–8455
Monday–Thursday: 10:00 a.m. to 9:00 p.m., Friday: 10:00 a.m. to 6:00 p.m., Saturday: 9:00 a.m. to 6:00 p.m., Sunday: 2:00 p.m. to 6:00 p.m.

Oliver Springs Public Library
607 Easterbrook Avenue
Oliver Springs, TN 37840
(615) 435–2509
Tuesday–Thursday: 2:00 p.m. to 4:00 p.m., Saturday: 9:00 a.m. to 12:00 midnight

Rockwood Public Library
117 North Front Avenue
Rockwood, TN 37854
(615) 354–1281
Monday, Wednesday, Friday, Saturday: 10:00 a.m. to 5:00 p.m., Tuesday, Thursday: 10:00 a.m. to 8:00 p.m.

General Library
University of Texas
PCL 2.402X
Austin, TX 78713
(512) 495–4262

School Hours: Monday–Friday: 8:00 a.m. to 2:00 a.m., Saturday: 9:00 a.m. to 2:00 a.m. Sunday: 12:00 p.m. to 2:00 a.m.
Summer Hours: Monday–Friday: 8:00 a.m. to 10:00 p.m., Saturday: 9:00 a.m. to 10:00 p.m. Sunday: 12:00 noon to 10:00 p.m.

Evans Library
Texas A&M University, MS 5000
College Station, TX 77843–5000
(409) 845–8850
School Hours: Monday–Thursday: 7:00 a.m. to 12:00 midnight, Friday: 7:00 a.m. to 10:00 p.m. Saturday: 9:00 a.m. to 10:00 p.m., Sunday: 12:00 noon to 10:00 p.m.
Summer Hours: Monday–Thursday: 7:00 a.m. to 11:00 p.m., Friday: 7:00 a.m. to 7:00 p.m., Saturday: 9:00 a.m. to 5:00 p.m., Sunday: 1:00 p.m. to 11:00 p.m.

Marriott Library
University of Utah
Salt Lake City, UT 84112
(801) 581–8394
School Hours: Monday–Thursday: 7:00 a.m. to 11:00 p.m., Friday: 7:00 a.m. to 5:00 p.m., Saturday: 9:00 a.m. to 5:00 p.m., Sunday: 11:00 a.m. to 9:00 p.m.
Summer Hours: Monday–Thursday: 7:00 a.m. to 10:00 p.m., Friday: 7:00 a.m. to 5:00 p.m., Saturday: 9:00 a.m. to 5:00 p.m., Sunday: 1:00 p.m. to 5:00 p.m.

Alderman Library
University of Virginia
Charlottesville, VA 22903–2498
(804) 924–3133
School Hours: Monday–Thursday: 8:00 a.m. to 12:00 midnight, Friday: 8:00 a.m. to 6:00 p.m., Saturday: 9:00 a.m. to 6:00 p.m., Sunday: 12:00 p.m. to 12:00 midnight
Summer Hours: Monday–Thursday: 8:00 a.m. to 10:00 p.m., Friday: 8:00 a.m. to 6:00 p.m., Saturday: 9:00 a.m. to 6:00 p.m., Sunday: 2:00 p.m. to 10:00 p.m.

Owen Science & Engineering Library
Washington State University
Pullman, WA 99164–3200
(509) 335–4181
School Hours: Monday–Thursday: 8:00 a.m. to 11:00 p.m., Friday: 8:00 a.m. to 9:00 p.m., Saturday: 12:00 noon to 9:00 p.m., Sunday: 12:00 noon to 11:00 p.m.
Summer Hours: Monday, Thursday: 7:30 a.m. to 11:00 p.m., Tuesday, Wednesday, Friday: 7:30 a.m. to 6:00 p.m., Saturday–Sunday: 12:00 noon to 6:00 p.m.

Foley Center
Gonzaga University
East 502 Boone Avenue
Spokane, WA 99258
(509) 328–4220, extension 3125
School Hours: Monday–Thursday: 8:00 a.m. to 12:00 midnight, Friday—Saturday: 8:00 a.m. to 9:00 p.m., Sunday: 11:00 a.m. to 12:00 midnight
Summer Hours: Monday–Friday: 8:00 a.m. to 9:00 p.m., Saturday: 10:00 a.m. to 6:00 p.m., Sunday: 1:00 p.m. to 7:00 p.m.

Madison Public Library
201 W. Mifflin Street
Madison, WI 53703
(608) 266–6350
Monday–Wednesday: 8:30 a.m. to 9:00 p.m., Thursday–Friday: 8:30 a.m. to 5:30 p.m., Saturday: 9:00 a.m. to 5:30 p.m.

Teton County Public Library
320 South King Street
Jackson, WY 83001
(307) 733–2164
Monday, Wednesday, Friday: 10:00 a.m. to 5:30 p.m., Tuesday, Thursday: 10:00 a.m. to 9:00 p.m., Saturday: 10:00 a.m. to 5:00 p.m., Sunday: 1:00 p.m. to 5:00 p.m.

The draft EIS should be retained, as the final EIS is expected to consist of the draft EIS, a record of public comments, DOE's responses to the comments, and any required changes or corrections. The final EIS is scheduled to be available no later than April 30, 1995.

Issued in Washington, D.C., on June 17, 1994.

Jill E. Lytle,

Deputy Assistant Secretary for Waste Management, Environmental Management.

[FR Doc. 94–15321 Filed 6–23–94; 8:45 am]

BILLING CODE 6450–01–P

Notice of Floodplain Statement of Findings for the East Fork Poplar Creek Flow Management Project for the Y–12 Site

AGENCY: Department of Energy (DOE).

ACTION: Notice.

SUMMARY: This is a Floodplain Statement of Findings for the proposed East Fork Poplar Creek (EFPC) Flow Management Project, prepared in accordance with Title 10, Code of Federal Regulations (CFR), Part 1022. DOE proposes to maintain the flow of the EFPC at 7 million gallons per day by providing augmented flow from the Clinch River using an existing water intake pumping and piping distribution system. Because the added flow would be applied at a point discharge, turbulence would cause erosion and sedimentation problems in the EFPC. To eliminate this potential problem, an energy dissipation chamber would be installed alongside the creek to control the turbulence of the incoming flow. This chamber is a concrete box approximately 10 by 14 feet with a series of weirs. Water would flow into the box through a series of baffles which would dissipate energy and flow out over a rip-rapped channel to the creek. This chamber would be installed on the creek bank within the Y–12 Plant on the Oak Ridge Reservation in Oak Ridge, Tennessee. The action would be located within the 100-year floodplain of the EFPC located in Anderson County, Tennessee. DOE prepared a Floodplain Assessment describing the effects, alternatives, and measures designed to avoid or minimize potential harm to or within the affected floodplain. The DOE will endeavor to allow 15 days of public review after publication of the Statement of Findings before implementing the proposed action.

FOR FURTHER INFORMATION CONTACT: S.D. Morris, DP–813, U.S. Department of Energy, DOE Y–12 Site Office, Post Office Box 2001, Oak Ridge, Tennessee 37831, (615) 576–3545 (telephone), (615) 576–8010 (facsimile).

FOR FURTHER INFORMATION ON GENERAL DOE FLOODPLAIN/WETLANDS ENVIRONMENTAL REVIEW REQUIREMENTS, CONTACT: Carol M. Borgstrom, Director, Office of NEPA Oversight, EH–25, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–4600 or (800) 472–2756.

SUPPLEMENTARY INFORMATION: This is a Floodplain Statement of Findings for the proposed EFPC Flow Management project, prepared in accordance with 10 CFR Part 1022. A Notice of Floodplain Involvement was published in the **Federal Register** on March 14, 1994, and a Floodplain Assessment submitted to the DOE Oak Ridge Operations Office staff as part of the request for Categorical Exclusion.

DOE proposes to install a concrete box and weir system approximately 10 by 14 feet to serve as an energy dissipation chamber at the edge of the EFPC within the Y–12 Plant on the Oak Ridge Reservation in Oak Ridge, Tennessee. All activities related to the proposed action would occur within an area of less than one acre.

The purpose of the proposed action is to maintain a consistent flow rate in the creek of 7 million gallons per day in compliance with National Pollutant Discharge Elimination System (NPDES) limits to protect the stream for its intended uses. Over the past several years, the base flow in the creek has gradually decreased due to the reduction in the amount of once-through, noncontact cooling water discharge from the Y–12 Plant. In an effort to maintain a guaranteed minimum flow in the EFPC at the Y–12 Plant site, the Tennessee Department of Environment and Conservation (TDEC) staff will require DOE, through its NPDES permit, to manage the EFPC flow such that at least 7 million gallons per day is consistently present in the EFPC. The flow is to be maintained at a location referred to as Station 17, which corresponds to approximate EFPC stream kilometer 23.4. TDEC selected 7 million gallons per day as the minimum flow based upon historical flow trends in the EFPC near the Y–12 Plant site. The requirement to maintain 7 million gallons per day in the EFPC will be enforceable as part of the next Y–12 Plant NPDES permit, June 1994.

The creek flow would be supplemented by adding water obtained from the Clinch River through existing raw water pipelines. At the point where the water would empty into EFPC, however, it is anticipated that this influx of water would cause substantial erosion and turbulence. To eliminate this concern, the installation of an "energy dissipation chamber" is proposed. This chamber is a concrete box approximately 10 by 14 feet with a series of weirs. The incoming water will discharge into this chamber and the weirs will cause the water turbulence to subside so that erosion does not occur as the water flows into the creek. It will act as a mixing box to dissipate the energy of the incoming water flow before it joins the water of EFPC. The additional water would be easily accommodated by the existing pipes and pumping station without any operational impacts to the system.

The energy dissipation chamber will be constructed into the creek bank on the south side of the creek and on the east side of E Road. A rip-rap outfall channel would be placed between the chamber and creek to direct the outgoing flow downstream. A stairway and platform would be constructed to provide access to the creek for water sampling activities. The excavation around the chamber would be backfilled to conform to the existing slope, minimizing changes to the creek and floodplain topography.

The action is proposed to be located in the 100-year floodplain of EFPC because there are no other viable locations for the action. Siting the chamber in the proposed location is the most viable alternative (as demonstrated in the Floodplain Assessment). Other alternatives to the proposed action are considered below. In order to provide a baseline for further assessment, DOE has considered the No Action Alternative. The No Action Alternative would not include constructing the energy dissipation chamber. Water coming from the Clinch River would be fed directly to EFPC causing turbulence, erosion, and sedimentation of the creek environment.

An alternative to the proposed action could be to supply additional flow at another location. However, any location along the creek would be within the 100-year floodplain. The proposed location contains the existing pipes. If an alternative location were selected, additional piping would need to be provided, resulting in additional excavation activities along the creek. Another alternative would be not to maintain the flow of the creek. The impact of not managing the flow by adding to it would be noncompliance with in the new NPDES permit.

The proposed action, if implemented, would be performed in such a manner as to avoid or minimize potential impacts on the floodplain. The project would have a Best Management Practices Plan prepared which would specify actions to be taken to minimize effects of the action on the nearby creek. On the basis of the Floodplain Assessment, the proposed construction of the chamber and related actions would not affect the existing normal channel cross section of EFPC. Risks to individuals and/or property would not be increased by the implementation of the proposed action. Adverse environmental effects of this action would, therefore, be negligible.

DOE will endeavor to allow 15 days of public review after publication of the Statement of Findings prior to implementing the proposed action.

Charles J. Beers, Jr.,

Rear Admiral, U.S. Navy, Acting Deputy Assistant Secretary for Military Application and Stockpile Support, Defense Programs.

[FR Doc. 94–15437 Filed 6–23–94; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. CP94–602–000]

U–T Offshore System; Notice of Application

June 20, 1994.

Take notice that on June 15, 1994, U–T Offshore System (U–TOS), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP94–602–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon a transportation service to Northern Natural Gas Company (Northern) which was authorized in Docket No. CP76–118,[1] all as more fully set forth in the application on file with the Commission and open to public inspection.

U–TOS proposes to abandon (a) a firm transportation service for Northern which is being rendered under an agreement dated May 1, 1978, on file as U–TOS' Rate Schedule T–9, and (b) an associated interruptible overrun transportation service rendered in accordance with U–TOS' Rate Schedule I. It is explained that the transportation agreement provides for gas received from Northern at a U–TOS interconnect with the HIOS system in West Cameron Block 167, offshore Louisiana, to be transported and delivered in Cameron Parish, Louisiana. U–TOS states that the currently effective contract demand is 18,150 Mcf per day and the related interruptible overrun volume is 28,364 Mcf per day. It is stated that any capacity resulting from the proposed abandonment would become available for services U–TOS provides under Part 284 of the Commission's regulations. U–TOS further states that the parties have agreed to terminate the transportation services effective August 31, 1994, and requests abandonment authorization consistent with that agreement.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 11, 1994, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy and Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 94–15371 Filed 6–20–94; 8:45 am]

BILLING CODE 6717–01–M

[1] *See* 3 FERC ¶61,232 (1978).

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-4712-6]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared June 6, 1994 through June 10, 1994 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(C) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in **Federal Register** dated April 08, 1994 (59 FR 16807).

Draft EISs

ERP No. D-AFS-J65217-MT Rating LO, Bear Timber Sales, Implementation, Bitterroot National Forest, Darby Ranger District, Ravalli County, MT.

Summary: EPA expressed lack of objection. EPA supported alternative B, but suggested air quality be monitored.

ERP No. D-BLM-J60014-MT Rating EC2, Rosebud Coal Mine Project, Implementation, Approval of Coal Lease Application (MTM-80697) on Federal Coal Lands, Powder River Resource Area, Miles City District Office, Rosebud County, MT.

Summary: EPA expressed environmental concerns based on groundwater, stream and riparian area/wetlands impacts and potential air quality impacts. EPA requested that these issues and more emphasis on cumulative effects analysis be addressed in the final EIS.

ERP No. D-CDB-C80013-NY Rating LO, Southwest Middle School Project, Construction and Operation, Site Approval and CDBG Funds, City of Rochester, Monroe County, NY.

Summary: EPA had no objection to the implementation of the proposed project.

ERP No. D-DOE-J05074-00 Rating EC2, Energy Planning and Management Program to service (15) States from Minnesota in the northeast to California in the southwest, Power Marketing Initiative, Implementation.

Summary: EPA had environmental concerns with this document's lack of information on rate design improvements that would promote successful load management and energy conservation.

ERP No. D-FHW-J40132-MT Rating EC2, US 93 (Somers to Whitefish West) Transportation Improvements, Funding and COE Section 404 Permit, Glacier National Park and Flathead National Forest, Flathead County, MT.

Summary: EPA expressed environmental concerns regarding wetlands and air quality. EPA indicated that the Alternative A alignment of the existing US 93 corridor through Kalispell was environmentally preferable to the Alternative B bypass west of Kalispell.

ERP No. D-UAF-C11009-NJ Rating EC2, McGuire Air Force Base (AFB) Realignment, Implementation, Burlington County, NJ.

Summary: EPA expressed environmental concerns that there was a lack of sufficient information on interim spill plans. EPA also recommended that the final EIS include additional information on wetlands, groundwater, air quality and noise levels.

ERP No. D-USN-E11033-FL Rating EC2, Pensacola Naval Air Station Realignment, Relocation of Memphis Naval Air Station and Closure of San Diego Naval Training Center, Implementation, Pensacola Bay, FL.

Summary: EPA had environmental concerns regarding a degree of uncertainty from the loss of wetland/biological functions associated with airfield construction and the potential adverse effects from the release of hazardous materials into the atmosphere during fire suppression training exercises. Additional information should be provided in the final document regarding these matters.

ERP No. DS-ICC-J53004-MT Rating EO2, Tongue River Railroad Additional Rail Line Construction and Operation, Additional Information concerning the Four Mile Creek Alternative, Ashland to Decker, Approval, Rosebud and Big Horn Counties, MT.

Summary: EPA expressed environmental objection with the preferred alternative, which would require the construction of five bridges over the Tongue River, each of which would require excavation and/or fill within the river's high water line, which could result in significant adverse impacts to the chemical, physical and biological integrity of the Tongue River. EPA also believed that the construction and operation of a railroad along the proposed alignment in the relatively undisturbed Tongue River canyon would result in significant adverse impacts to recreational, aesthetic and wildlife values, including the habitat of the bald eagle.

Final EISs

ERP No. F-AFS-J65206-CO, Snowmass Ski Area Upgrading and Expansion Development Plan, Special Use Permit and COE Section 404 Permit, White River National Forest, Aspen Ranger District, Pitkin County, CO.

Summary: EPA expressed environmental concerns based on potential effects to wetlands and aquatic resources. EPA recommended developing a wetland plan pursuant to Section 404 and the no-net-loss policy. Inadequate data was given for the air quality modelling analysis.

ERP No. F-AFS-K65159-NV, East Shore Land and Resource Management Plan, Implementation, Lake Tahoe Basin Management Unit (LTBMU), Washoe and Douglas Counties, NV.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. F-APH-A99185-00, Nationwide Cooperative Animal Damage Control Program, Integrated Pest Management Approach, Implementation.

Summary: EPA expressed environmental concerns that the EIS does not fully discuss environmental impacts and, instead, relies more on the fact that standards are met. EPA recommended that APHIS discuss the Animal Damage Control's program for widespread and repeated mortality of non-target species.

ERP No. F-APH-C99009-NY, Gull Hazard Reduction Program, John F. Kennedy International Airport, Implementation, Gateway National Recreation Area, Jamaica Bay National Wildlife Refuge, Queens County, NY.

Summary: EPA expressed lack of objections to the proposed project.

ERP No. F-COE-E40749-NC, Fairfield Bridge Replacement Project, Implementation, Atlantic Intracoastal Waterway, Hyde County, NC.

Summary: EPA had environmental concerns about the losses associated with upgrading the Fairfield Bridge which have been satisfactorily addressed in the final EIS.

ERP No. F-FHW-C40128-NY, I-90/Interchange 8 Connector to Route 4 at Washington Avenue Transportation Improvements, Funding and COE Permits, Town of North Greenbush, Rensselaer County, NY.

Summary: EPA had an environmental concern with the potential inclusion of storm water retention ponds in the project's wetlands mitigation plan. EPA requested that this issue be clarified in the project's record of decision.

ERP No. F-SFW-J99050-WY, Gray Wolves (Canis Lupus) Reintroduction

into the Yellowstone National Park and Central Idaho, Implementation, MT, WY and ID.

Summary: Review of the Final EIS has been completed and the project found to be satisfactory.

ERP No. FS–AFS–E65029–NC, Nantahala and Pisgah National Forests Land and Resource Management Plan, Updated Information, Amendment 5, Implementation, several counties, NC.

Summary: EPA supported alternative E-modified, but expressed environmental concerns regarding impacts from logging on water quality and riparian zones.

ERP No. FS–GSA–C81014–NY, Foley Square Federal Courthouse and Federal/Municipal Office Building Development and Construction, Updated Information, New York County, NY.

Summary: EPA had no objection to the proposed action.

Dated: June 21, 1994.

Marshall Cain,

Senior Legal Advisor, Office of Federal Activities.

[FR Doc. 94–15433 Filed 6–23–94; 8:45 am]

BILLING CODE 6560–50–U

[ER–FRL–4712–5]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260–5076 OR (202) 260–5075.

Weekly receipt of Environmental Impact Statements Filed June 13, 1994 Through June 17, 1994 Pursuant to 40 CFR 1506.9.

EIS No. 940233, Revised Draft EIS, AFS, SD, WY, Black Hills National Forest, Revision to Land and Resource Management Plan, Implementation, Custer, Fall River, Lawrence and Meade Cos, SD and Crook and Weston Cos. WY, Due: October 24, 1994, Contact: Roberta A. Moltzen (605) 673–2251.

EIS No. 940234, Draft EIS, NPS, NV, AZ, Lake Mead National Recreation Area, Management of Burros, Implementation, Clark Co., NV and Mohave Co., AZ, Due: August 23, 1994, Contact: Kent Turner (702) 293–8941.

EIS No. 940235, Final EIS, AFS, MT, Middle Fork Ecosystem Management Project, Implementation, Flathead National Forest, Hungry Horse Ranger District, Flathead River, Flathead County, MT, Due: July 25, 1994, Contact: Heidi Trechsel (406) 387–5243.

EIS No. 940236, Draft EIS, FAA, NY, NJ, La Guardia and John F. Kennedy International Airports, Implementation of Automated Guideway Transit System by the Port Authority of New York and New Jersey's Airport Access Program, Funding, Airport Layout Plan, COE Section 10 and 404 Permits and US Coast Guard Permit, NY and NJ, Due: August 08, 1994, Contact: Anthony Spera (718) 553–1250.

EIS No. 940237, Final EIS, UAF, CA, Travis Air Force Base, Defense Base Closure and Realignment, KC–10 Aircraft Realignment and Additional KC–10 Basing Proposal, Fairfield, CA, Due: July 25, 1994, Contact: Jean Reynolds (618) 256–6128.

EIS No. 940238, Draft EIS, UAF, GU, Andersen Air Force Base (AFB) Solid Waste Management Complex, Construction, Island of Guam, GU, Due: August 08, 1994, Contact: Bob Landis (808) 449–0473.

EIS No. 940239, Final EIS, SCS, WV, North Fork Hughes River Watershed Plan, Installation of a Multi-purpose Roller Compacted Concrete Dam, Implementation and Funding, Flood Protection and COE Section 404 Permits, Ritchie County, WV, Due: July 25, 1994, Contact: Rollin N. Swank (307) 291–4152.

EIS No. 940240, Draft EIS, DOI, AK, Institute of Marine Science Infrastructure Improvement, Long-Term Research and Monitoring of the Ecosystem affected by the Exxon Valdez Oil Spill, Funding, Seward, AK, Due: August 08, 1994, Contact: Nancy Swanton (907) 271–6622.

Dated: June 21, 1994.

Marshall Cain,

Senior Legal Advisor, Office of Federal Activities.

[FR Doc. 94–15434 Filed 6–23–94; 8:45 am]

BILLING CODE 6560–50–U

GENERAL SERVICES ADMINISTRATION

Public Buildings Service; Proposed Port of Entry, Located at Pacific Highway, Blaine, Washington; Intent To Prepare an Environmental Assessment or Environmental Impact Statement

ACTION: The General Services Administration (GSA) hereby gives notice it intends to prepare either an Environmental Assessment (EA) or an Environmental Impact Statement (EIS) in accordance with the National Environmental Policy Act of 1969 (NEPA) for the proposed expansion of the port of entry located at Pacific Highway, Blaine, Washington. The decision on whether to prepare an EIS would be made following the completion of scoping and the Environmental Assessment. The EA would evaluate the proposed project, expansion of the existing port of entry, the no-action alternative, and other reasonable alternatives that might be identified during the scoping process.

ADDRESSES: Scoping will be accomplished by correspondence and through a public meeting with interested persons, organizations, and Federal, state, and local agencies. Written comments on the scope of alternatives and potential impacts should be addressed to the GSA's EIS sub consultant, ABAM Consulting Engineers, at the following address: 33301 Ninth Avenue South, Federal Way, Washington 98003–6395, Attention: Carol Beck.

DATES: Written comments should be sent by July 15, 1994. Comments and suggestions will also be accepted at a public scoping meeting from 5:30 p.m. to 7:00 p.m. on Tuesday, June 28, 1994 at the Blaine Public Library, 610 Third Street, Blaine, WA 98230. All comments received during the meeting will be made part of the administrative record for the EA and will be evaluated as part of the scoping process.

FOR FURTHER INFORMATION CONTACT: Contact Carol Beck at ABAM Consulting Engineers, 3301 Ninth Avenue South, Federal Way, Washington 98003–6395, (206) 241–2040 or Donna M. Meyer at General Services Administration, (206) 931–7675.

SUPPLEMENTARY INFORMATION: The GSA, assisted by our contractor will prepare an Environmental Assessment on a proposal to design and construct a new border station to be located at Pacific Highway, Blaine, Washington. The scoping process will determine the issues to be addressed in the EA, identify the potential adverse enviromental issues related to the proposed expansion, and assist to determine whether an EIS should be prepared. Scoping will be conducted in a manner consistent with NEPA guidelines. If an EIS is required, GSA will serve as the lead agency pursuant to Section 1501.5(a) of the Council on Environmental Quality's Regulations for Implementing the Procedural Provisions of NEPA (40 CFR 1500–1508).

Scoping

GSA invites interested individuals, organizations, affected tribes and Federal, state and local agencies and officials to participate in defining the reasonable alternatives to be evaluated in the EA and in identifying any adverse

social, economical, or environmental issues related to the alternatives. Scoping comments can be made verbally or in writing (see **DATES** and **ADDRESSES** section above for location and time of meeting). During scoping, comments should focus on identifying specific impacts to be evaluated and suggesting alternatives or mitigation that minimize adverse impacts while achieving similar objectives. Comments may also identify issues which are not significant or which have been covered by prior environmental review. Scoping should be limited to commenting on alternatives and not indicating preferences. If an EIS is undertaken, there will be an opportunity to comment on impacts of the selected alternatives upon release of the draft document.

Additional Information

A project information packet will be available at the public meeting or can be obtained by contacting the above referenced personnel. The packet will describe in more detail the proposed project, alternatives and the EA/EIS process.

Mailing List

If you wish to be placed on the mailing list to receive further information for this proposal as the EA process develops, contact the above referenced personnel.

Project Purpose, Historical Background, and Project Description

The project purpose is the design and construction for expansion of a new Port of Entry at the U.S. and Canadian border at Pacific Highway, Blaine, Washington. The new station would replace the existing station, which is overcrowded and functionally obsolete. The new facility would be constructed on 12.06 acres of land by utilizing the existing site of 7.88 acres and acquiring an additional 4.1 acres on either side of Pacific Highway (S.R. 543). This additional acreage is necessary for maneuverability, reconfiguration and expansion.

This facility is the region's major commercial port as well as the largest commercial truck crossing point in Washington State. There has been an increase in total volume of traffic of 21 percent; and commercial traffic of 15.2 percent over the last six years at this facility.

At completion, the new port facility would provide 122,900 gross square feet of space, including canopy areas. The new facility would include a new main administration and automobile inspection building, a bus port, a devanning building and commercial inspection office, and export inspection area, an Animal and Plant inspection building, a dog kennel, and a maintenance/workshop building. The primary inspection lanes would increase from four to six, secondary lanes from ten to twenty. The six existing primary commercial truck lanes will be reduced to three. However, secondary truck inspection lanes will increase from six to twenty. A total of 274 outside parking spaces, 214 automobile, and 60 truck would be provided for travelers, employees, seized vehicles, commercial vehicles, and government vehicles.

Alternatives

The EA would consider an action alternative (Federal construction) and a no-action alternative. Due to the unique requirements for port of entry's, GSA has found it is impractical to consider leasing an exiting office building to meet these needs. GSA is proposing to construct the facility at the site of the existing port of entry and to acquire a parcel of land lying directly to the east and west. The no-action alternative would continue the use of the overcrowded and obsolete station.

Probable Effects

GSA will evaluate significant environmental, social, and economical impacts of the alternatives in the EA. Potential impacts include, but are not limited to, changes in geological and/or characteristics; changes in drainage and absorption patterns; water quality/groundwater quality; changes to vegetation, wetland and wildlife habitats; new sources of light or glare; impacts to local residences and businesses; loss of open space; and, changes in traffic and circulation patterns. The impacts will be evaluated both for the construction period and for the life of the project. Measures to mitigate any identifiable adverse impacts will be addressed.

Procedures

The EA will be prepared according to the scoping report. After its publication, GSA will make a decision whether an EIS will be prepared. If an EIS is to be prepared, a Draft EIS would be made available for public and agency review and comment, and a public hearing would be held. A Final EIS would be prepared following the closing of the comment period of the Draft.

Dated: June 10, 1994.

L. Jay Pearson,

Regional Administrator (10A).

[FR Doc. 94–15221 Filed 6–23–94; 8:45 am]

BILLING CODE 6820–23–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 94N–0226]

Drug Export; Haldol® (Haloperidol) Decanoate 50 MG/ML and 100 MG/ML in 5 ML Vials

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that The R.W. Johnson Pharmaceutical Research Institute has filed an application requesting approval for the export of the human drug Haldol® (haloperidol) Decanoate 50 milligrams/milliliter (mg/mL) and 100 mg/mL in 5 mL vials to Canada.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: James E. Hamilton, Center for Drug Evaluation and Research (HFD–313), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2073.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of drugs that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that The R.W. Johnson Pharmaceutical Research Institute, Welsh and McKean Roads, Spring House, PA 19477–0776, has filed an application requesting approval for the export of the human drug Haldol® (haloperidol) Decanoate 50 mg/mL and

100 mg/mL in 5 mL vials to Canada. The firm does have an approved new drug application for this product, but has requested a change in the manufacturing site. Haldol® (haloperidol) Decanoate is intended for use in the management of patients requiring prolonged parenteral antipsychotic therapy. The application was received and filed in the Center for Drug Evaluation and Research on May 13, 1994, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by July 5, 1994, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: June 15, 1994.

David B. Barr,

Deputy Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 94–15436 Filed 6–23–94; 8:45 am]

BILLING CODE 4160–01–F

Advisory Committees; Notice of Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

MEETINGS: The following advisory committee meetings are announced:

National Mammography Quality Assurance Advisory Committee

Date, time, and place. July 12, 1994, 1:30 p.m., and July 13, 14, and 15, 1994, 9 a.m., Gaithersburg Holiday Inn, Grand Ballroom, Two Montgomery Village Ave., Gaithersburg, MD. A limited number of overnight accommodations have been reserved at the Gaithersburg Holiday Inn. Attendees requiring overnight accommodations must contact the hotel at 301–948–8900 and reference the FDA Panel meeting block. Reservations will be confirmed at the group rate based on availability.

Type of meeting and contact person. Open public hearing, July 12, 1994, 1:30 p.m. to 2:30 p.m., unless public participation does not last that long; open committee discussion, 2:30 p.m. to 5:30 p.m.; open committee discussion, July 13 and 14, 1994, 9 a.m. to 5 p.m.; open committee discussion, July 15, 1994, 9 a.m. to 3:30 p.m.; Charles K. Showalter, Center for Devices and Radiological Health (HFZ–240), Food and Drug Administration, 1901 Chapman Ave., Rockville, MD 20857, 301–594–3311.

General function of the committee. The committee advises on developing appropriate quality standards and regulations for the use of mammography facilities.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before July 8, 1994, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss the interim final standards for accreditation bodies and the interim final standards for facilities. Specific topics to be discussed include: Sanctions, suspensions, revocations and injunction procedures, quality control and quality assurance standards, x-ray equipment standards, and accreditation bodies standards.

National Task Force on AIDS Drug Development

Date, time, and place. July 18 and 19, 1994, 8:30 a.m., Sheraton National Hotel, South Ballroom, 900 South Orme St., Arlington, VA.

Type of meeting and contact person. Open task force discussion, July 18, 1994, 8:30 a.m. to 4:30 p.m.; open public hearing, 4:30 p.m. to 5:30 p.m., unless public participation does not last that long; open task force discussion, July 19, 1994, 8:30 a.m. to 11:30 a.m.; Jean H. McKay, Office of AIDS and Special Health Issues (HF–12), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–0104.

General function of the task force. The National Task Force on AIDS Drug Development shall identify any barriers and provide creative options for the rapid development and evaluation of treatments for human immunodeficiency virus (HIV) infection and its sequelae. It also advises on issues related to such barriers and provides options for the elimination of these barriers.

Open task force discussion. The task force will present, hear, and discuss issues on the barriers to acquired immune deficiency syndrome (AIDS) drug discovery from the perspective of task force members, members of the Federal Government, and the public. The task force will determine how to proceed with overcoming the barriers to AIDS drug discovery.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the task force. Those desiring to make formal presentations should notify the contact person before July 8, 1994, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Nonprescription Drugs Advisory Committee

Date, time, and place. July 27, 1994, 2 p.m., Parklawn Bldg., conference rms. D and E, 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, 2 p.m. to 3 p.m., unless public participation does not last that long; open committee discussion, 3 p.m. to 6 p.m.; Mae Brooks or Lee L. Zwanziger, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4695.

General function of the committee. The committee reviews and evaluates available data concerning the safety and effectiveness of over-the-counter (nonprescription) human drug products for use in the treatment of a broad spectrum of human symptoms and diseases.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the

contact person before July 20, 1994, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss the new drug application (NDA) 19–501, The Upjohn Co., to switch Rogaine® (minoxidil 2% topical solution) for use as a hair growth stimulant for persons with androgenetic alopecia, from prescription to over-the-counter marketing status.

Antiviral Drugs Advisory Committee

Date, time, and place. July 29, 1994, 8 a.m., Parklawn Bldg., conference rms. G, H, I, and J, 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open committee discussion, 8 a.m. to 11 a.m.; open public hearing, 11 a.m. to 12 m., unless public participation does not last that long; open committee discussion, 12 m. to 4 p.m.; Lee L. Zwanziger or Valerie Mealy, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4695.

General function of the committee. The committee reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of AIDS, AIDS-related complex (ARC), and other viral, fungal, and mycobacterial infections.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify a contact person before July 20, 1994, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss data submitted in support of supplementary new drug applications (NDA's) 19–655 (supplement 023), 19–910 (supplement 011), and 19–951 (supplement 003) for zidovudine (Retrovir®, Burroughs Welcome) for use as prophylaxis against maternal to fetal transmission of HIV infection.

Joint Meeting of the Gastrointestinal Drugs and the Nonprescription Drugs Advisory Committees

Date, time, and place. July 29, 1994, 9 a.m., Parklawn Bldg., conference rms. D and E, 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 3 p.m.; Joan C. Standaert, Center for Drug Evaluation and Research (HFD–180), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 419–259–6211, or Lee Zwanziger or Valerie M. Mealy, 301–443–4695.

General function of the committees. The Gastrointestinal Drugs Advisory Committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in gastrointestinal diseases. The Nonprescription Drugs Advisory Committee reviews and evaluates available data concerning the safety and effectiveness of over-the-counter (nonprescription) human drug products for use in the treatment of a broad spectrum of human symptoms and diseases.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committees. Those desiring to make formal presentations should notify the contact person before July 15, 1994, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committees discussion. The committees will discuss NDA 20–325, Pepcid (famotidine), Merck and Co., for treatment and prevention of episodic heartburn.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing; (2) an open committee discussion; (3) a closed presentation of data; and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: June 20, 1994.

Linda A. Suydam,

Interim Deputy Commissioner for Operations.

[FR Doc. 94–15435 Filed 6–23–94; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 94N–0225]

Drug Export; Cymevan® (Ganciclovir) 250 Milligram (MG) capsules

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Syntex Puerto Rico Inc., has filed an application requesting conditional approval for the export of the human drug Cymevan® (ganciclovir) 250 mg Capsules to France.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: James E. Hamilton, Division of Drug Labeling Compliance (HFD–313), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2073.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of drugs that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the Federal Register within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Syntex Puerto Rico Inc., HC01 Box 16635, BO. Mariana Rd. 909, KM.1.1 Humacao 00791, Puerto Rico, has filed an application requesting conditional approval for the export of the human drug Cymevan® (ganciclovir) 250 mg Capsules to France. Cymevan® (ganciclovir) 250 mg Capsules is indicated for the treatment of stable CMV retinitis in immunocompromised patients. The application was received and filed in the Center for Drug Evaluation and Research on June 8, 1994, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by July 5, 1994, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30–day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: June 15, 1994

David B. Barr,

Deputy Director, Office of Compliance, Center for Drug Evaluation and Research

[FR Doc. 94–15385 Filed 6–23–94; 8:45 am]

BILLING CODE 4160–01–F

Public Health Service

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection requests it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following requests have been submitted to OMB since the list was last published on Friday, June 17, 1994.

(Call PHS Reports Clearance Officer on 202–690–7100 for copies of request).

1. Revised Mandatory Guidelines for Federal Workplace Drug Testing—9999–0023 and 0930–0158 (revision)—Executive Order 12564 certified the need for and implementation of a drug testing program for employees of Executive Agencies to assure a drug-free Federal workplace. These guidelines promulgate standards for the certification of laboratories to conduct urine drug testing and establish scientific and technical guidelines for drug testing programs to assure compliance with the intent of the Executive Order. This revision includes the additional reporting requirements contained in the Revised Mandatory Guidelines for Federal Workplace Drug Testing, § 4.14.9 and § 2.2(h)(8). (Note: The Substance Abuse and Mental Health Services Administration (SAMHSA) is responsible for administrative management of this multi-agency activity. The Office of Management and Budget (OMB) has, therefore, also approved these reporting requirements and associated materials under control number 0930–0158 and assigned a one-hour burden to the SAMHSA control number to facilities OMB's management of the activity. Accordingly, a duplicate submission for the same revision has been made to OMB with a one hour burden, for 0930–0158). Respondents: Individuals or households.

Title	No. of respondents	No. of responses per respondent	Average burden per response
Laboratories § 4.1–4.9	2	3	10 hours.
MRO's § 2.2(h)(8)	5	1	1 hour.
Currently Approved Collections	7,484,176	1.0001	0.2703 hours.

Estimated Total Annual Burden.....2,023,493

2. Occupational Asthma Identifications Methods—New—A sample of workers identified with occupational asthma from the National Occupational Exposure Survey will be used to develop a surveillance system and further to identify risk factors associated with development of asthma. Respondents: Individuals or households; Number of Respondents: 800; Number of Responses per Respondent: .83; Average Burden per Response: 3.6 hours; Estimated Annual Burden: 2,400 hours.

3. Drug Pricing Program Reporting Requirements—New—PHS has developed, pursuant to section 340B of the PHS Act (42 USC 256b) audit guidelines and a dispute resolution process for the Drug Pricing Program. The associated reporting requirements are necessary to provide participating entities with protection from abusive audits and to provide the information necessary to give entities and manufacturers fair "notice and hearing" opportunities. Respondents: State or local governments, Businesses or other for-profit, Non-profit institutions, Small businesses or organizations.

Title	Number of respondents	Number of responses per respondent	Average burden per response
Reporting:			
Manufacturers	45	1.9	4.5 hours.
Participating Entities	25	1	14.4 hours.
Recordkeeping	80	1	.5 hour.

Estimated Total Annual Burden.....780

4. Technical Assistance to Enhance the Statistical and Analytic Capacity of State and Local Public Health Professionals for Year 2000 Applications—0920–0290—(Extension, no change)—Applicants for training in setting and evaluating health objectives for the Year 2000 must complete an application form for use by the instructor in selecting training applicants. An annual survey of training needs of public health employees is conducted among State Centers/Public Health Agencies. Respondents: Individuals or households, State or local government.

Title	Number of respondents	Number of responses per respondent	Average burden per response
Annual Needs Survey	56	1	.33 hour.
Application for Training	330	1	.25 hour.

Estimated Total Annual Burden.....101

5. A Study of Access and Needs for Services Among HIV-Infected STD Clinic Patients Following Post-test Counseling—New—This information collection will be used to improve the counseling messages given to persons who test positive in STD clinics. This information will help determine the effectiveness of counseling and referral in influencing service delivery to populations served by STD clinics. Respondents: Individuals or households; Number of Respondents: 250; Number of Responses per Respondent: 1; Average Burden per Response: .75 hour; Estimated Annual Burden: 188 hours.

6. A Case-Control Study of the Deterrent Effect of Environmental Designs on Robbery in Virginia Convenience Stores—New—This study utilizes a case-control study of the deterrent effect of environmental designs and crime prevention strategies to deter violent crime in Virginia convenience stores. The information to be collected will be used to determine criteria for establishing a safe and healthy work environment. Respondents: Business or other for profit; Number of Respondents: 5,095; Number of Responses per Respondent: 1; Average Burden per Response: .165 hour; Estimated Annual Burden: 849 hours.

Written comments and recommendations concerning the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated below at the following address: Shannah Koss, Human Resources and Housing Branch, New Executive Office Building, Room 3002, Washington, DC 20503.

Dated: June 20, 1994.

Nancy D. Pearce,

Acting Director, Division of Data Policy, Office of Health Planning and Evaluation.

[FR Doc. 94–15397 Filed 6–23–94; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–94–1917; FR–3350–N–89]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

ADDRESSES: For further information, contact Barbara Richards, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–4300; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-

free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with Sections 2905 and 2906 of the National Defense Authorization Act for Fiscal Year 1994, P.L. 103–160 (Pryor Act Amendment) and with 56 FR 23789 (May 24, 1991) and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding utilized and underutilized buildings and real property control by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the April 21, 1993 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88—2503–OG (D.D.C.).

These properties reviewed are listed as suitable/available and unsuitable. In accordance with the Pryor Act Amendment the suitable properties will be made available for use to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this notice. Please be advised, in accordance with the provisions of the Pryor Act Amendment, that if no expressions of interest or applications are received by the Department of Health and Human Services (HHS) during the 60 day period, these properties will no longer be available for use to assist the homeless. In the case of buildings and properties for which no such notice is received, these buildings and properties shall be available only for the purposes of permitting a redevelopment authority to express in writing an interest in the use of such buildings and properties. These buildings and properties shall be available for a submission by such redevelopment authority exclusively for one year. Buildings and properties available for a redevelopment authority shall not be available for use to assist the homeless. If a redevelopment authority does not express an interest in the use of the buildings or properties or commence the use of buildings or properties within the applicable time period such buildings and properties shall then be republished as properties available for use to assist the homeless pursuant to Section 501 of the Stewart B. McKinney Homeless Assistance Act.

Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A–10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443/2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instruction for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Barbara Richards at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: Corps of Engineers: Gary B. Paterson, Chief, Base Realignment and Closure Office, Directorate of Real Estate, 20 Massachusetts Ave., NW, Rm. 4133, Washington, DC 20-314–1000; (202) 272–0520; U.S. Navy: John J. Kane, Deputy Division Director, Dept. of Navy, Real Estate Operations, Naval Facilities Engineering Command, 200 Stoval Street, Alexandria, VA 22332–2300; (703) 325–0474; U.S. Air Force: John Carr, Realty Specialist, HQ–AFBDA/BDR, Pentagon, Washington, DC 20330–5130; (703) 696–5569; (These are not toll-free numbers).

Dated: June 17, 1994.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM, FEDERAL REGISTER REPORT FOR 06/24/94

Suitable/Available Properties

Buildings (by State)

California

4 Shop Facilities
Naval Aviation Depot
Naval Air Station
Alameda Co: Alameda CA 94501–
Landholding Agency: Navy Base Close
Property Number: 789420051
Status: Pryor Amendment
Base closure. Number of Units: 4
Comment: 504–55400 sq. ft., 1 story, do not meet earthquake codes, decontamination & cleanup sched. in 95/96, may be subj. to Tidelands Trust, eng repair shops, sched. to be vacated 10/97.

5 Office Buildings
Naval Aviation Depot
Naval Air Station
Alameda Co: Alameda CA 94501–
Landholding Agency: Navy Base Close
Property Number: 789420052
Status: Pryor Amendment
Base closure. Number of Units: 5
Comment: various sq. ft., 1 story do not meet earthquake codes, some bldgs. need repairs, may be subj. to Tidelands Trust, incs. Bldgs. 42,44,62,603,500, sched. to be vacated 10/97.

5 Storage Facilities
Naval Aviation Depot
Naval Air Station
Alameda Co: Alameda CA 94501–
Landholding Agency: Navy Base Close
Property Number: 789420053
Status: Pryor Amendment
Base closure. Number of Units: 5
Comment: various sq. ft., 1 story, some bldgs. do not meet earthquake codes, decontamination & cleanup sched. in 95/96, includes storage bunkers & space, scheduled to be vacated 10/97.

7 Flammable/Hazardous Storage
Naval Aviation Depot
Naval Air Station
Alameda Co: Alameda CA 94501–Location: Includes bldgs. 261, 265, 414, 614 thru 616, & 479
Landholding Agency: Navy Base Close
Property Number: 789420054
Status: Pryor Amendment
Base closure. Number of Units: 7
Comment: 216–2400 sq. ft., 1 story, some bldgs. do not meet earthquake codes, decontam. & cleanup sched. in 95/96, may be subj. to Tidelands Trust, scheduled to be vacated 10/97.

2 Aircraft Rework Facilities
Naval Aviation Depot
Naval Air Station
Alameda Co: Alameda CA 94501–
Landholding Agency: Navy Base Close
Property Number: 789420055
Status: Pryor Amendment
Base closure. Number of Units: 2

Comment: 65100–910382 sq. ft., 2 story, do not meet earthquake codes, decontam. sched. in 1996, inc. bldgs 5,11,12, may be subj. to Tidelands Trust, site restoration to extend to 2007.

3 Missile Guidance/Test Facs.
Naval Aviation Depot
Naval Air Station
Alameda Co: Alameda CA 94501–
Landholding Agency: Navy Base Close
Property Number: 789420056
Status: Pryor Amendment
Base closure. Number of Units: 3
Comment: various sq. ft., 1 story, do not meet seismic codes, decontamination & cleanup in 95, may be subj. to Tidelands Trust, bldgs. 529, 530, 600, sched. to be vacated 10/97.

Bldg. 7
Naval Aviation Depot
Naval Air Station
Alameda Co: Alameda CA 94501–
Landholding Agency: Navy Base Close
Property Number: 789420057
Status: Pryor Amendment
Base closure. Number of Units: 1
Comment: 15547 sq. ft., 2 story, may be subj. to Tidelands Trust, cleanup sched. in 1997 incs. materials eng. lab, scheduled to be vacated in 10/97.

Bldg. 24
Naval Aviation Depot
Naval Air Station
Alameda Co: Alameda CA 94501–
Landholding Agency: Navy Base Close
Property Number: 789420058
Status: Pryor Amendment
Base closure. Number of Units: 1
Comment: 63000 sq. ft., 1 story, decontamination & cleanup sched. in 1996, may be subj. to Tidelands Trust, incs. aircraft painting facility, scheduled to be vacated 10/97.

Bldg. 25
Naval Aviation Depot
Naval Air Station
Alameda Co: Alameda CA 94501–
Landholding Agency: Navy Base Close
Property Number: 789420059
Status: Pryor Amendment
Base closure. Number of Units: 1
Comment: 54450 sq. ft., 2 story, decontamin. & cleanup sched. in 1996, may be subject to Tidelands Trust, incs. aircraft corrosion control facility, scheduled to be vacated 10/97.

Bldg. 32
Naval Aviation Depot
Naval Air Station
Alameda Co: Alameda CA 94501–
Landholding Agency: Navy Base Close
Property Number: 789420060
Status: Pryor Amendment
Base closure. Number of Units: 1
Comment: 56640 sq. ft., 1 story, decontamination & cleanup sched. in 1995, may be subject to Tidelands Trust, incs. plating aircraft parts, scheduled to be vacated 10/97.

Bldg. 66
Naval Aviation Depot
Naval Air Station
Alameda Co: Alameda CA 94501–
Landholding Agency: Navy Base Close
Property Number: 789420061
Status: Pryor Amendment
Base closure. Number of Units: 1
Comment: 30919 sq. ft., 1 story, does not meet earthquake codes, decontamin. & cleanup sched. in 1995, may be subj. to Tidelands Trust, incs. testing of parts, sched. to be vacated 10/97.

Bldg. 113
Naval Aviation Depot
Naval Air Station
Alameda Co: Almeda CA 94501–
Landholding Agency: Navy Base Close
Property Number: 789420062
Status: Pryor Amendment
Base Closure. Number of Units: 1
Comment: 13115 sq. ft., 1 story, does not meet earthquake codes, decontamin. & cleanup in 1996, may be subj. to Tidelands Trust incs. aircraft repair area, scheduled to be vacated 10/97.

Bldg. 349
Naval Aviation Depot
Naval Air Station
Alameda Co: Almeda CA 94501–
Landholding Agency: Navy Base Close
Property Number: 789420063
Status: Pryor Amendment
Base Closure. Number of Units: 1
Comment: 4157 sq. ft., 1 story, does not meet earthquake codes, decontamin. & cleanup in 1996, may be subj. to Tidelands Trust incs. fuel component testing, sched. to be vacated 10/97.

Bldg. 398, 399, 470
Naval Aviation Depot
Naval Air Station
Alameda Co: Almeda CA 94501–
Landholding Agency: Navy Base Close
Property Number: 789420064
Status: Pryor Amendment
Base Closure. Number of Units: 3
Comment: various sq. ft., 1 story ea., do not meet earthquake codes, decontam. & cleanup in 96, may be subj. to Tidelands Trust, incs. pneumatic acceso. testing, sched. to be vacated 10/97.

Bldg. 372, 397
Naval Aviation Depot
Naval Air Station
Alameda Co: Almeda CA 94501–
Landholding Agency: Navy Base Close
Property Number: 789420065
Status: Pryor Amendment
Base Closure. Number of Units: 2
Comment: 17335–18513 sq. ft., 1 story, do not meet earthquake codes, decontam. & cleanup in 1995, may subj. to Tidelands Trust, incs. engine prep/testing, sched. to be vacated 10/97.

Bldg. 400
Naval Aviation Depot
Naval Air Station
Alameda Co: Almeda CA 94501–
Landholding Agency: Navy Base Close
Property Number: 789420066
Status: Pryor Amendment
Base Closure. Number of Units: 1
Comment: 192112 sq. ft., 3 story, do not meet earthquake codes, decontam. & cleanup in 1996, may be subj. to Tidelands Trust, incs. aircraft repair fac., sched. to be vacated 10/97.

Bldg. 405
Naval Aviation Depot
Naval Air Station
Alameda Co: Almeda CA 94501–
Landholding Agency: Navy Base Close
Property Number: 789420067
Status: Pryor Amendment
Base Closure. Number of Units: 1
Comment: 5757 sq. ft., 1 story, do not meet earthquake codes, clean-up sched. in 1995, may be subject to Tidelands Trust, incs. ground equipment rework, sched. to be vacated 10/97.

Bldg. 410
Naval Aviation Depot
Naval Air Station
Alameda Co: Almeda CA 94501–
Landholding Agency: Navy Base Close
Property Number: 789420068
Status: Pryor Amendment
Base Closure. Number of Units: 1
Comment: 34668 sq. ft., 1 story, do not meet earthquake codes, need repairs, fac. is environ. remediation site, incs. aircraft facility, may be subj. to Tidelands Trust, vacated 10/97.

Bldg. 494
Naval Aviation Depot
Naval Air Station
Alameda Co: Almeda CA 94501–
Landholding Agency: Navy Base Close
Property Number: 789420069
Status: Pryor Amendment
Base Closure. Number of Units: 1
Comment: 2876 sq. ft., 1 story, do not meet earthquake codes, decontamination & cleanup in 1996, may be subj. to Tidelands Trust, incs., aircraft run-up fac., sched. to be vacated 10/97.

Bldg. 606
Naval Aviation Depot
Naval Air Station
Alameda Co: Almeda CA 94501–
Landholding Agency: Navy Base Close
Property Number: 789420070
Status: Pryor Amendment
Base Closure. Number of Units: 1
Comment: 288 sq. ft., 1 story, do not meet earthquake codes, decontamination & cleanup in 1996, may be subj. to Tidelands Trust, incs. office space, sched. to be vacated 10/97.

Bldg. 625, 626
Naval Aviation Depot
Naval Air Station
Alameda Co: Almeda CA 94501–
Landholding Agency: Navy Base Close
Property Number: 789420071
Status: Pryor Amendment
Base Closure. Number of Units: 2
Comment: 1560 sq. ft., 1 story ea., used for storage of compressed gas cylinders, may be subj. to Tidelands Trust, scheduled to be vacated 10/97.

Bldg. 622
Naval Aviation Depot
Naval Air Station
Alameda Co: Almeda CA 94501–
Landholding Agency: Navy Base Close
Property Number: 789420072
Status: Pryor Amendment
Base Closure. Number of Units: 1
Comment: 9088 sq. ft., 1 story, decontamination to begin in 1996, incs. utilities support bldg., may be subject to Tidelands Trust, scheduled to be vacated 10/97.

15 Administration Buildings

Naval Civil Engineering Lab
560 Laboratory Drive
Port Hueneme Co: Ventura CA 93043–
Landholding Agency: Navy Base Close
Property Number: 789420082
Status: Pryor Amendment
Base Closure. Number of Units: 15
Comment: 80 to 76896 sq. ft., 1–2 story, wood/stucco, concrete frame, some w/o sanitary facs., environmental eval. not completed, located in earthquake/tsunami area, sched. to be vacated 4/96.

4 Materials Research Labs
Naval Civil Engineering Lab
560 Laboratory Drive
Port Hueneme Co: Ventura CA 93043–
Landholding Agency: Navy Base Close
Property Number: 789420083
Status: Pryor Amendment
Base Closure. Number of Units: 4
Comment: 1600 to 4704 sq. ft., 1 story, bldg. #558, 582, 569 & 3008, may need rehab, environmental eval. not completed, located in earthquake/tsunami area, scheduled to be vactated 4/96.

4 Machinery Shops
Naval Civil Engineering Lab
560 Laboratory Drive
Port Hueneme Co: Ventura CA 93043–
Landholding Agency: Navy Base Close
Property Number: 789420084
Status: Pryor Amendment
Base Closure. Number of Units: 4
Comment: 2000 to 6425 sq. ft., 1 story, bldg. #415, 586, 598, 1312, environmental eval. not completed, metal frame, located in earthquake/tsunami area, scheduled to be vacated 4/96.

3 Storage Facilities
Naval Civil Engineering Lab
560 Laboratory Drive
Port Hueneme Co: Ventura CA 93043–
Landholding Agency: Navy Base Close
Property Number: 789420085
Status: Pryor Amendment
Base Closure. Number of Units: 3
Comment: 1029 to 4275 sq. ft., 1 story, bldg. #599, 1198 & 3007, utilities potential, environmental eval. not completed, located in earthquake/tsunami area, sched. to be vacated 4/96.

Bldg. 562
Naval Civil Engineering Lab
560 Laboratory Drive
Port Hueneme Co: Ventura CA 93043–
Landholding Agency: Navy Base Close
Property Number: 789420086
Status: Pryor Amendment
Base Closure. Number of Units: 1
Comment: 5239 sq. ft., 1 story, environmental eval. not completed, metal frame, located in earthquake/tsunami area, most recent use—research & dev./storage, sched. to be vacated 4/96.

Bldg. 566
Naval Civil Engineering Lab
560 Laboratory Drive
Port Hueneme Co: Ventura CA 93043–
Landholding Agency: Navy Base Close
Property Number: 789420087
Status: Pryor Amendment
Base Closure. Number of Units: 1
Comment: 4426 sq. ft., 1 story, metal/steel frame, environ. eval. not completed, located in earthquake/tsunami area, most recent use—research & development, sched. to be vacated 4/96.

Bldgs. 564, 3000, 3006
Naval Civil Engineering Lab
560 Laboratory Drive
Port Hueneme Co: Ventura CA 93043–
Landholding Agency: Navy Base Close
Property Number: 789420088
Status: Pryor Amendment
Base Closure. Number of Units: 3
Comment: 4000 to 12040 sq. ft., 1 story, metal frame, environ. eval. not completed, located in earthquake/tsumami area, most recent use—research & dev., sched. to be vacated 4/96.

Bldgs. 557 & 1195
Naval Civil Engineering Lab
560 Laboratory Drive
Port Hueneme Co: Ventura CA 93043–
Landholding Agency: Navy Base Close
Property Number: 789420089
Status: Pryor Amendment
Base Closure. Number of Units: 2
Comment: 4020/4000 sq. ft., 1 story, metal frame, limited utilities, environ. eval. not completed, located in earthquake/tsunami area, most recent use—elec. R&D, sched. to be vacated 4/96.

Bldgs. 559 & 1311
Naval Civil Engineering Lab
560 Laboratory Drive
Port Hueneme Co: Ventura CA 93043–
Landholding Agency: Navy Base Close
Property Number: 789420090
Status: Pryor Amendment
Base Closure. Number of Units: 1
Comment: 4000/12442 sq. ft., 1–2 story, environmental eval. not completed, located in earthquake/tsunami area, most rcent use—admin offices/chemical lab, scheduled to be vacated 4/96.

Bldgs. 567 & 3005
Naval Civil Engineering Lab
560 Laboratory Drive
Port Hueneme Co: Ventura CA 93043–
Landholding Agency: Navy Base Close
Property Number: 789420091
Status: Pryor Amendment
Base Closure. Number of Units: 2
Comment: 1664/4920 sq. ft., 1 story, metal/wood frame, environmental eval. not completed, located in earthquake/tsunami area, most recent use—photo labs, sched. to be vacated 4/96.

Bldgs. 570, 595, 596
Naval Civil Engineering Lab
560 Laboratory Drive
Port Hueneme Co: Ventura CA 93043–
Landholding Agency: Navy Base Close
Property Number: 789420092
Status: Pryor Amendment
Base Closure. Number of Units: 3
Comment: 4864 to 12243 sq. ft., 1 story, (bldg. 570 needs rehab), environ. eval. not completed, metal frame, located in earthquake/tsunami area, scheduled to be vacated 4/96.

Bldg. 573
Naval Civil Engineering Lab
560 Laboratory Drive
Port Hueneme Co: Ventura CA 93043–
Landholding Agency: Navy Base Close
Property Number: 789420093
Status: Pryor Amendment
Base Closure. Number of Units: 1
Comment: 3880 sq. ft., 1 story, wood frame, environmental eval. not completed, located in earthquake/tsunami area, most recent use—research labs, scheduled to be vacated 4/96.

Bldg. 591
Naval Civil Engineering Lab
560 Laboratory Drive
Port Hueneme Co: Ventura CA 93043–
Landholding Agency: Navy Base Close
Property Number: 789420094
Status: Pryor Amendment
Base Closure. Number of Units: 1
Comment: 140 sq. ft., 1 story, limited utilaties, environmental eval. not completed, cement block frame, located in earthquake area, most recent use—shredder bldg., sched. to be vac. 4/96.

Bldg. 1305
Naval Civil Engineering Lab
560 Laboratory Drive
Port Hueneme Co: Ventura CA 93043–
Landholding Agency: Navy Base Close
Property Number: 789420095
Status: Pryor Amendment
Base closure. Number of Units: 1
Comment: 1770 sq. ft., 1 story, wood/stucco frame, environmental eval not completed, located in earthquake/tsunami area, most recent use—bathhouse, sched. to be vac. 4/96.

Bldg. 1313
Naval Civil Engineering Lab
560 Laboratory Drive
Port Hueneme Co: Ventura CA 93043–
Landholding Agency: Navy Base Close
Property Number: 789420096
Status: Pryor Amendment
Base closure. Number of Units: 1
Comment: 700 sq. ft., 1 story, wood/stucco frame, environmental eval not completed, located in earthquake/tsunami area, most recent use—ballistic testing, sched. to be vac. 4/96.

Bldg. 1411
Naval Civil Engineering Lab
560 Laboratory Drive
Port Hueneme Co: Ventura CA 93043–
Landholding Agency: Navy Base Close
Property Number: 789420097
Status: Pryor Amendment
Base closure. Number of Units: 1
Comment: 458 sq. ft., 1 story, wood/stucco frame, environmental eval not completed, located in earthquake/tsunami area, most recent use—theodolite instrumentation, sched. to be vac. 4/96.

Bldg. 5297
Naval Civil Engineering Lab
560 Laboratory Drive
Port Hueneme Co: Ventura CA 93043–
Landholding Agency: Navy Base Close
Property Number: 789420098
Status: Pryor Amendment
Base closure. Number of Units: 1
Comment: 1147 sq. ft., 1 story, wood/stucco frame, environmental eval not completed, located in earthquake/tsunami area, most recent use—R&D penetration testing, sched. to be vac. 4/96.

Bldg. 5298
Naval Civil Engineering Lab
560 Laboratory Drive
Port Hueneme Co: Ventura CA 93043–
Landholding Agency: Navy Base Close

Property Number: 789420099
Status: Pryor Amendment
Base closure. Number of Units: 1
Comment: 384 sq. ft., 1 story, wood/stucco frame, environmental eval not completed, located in earthquake/tsunami area, most recent use—R&D penetration testing, sched. to be vac. 4/96.

Massachusetts

54 Office/Administration Bldgs
Fort Devens
Ft. Devens Co: Worcester MA 01433–5000
Landholding Agency: COE–BC
Property Number: 329210012
Status: Pryor Amendment
Base closure. Number of Units: 54
Comment: 1174 to 71781 sq. ft., wood, brick or concrete/block frame, includes personnel bldgs., general purpose and support services bldgs., scheduled to be vacated 10/95.

25 Recreational Facilities
Fort Devens
Ft. Devens Co: Worcester MA 01433–5000
Landholding Agency: COE–BC
Property Number: 329210013
Status: Pryor Amendment
Base closure. Number of Units: 25
Comment: 155 to 30000 sq. ft., wood, brick, steel or concrete/block frame, includes gym, library, swimming pool, golf clubhouse, bowling center, etc., scheduled to be vacated 10/95.

Child Care Facility
Fort Devens
Ft. Devens Co: Worcester MA 01433–5000
Landholding Agency: COE–BC
Property Number: 329210014
Status: Pryor Amendment
Base closure. Number of Units: 1
Comment: 61012 sq. ft., wood frame, scheduled to be vacated 10/95.

150 Temp. Living Quarters
Fort Devens
Ft. Devens Co: Worcester MA 01433–5000
Landholding Agency: COE–BC
Property Number: 329210015
Status: Pryor Amendment
Base closure. Number of Units: 150
Comment: 1028 to 19120 sq. ft., wood, concrete block or brick frame, includes barracks, scheduled to be vacated 10/95.

8 Aircraft/Airport Facilities
Fort Devens
Ft. Devens Co: Worcester MA 01433–5000
Landholding Agency: COE–BC
Property Number: 329210016
Status: Pryor Amendment
Base closure. Number of Units: 8
Comment: Scheduled to be vacated 10/95.

16 Maintenance Eng. Facilities
Fort Devens
Ft. Devens Co: Worcester MA 01433–5000
Landholding Agency: COE–BC
Property Number: 329210017
Status: Pryor Amendment
Base closure. Number of Units: 16
Comment: 960 to 16699 sq. ft., wood, brick or steel frame, includes maintenance shops, entomology facility, scheduled to be vacated 10/95.

4 Hospital Facilities
Fort Devens
Ft. Devens Co: Worcester MA 01433–5000
Landholding Agency: COE–BC
Property Number: 329210019
Status: Pryor Amendment
Base closure. Number of Units: 4
Comment: 493 to 126835 sq. ft., wood, concrete, brick or concrete block frame, includes clinics, hospital, veterinarian facility, dental clinic, scheduled to be vacated 10/95.

15 Vehicle Shops
Fort Devens
Ft. Devens Co: Worcester MA 01433–5000
Landholding Agency: COE–BC
Property Number: 329210021
Status: Pryor Amendment
Base closure. Number of Units: 15
Comment: 120 to 20310 sq. ft., wood, concrete block or steel frame, includes vehicle maintenance shops, oil storage bldgs., scheduled to be vacated 10/95.

4 Audio Visual/Photo Labs
Fort Devens
Ft. Devens Co: Worcester MA 01433–5000
Landholding Agency: COE–BC
Property Number: 329210022
Status: Pryor Amendment
Base closure. Number of Units: 4
Comment: 480 to 10612 sq. ft., wood or concrete block frame, scheduled to be vacated 10/95.

8 Hazardous Storage Buildings
Fort Devens
Ft. Devens Co: Worcester MA 01433–5000
Landholding Agency: COE–BC
Property Number: 329210023
Status: Pryor Amendment
Base closure. Number of Units: 8
Comment: 64 to 6000 sq. ft., concrete, steel or concrete block frame, includes oxygen storage facility and flammable materials storage, scheduled to be vacated 10/95.

2 Communications Buildings
Fort Devens
Ft. Devens Co: Worcester MA 01433–5000
Landholding Agency: COE–BC
Property Number: 329210024
Status: Pryor Amendment
Base closure. Number of Units: 2
Comment: 1322 to 1749 sq. ft., concrete block or brick frame, includes communication center, scheduled to be vacated 10/95.

7 Fuel Facilities
Fort Devens
Ft. Devens Co: Worcester MA 01433–5000
Landholding Agency: COE–BC
Property Number: 329210025
Status: Pryor Amendment
Base closure. Number of Units: 17
Comment: 121 to 226 sq. ft., wood, concrete block or steel frame, includes gas station bldgs., and pump stations, scheduled to be vacated 10/95.

86 Warehouses
Fort Devens
Ft. Devens Co: Worcester MA 01433–5000
Landholding Agency: COE–BC
Property Number: 329210026
Status: Pryor Amendment
Base closure. Number of Units: 86
Comment: 49 to 85790 sq. ft., wood, concrete block, concrete or steel frame, incs. sheds, gen. purpose bldgs., vehicle storage, medical supply, storehouses, scheduled to be vacated 10/95.

24 Mess/Dining Halls
Fort Devens
Ft. Devens Co: Worcester MA 01433–5000
Landholding Agency: COE–BC
Property Number: 329210027
Status: Pryor Amendment
Base closure. Number of Units: 24
Comment: 2403 to 2717 sq. ft., wood frame, includes enlisted personnel dining, scheduled to be vacated 10/95.

168 Miscellaneous Facilities
Fort Devens
Ft. Devens Co: Worcester MA 01433–5000
Landholding Agency: COE–BC
Property Number: 329210028
Status: Pryor Amendment
Base closure. Number of Units: 168
Comment: 320 to 114000 sq. ft., wood, concrete block, brick or steel frame, includes general purpose training fac., RG houses, reserve centers, garages, scheduled to be vacated 10/95.

402 Housing Units
Fort Devens
Ft. Devens Co: Worcester MA 01433–5000
Landholding Agency: COE–BC
Property Number: 329210029
Status: Pryor Amendment
Base closure. Number of Units: 402
Comment: 1200 to 4380 sq. ft., wood or brick frame, includes single and multifamily bldgs., scheduled to be vacated 10/95.

4 Multi-purpose Buildings
Fort Devens
Ft. Devens Co: Worcester MA 01433–5000
Landholding Agency: COE–BC
Property Number: 329210030
Status: Pryor Amendment
Base closure. Number of Units: 4
Comment: Scheduled to be vacated 10/95.

Michigan

98 Units Single Family Housing
K.I. Sawyer Air Force Base
Gwinn Co: Marquette MI 49843–
Landholding Agency: Air Force–BC
Property Number: 199420074
Status: Pryor Amendment
Base closure. Number of Units: 98
Comment: 887 sq. ft. each, 3 bedrooms, relocatable single family bldgs., scheduled to be vacated 9/30/95.

37 Units Single Family Housing
K.I. Sawyer Air Force Base
Gwinn Co: Marquette MI 49843–
Landholding Agency: Air Force–BC
Property Number: 199420075
Status: Pryor Amendment
Base closure. Number of Units: 37
Comment: 1191–1500 sq. ft., 3 to 4 bedrooms, non-relocatable single family bldgs., scheduled to be vacated 9/30/95.

772 Units Duplex Housing
K. I. Sawyer Air Force Base
Gwinn Co: Marquette MI 49843–
Landholding Agency: Air Force—BC
Property Number: 199420076
Status: Pryor Amendment
Base closure. Number of Units: 772
Comment: 801–1274 sq. ft., 2 to 4 bedrooms, 386 duplex bldgs. consisting of 772 units, scheduled to be vacated 9/30/95.

746 Units Multiplex Housing
K. I. Sawyer Air Force Base
Gwinn Co: Marquette MI 49843–
Landholding Agency: Air Force—BC

Property Number: 199420077
Status: Pryor Amendment
Base closure. Number of Units: 746
Comment: 813–1151 sq. ft., 2 to 5 bedrooms, 135 multiplex bldgs, consisting of 746 units, scheduled to be vacated 9/30/95.

5 Dormitory Facilities
K. I. Sawyer Air Force Base
Gwinn Co: Marquette MI 49843–
Landholding Agency: Air Force—BC
Property Number: 199420078
Status: Pryor Amendment
Base closure. Number of Units: 5
Comment: 25704 sq. ft. each, block, dorms, scheduled to be vacated 9/30/95.

1 Dining Facility
K. I. Sawyer Air Force Base
Gwinn Co: Marquette MI 49843–
Landholding Agency: Air Force—BC
Property Number: 199420079
Status: Pryor Amendment
Base closure. Number of Units: 1
Comment: 15588 sq. ft., block, dining hall, scheduled to be vacated 9/30/95.

14 Administrative Facilities
K. I. Sawyer Air Force Base
Gwinn Co: Marquette MI 49843–
Landholding Agency: Air Force—BC
Property Number: 199420080
Status: Pryor Amendment
Base closure. Number of Units: 14
Comment: 1200–13456 sq. ft., which includes admin., family support centers and library, scheduled to be vacated 9/30/95

1 Chapel Facility
K. I. Sawyer Air Force Base
Gwinn Co: Marquette MI 49843–
Landholding Agency: Air Force—BC
Property Number: 199420081
Status: Pryor Amendment
Base closure. Number of Units: 1
Comment: 7598 sq. ft., wood frame, chapel, scheduled to be vacated 9/30/95.

14 Recreation Facilities
K. I. Sawyer Air Force Base
Gwinn Co: Marquette MI 49843–
Landholding Agency: Air Force—BC
Property Number: 199420082
Status: Pryor Amendment
Base closure. Number of Units: 14
Comment: 302–12913 sq. ft., which includes clubs, youth and child care centers, theater, fitness annex and storage, scheduled to be vacated 9/30/95.

1 Communication Facility
K. I. Sawyer Air Force Base
Gwinn Co: Marquette MI 49843–
Landholding Agency: Air Force—BC
Property Number: 199420083
Status: Pryor Amendment
Base closure. Number of Units: 1
Comment: 6338 sq. ft., block, control tower, scheduled to be vacated 9/30/95.

2 Medical Facilities
K. I. Sawyer Air Force Base
Gwinn Co: Marquette MI 49843–
Landholding Agency: Air Force—BC
Property Number: 199420084
Status: Pryor Amendment
Base closure. Number of Units: 2
Comment: 199500 sq. ft., brick/block hospital and 280 sq. ft., metal storage, scheduled to be vacated 9/30/95.

10 Industrial Facilities
K. I. Sawyer Air Force Base
Gwinn Co: Marquette MI 49843–
Landholding Agency: Air Force—BC
Property Number: 199420085
Status: Pryor Amendment
Base closure. Number of Units: 10
Comment: 1288–16276 sq. ft., which includes fire stations, photo lab and security police facilities, scheduled to be vacated 9/30/95.

20 Maintenance Facilities
K. I. Sawyer Air Force Base
Gwinn Co: Marquette MI 49843–
Landholding Agency: Air Force—BC
Property Number: 199420086
Status: Pryor Amendment
Base closure. Number of Units: 20
Comment: 1016–32336 sq. ft., which includes shops, storage and equipment facilities, scheduled to be vacated 10/30/95.

17 Warehouse Facilities
K. I. Sawyer Air Force Base
Gwinn Co: Marquette MI 49843–
Landholding Agency: Air Force—BC
Property Number: 199420087
Status: Pryor Amendment
Base closure. Number of Units: 17
Comment: 96–7052 sq. ft., which includes igloo and hazardous storage, and maintenance facilities, scheduled to be vacated 9/30/95.

8 Hangar Facilities
K. I. Sawyer Air Force Base
Gwinn Co: Marquette MI 49843–
Landholding Agency: Air Force—BC
Property Number: 199420088
Status: Pryor Amendment
Base closure. Number of Units: 8
Comment: 9606–40080 sq. ft., steel aircraft maintenance facilities, scheduled to be vacated 9/10/95.

6 Vehicle Parking Facilities
K. I. Sawyer Air Force Base
Gwinn Co: Marquette MI 49843–
Landholding Agency: Air Force—BC
Property Number: 199420089
Status: Pryor Amendment
Base closure. Number of Units: 6
Comment: 760–17349 sq. ft., "vehicle parking" type facilities, scheduled to be vacated 9/30/95.

17Administrative Facilities
K. I. Sawyer Air Force Base
Gwinn Co: Marquette MI 49843–
Landholding Agency: Air Force—BC
Property Number: 199420092
Status: Pryor Amendment
Base closure. Number of Units: 17
Comment: 210–120819 sq. ft., which includes education and admin. facilities, scheduled to be vacated 9/30/95, leased land, off-site use only.

1 Chapel Facility
K. I. Sawyer Air Force Base
Gwinn Co: Marquette MI 49843–
Landholding Agency: Air Force—BC
Property Number: 199420093
Status: Pryor Amendment
Base closure. Number of Units: 1
Comment: 10374 sq. ft., wood, chapel, scheduled to be vacated 9/30/95, leased land, off-site use only.

2 Communication Facilities
K. I. Sawyer Air Force Base
Gwinn Co: Marquette MI 49843–
Landholding Agency: Air Force—BC
Property Number: 199420094
Status: Pryor Amendment
Base closure. Number of Units: 2
Comment: 1052 and 6142 sq. ft., communication bldgs., scheduled to be vacated 9/30/95, leased land, off-site use only.

11 Dormitory Facilities
K. I. Sawyer Air Force Base
Gwinn Co: Marquette MI 49843–
Landholding Agency: Air Force—BC
Property Number: 199420095
Status: Pryor Amendment
Base closure. Number of Units: 11
Comment: 1526–30742 sq. ft., dorms, scheduled to be vacated 9/30/95, leased land, off-site use only.

3 Dining Facilities
K. I. Sawyer Air Force Base
Gwinn Co: Marquette MI 49843–
Landholding Agency: Air Force—BC
Property Number: 199420096
Status: Pryor Amendment
Base closure. Number of Units: 3
Comment: 3378–20132 sq. ft., which includes a mess, officers club, and pizza hangar, scheduled to be vacated 9/30/95, leased land, off-site use only.

3 Recreational Facilities
K. I. Sawyer Air Force Base
Gwinn Co: Marquette MI 49843–
Landholding Agency: Air Force—BC
Property Number: 199420097
Status: Pryor Amendment
Base closure. Number of Units: 3
Comment: 13132–70129 sq. ft., which includes a gym and bowling alley, scheduled to be vacated 9/30/95, leased land, off-site use only.

18 Warehouse Facilities
K. I. Sawyer Air Force Base
Gwinn Co: Marquette MI 49843–
Landholding Agency: Air Force—BC
Property Number: 199420098
Status: Pryor Amendment
Base closure. Number of Units: 18
Comment: 3282–74629 sq. ft., which includes storage igloos, warehouses, commissary and stores, scheduled to be vacated 9/30/95, leased land, off-site use only.

17 Maintenance Facilities
K. I. Sawyer Air Force Base
Gwinn Co: Marquette MI 49843–
Landholding Agency: Air Force—BC
Property Number: 199420099
Status: Pryor Amendment
Base closure. Number of Units: 17
Comment: 32–108161 sq. ft., which includes storage and maintenance facilities, scheduled to be vacated 9/30/95. leased land, off-site use only

26 Industrial Facilities
K. I. Sawyer Air Force Base
Gwinn Co: Marquette MI 49843–
Landholding Agency: Air Force—BC
Property Number: 199420100
Status: Pryor Amendment
Base closure. Number of Units: 26
Comment: 48–101423 sq. ft., which includes fuel and heating facilities, animal clinic, & hobby shops, scheduled to be vacated 9/30/95, leased land, off-site use only

3 Vehicle Parking Facilities
K. I. Sawyer Air Force Base
Gwinn Co: Marquette MI 49843–

Landholding Agency: Air Force—BC
Property Number: 199420101
Status: Pryor Amendment
Base closure. Number of Units: 3
Comment: 1577–26963 sq. ft., "vehicle parking" type facilities, scheduled to be vacated 9/30/95, leased land, off-site use only.

3 Hangar Facilities
K.I. Sawyer Air Force Base
Gwinn Co: Marquette MI 49843–
Landholding Agency: Air Force—BC
Property Number: 199420102
Status: Pryor Amendment
Base closure. Number of Units: 3
Comment: 26350–28727 sq. ft., steel hangars, scheduled to be vacated 9/30/95, leased land, off-site use only.

9 Recreation Facilities
K.I. Sawyer Air Force Base
Gwinn Co: Marquette MI 49843–
Landholding Agency: Air Force—BC
Property Number: 199420103
Status: Pryor Amendment
Base closure. Number of Units: 9
Comment: golf club storage bldgs., clubhouse, 3 gazebos & 18-hole golf course, scheduled to be vacated 9/30/95, public land, off-site use only.

2 Industrial Facilities
K.I. Sawyer Air Force Base
Gwinn Co: Marquette MI 49843–
Landholding Agency: Air Force—BC
Property Number: 199420104
Status: Pryor Amendment
Base closure. Number of Units: 2
Comment: 46 sq. ft. traffic check house and 1800 sq. ft. canine kennel, scheduled to be vacated 9/30/95, public land, off-site use only.

Missouri

3 Miscellaneous Facilities
NIKE Battery KC–30 Missouri
Pleasant Hill Co: Cass MO 64080–
Landholding Agency: COE–BC
Property Number: 329420014
Status: Pryor Amendment
Base closure. Number of Units: 3
Comment: various sq. ft., 1 story structures, includes motor vehicle maintenance bldg., ammo storage vault, & small arms bldg., environmental cleanup to occur before 9/30/95.

New York

218 Family Housing Units
Plattsburgh Air Force Base
Old Base Portion
Plattsburgh Co: Clinton, NY 12901–
Landholding Agency: Air Force—BC
Property Number: 199420050
Status: Pryor Amendment
Base closure. Number of Units: 218
Comment: 218 appropriated and capehart housing units, 3 to 4 bedrooms, possible asbestos, lead base paint and historic restrictions scheduled to be vacated 9/30/95.

979 Family Housing Units
Plattsburgh Air Force Base
New Base Portion
Plattsburgh Co: Clinton, NY 12901–
Landholding Agency: Air Force—BC
Property Number: 199420051
Status: Pryor Amendment
Base closure. Number of Units: 979
Comment: 979 capehart family housing units, 2 to 6 bedrooms, possible asbestos and lead base paint, scheduled to be vacated 9/30/95.

5 Dorm Storage/Sup. Facilities
Plattsburgh Air Force Base
#1875, 1925, 1935, 2030, 2892
Plattsburgh Co: Clinton, NY 12901–
Landholding Agency: Air Force—BC
Property Number: 199420052
Status: Pryor Amendment
Base closure. Number of Units: 5
Comment: 720–5376 sq. ft., possible asbestos and lead base paint, scheduled to be vacated 9/30/95.

3 Dorms/Quarters
Plattsburgh Air Force Base
#1944, 379, 381
Plattsburgh Co: Clinton, NY 12901–
Landholding Agency: Air Force—BC
Property Number: 199420053
Status: Pryor Amendment
Base closure. Number of Units: 3
Comment: 23980–25727 sq. ft., possible asbestos and lead base paint, scheduled to be vacated 9/30/95.

15 Administrative Facilities
Plattsburgh Air Force Base
Plattsburgh Co: Clinton, NY 12901–
Landholding Agency: Air Force—BC
Property Number: 199420056
Status: Pryor Amendment
Base closure. Number of Units: 15
Comment: 259–66406 sq. ft., 1 to 3-story which includes admin/ofc facilities, possible asbestos, lead base paint and historic restrictions, scheduled to be vacated 9/30/95.

3 Dining Halls/Cadet Qtrs.
Plattsburgh Air Force Base
Plattsburgh Co: Clinton, NY 12901–
Landholding Agency: Air Force—BC
Property Number: 199420057
Status: Pryor Amendment
Base closure. Number of Units: 3
Comment: 5376–71804 sq. ft., which includes a 3-story cadet qtrs. and 2 dining halls, possible asbestos, lead base paint and historic restrictions, scheduled to be vacated 9/30/95.

25 Personnel Sup/Svc Facs.
Plattsburgh Air Force Base
Plattsburgh Co: Clinton, NY 12901–
Landholding Agency: Air Force—BC
Property Number: 199420058
Status: Pryor Amendment
Base closure. Number of Units: 25
Comment: 48–25592 sq. ft., which includes fire stations, educ. & chapel facilities, post office & store, possible asbestos, lead base paint and hist. restrc., sched. to be vac. 9/30/95.

30 Welfare/Recrea. Facilities
Plattsburgh Air Force Base
Plattsburgh Co: Clinton, NY 12901–
Landholding Agency: Air Force—BC
Property Number: 199420059
Status: Pryor Amendment
Base closure. Number of Units: 30
Comment: 960–51910 sq. ft., which includes rec., bowling, & child care ctrs., library, stores, gyms, & theater, possible asbes., lead base pt. & hist. restr., sched. to be vac. 9/30/95.

4 Medical Facilities
Plattsburgh Air Force Base
Plattsburgh Co: Clinton NY 12901–
Landholding Agency: Air Force—BC
Property Number: 199420060
Status: Pryor Amendment
Base closure. Number of Units: 4
Comment: 240–94055 sq. ft., which includes a 3-story med. bldg., possible asbestos and lead base paint, scheduled to be vacated 9/30/95.

17 Storage Facilities
Plattsburgh Air Force Base
Plattsburgh Co: Clinton NY 12901–
Landholding Agency: Air Force—BC
Property Number: 199420061
Status: Pryor Amendment
Base closure. Number of Units: 17
Comment: 65–101919 sq. ft., 1-story, which includes warehouses, possible asbestos and lead base paint, scheduled to be vacated 9/30/95.

5 Training Facilities
Plattsburgh Air Force Base
Plattsburgh Co: Clinton NY 12901–
Landholding Agency: Air Force—BC
Property Number: 199420062
Status: Pryor Amendment
Base closure. Number of Units: 5
Comment: 100–44500 sq. ft., 1-story, scheduled to be vacated 9/30/95.

43 Maintenance Facilities
Plattsburgh Air Force Base
Plattsburgh Co: Clinton NY 12901–
Landholding Agency: Air Force—BC
Property Number: 199420063
Status: Pryor Amendment
Base closure. Number of Units: 43
Comment: 120–166367 sq. ft., which includes hangar, maint. shops & docks, & storage, possible asbestos, lead base paint & historic restrictions, scheduled to be vacated 9/30/95.

21 Explosive Storage Facs.
Plattsburgh Air Force Base
Plattsburgh Co: Clinton NY 12901–
Landholding Agency: Air Force—BC
Property Number: 199420064
Status: Pryor Amendment
Base closure. Number of Units: 21
Comment: 78–5000 sq. ft., 1-story, majority igloo storage, possible asbestos and lead base paint, scheduled to be vacated 9/30/95.

8 Land Operational Facilities
Plattsburgh Air Force Base
Plattsburgh Co: Clinton NY 12901–
Landholding Agency: Air Force—BC
Property Number: 199420065
Status: Pryor Amendment
Base closure. Number of Units: 8
Comment: 160–63500 sq. ft., 1- to 2-story which includes photo lab, oper. & terminal facilities, possible asbestos & lead base paint, scheduled to be vacated 9/30/95.

7 Comm./Navig. Aids & Airfield
Plattsburgh Air Force Base
Plattsburgh Co: Clinton NY 12901–
Landholding Agency: Air Force—BC
Property Number: 199420066
Status: Pryor Amendment
Base closure. Number of Units: 7
Comment: 154–13588 sq. ft., possible asbestos & lead base paint, scheduled to be vacated 9/30/95.

13 Petro Disp/Oper Facilities
Plattsburgh Air Force Base
Plattsburgh Co: Clinton NY 12901–
Landholding Agency: Air Force—BC
Property Number: 199420067
Status: Pryor Amendment
Base closure. Number of Units: 13
Comment: 60–5376 sq. ft., 1-story which includes fueling stations, possible asbestos & lead base paint, scheduled to be vacated 9/30/95.

Bldg. 9400—Tacan Station
Plattsburgh Air Force Base
Off-Base Site
Plattsburgh Co: Clinton NY 12901–
Landholding Agency: Air Force—BC
Property Number: 199420068
Status: Pryor Amendment
Base closure. Number of Units: 1
Comment: 343 sq. ft., 1-story wood, possible asbestos and lead base paint, scheduled to be vacated 9/30/95.

Bldg. 9700
Plattsburgh Air Force Base
Off-Base Site
Plattsburgh Co: Clinton NY 12901–
Landholding Agency: Air Force—BC
Property Number: 199420069
Status: Pryor Amendment
Base closure. Number of Units: 1
Comment: 342 sq. ft., 1-story concrete block, possible asbestos and lead base paint, scheduled to be vacated 9/30/95.

Bldg. 651
Plattsburgh Air Force Base
Off-Base Site, ILS Middle Marker Beacon
Plattsburgh Co: Clinton NY 12901–
Landholding Agency: Air Force—BC
Property Number: 199420070
Status: Pryor Amendment
Base closure. Number of Units: 1
Comment: 1502 sq. ft., 1-story brick museum, possible asbestos, lead base paint and historic restrictions, scheduled to be vacated 9/30/95.

Bldg. 2658
Plattsburgh Air Force Base
Plattsburgh Co: Clinton NY 12901–
Landholding Agency: Air Force—BC
Property Number: 199420071
Status: Pryor Amendment
Base closure. Number of Units: 1
Comment: 25144 sq. ft., 1-story concrete, most recent use—heating facility, possible asbestos and lead base paint, scheduled to be vacated 9/30/95.

6 Outdoor Recre. Facilities
Plattsburgh Air Force Base
Plattsburgh Co: Clinton, NY 12901–
Landholding Agency: Air Force—BC
Property Number: 199420072
Status: Pryor Amendment
Base closure. Number of Units: 6
Comment: baseball/softball fields and 9-hole golf course & clubhouse, possible asbestos & lead base paint, scheduled to be vacated 9/30/95.

Virginia

3 Maintenance Facilities
Naval Radio Transmitting Facility
Driver, VA
Suffolk, VA 23435–
Landholding Agency: Navy Base Close
Property Number: 789420078
Status: Pryor Amendment
Base closure. Number of Units: 3
Comment: 2000 to 5833 sq. ft., 1 story, metal or concrete frame.

3 Operational Facilities
Naval Radio Transmitting Facility
Driver, VA
Suffolk, VA 23435–
Landholding Agency: Navy Base Close
Property Number: 789420079
Status: Pryor Amendment
Base closure. Number of Units: 3
Comment: 2620 to 51174 sq. ft., 1 story concrete structures.

5 Storage Facilities
Naval Radio Transmitting Facility
Driver, VA
Suffolk, VA 23435–
Landholding Agency: Navy Base Close
Property Number: 789420080
Status: Pryor Amendment
Base closure. Number of Units: 5
Comment: 1000 to 7370 sq. ft., 1 story concrete or prefab structures.

Land (by State)

Michigan

Land—2763 acres
K.I. Sawyer Air Force Base
Gwinn Co: Marquette, MI 49843–
Landholding Agency: 199420090
Status: Pryor Amendment
Base closure. Number of Units: 1
Comment: 2763 acres, portion located in floodway is unsuitable (lake area), scheduled to be vacated 9/30/95.

Missouri

Land
NIKE Battery KC–30 Missouri
Pleasant Hill Co: Cass, MO 64080–
Landholding Agency: COE–BC
Property Number: 329420015
Status: Pryor Amendment
Base closure. Number of Units: 1
Comment: 23.88 acres of which 4.68 acres is improved w/bldgs., environmental cleanup to occur before 9/30/95.

New York

Land
Plattsburgh Air Force Base
Plattsburgh Co: Clinton, NY 12901–
Landholding Agency: Air Force—BC
Property Number: 199420073
Status: Pryor Amendment
Base closure. Number of Units: 1
Comment: 4686 main base acreage, scheduled to be vacated 9/30/95.

Virginia

Land
Naval Radio Transmitting Facility
Driver, VA
Suffolk, VA 23435–
Landholding Agency: Navy Base Close
Property Number: 789420081
Status: Pryor Amendment
Base closure. Number of Units: 1
Comment: 326.7 acres, utility easement restrictions, 150 acres is wetlands, land contains approx. 80 transmitting antennas.

Unsuitable Properties

Buildings (by State)

California

Bldg. 604
Naval Aviation Depot
Naval Air Station
Alameda Co: Alameda, CA 94501–
Landholding Agency: Navy Base Close
Property Number: 789420073
Status: Pryor Amendment
Base closure. Number of Units: 1
Reason: Within airport runway clear zone.

Bldgs. 331, 344, 477
Naval Aviation Depot
Naval Air Station
Alameda Co: Alameda, CA 94501–
Landholding Agency: Navy Base Close
Property Number: 789420074
Status: Pryor Amendment
Base closure. Number of Units: 1
Reason: Within airport runway clear zone.

Bldgs. 343
Naval Aviation Depot
Naval Air Station
Alameda Co: Alameda, CA 94501–
Landholding Agency: Navy Base Close
Property Number: 789420075
Status: Pryor Amendment
Base closure. Number of Units: 1
Reason: Within airport runway clear zone.

Bldg. 565
Naval Civil Engineering Lab
560 Laboratory Drive
Port Hueneme Co: Ventura CA 93043–
Landholding Agency: Navy Base Close
Property Number: 789420100
Status: Pryor Amendment
Base closure. Number of Units: 1
Reason: Other.
Comment: Sewer Pumping Station.

Bldg. 3011
Naval Civil Engineering Lab
560 Laboratory Drive
Port Hueneme Co: Ventura, CA 93043–
Landholding Agency: Navy Base Close
Property Number: 789420101
Status: Pryor Amendment
Base closure. Number of Units: 1
Reason: Other.
Comment: Structural Deficiencies.

Michigan

8 Industrial Facilities
K. I. Sawyer Air Force Base
Gwinn Co: Marquette MI 49843–
Landholding Agency: Air Force—BC
Property Number: 199420091
Status: Pryor Amendment
Base closure. Number of Units: 8
Reason: Floodway.

Missouri

Bldg. S–3003
NIKE Battery KC–30 Missouri
Pleasant Hill Co: Cass MO 64080–
Landholding Agency: COE–BC
Property Number: 329420008
Status: Pryor Amendment
Base closure. Number of Units: 1
Reason: Extensive deterioration.

Bldg. S–3004
NIKE Battery KC–30 Missouri
Pleasant Hill Co: Cass MO 64080–
Landholding Agency: COE–BC
Property Number: 329420009
Status: Pryor Amendment

Base closure. Number of Units: 1
Reason: Extensive deterioration.

Bldg. S–3005
NIKE Battery KC–30 Missouri
Pleasant Hill Co: Cass MO 64080–
Landholding Agency: COE–BC
Property Number: 329420010
Status: Pryor Amendment
Base closure. Number of Units: 1
Reason: Extensive deterioration.

Bldg. S–3006
NIKE Battery KC–30 Missouri
Pleasant Hill Co: Cass MO 64080–
Landholding Agency: COE–BC
Property Number: 329420011
Status: Pryor Amendment
Base closure. Number of Units: 1
Reason: Extensive deterioration.

3 Operational Facilities
NIKE Battery KC–30 Missouri
Pleasant Hill Co: Cass MO 64080–
Landholding Agency: COE–BC
Property Number: 329420012
Status: Pryor Amendment
Base closure. Number of Units: 1
Reason: Extensive deterioration.

2 Radar Bldgs.
NIKE Battery KC–30 Missouri
Pleasant Hill Co: Cass MO 64080–
Landholding Agency: COE–BC
Property Number: 329420013
Status: Pryor Amendment
Base closure. Number of Units: 1
Reason: Extensive deterioration.

New York

400 Capehart Housing Units
Plattsburgh Air Force Base
New Base Portion
Plattsburgh Co: Clinton NY 12901–
Landholding Agency: Air Force–BC
Property Number: 199420054
Status: Pryor Amendment
Base closure. Number of Units: 400
Reason: Within 2000 ft. of flammable or explosive material.

12 Dormitory Facilities
Plattsburgh Air Force Base
Plattsburgh Co: Clinton NY 12901–
Location: #1880, 1882, 1884, 1904, 1906, 1908, 1940, 1942, 2028, 2038, 2042, 2046
Landholding Agency: Air Force–BC
Property Number: 199420055
Status: Pryor Amendment
Base closure. Number of Units: 12
Reason: Within 2000 ft. of flammable or explosive material.

Virginia

6 Housing Facilities
Naval Radio Transmitting Facility
Driver VA
Suffolk VA 23435–
Landholding Agency: Navy Base Close
Property Number: 789420076
Status: Pryor Amendment
Base closure. Number of Units: 6
Reason: Extensive deterioration.

5 Utility Support Facilities
Naval Radio Transmitting Facility
Driver VA
Suffolk VA 23435–
Landholding Agency: Navy Base Close
Property Number: 789420077
Status: Pryor Amendment
Base closure. Number of Units: 5
Reason: Extensive deterioration.

[FR Doc. 94–15195 Filed 6–23–94; 8:45 am]
BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–030–4333–04; Closure Notice No. NV–030–94–05]

Temporary Closure of Certain Public Lands in the Carson City District for Management of the 1994 Running of the V.O.R.R.A. "Fallon 250" Off-Highway Vehicle (OHV) Race

AGENCY: Bureau of Land Management, NV.

ACTION: Temporary closure of certain public lands in Churchill County, Nevada, on and adjacent to the 1994 "Fallon 250" race course on July 30, 1994. Access will be limited to race officials, entrants, law enforcement and emergency personnel, BLM personnel monitoring the event, licensed permittee(s) and right-of-way grantees.

SUMMARY: The Carson City District Manager announces the temporary closure of selected public lands under his administration. This action is being taken to provide for public safety during the official running of the 1994 "Fallon 250" OHV Race.

EFFECTIVE DATE: July 30, 1994.

FOR FURTHER INFORMATION CONTACT: Terry Knight, Outdoor Recreation Planner, Carson City District Office, 1535 Hot Springs Road, Suite 300, Carson City, Nevada 89706–0638. Telephone (702) 885–6100.

SUPPLEMENTARY INFORMATION: Certain public lands in the Carson City District, Churchill County, Nevada, will be temporarily closed to public access on July 30, 1994, to protect persons, property, and public land resources on and adjacent to the 1994 "Fallon 250" OHV race, permit number NV–03414–4–10. Specific restrictions and closure information are as follows:

1. The public lands to be closed or restricted are those lands adjacent to and including roads, trails and washes identified as the 1994 "Fallon 250" OHV race course. These lands are within T.17N., R.30E.; T.17N., R.31E.; T.16N., R.30E.; T.16N., R.31E.; T.16N., R.32E.; T.15N., R.31½E.; T.15N., R.32E.; and T.15N., R.33E., M.D.M. A map of the race course may be obtained from Terry Knight at the contact address. The event permittee is required to mark and monitor the race course during this closure period.

2. From 9 A.M. to 11:59 P.M., Saturday, July 30, 1994, the race course and those public lands 300 feet to either side of the course are closed to the public, except for designated check points and spectator areas.

3. Areas from which spectators may view the event are confined to the start/finish area in NE¼ SE¼ Section 9 and NW¼ SW¼ Section 10, T.16N., R.32E., M.D.M., and check points 1, 2, 3 and 4, identified on the map of the race course. All public spectator vehicles operating within these designated areas shall maintain a maximum speed of 10 MPH. Spectators shall remain in safe locations as directed by event officials or BLM personnel.

The above restrictions do not apply to race officials, law enforcement and emergency personnel, or BLM personnel monitoring the event.

Authority for closure of public lands is found in 43 CFR 8341, 43 CFR 8364 and 43 CFR 8372. Any person who fails to comply with this closure order may be subject to the penalties provided in 43 CFR 8360.7.

Dated: June 14, 1994.

Karl L. Kipping,

Acting District Manager.

[FR Doc. 94–15376 Filed 6–23–94; 8:45 am]
BILLING CODE 4310–HC–M

[OR–015–94–4350–10; G4–193]

Emergency Closure of Public Lands; Oregon

AGENCY: Bureau of Land Management (BLM), DOI.

ACTION: Notice is hereby given that effective immediately all public lands in Lake County, Oregon, as legally described below are closed to vehicle travel.

T. 26 S., R. 17 E., Oregon
Section 4 NW¼, Section 3 W½, north of the existing vehicle access to crack in the ground well

The purpose of this closure is to protect the area's threatened and endangered plant species. The authority for this closure is 43 CFR 8341.2 and 8342. This closure will remain in effect until a new ORV designation plan is completed for the Lakeview Resource Area.

Scott R. Florence,

Manager, Lakeview Resource Area.

[FR Doc. 94–15382 Filed 6–23–94; 8:45 am]
BILLING CODE 4310–33–M

[ID–020–406A–02]

Notice of Availability of the Proposed Twin Falls County Solid Waste Facility (TFSWF) Final Environmental Impact Statement and Proposed Land Use Plan Amendment

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.) and Sections 201 and 202 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1711–1712), a Final Environmental Impact Statement/ Proposed Plan Amendment (FEIS/PPA) has been prepared for the proposed sale of 1083.77 acres of public land, managed by the Bureau of Land Management (BLM), to Twin Falls County, Idaho. Twin Falls County proposes to construct, operate and maintain a state of the art "Sub Title D" solid waste disposal facility on the parcel. The proposed project, referred to as the Twin Falls Solid Waste Facility (TFSWF), is located near Hub Butte, 10 miles south of the City of Twin Falls, Idaho. The purpose of the proposed facility is to bring Twin Falls County into compliance with Sub Title D of the Resource Conservation and Recovery Act (RCRA) and its associated regulations, 40 CFR parts 257 and 258. Decisions generated during this planning process will supersede land use planning guidance presented in the Twin Falls Management Framework Plan (MFP) regarding land tenure adjustments.

DATES: The Proposed Plan Amendment may be protested in accordance with 43 CFR 1610.5–2. Protests must be postmarked no later than August 5, 1994. Protests must contain: (1) Name, mailing address, telephone number, and interest of the person filing the protest, (2) a statement of the issue(s) being protested, (3) a statement of the part(s) of the plan being protested, (4) a copy of all documents addressing the issue(s) that were submitted during the planning process by the protesting party, or an indication of the date the issue or issues were discussed for the record, (5) a concise statement explaining why the proposed plan is believed to be wrong.

ADDRESSES: Protests on the Proposed Plan Amendment must be in writing, and sent to: Director, BLM (760), Department of Interior, 1848 C Street NW, Washington, DC 20240. Those wishing only to make comments on the Final Environmental Impact Statement may send them to the Bureau of Land Management, Burley District Office, at the address below. All comments received will be considered in the preparation of the Record of Decision (ROD).

FOR FURTHER INFORMATION CONTACT: Scott Barker, Project Manager, Bureau of Land Management, Burley District Office, Route 3, Box 1, Burley, Idaho 83318. Phone (208)678–5514.

SUPPLEMENTARY INFORMATION: This Final Environmental Impact Statement/ Proposed Plan Amendment (FEIS/PPA) is complete and does not need to be used in conjunction with the Draft Environmental Impact Statement/Draft Plan Amendment (DEIS/DPA) which was distributed to the public on January 15, 1994. The FEIS/PPA has been prepared considering comments received on the draft document.

Copies of the FEIS/PPA are being sent to all individuals, agencies and organizations that received the draft document or that have otherwise requested to be included on the mailing list. Additional copies are available from the Burley District of the Bureau of Land Management, Route 3, Box 1, Burley, Idaho, 83318, telephone number (208) 678–5514 and from EHM–JUB Engineers, Inc., 621 North College Rd., Twin Falls, ID, 83301, telephone number (208) 734–4888.

Dated: June 17, 1994.

Marvin R. Bagley,

Associate District Manager.

[FR Doc. 94–15369 Filed 6–23–94; 8:45 am]

BILLING CODE 4310–GG–P

[NV–930–4210–04; N–57468]

Realty Action: Exchange of Public Lands in Clark and Nye Counties, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action N–57468 for Exchange of Lands in Clark and Nye Counties, Nevada.

SUMMARY: The following described public lands in Las Vegas, Clark County, Nevada, including the mineral estate with no known value, have been determined to be suitable for disposal by exchange pursuant to Sections 206 and 209 of the Federal Land Policy and Management Act of October 21, 1976, 43 U.S.C. 1716.

Mount Diablo Meridian, Nevada

T. 19 S., R. 60 E.,
Sec. 29, E½NE¼N¼, E½NW¼NE¼NE¼.
Aggregating 25.00 acres (gross).

In exchange for these lands, the Federal Government will acquire a tract of non-federal land in Tonopah, Nye County, Nevada, described as follows:

Mount Diablo Meridian, Nevada

T. 3 N., R. 42 E.,
Sec. 36, a portion of the E½W½.

The area described contains 8.23 acres, more or less.

The purpose of the exchange is to acquire the non-federal lands located within the Town of Tonopah to be used as an administrative office complex for the Bureau of Land Management's Tonopah Resource Area Office. The exchange is consistent with the Bureau's planning for the lands involved. The public interest will be served by making the exchange.

The value of the lands to be exchanged is approximately equal, and the acreage will be adjusted or money will be used to equalize the values. The patent, when issued, will contain the following reservations to the United States:

1. A right-of-way for ditches or canals constructed by the authority of the United States. Act of August 30, 1890 (43 U.S.C. 945).

2. All oil and gas deposits, compounds of sodium and potassium, and saleable minerals.

And will be subject to:

1. Right-of-way N–53652 granted to Central Telephone Company for an underground communication line, 2616.24′ × 10′, as to the E½NE¼NE¼.

2. Right-of-way N–55369 granted to Las Vegas Valley Water District for a water main, 2616.24′ × 20′, and a temporary construction area 2616.24′ × 10′ (expires 3/3/95), as to the E½NE¼NE¼.

3. Right-of-way N–57864 granted to Southwest Gas Corp. for a gas pipeline, 2622′ × 30′, as to the E½NE¼NE¼.

4. An easement 30.00 feet in width along the south boundary of the NE¼NE¼NE¼, together with a 15.00-foot spandrel area in the Southwest corner thereof concave Northeasterly, and being tangent to the East line of said West 30.00 feet and tangent to the North line of said South 30.00 feet, together with a 25.00-foot spandrel area in the Southeast corner thereof concave 25.00-foot spandrel area in the Southeast corner thereof concave Northwesterly, being tangent to the North line of said South 30.00 feet and tangent to the West line of said East 50.00 feet, in favor of Clark County, for road, public utilities and flood control purposes to insure continued ingress and egress to adjacent lands.

5. An easement 50.00 feet in width along the north and east boundaries, and 30.00 feet in width along the west and south boundaries of the

E½NE¼NE¼, together with a 25.00-foot spandrel area in the Northwest corner thereof concave Southeasterly, and being tangent to the South line of said North 50.00 feet and tangent to the East line of said West 30.00 feet; also together with a 15.00-foot spandrel area in the Southwest corner thereof concave Northeasterly, and being tangent to the East line of said West 30.00 feet and tangent to the North line of said South 30.00 feet; further together with a 25.00-foot spandrel area in the Southeast corner thereof concave Northwesterly, and being tangent to the North line of said South 30.00 feet and tangent to the West line of said East 50.00 feet; together with a 54.00-foot spandrel area in the Northeast corner thereof concave Southwesterly, being tangent to the West line of said East 50.00 feet and tangent to the South line of said North 50.00 feet, in favor of Clark County, for road, public utilities and flood control purposes to insure continued ingress and egress to adjacent lands.

6. An easement 50.00 feet in width along the north boundary, and 30.00 feet in width along the south and east boundaries of the E½NW¼NE¼NE¼, together with a 15.00-foot spandrel area in the Southeast corner thereof concave Northwesterly, and being tangent to the North line of said South 30.00 feet and tangent to the West line of said East 30.00 feet, also together with a 25.00-foot spandrel area in the Northeast corner thereof concave Southwesterly, being tangent to the West line of said East 30.00 feet and tangent to the South line of said North 50.00 feet, in favor of Clark County, for road, public utilities and flood control purposes to insure continued ingress and egress to adjacent lands.

7. An easement 30.00 feet in width along the north boundary of the SE¼NE¼NE¼, together with a 15.00-foot spandrel area in the Northwest corner thereof concave Southeasterly, and being tangent to the South line of said North 30.00 feet and tangent to the East line of said West 30.00 feet, together with a 25.00-foot spandrel area in the Northeast corner thereof concave Southwesterly, being tangent to the West line of said East 50.00 feet and tangent to the Southline of said North 30.00 feet, in favor of Clark County, for road, public utilities and flood control purposes to insure continued ingress and egress to adjacent lands.

SUPPLEMENTARY INFORMATION: Detailed information concerning the exchange, including the environmental assessment is available for review at the Bureau of Land Management, Las Vegas District Office, 4765 W. Vegas Dr., Las Vegas, NV 89108.

Dated: June 15, 1994.

Mason K. Hall,

Acting District Manager.

[FR Doc. 94–15366 Filed 6–23–94; 8:45 am]

BILLING CODE 4310–HC–M

Fish and Wildlife Service

Availability of Draft Recovery Plans for Conradina glabra (Apalachicola Rosemary) and Conradina etonia (Etonia Rosemary) 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 two draft recovery plans: the *Conradina glabra* (Apalachicola rosemary) Recovery Plan and the *Conradina etonia* (Etonia rosemary) Recovery Plan. *Conradina glabra* is restricted to an area of several square miles of gently undulating upland, originally with longleaf pine-wiregrass vegetation, dissected by ravines of the Sweetwater Creek system in northern Liberty County, Florida. *Conradina etonia* is only known to occur on private lands in Putnam County, Florida. It is restricted to very limited areas of scrub vegetation, including shrubby oaks and sand pines, on deep white-sand soils. The Service solicits review and comment from the public on these draft plans.

DATES: Comments on the draft recovery plan must be received on or before August 23, 1994 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plans for *Conradina glabra* (Apalachicola rosemary) or *Conradina etonia* (Etonia rosemary) may obtain a copy by contacting David J. Wesley, State Administrator, Jacksonville Field Office, U.S. Fish and Wildlife Service, 6620 Southpoint Drive, South, Suite 310, Jacksonville, Florida 32216. Comments and material received are available upon request for public inspection, by appointment, and during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: For information on the Recovery Plan for *Conradina glabra* (Apalachicola rosemary) or for *Conradina etonia* (Etonia rosemary) contact Linda Finger at the Jacksonville, Florida, address (Telephone: 904–232–2580, FAX 904–232–2404).

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 Service's endangered species program. To help guide the recovery effort the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery Plans describe actions necessary for the conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that 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 take these comments into account in the course of implementing approved recovery plans.

Conradina glabra was listed as an endangered species on July 12, 1993. *C. glabra* is a narrowly distributed species that was originally restricted to a specialized habitat, the edges of steephead ravines and possibly also to upland longleaf pine-wiregrass vegetation. Steepheads are heads of ravines having slopes undermined by groundwater seeing into the ravine bottom, which causes the slopes to gradually slump, carrying the vegetation with it. The plant appears to require full sunlight or light shade. Planted pine trees are likely, by the time they mature, to produce dense shade that could kill this species. Another possible problem in planted pine stands is that sand pine (which is currently grown in the area) does not tolerate prescribed fire, which may help keep habitat open for *C. glabra*. At the present time, 7 natural populations of *Conradina glabra* are known, 6 of them on land owned by a forest products company and on public road rights-of-way. The seventh, a protected population, was documented at Torreya State Park but has not been relocated. An additional population is being established a short distance (2.5 km) from 2 of the extant populations, on similar ravine edges, in the

Apalachicola Bluffs and Ravines Preserve, owned by The Nature Conservancy. Since initiation of this project, 2 small, naturally occurring populations have been discovered on the Preserve. Specific recovery actions include possible habitat acquisition or conservation easements and developing prescribed fire and mowing regimes beneficial to the plant.

Conradina etonia was discovered in 1990, described in 1991, and listed as an endangered species on July 12, 1993. It is known from only two sites near Etonia Creek in Putnam County, Florida, where it is restricted to very limited areas of scrub vegetation with scrubby evergreen oaks (*Quercus spp.*) and sand pines (*Pinus clausa*). This habitat is a northern extension of the deep scrub habitat of south Florida, where several plant species characteristic of Florida scrub reach their northeastern range limit. Development is the major threat as this species occurs only on private land already subdivided for residential development when it was discovered. Because of the very recent discovery of *Conradina etonia*, little is known about specific habitat requirements and limiting factors.

Public Comments Solicited

The Service solicits written comments on the two recovery plans described. All comments received by the date specified will be considered prior to the approval of the plans.

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: June 16, 1994.

Don Palmer,

Acting Field Supervisor, Jacksonville Field Office.

[FR Doc. 94–15377 Filed 6–23–94; 8:45 am]

BILLING CODE 4310–55–M

Extension of Comment Period for an Amendment to the Permit Allowing Incidental Take of the Threatened Desert Tortoise by Clark County and the Cities of Las Vegas, North Las Vegas, Henderson, and Boulder City, NV

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Extension of comment period.

SUMMARY: This notice advises the public that the U.S. Fish and Wildlife Service (Service), Clark County, and the cities of Las Vegas, North Las Vegas, Henderson, and Boulder City, Nevada, (applicants) have extended the comment period for an amendment to their existing permit (PRT 756260) authorizing incidental take of desert tortoises (*Gopherus agassizii*), pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The proposed amendment would extend the term of the existing permit 1 year, to July 31, 1995, and allow disturbance of 8,000 additional acres within the existing permit area. The number of desert tortoises taken would not increase above what is currently authorized under the existing permit, which is up to 3,710 tortoises. The permit application is accompanied by amendments to the Habitat Conservation Plan and Implementing Agreement. The Service also extends the comment period for an environmental assessment (EA) for the proposed amendment to the permit. This notice supplements the notice for the Availability of an EA and Receipt of an Application for an Amendment to the Permit Allowing Incidental Take of the Threatened Desert Tortoise by Clark County and the cities of Las Vegas, North Las Vegas, Henderson, and Boulder City, Nevada, published in the **Federal Register** on May 26, 1994 (59 FR 27295).

DATES: Written comments on the permit amendment application and EA should be received on or before July 11, 1994.

ADDRESSES: Comments regarding the application or adequacy of the EA should be addressed to Mr. David Harlow, Field Supervisor, U.S. Fish and Wildlife Service, Reno Field Office, 4600 Kietzke Lane, Building C, room 125, Reno, Nevada 89502. Please refer to permit No. PRT 756260 when submitting comments.

FOR FURTHER INFORMATION CONTACT: Ms. Sheryl Barrett, U.S. Fish and Wildlife Service, Reno Field Office, 4600 Kietzke Lane, Building C, Room 125, Reno, Nevada 89502 (702–784–5227). Individuals wishing copies of the application or EA for review should immediately contact the above individual. Documents will be available for public inspection, by appointment, and during normal business hours at the Reno Field Office (address given above). Documents will also be available for review at the reference desks of all public libraries in Clark County, Nevada.

Dated: June 20, 1994.

Marvin L. Plenert,

Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 94–15438 Filed 6–23–94; 8:45 am]

BILLING CODE 4310–55–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32524]

Fort Worth & Western Railroad Company—Trackage Rights Exemption—The Atchison, Topeka and Santa Fe Railway Company

The Atchison, Topeka and Santa Fe Railway Company (ATSF) has agreed to grant overhead trackage rights to Fort Worth & Western Railroad Company (FWWR) on ATSF's line of railroad between approximately milepost 0.05 on the ATSF's Dublin Subdivision near Birds, TX, and approximately milepost 368.5 at Lambert, TX, a distance of approximately 26.3 miles. FWWR's trackage rights will provide it with direct access to ATSF facilities at Alliance Yard. The trackage rights were to become effective June 13, 1994.

This notice is filed under 49 CFR 1180.2(d)(7). 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 stay the transaction. Pleadings must be filed with the Commission and served on: Kevin M. Sheys, Oppenheimer Wolff & Donnelly, 1020 19th St., NW., Washington, D.C. 20036.

As a condition to use of this exemption, any employees adversely affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Decided: June 17, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–15401 Filed 6–23–94; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF LABOR

Office of the Secretary

Advisory Council on Employee Welfare and Pension Benefit Plans; Announcement of Vacancies, Request for Nominations

Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA) 88 Stat. 895, 29 U.S.C. 1142, provides for the establishment of an "Advisory Council on Employee Welfare and Pension Benefit Plans" (The Council) which is to consist of 15 members to be appointed by the

Secretary of Labor (the Secretary) as follows: Three representatives of employee organizations (at least one of whom shall be representative of an organization whose members are participants in a multiemployer plan); three representatives of employers (at least one of whom shall be representative of employers maintaining or contributing to multiemployer plans); one representative each from the fields of insurance, corporate trust, actuarial counseling, investment counseling, investment management, and accounting; and three representatives from the general public (one of whom shall be a person representing those receiving benefits from a pension plan). Not more than eight members of the Council shall be members of the same political party.

Members shall be persons qualified to appraise the programs instituted under ERISA. Appointments are for terms of three years.

The prescribed duties of the Council are to advise the Secretary with respect to the carrying out of his/her functions under ERISA, and to submit to the Secretary, or their designee, recommendations with respect thereto. The Council will meet at least four times each year, and recommendations of the Council to the Secretary will be included in the Secretary's annual report to the Congress on ERISA.

The terms of five members of the Council expire Monday, November 14, 1994. The groups or fields represented are as follows: employee organizations (multiemployer plans), actuarial counseling, investment counseling field, employers, and the general public (pensioners).

Accordingly, notice is hereby given that any person or organization desiring to recommend one or more individuals for appointment to the ERISA Advisory Council on Employee Welfare and Pension Benefit Plans to represent any of the groups or fields specified in the preceding paragraph, may submit recommendations to, Attention: William E. Morrow, Executive Secretary, ERISA Advisory Council, Frances Perkins Building, U.S. Department of Labor, 200 Constitution Avenue, N.W., Suite N–5677, Washington, DC 20210. Recommendations must be delivered or mailed on or before September 16, 1994. Recommendations may be in the form of a letter, resolution or petition, signed by the person making the recommendation or, in the case of a recommendation by an organization, by an authorized representative of the organization. Each recommendation should identify the candidate by name, occupation or position, telephone number and address. It should also include a brief description of the candidate's qualifications, the group or field which he or she would represent for the purpose of Section 512 of ERISA, the candidates' political party affiliation, and whether the candidate is available and would accept.

Signed at Washington, DC this 20th day of June, 1994.

Olena Berg,

Assistant Secretary of Labor for Pension and Welfare Benefit Programs.

[FR Doc. 94–15364 Filed 6–23–94; 8:45 am]

BILLING CODE 4510–29–M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue NW., room S–3014, Washington, DC 20210.

Withdrawn General Wage Determination Decision

This is to advise all interested parties that the Department of Labor is withdrawing, from the date of this notice, General Wage Determination No. TX940110 dated March 25, 1994.

Agencies with construction projects pending, to which this wage decision would have been applicable, should utilize the project determination procedure by submitting a SF–308. Contracts for which bids have been opened shall not be affected by this notice. Also, consistent with 29 CFR 1.6(c)(2)(i)(A), when the opening of bids is less than ten (10) days from the date of this notice, this action shall be effective unless the agency finds that there is insufficient time to notify

bidders of the change and the finding is documented in the contract file.

New General Wage Determination Decisions

The numbers of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume and State.

Volume V

Iowa
IA940068 (Jun. 24, 1994)

Modification to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the Federal Register are in parentheses following the decisions being modified.

Volume I

New Hampshire
NH940007 (Feb. 11, 1994
Virgin Islands
VI940001 (Feb. 11, 1994)
New York
NY940021 (Feb. 11, 1994)

Volume II

Pennsylvania
PA940004 (Feb. 11, 1994)

Volume III

None

Volume IV

Wisconsin
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General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 17th day of June 1994.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 94–15173 Filed 6–23–94; 8:45 am]

BILLING CODE 4510–27–M

Employment and Training Administration

Notice of Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of June, 1994.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–29,695; The Frost Co., Kenosha, WI

TA–W–29,457; Allied Signal Aerospace, Eatontown, NJ

TA–W–29,721; International Paper/ Container Div., Preque Isle, ME

TA–W–29,703; Keystone Aluminum, Inc., Mars, PA

TA–W–29,683; Layne & Bowler, Memphis, TN

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA–W–29,755; Unifirst Corp., Haverhill, MA

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–29,605; Enclean, Inc., Odessa, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–29,692; Allied Signal Safety Restraint Systems, El Paso, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–29,761; Monroeville Dodge, dba Dodgeland, Monroeville, PA

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–29,826; Ashland Hide Co., Ashland, KY

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period for certification.

Affirmative Determinations for Worker Adjustment Assistance

TA–W–29,853; Crown Pacific Inland Lumber, Superior, MT

A certification was issued covering all workers separated on or after April 12, 1993.

TA–W–29,652; S&M Sportswear, Throop, PA

A certification was issued covering all workers separated on or after March 17, 1993.

TA–W–29,627; Howard Avenue Apparel, Tampa, FL

A certification was issued covering all workers separated on or after February 22, 1993.

TA–W–29,573; Sandefer Offshore Operating Co., Houston, TX

A certification was issued covering all workers separated on or after January 25, 1993.

TA–W–29,641; Loud Engineering & Manufacturing, Inc., Ontario, CA

A certification was issued covering all workers separated on or after October 15, 1993.

TA–W–29,776; Harbour Casuals, Inc., Plains, PA

A certification was issued covering all workers separated on or after April 11, 1993.

TA–W–29,829; Shorewood Packaging, Farmingdale, NY

A certification was issued covering all workers separated on or after April 22, 1993.

TA–W–29,649; ACI America, Inc., (Currently VVP America, Inc), dba Glasscraft, Memphis, TN

A certification was issued covering all workers separated on or after February 14, 1993.

TA–W–29,689; Mantua Industries, Woodbury Heights, NJ

A certification was issued covering all workers separated on or after March 11, 1993.

TA–W–29,782 & TA–W–29,783; Amoco Production Co, Headquartered in Chicago, IL, & Tulsa Research Center, Tulsa, OK

A certification was issued covering all workers separated on or after April 12, 1993.

TA–W–29,784; Amoco Production Co., Tulsa Data Center, Tulsa, OK

A certification was issued covering all workers separated on or after April 12, 1993.

TA–W–29,785; Amoco Production Co., Offshore, Headquartered in New Orleans, LA & Other Offshore Operations in the Following States: A; LA, B; TX

A certification was issued covering all workers separated on or after April 12, 1993.

TA–W–29,786; Amoco Production Co., Mid-Continent, Northwestern & Southern Rockies Region, Headquartered in Denver, CO & Other Field Operations in the Following States: A; AK, B; CO, C; KS, D; NM, E; OK, F; TX, G; UT, H; WY

A certification was issued covering all workers separated on or after April 12, 1993.

TA–W–29,787; Amoco Production Co., Southeastern North & South Permian Region, Houston Support Services, Headquartered in Houston, TX & Other Field Operations in the Following States: A; AL, B; AR, C; LA, D; MI, E; MS, F; NM, G; TX

A certification was issued covering all workers separated on or after April 12, 1993.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a) Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of June, 1994.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(A) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(B) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased.

(C) That the increase in imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm subdivision; or

(2) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

NAFTA–TAA–00100; Supervalu, Bloomington, IN

The investigation revealed that workers of the subject firm do not produce an article within the meaning of the Act. The Department of Labor has consistently determined that the performance of services does not constitute production of an article as required by the Trade Act of 1974.

NAFTA–TAA–00095; Hampton Industries, Inc., Kinston Shirt Co., Inc., Kinston, NC

The investigation revealed that criteria (3) & criterion (4) were not met. A survey conducted with major customers revealed that respondents did not import men's and boys' shirts from Canada or Mexico during the relevant time period.

NAFTA–TAA–00107; Southland Manufacturing Lepanto, AZ

The investigation revealed that criterion (3) and criterion (4) were not met. A survey revealed that Southland's manufacturers did not contract with

firms in Canada or Mexico and did not import apparel that was manufactured in Canada or Mexico. Also, Southland's manufacturers experienced increasing apparel sales in the relevant time period.

NAFTA–TAA–000970; Moore Business Forms, Inc., U.S. Forms & Systems Div., Lewisburg, PA

The investigation revealed that criterion (3) and criterion (4) were not met. There was no shift in production from the workers' firm to Mexico or Canada. The investigation further revealed that customers did not decrease purchases from the subject firm and increase imports from Canada or Mexico during the relevant period.

NAFTA–TAA–00096; J & G Shake, Forks, WA

The investigation revealed that criterion (1) was not met in conjection with the requirements of Section 506(b)(2) of the Act. Workers at the subject firm were not separated from employment on or after December 8, 1993, the earliest date for certification under NAFTA–TAA.

NAFTA–TAA–00113; Infotec Development, Inc., Portland, OR

The investigation revealed that workers of the subject firm do not produce an article within the meaning of the Act. The Department of Labor has consistently determined that the performance of services does not constitute production of an article as required by the Trade Act of 1974.

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–00101; Polytech Netting Industries, Scottsboro, AL

A certification was issued covering all workers engaged in employment related to the production of automotive convenience and restraint netting separated on or after December 8, 1993.

NAFTA–TAA–00094; Shorewood Packaging Corp., Farmingdale, NY

A certification was issued covering all workers of Shorewood Packaging Corp., Farmingdale, NY separated on or after December 8, 1993.

NAFTA–TAA–00104; The Procter & Gamble Manufacturing Co., Quincy, MA

A certification was issued covering all workers engaged in employment related to the production of Camay soap at The Procter & Gamble Manufacturing Co., Quincy, MA separated on or after December 8, 1993.

I hereby certify that the aforementioned determinations were issued during the month of June, 1994. Copies of these determinations are available for inspection in Room C–4318, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210 during normal Business hours or will be mailed to persons who write to the above address.

Dated: June 15, 1994.

Violet L. Thompson,

Deputy Director, Office of Trade Adjustment Assistance.

[FR Doc. 94–15412 Filed 6–23–94; 8:45 am]

BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address show below, not later than July 5, 1994.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than July 5, 1994.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

Signed at Washington, DC this 6th day of June, 1994.

Violet Thompson,

Deputy Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers/firm	Location	Date received	Date of petition	Petition No.	Articles produced
Howes Leather Co., Inc (Wkrs)	Ashland, KY	06/06/94	04/21/94	29,933	Sole leather.
Albex Apparel (ACTWU)	Brooklyn, NY	06/06/94	05/25/94	29,934	Men's suits.
American Microsystems, Inc (Co)	Pocatello, ID	06/06/94	05/25/94	29,935	Semiconductors.
Beaver Plant Operations, Inc (Wkrs)	Lincoln, ME	06/06/94	04/25/94	29,936	Electricity produced by biomass burning.
Burlington Industries (Wkrs)	New York, NY	06/06/94	05/17/94	29,937	Knitting fabric.
Burlington Industries (Wkrs)	Stateville, NC	06/06/94	05/17/94	29,938	Knitting fabric.
Commercial Flight Service (Wkrs)	Phoenix, AZ	06/06/94	05/24/94	29,939	Commercial avionics flight control.
Dalex, Inc (Wkrs)	Redmond, OR	06/06/94	05/20/94	29,940	Circular saw blades.
DeSota, Inc (Wkrs)	Stone Mountain, GA	06/06/94	05/24/94	29,941	Sunlight autodish gel.
Fuel Resources Development Co (Co)	Denver, CO	06/06/94	05/05/94	29,942	Crude oil and natural gas.
Cavalier Clothing, Inc (ACTWU)	Jamaica, NY	06/06/94	05/25/94	29,943	Military garments.
Gage Corp (Co)	Norman, OK	06/06/94	05/24/94	29,944	Natural gas.
McDonnell Douglas Corp (UAW)	Tulsa, OK	06/06/94	05/20/94	29,945	Aircraft.
Philips Technologies, Airpax Group (Co)	Cheshire, CT	06/06/94	05/25/94	29,946	1/10 Horsepower stepper motors.
Portland Glove Co (Wkrs)	Carlton, OR	06/06/94	05/20/94	29,947	Leather gloves, mitts and aprons.

APPENDIX—Continued

Petitioner: Union/workers/firm	Location	Date received	Date of petition	Petition No.	Articles produced
Puritan-Reinkie (Wkrs)	Boulder, CO	06/06/94	05/18/94	29,948	Portable ventilators.
R–M Industries, Inc (Co)	Fort Mill, SC	06/06/94	05/25/94	29,949	Sulfanic acid and violet pigment.
S.D. Warren (Wkrs)	Westbrook, ME	06/06/94	05/24/94	29,950	Paper Pulp.
Saft Aerospace Batteries (IBEW)	Gainesville, FL	06/06/94	05/20/94	29,951	Nickle cadmium batteries.
Westinghouse Electric Corp (AWSE)	Pittsburgh, PA	06/06/94	05/24/94	29,952	Sales of turbine generator equipment.
Universal/Univis, Inc (Co)	Attleboro, MA	06/06/94	05/24/94	29,953	Eyeglass frames.
Andre Fashions (ILGWU)	Passaic, NJ	06/06/94	05/11/94	29,954	Ladies' coats.
E.F.W., Inc (IAM)	Fort Worth, TX	06/06/94	03/21/94	29,955	Aircraft components.
Anchor Drilling Fluids (Co)	Houston, TX	06/06/94	05/06/94	29,956	Drilling fluids.

[FR Doc. 94–15413 Filed 6–23–94; 8:45 am]
BILLING CODE 4510–30–M

[TA–W–29,530]

Northwest Alloys, Inc., Addy, Washington; Notice of Revised Determination on Reconsideration

On May 11, 1994, the Department issued an Affirmative Determination Regarding Application for Reconsideration for workers and former workers of the subject firm in Addy, Washington. The notice was published in the Federal Register on May 20, 1994 (59 FR 26520).

Investigation findings show that the workers produce magnesium.

The Department's initial denial showed that the decreased sales or production criterion of the Worker Group Eligibility Requirements of the Trade Act of 1974 was not met.

New findings on reconsideration, however, show that magnesium sales decreased in the last half of 1993 compared to the same period in 1992 and decreased in the first five months of 1994 compared to the same period in 1993.

U.S. aggregate imports of magnesium increased substantially in 1993 compared to 1992.

The Department surveyed several additional customers on reconsideration. The survey showed that these customers accounted for the major portion of Northwest's sales decline in the last six months of 1993 compared to the same period in 1992. The survey showed that all the respondents increased their import purchases of magnesium and reduced their purchases from the subject firm.

Conclusion

After careful review of the additional facts obtained on reconsideration, it is concluded that increased imports of articles like or directly competitive with the magnesium produced at Northwest Alloys, Inc., in Addy, Washington contributed importantly to the decline in sales or production and to the total or partial separation of workers at the Addy, Washington facility of Northwest Alloys, Inc. In accordance with the provisions of the Trade Act of 1974, I make the following revised determination:

"All workers of Northwest Alloys, Inc., in Addy, Washington who became totally or partially separated from employment on or after February 7, 1993 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, DC, this 9th day of June 1994.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Services Unemployment Insurance Service.

[FR Doc. 94–15414 Filed 6–23–94; 8:45 am]
BILLING CODE 4510–30–M

Notice of Changes in Status of Extended Benefit (EB) Periods for Five States

This notice announces changes in benefit period eligibility under the Extended Benefit (EB) Program for five States.

Background

The following changes have occurred in States since the publication of the last notice regarding States' EB status:

- January 23, 1994—Alaska triggered "on" to EB based on its 13 week Insured Unemployment Rate (IUR) exceeding 6.0 percent.
- February 26, 1994—Oregon and Washington triggered "off" EB based on their seasonally adjusted Total Unemployment Rates (TURs) for the three months ending December 1993 falling below 110 percent of the corresponding 3-month average for both of the prior two years.
- March 27, 1994—Maine triggered "on" to a "high unemployment period" (HUP) under the EB Program based on its seasonally adjusted TUR for the three months ending February 1994 exceeding 8.0 percent and being 110 percent of the corresponding TUR for the 3-month period in the prior year. An HUP provides up to a maximum of 20 weeks of benefits to claimants.
- May 15, 1994—Rhode Island triggered "on" to an HUP under the EB Program based on its seasonally adjusted TUR for the three months ending March 1994 exceeding 8.0 percent and being 110 percent of the corresponding TUR for the 3-month period in the prior year.

Information for Claimants

The duration of benefits payable in the EB Program, and the terms and conditions on which they are payable, are governed by the Federal-State Extended Unemployment Compensation Act of 1970 and the operating instructions issued to the States by the U.S. Department of Labor. The State employment security agency must furnish a written notice of potential entitlement to each individual who has exhausted all rights to regular benefits and is potentially eligible for EB benefits (20 CFR 615.13(c)).

Persons who believe they may be entitled to EB benefits, or who wish to inquire about their rights under the programs, should contact the nearest State employment service office or unemployment compensation claims office in their locality.

Signed at Washington, DC., on June 20, 1994.

Doug Ross,

Assistant Secretary of Labor.

[FR Doc. 94–15415 Filed 6–23–94; 8:45 am]
BILLING CODE 4510–30–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 94–041]

NASA Advisory Council (NAC), Life and Microgravity Sciences and Applications Advisory Committee, Space Station Science and Applications Advisory Subcommittee; 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 forthcoming meeting of the NASA Advisory Council, Life and Microgravity Sciences and Applications Advisory Committee, Space Station Science and Applications Advisory Subcommittee.

DATES: July 5, 1994, 7:30 a.m. to 5 p.m.; July 6, 1994, 8 a.m. to 9 p.m.; July 7, 1994, 8 a.m. to 5 p.m.; and July 8, 1994, 8 a.m. to 3 p.m..

ADDRESSES: St. Mary's College, Science Lecture Hall, St. Mary's, MD 20686.

FOR FURTHER INFORMATION CONTACT: Dr. Edmond M. Reeves, Code US, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–2560.

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:

—Space Station Program Overviews
—Payload Program Overviews
—Distributed Systems Interoperability
—Components Interoperability
—Mission Preparations Phase
—Mission Operations Phase
—Findings, Conclusions, and Recommendations

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 20, 1994.

Timothy M. Sullivan,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 94–15378 Filed 6–23–94; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Humanities Panel; Meetings

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: David C. Fisher, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, D.C. 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) trade secrets and commercial or financial information obtained from a person and privileged or confidential; or (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), and (6) of section 552b of Title 5, United States Code.

1. Date: July 15, 1994
   Time: 8:00 a.m. to 5:30 p.m.
   Room: 430
   Program: This meeting will review Fellowships for University Teachers applications in British Literature, Rhetoric; and Composition, submitted to the Division of Fellowships and Seminars, submitted to the Division of Public Programs, for projects beginning after June 1, 1995.
2. Date: July 18, 1994
   Time: 8:00 a.m. to 5:30 p.m.
   Room: 315
   Program: This meeting will review Fellowships for University Teachers applications in Anthropology, Sociology; Psychology; and Archaeology, submitted to the Division of Fellowships and Seminars, for projects beginning after June 1, 1995.
3. Date: July 18, 1994
   Time: 8:00 a.m. to 5:30 p.m.
   Room: 415
   Program: This meeting will review Fellowships for College Teachers applications in European History, submitted to the Division of Fellowships and Seminars, for projects beginning after June 1, 1995.
4. Date: July 20, 1994
   Time: 8:00 a.m. to 5:30 p.m.
   Room: 315
   Program: This meeting will review Fellowships for University Teachers applications in Comparative Literature; Germanic, Slavic, and Asian Languages and Literatures; and Linguistics, submitted to the Division of Fellowships and Seminars, for projects beginning after June 1, 1995.

David Fisher,

Advisory Committee Management Officer.

[FR Doc. 94–15396 Filed 6–23–94; 8:45 am]

BILLING CODE 7536–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting Agenda

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on July 7–8, 1994, in Room P–110, 7920 Norfolk Avenue, Bethesda, Maryland.

Thursday, July 7, 1994

8:30 A.M.–8:45 A.M.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding conduct of the meeting and comment briefly regarding items of current interest. During this session, the Committee will discuss priorities for preparation of ACRS reports.

8:45 A.M.–10:15 A.M.: Meeting with the Director of the NRC Office of Nuclear Reactor Regulation (NRR) (Open)—The Committee will meet with Mr. W.T. Russell, Director of NRR, to discuss items of mutual interest.

10:30 A.M.–12:00 Noon: Proposed Workshop and Study on Digital Instrumentation and Control Systems (Open/Closed)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and the National Academy of Sciences (NAS) regarding the details of the NAS proposal, which was submitted

in response to an NRC request-for-proposal, to conduct a workshop and perform a study on the use of digital instrumentation and control systems at nuclear power plants and the adequacy of the regulatory requirements.

A portion of this session may be closed to discuss matters (i.e., the NAS proposal) exempted from disclosure by statute and such statute requires that the matter be withheld from the public in such a manner as to leave no discretion on the issue.

1:00 P.M.–2:30 P.M.: Proposed Resolution of Generic Safety Issue 15, "Radiation Effects on Reactor Vessel Supports" (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the staff's proposed resolution of Generic Safety Issue 15 that addresses potential embrittlement of the reactor vessel support structures resulting from neutron irradiation damage, and the associated safety significance.

2:30 P.M.–3:30 P.M.: Overview of the PRA Implementation Plan (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the PRA Implementation Plan.

3:45 P.M.–4:30 P.M.: Report of the Planning and Procedures Subcommittee (Open/Closed)—The Committee will hear a report of the Planning and Procedures Subcommittee on matters related to the conduct of ACRS business, qualifications of candidates nominated for appointment to the ACRS, and internal organizational and personnel matters relating to the ACRS staff members.

A portion of this session may be closed to discuss matters that relate solely to internal personnel rules and practices of this advisory Committee, and matters the release of which would represent a clearly unwarranted invasion of personal privacy.

4:30 P.M.–5:00 P.M.: Future ACRS Activities (Open)—The Committee will discuss topics proposed for consideration during future ACRS meetings.

5:00 P.M.–5:15 P.M.: Reconciliation of ACRS Comments and Recommendations (Open)—The Committee will discuss responses from the NRC Executive Director for Operations to recent ACRS comments and recommendations.

5:15 P.M.–6:30 P.M.: Preparation of ACRS Reports (Open/Closed)—The Committee will discuss the proposed ACRS report on the proposed Workshop and Study on Digital Instrumentation and Control Systems that was discussed between 10:30 A.M.–12:00 Noon today. Also it will discuss other ACRS reports on matters considered during this meeting, as well as those regarding Protective Action Guidelines, and issues stemming from the ACRS review of the evolutionary plant designs and their applicability to operating and future nuclear power plants.

A portion of this session may be closed to discuss matters (i.e., the NAS proposal) exempted from disclosure by statute and such statute requires that the matter be withheld from the public in such a manner as to leave no discretion on the issue.

Friday, July 8, 1994

8:30 A.M.–8:35 A.M.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding conduct of the meeting.

8:35 A.M.–12:00 Noon: Preparation of ACRS Reports (Open/Closed)—The Committee will discuss the proposed ACRS report on the proposed Workshop and Study on Digital Instrumentation and Control Systems that was discussed between 10:30 A.M. and 12:00 Noon on Thursday, July 7, 1994. Also it will discuss proposed reports on other matters considered during this meeting.

A portion of this session may be closed to discuss matters (i.e., the NAS proposal) exempted from disclosure by statute and such statute requires that the matter be withheld from the public in such a manner as to leave no discretion on the issue.

1:00 P.M.–3:00 P.M.: Preparation of ACRS Reports (Open/Closed)—The Committee will continue its discussion of the proposed ACRS report on the Proposed Workshop and Study on Digital Instrumentation and Control Systems that was discussed between 10:30 A.M. and 12:00 Noon on Thursday, July 7, 1994. Also, it will continue the discussion of proposed reports on other matters considered during this meeting.

A portion of this session may be closed to discuss matters (i.e., the NAS proposal) exempted from disclosure by statute and such statute requires that the matter be withheld from the public in such a manner as to leave no discretion on the issue.

3:15 P.M.–3:45 P.M.: Activities of the ACRS Subcommittees/Individual Members (Open)—The Committee will hear reports and hold discussions regarding activities of ACRS Subcommittees and individual members.

3:45 P.M.–4:00 P.M.: Miscellaneous (Open)—The Committee will discuss miscellaneous matters related to the conduct of Committee activities and complete discussion of topics that were not completed during previous meetings as time and availability of information permit.

Procedures for the conduct of and participation in ACRS meetings were published in the Federal Register on September 30, 1993 (58 FR 51118). In accordance with these procedures, oral or written statements may be presented by members of the public, electronic recordings will be permitted only during the open portions of the meeting, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS Executive Director, Dr. John T. Larkins, as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting the ACRS Executive Director prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with Subsection 10(d) P.L. 92–463 that it is necessary to close portions of this meeting noted above to discuss information that involves the internal personnel rules and practices of this advisory Committee per 5 U.S.C. 552b(c)(2); to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy per 5 U.S.C. 552b(c)(6); and to discuss matters (*i.e.*, the NAS proposal) exempted from disclosure by statute and such statute requires that the matter be withheld from the public in such a manner as to leave no discretion on the issue per 5 U.S.C. 552b(c)(3)(A).

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by contacting the ACRS Executive Director, Dr. John T. Larkins (telephone 301–492–4516), between 7:30 A.M. and 4:15 P.M. EST.

The ACRS meetings for the remainder of the year, listed below, will be held at 11545 Rockville Pike, Rockville, Maryland, Conference Room T2B3.

412th ACRS Meeting—August 4–6, 1994
413th ACRS Meeting—September 8–10, 1994
414th ACRS Meeting—October 6–8, 1994
415th ACRS Meeting—November 3–5, 1994
416th ACRS Meeting—December 8–10, 1994.

Dated: June 20, 1994.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 94–15387 Filed 6–23–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 030–16055]

Advanced Medical Systems, Inc.; Issuance of Director's Decision Under 10 CFR § 2.206

Notice is hereby given that the Director, Office of Nuclear Material Safety and Safeguards, has issued a decision concerning a Petition dated August 2, 1993, submitted by the Northeast Ohio Regional Sewer District regarding Advanced Medical Systems, Inc. (AMS).

By letter dated November 24, 1993, the NRC staff formally acknowledged receipt of the Petition and informed the Petitioner that their Petition would be treated as a request under 10 CFR § 2.206. The Petition requested the U.S. Nuclear Regulatory Commission to take action to require AMS to provide adequate financial assurance to cover public liability pursuant to section 170 of the Atomic Energy Act of 1954, as amended.

The Director of the Office of Nuclear Material Safety and Safeguards has determined to deny the Petition. The reasons for this Decision are explained in a "Director's Decision Under 10 CFR § 2.206" (DD–94–06), which is available for public inspection in the Commission's Public Document Room located at 2120 L Street NW., DC 20555, and at the Local Public Document Room, Perry Public Library, 3735 Main Street, Perry, Ohio 44081.

A copy of this Decision will be filed with the Secretary for the Commission's review in accordance with 10 CFR § 2.206. As provided by this regulation, the Decision will constitute the final action of the Commission 25 days after the date of issuance of the Decision unless the Commission on its own motion institutes a review of the Decision within that time.

Dated at Rockville, Maryland, this 16th day of June 1994.

For The Nuclear Regulatory Commission

Robert M. Bernero,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 94–15386 Filed 6–23–94; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–34223; File No. SR–CHX–94–13]

Self-Regulatory Organizations, Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Inc. to Amend Rule 1 of Article I of the Exchange's Rules

June 16, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 18, 1994, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") proposes to amend Rule 1 of Article I of the Exchange's Rules. The text of the proposed rule is as follows:

Additions are italicized; deletions [bracketed].

ARTICLE I

Rule 1.

• • •

(b) An individual member may function either (i) as a co-specialist, floor broker or registered [floor trader] *market maker* on the equity floor, or (ii) as a partner in a member firm in accordance with Article II or an officer in a member corporation in accordance with Article III. An individual member shall not transact business with the public as a sole proprietorship.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to make a technical correction to Article I, Rule 1(b) which inadvertently references the term "registered floor trader", a designation which is no longer in existence. The proper reference should be to a "registered market maker."

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change constitutes a stated policy, practice or interpretation with respect to the meaning, administration or enforcement of an existing rule of the Exchange and therefore has become effective pursuant to Section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 thereunder. At any time within 60 days of the filing of such 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 at the principal office of the above-referenced self-regulatory organization. All submissions should refer to file number SR–CHX–94–13 and should be submitted by July 15, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–15363 Filed 6–23–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34231; File No. SR–NYSE–90–10]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval and Notice and Order Granting Accelerated Approval to Amendments No. 1, 2, and 3 to Proposed Rule Change Relating to Various Rule Revisions Recommended by the Market Regulation Review Committee of the New York Stock Exchange

June 17, 1994.

I. Introduction

On March 12, 1990, the New York Stock Exchange, Inc. ("NYSE") or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend various exchange rules. On October 2, 1990, the NYSE submitted to the Commission Amendment No. 1 to the proposal.[3] On March 19, 1993, the NYSE submitted Amendment No. 2 to the proposal.[4] On March 4, 1994, the NYSE submitted Amendment No. 3 to the proposal.[5]

Notice of the proposal appeared in the **Federal Register** on May 1, 1990.[6] Two comment letters were received supporting the proposed rule change.[7] This order approves the proposed rule change, including Amendments No. 1, 2, and 3 on an accelerated basis.

II. Discussion

A. Introduction

The NYSE's Board of Directors established the Market Regulation Review Committee ("Committee")[8] to examine the structure of market trading regulations. The Committee was charged with reviewing existing regulations to enable the Exchange, in a manner consistent with maintaining market integrity and protecting investors, to compete more effectively with its current and future competitors, to provide additional intra-market trading opportunities for all Exchange market participants, and to eliminate requirements that may no longer serve a meaningful regulatory purpose.

Over seventy recommendations for changes to Exchange rules were made by the Committee. Several of these recommendations have been approved by the Commission previously.[9]

The proposed rule change reflects the recommendations of the Committee.[10] The specific proposals fall within three categories: "general auction market rules"; "trading rules applicable to specialists"; and "member proprietary and on-floor trading."

B. Commission Findings

The Commission has reviewed carefully the NYSE's proposed rule change and concludes that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular with Section 6(b)(5), 6(b)(8), 11(b) and 11A(a)(1) of the Act.[11] The Commission supports the NYSE's efforts to continue to review the structure of market trading regulation in response to changes in market structure. The Commission believes it important to market quality that the Exchange have a regulatory program that is tailored to the current market structure, especially in light of the significant role played by the NYSE in the U.S. markets. The Commission agrees that the proposed rule change

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[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] 17 CFR § 240.19b–4 (1991).

[3] Amendment No. 1 deleted the proposed amendments to Rule 116.30 dealing with "stopping stock." *See* letter from James E. Buck, Senior Vice President and Secretary, NYSE to Mary Revell, Branch Chief, Exchange Branch, Division of Market Regulation, Commission, dated October 2, 1990, forwarding to the Commission Amendment No. 1 to the proposal.

[4] Amendment No. 2 deleted ten of the proposed rule changes and added a new amendment to Rule 107. The Exchange deleted the following proposed changes contained in the original proposal: amendments to Rule 440B pertaining to the short sale rule; amendments to Rule 104 pertaining to dealings by specialists; amendments to Rule 104.10(5)(i) and 104.10(b)(i) pertaining to functions of specialists; amendments to Rule 104.12 pertaining to the reasonable necessity test for proprietary dealings and regarding the requirement that specialists make their investment accounts available to maintain fair and orderly markets; amendments to Rule 104.13 which impose restrictions on transactions of spouses and children and which delete restrictions on acquisitions and liquidations of investment accounts; amendment to Rule 113 which requires that certain orders be identified if greater than 2,000 shares; amendment to Rule 107B(6) pertaining to RCMM trading; amendment to Rule 107B(7).10(ii)(B) pertaining to RCMM's purchase of up to half of the offer on a zero plus tick in an ⅛ point market; amendments to Rule 112 pertaining to restrictions on competitive traders. See letter from James E. Buck, Senior Vice President and Secretary, NYSE to Diana Luka-Hopson, Branch Chief, Exchange Branch, Division of Market Regulation, Commission, dated March 18, 1993, forwarding to the Commission Amendment No. 2 to the proposal.

[5] Amendment No. 3 deleted the agency facilitation trader provisions from the proposal. *See* letter from James E. Buck, Senior Vice President and Secretary, NYSE to Cheryl Evans Dunfee, Attorney, Exchange Branch, Division of Market Regulation, Commission, dated February 28, 1994.

[6] The proposed rule change was published in Securities Exchange Act Release No. 27939 (April 24, 1990), 55 FR 18207 (May 1, 1990).

[7] Both comment letters were supportive of the work done by the Market Regulation Review Committee in developing the changes. Both expressed specific support for changes that were subsequently withdrawn from the proposal. *See* letter from Robert M. Newman, Jr., Managing Partner, Equitrade Partners, dated June 11, 1990, and letter from George A. Corroon, Jr., Partner, Corroon, Lichtenstein & Co., dated May 31, 1990.

[8] The Committee was established in December 1985 and it was originally given an 18-month chartered life. The charter was subsequently extended 27 months, until March 31, 1988.

[9] *See* Securities Exchange Act Release No. 29318 (June 17, 1991), 56 FR 28937 (June 25, 1991) (File No. SR–NYSE–89–2) (approving changes to 18 NYSE Rules). In conjunction with its filing of File No. SR–NYSE–90–10, the NYSE also filed Amendment No. 1 to File SR–NYSE–89–02, which withdrew certain provisions of File No. SR–NYSE–89–02 as filed originally and resubmitted them in file No. SR–NYSE–90–10, in order to expedite the Commission's consideration of the Market Regulation Review Committee's recommendations. *See* Amendment No. 1 to File No. SR–NYSE–89–2. *See also* letter from Howard Kramer, Assistant Director, Division of Market Regulation, Commission, to Brian McNamara, Managing Director, Market Surveillance Division, NYSE, dated June 29, 1989.

[10] The text of the Exchange rules to be amended and complete descriptions of the proposed amendments are set forth in the Exchange's original filing and in Amendments No. 1 and 2 thereto, all of which are available for inspection at the Commission and at the principal office of the NYSE. The changes being approved herein are also discussed in detail *infra*.

[11] 15 U.S.C. § 78f(b)(5), 78f(b)(8), 78k(b), and 78 k–1(a)(1) (1988).

will be helpful in updating Exchange Rules. The Commission's detailed discussion regarding the significant changes proposed by the NYSE follows.

C. General Auction Market Rules

1. Rule 64: Bonds, Rights and 100-Share-Unit Stocks

NYSE Rule 64 specifies the time periods within which trades on the Exchange must be settled. It provides that all trades shall be considered "regular way" trades, which currently settle within five business days after the transaction date, unless certain conditions are specified, such as "cash," "next day" and "seller's option," or any other settlement periods that may be determined by the Exchange. Currently, the NYSE rule specifies a number of business days following the date of the trade for settlement of most "non-regular way" trades. Seller's option trades currently settle between six and sixty business days following the trade date.

The Exchange is amending Rule 64(a)(4) to provide that seller's options shall be delivered not less than 2 business days nor more than 180 days following the day of the contract. The Exchange has indicated that this change provides an alternative settlement mechanism with which investors may more closely match their investment objectives with their trading opportunities.[12]

The Commission agrees that this change in the delivery time for seller's options is appropriate in light of current market realities. The Commission believes that this change will give "seller's options" parties increased flexibility in settling such transactions, thereby removing impediments to a free and open market in accordance with Section 6(b)(5) of the Act.

The Exchange is adding new paragraph (b) to Rule 64 to provide that all trades effected for other than "regular way" settlement must be approved by a Floor Official, except during the last calendar week of the year, at which time Floor Official approval is required only for sales which are more than ¼ point away from the "regular way" bid or offer. In addition, in considering whether to grant such approval, the rule states that the Floor Official should take into consideration whether the price of the transaction is reasonable in relation to the "regular way" market. The Exchange states that this provision is a codification of existing practice.[13] The Exchange believes that Floor Official approval is generally beneficial prior to the execution of each non-regular way transaction to ensure that each is appropriately priced in relation to the regular way market. The Exchange does not, however, believe that it is appropriate to require Floor Official approval during the last calendar week of the year when numerous non-regular way trades are affected for legitimate tax purposes, unless the non-regular way trade is more than ¼ point away from the regular way market.

The Commission agrees that Rule 64(b) is an appropriate change to ensure adequate pricing of such trades and agrees that it may not be practical to obtain Floor Official approval for every non-regular way trade during the last calendar week of the year, which traditionally has more non-regular way trades for tax purposes. The ¼ point limit related to receiving Floor Official approval for non-regular way trades during the last calendar week of the year should provide enough protection to ensure adequate pricing of such trades. The Commission therefore believes that new paragraph (b) will help to remove impediments to and perfect the mechanism of a free and open market in accordance with Section 6(b)(5) of the Act.

The Exchange is adding new paragraph (c) to Rule 64 to provide that: all "seller's option" trades, for delivery between two and 180 business days, should be reported to the tape only in calendar days;[14] weekends and holidays are counted; and the trade date is not included when calculating the print for "seller's option" trades. In addition, the settlement date of a "seller's option" transaction printed as calendar days cannot coincide with the normal five business day "regular way" settlement.

The Commission believes that Rule 64(c) accurately reflects the method by which seller's options trades are settling and will serve to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, and processing information with respect to transactions in securities in accordance with Section 6(b)(5) of the Act.

D. Trading Rules Applicable to Specialists

1. Rule 104.10(7): "Clean-ups"

Rule 104.10(7) currently provides that when an inquiry is made of a specialist as to the price at which a block of stock may be sold, the specialist may advise the broker of the "clean up" price of the block, but may not specify the amount that would be purchased by the book and the amount that he would take as dealer. The Rule further provides that when a specialist participates as a dealer in the block at the "clean-up" price, the specialist must give all the executable orders that he is holding the "clean-up" price, except for the amount of the block that can be executed at the price of the current bid (whether such bid is for orders held by him or for the account of the specialist, or both).[15]

In the interest of facilitating the overall transaction, the Exchange is deleting the provision whereby the specialist may not specify the amount that would be purchased by the book and the amount that he would take as dealer in cleaning up the block. The Exchange is also deleting the provision that limits who can get the "clean-up" price when the specialist participates as a dealer in the block sale,[16] thereby providing that all executable orders would receive the clean-up price.

The Exchange asserts that the amendment to Rule 104.10(7) incorporates a concept that currently exists in Exchange rule 127, which provides that when a member is crossing block-sized orders, and will be positioning all or part of one side of the cross, he must give public orders limited to the clean-up price the benefit of that price.

The Commission believes that the changes to Rule 104.10(7) increase fairness in execution of block orders in accordance with Section 6(b)(5) of the Act, which requires that the rules of an exchange be designed to promote just and equitable principles of trade. The Commission also believes that the changes to Rule 104.10(7) help to assure that investors' orders are executed at the best possible market in accordance with Section 11A(a)(1) of the Act which provides, *inter alia*, that, it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the practicability of brokers

[12] Telephone conversation between Don Siemer, Director Market Surveillance, Division, NYSE, and Cheryl Dunfee, Attorney, Division of Market Regulation, February 9, 1994.

[13] *Id.*

[14] The Exchange provides the following example in Rule 64(c): A trade settling in six business days would print as a "seller's 8" unless there is an intervening holiday (in which case it would print as a "seller's 9").

[15] The same principles apply to inquiries respecting an order to purchase a block of stock.

[16] Specifically, the Exchange is deleting the following language: ". . . except for the amount of the block which can be executed at the current bid, whether such bid is for orders held by him or for the account of the specialist or both."

executing investors' orders in the best market.

2. Rule 104.12: Specialists' Investment Accounts

Rule 104.12 concerns reporting by specialists about investment positions in speciality stocks. The Exchange is replacing current reporting requirements for specialist investment accounts with a simplified, aggregated, monthly reporting requirement.[17]

The Exchange is adopting the following simplified reporting requirement. In connection with investment positions in specialty stocks, a specialist shall report to the Exchange, on such form and in such format as the Exchange may from time to time prescribe, a record of all transactions effected for investment purposes and shall also report a record of all such transactions effected for investment purposes for the account of any person specified in Rule 104.13.

The Commission believes that the changes to Rule 104.12 are reasonable because the NYSE's reporting requirements still ensure that the NYSE receives information about all transactions effected for investment purposes by a specialist in specialty stocks.

3. Rule 104.13: Investment Transactions

Rule 104.13 generally requires that transactions in specialty stocks by specified persons, such as the specialist's spouse and persons residing in his household, be for investment purposes. The Exchange is adding new paragraph (d) to this rule[18] that states that specialists should not originate orders in the specialty stocks in which they are registered for any accounts over which they may have discretion.

The Commission believes that paragraph (d) is an appropriate addition to Rule 104.13 in accordance with Section 11(a) of the Act which generally makes it unlawful, with certain exceptions, for any member of a national securities exchange to effect a transaction on such exchange for his own account, the account of an associated person, or an account with respect to which it or an associated person thereof exercises investment discretion. The Commission also believes that paragraph (d) is an appropriate limitation on specialist trading designed to prevent fraudulent and manipulative actions in accordance with Section 6(b)(5) of the Act.

4. Rule 113(c): Specialists' Public Customers

Rule 113 governs a specialist's actions when handling public customer orders in stocks for which he is registered as a specialist. Rule 113(c) currently provides that every specialist shall report to the Exchange such information as the Exchange may require with respect to transactions which are made in a stock in which he is registered for any customer account not prohibited under Section (a)[19] which is: (1) Carried by a member organization; (2) serviced by him or his member organization; or (3) introduced by him or his member organization to another member organization on a disclosed basis.

The Exchange proposes to simplify the reporting requirements of Rule 113(c) with regard to transactions in specialty stocks for accounts carried by a specialist,[20] by requiring reports on all such transactions to be submitted to the Exchange on a monthly rather than weekly basis.[21] The Exchange states that experience has shown that monthly reporting of customer account data by specialists is adequate and will allow the Exchange to properly review specialist activities.[22]

In this regard, we note that the revised rule, although decreasing the frequency of specialist reports, requires all purchases and sales in specialty stocks to be reported to the Exchange. The Commission believes that the changes to Rule 113(c) could facilitate transactions in securities in accordance with Section 6(b)(5) of the Act by requiring specialists to spend less time on compiling and reporting activities without compromising the information available to the NYSE to adequately surveil its markets.

E. Member Proprietary and On-Floor Trading

Rules 107A and B govern Registered Competitive Market Makers ("RCMMs"). A RCMM is an individual who may initiate trades for his own account or for the account of his member organization or who may execute orders as broker for the purchase or sale of stock which has been left with him for execution by his member or any other member organization. A RCMM may initiate such trades on the Floor and is expected to trade in certain market situations on the other side of the market imbalance.[23] The Exchange is making a number of changes to Rules 107A and B to facilitate the contribution of RCMMs to the NYSE market.

1. Rule 107A(2)(a): Requirements (RCMM)

Rule 107A(2)(a) currently requires that an RCMM be able to establish that he can meet, at all times, with his own liquid assets, a minimum net capital requirement of $25,000 over and above any and all other federal and or Exchange capital requirement to which he may be subject. The Exchange is increasing that amount to $100,000, and making the $100,000 inclusive of all other federal and/or Exchange capital requirements to which he may be subject, unless federal or Exchange capital rules require a greater amount. The Exchange asserts that the $100,000 capital requirement is a reasonable figure in today's markets which are characterized by greater trading volume and volatility than existed when the $25,000 figure was first specified in 1977.

The Commission agrees that an increase in RCMM capital requirements is appropriate in light of significant

[17] Currently, the rule lists three circumstances in which a specialist must file equity trading data reports. Whenever a specialist assigns a specialty stock to an investment account, he must file a report (on Form 81) covering his transactions in that stock for the calendar week in which the purchase was made, and for the day of the assignment. A specialist must file a report (on Form 81) of all transactions in any stock on a day in which his dealer accounts show a "short" position in excess of 500 shares while he maintains a long position in his investment account. A report must be filed as of the last business day of each month in which a specialist had an investment position in a specialty stock indicating the number of shares held "long" in the investment account and the extent of any "short" position existing in the dealer account with respect to such stock.

[18] The Exchange states that the information in paragraph (d) was transposed from NYSE Rule 95.20.

[19] Section (a) of Rule 113 deals with when a specialist or his member organization or corporate subsidiary of such organization may accept an order for the purchase or sale of any stock in which he is registered as a specialist.

[20] Under the amended rule, every specialist shall report to the Exchange on a monthly basis, on such forms and in such format as the Exchange may prescribe, a record of all purchases and sales effected in stocks in which he is registered for any customer account not prohibited under section (a).

[21] In addition, Rule 113(c), Supplementary Material .10, which requires specialists to submit weekly reports on Form SPA, is being deleted.

[22] Telephone conversation between Don Siemer, Director, Market Surveillance Division NYSE, and Cheryl Evans Dunfee, Staff Attorney, Division of Market Regulation, Commission, February 9, 1994.

[23] All RCMM purchases and sales on the Exchange shall constitute a course of dealings reasonably calculated to contribute to the maintenance of price continuity with reasonable depth, and to the minimizing of the effects of any temporary disparity between supply and demand. At the request of any Floor Official, a RCMM shall make a bid or offer for his own account or for the account of his member organization in order to contribute to the maintenance of a fair and orderly market. All purchases and sales of any stock on the Exchange by a RCMM for his own account or the account of his member organization shall be effected in a reasonable and orderly manner in relation to the condition of the general market and the market in such stock. *See* Rule 107B (3), (4) and (5).

trading volume increases in the last 15 years. In response to price and trading volume increases, the Commission, in 1992, increased the federal minimum net capital standards for broker-dealers, market makers, and certain dealers, in order to provide greater investor protection. The Commission, therefore, believes that this increase in the RCMM aggregate minimum capital requirement will serve to protect investors and the public interest in accordance with Section 6(b)(5) of the Act.

2. Rule 107A(3): Voluntary Withdrawal of Registration

Rule 107A(3) currently provides that a RCMM may withdraw his registration as such upon no less than 10 days written notice of such withdrawal given to the Exchange. The Exchange is amending Rule 107A(3) to state that a RCMM may withdraw his registration by giving notice to the Market Surveillance Division and such withdrawal shall become effective immediately on the giving of the notice. The Exchange also is prohibiting an RCMM from re-entering the Exchange market as an RCMM for six months after withdrawing his registration.

The Exchange states that it does not believe it is necessary to require 10 days notice of withdrawal. The Exchange believes that there is no reason for RCMMs to be prevented from immediately withdrawing from the marketplace as long as RCMMs are not able to immediately re-enter the marketplace. The Exchange states that the re-entry limitation will ensure that RCMM withdrawal is not based upon transitory events.[24]

The Commission agrees that there is no reason to prevent RCMMs from immediately withdrawing from their RCMM status as long as they are prevented from re-entering as an RCMM for six months. As noted above, RCMMs have certain obligations to the market and as a result receive the benefits from their status as a market maker. Because of their obligations as a market maker, the Commission believes that it is appropriate to prevent RCMMs from re-entering the Exchange market as an RCMM for a six month period after their withdrawal. Without such a requirement, RCMMs could easily avoid their market obligations by withdrawing during volatile market conditions and then re-entering the market soon thereafter. The Commission also believes that the need for the six month re-entry bar outweighs any burden on competition that such a bar would impose in accordance with Section 6(b)(8) of the Act because it assures that RCMMs are adequately fulfilling their market making obligations required under the Act.

3. Dealings of Registered Competitive Market-Makers Rule 107B(7)

The Exchange states that it has informed RCMMs that it would be desirable for them to respond, on a monthly average basis, to at least one market imbalance "call-in" as disseminated electronically on the floor.[25] The Exchange, therefore, is adding new Rule 107B(7) to provide that a RCMM shall respond, on a monthly averaged basis, to at least one market imbalance call-in notification disseminated electronically on the floor for each trading session that he is on the floor. It would also provide that a RCMM shall not be required to respond to more than three individual call-ins, in the aggregate, by Floor Officials or brokers, for any trading session that he is on the floor. Notwithstanding the aforementioned, the rule makes clear that a RCMM shall be required to respond to as many call-ins as required by market circumstances and needs. The Exchange states that it is proposing Rule 107B(7) as a means of strengthening an RCMM's affirmative commitment to providing additional depth and liquidity to the market as may be needed.

The Commission does not believe that it is unreasonable for the NYSE to set forth specific guidelines for call-ins for RCMMs. Requiring RCMMs to respond to at least one but not more than three call-ins for any trading session will help to ensure adequate market depth and liquidity when needed. Most important, however, is the rule's requirement that RCMMs should be required to respond to all call-ins that are necessary under market circumstances. This should ensure that RCMMs are using their market making obligations to provide liquidity to the market when needed, consistent with Sections 6(b)(5) and 11(b) of the Act.

4. Rule 107B(7).10(ii) and 107B(7).30:

Rule 107B(7).10(ii) currently provides that when two or more RCMMs, or one or more RCMMs and the specialist, are purchasing or supplying stock, they may not, in the aggregate, supply or take more than 50% of the stock bid for or offered. The Exchange is deleting the reference to the specialist's participation with respect to the aggregated 50% limitation. In conjunction with this change, the Exchange is also eliminating the requirement that RCMMs report instances when they trade along with a specialist.[26]

In the Exchange's view, possible regulatory concerns that a specialist and one or more RCMMs may be improperly trading in collusion with each other can be effectively addressed by review of audit trail data and other surveillance activities. The Exchange believes that it is not necessary to place an arbitrary limitation on trading that may provide liquidity to the market and which is otherwise permissible in terms of specialist trading regulations.[27]

The Commission agrees that the trading restrictions in Rule 107B(7).10(ii) and the reporting obligations in Rule 107B(7).30 are unnecessary in view of Exchange surveillance capabilities. Moreover, specialists would continue to have to comply with specialist obligations under NYSE Rule 104 and the requirements under Section 11(b) and Rule 11(b)(1) thereunder.

5. Rule 107B(7).60

Rule 107B(7).60 currently provides that, with respect to orders received by the specialist by means of the Exchange's SuperDot System,[28] the specialist may request a Floor Official to consider whether to call in an RCMM to trade with an order imbalance. In particular, Rule 107B(7).60 states that, with respect to orders received by a specialist via the SuperDot system, the specialist may request that a Floor Official consider whether to call upon RCMMs to discharge obligations as set forth in subparagraph .10(i).[29] The

[24] Telephone conversation between Don Siemer, Director, Market Surveillance Division, NYSE and Cheryl Evans Dunfee, Attorney, Exchange Branch, Division of Market Regulation, Commission, March 30, 1994.

[25] The Exchange states that these call-ins are popularly referred to as "bluelight call-ins."

[26] Specifically, the Exchange is deleting the language in Rule 107B(7).30 which requires a RCMM to submit a Form 81/RCMM Report to the Exchange whenever having purchased or sold pursuant to paragraph B(4) he also effects a transaction on the other side of the market at the same price with a specialist on the same day.

[27] Telephone conversation between Don Siemer, Director, Market Surveillance Division, NYSE, and Cheryl Dunfee, Attorney, Division of Market Regulation, Commission, March 30, 1994.

[28] The SuperDot system is an electronic order-routing system that enables member firms to quickly transmit market and limit orders in all NYSE-list securities directly to the specialist post where the securities are traded, or to the member firm's booth. After the order has been executed in the action market, a report of execution is returned directly to the member firm office over the same electronic circuit that brought the order to the trading floor, and the execution is submitted directly to the comparison system.

[29] Subparagraph .10(i) states that each RCMM shall comply with the provisions of paragraphs B (2), (3), (4) and (5) which govern dealings by RCMMs. Subparagraph .10(i) describes, for example, what actions should be taken by an

Continued

Exchange is deleting Rule 107B(7).60. The Exchange states that it is unnecessary in light of other call-in provisions in Rule 107.[30]

The Commission agrees that Rule 107B(7).60 is unnecessary as other call-in provisions, such as the call-in requirements of Rule 107B(4), are sufficient. This change will serve to eliminate unnecessary regulations, streamline market regulation, and thereby remove impediments to and perfect the mechanism of a free and open market in accordance with Section 6(b)(5) of the Act.

6. Rule 110: Congregating in, Dominating Market and Effecting Purchases or Sales in Orderly Manner

Rule 110 currently provides that members who are acting as Competitive Traders ("CTs")[31] on the floor of the Exchange and who desire to purchase or sell stock for accounts in which they have an interest: (1) shall not congregate in a particular stock and individually or as a group intentionally or unintentionally dominate the market in that stock; (2) shall not effect such purchases or sales except in a reasonable and orderly manner and shall not be conspicuous in the general market or in the market in a particular stock.

Supplementary Material .10 to Rule 110 provides that, when establishing, increasing or liquidating a position, no more than three CTs may be in the trading crowd for one stock at the same time unless an increase is approved in writing by a Floor Director whenever he believes that the presence of a larger number of CTs would be constructive. It further provides that this limitation includes brokers who are attempting to execute orders for CTs; in such cases, brokers must announce publicly that they are so acting for CTs.

The Exchange is deleting Supplementary Material .10 because it believes this provision is unnecessary given the relatively small number of CTs active on the floor and the low level of their overall activity. The Commission agrees that, given current market conditions and the other market making obligations on the CT, that this provision is not necessary and its deletion is consistent with removing impediments to a free and open market in accordance with Section 6(b)(5) of the Act.

7. Rule 111(b)(1): Competitive Traders

Rule 111(b)(1) currently provides that a member who is registered as a CT is required to establish and maintain minimum capital of $25,000 over and above any other Federal or Exchange capital requirements. The Exchange is revising the CT capital requirement to parallel the change to the RCMM capital requirement in Rule 107A, discussed above. As revised, Rule 111(b)(1) would provide that a member who is registered as a CT must establish and maintain minimum capital of $100,000, including all federal and Exchange capital requirements, unless federal or Exchange capital rules require a greater amount.

As with Rule 107A(2)(a), the Commission agrees that the $100,000 capital requirement is a reasonable figure in today's markets which have greater trading volume than when the $25,000 figure was enacted in 1965. The Commission believes that this increase in CT aggregate minimum capital requirement will serve to protect investors and the public interest in accordance with Section 6(b)(5) of the Act.

III. Conclusion

The Commission has reviewed carefully the Exchange's proposed rule change and concludes that, for the above stated reasons, the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. The Commission believes that the proposals developed by the Exchange's Market Regulation Review Committee appropriately balance the competing concerns of various Exchange constituencies in a manner consistent with just and equitable principles of trade. Given the significant role played by the NYSE as a primary market and the dynamic nature of competitive forces shaping the national market system, the Commission supports the NYSE's efforts to review the structure of market trading regulation in order to have an efficient and meaningful regulatory program consistent with the protection of investors and the public interest.

Accordingly, based upon the aforementioned factors, the Commission finds that the Exchange's proposal discussed above is consistent with the Act, and in particular with sections 6(b)(5), 6(b)(8), 11(b) and 11A(a)(1) of the Act[32] and the rules and regulations thereunder applicable to a national securities exchange.

The Commission finds good cause for approving Amendments No. 1, 2 and 3 prior to the thirtieth day after the date of publication of notice of filing thereof. Amendments No. 1, 2 and 3 appropriately deleted certain proposed rule revisions from the proposal. Amendment No. 2 made additional clarifying and technical changes. For example, Amendment No. 2 clarified that the new capital requirements for RCMMs and CTs must accommodate other federal or exchange rules concerning capital requirements for those parties. Amendment No. 2 also clarified that RCMMs would continue to have the obligation to respond to call-ins as dictated by market circumstances, notwithstanding that, in normal circumstances, they need respond only to three individual call-ins. Finally, Amendment No. 2 codified that a member who withdrew as a RCMM must wait six months before re-registering as a RCMM to ensure that RCMMs do not withdraw based on short term market conditions. The Commission believes these amendments are clarifying and strengthen the proposal from a regulatory perspective.

Interested persons are invited to submit written data, views and arguments concerning Amendments No. 1, 2, and 3 to the proposed rule change. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to Amendments No. 1, 2 or 3 between the Commission and any persons, 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 at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–90–10 and should be submitted by July 15, 1994.

It Is Therefore Ordered, pursuant to section 19(b)(2)[33] of the Act, that the

RCMM who is called upon by a Floor Broker holding an unexecuted customer order.

[30] According to the NYSE, a specialist always has the ability to go to a floor official and ask for an RCMM. The Exchange believes that the general call-in provisions under Rule 107 are sufficient. Telephone conversation between Don Siemer, Director, Market Surveillance Division, NYSE, and Cheryl Evans Dunfee, Attorney, Commission, February 9, 1994.

[31] A member who is registered as a CT may initiate transactions while on the Floor for an account in which he has an interest. A CT must be approved for such trading by the Exchange.

[32] 15 U.S.C. § 78f(b)(5), 78f(b)(8), 78k(b), 78k–1(a)(1) (1988).

[33] 15 U.S.C. § 78s(b)(2) (1988).

proposed rule change (SR–NYSE–90–10) be, and hereby is approved, including Amendments No. 1, 2 and 3 on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[34]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–15361 Filed 6–23–94; 8:45 am]

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[Release No. 34–34230; File No. SR–NYSE–94–05]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change and Amendment No. 1 to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 to Proposed Rule Change Relating to Additions to "List of Exchange Rule Violations and Fines Applicable Thereto Pursuant to Rule 476A" and Minor Rule Violation Enforcement and Reporting Plan

June 17, 1994.

I. Introduction

On March 2, 1994, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to add to the "List of Exchange Rule Violations and Fines Applicable Thereto Pursuant to Rule 476A" ("Rule 476A List") its policy that new Exchange members must have their trades supervised by an experienced member. The NYSE also requested approval, under Rule 19d–1(c)(2), to amend its Minor Rule Violation Enforcement and Reporting Plan ("Plan") to include the policy regarding supervision of trades by new members.[3] On March 21, 1994, the NYSE submitted to the Commission Amendment No. 1 to the proposed rule change in order to clarify certain aspects of the original filing and to request approval of the policy itself.[4] On June 17, 1994, the NYSE submitted Amendment No. 2 to proposed rule change to revise certain language in the text of the Rule 476A List and to describe the form of notice provided to members.[5]

The proposed rule change was published for comment in Securities Exchange Act Release No. 33834 (March 30, 1994), 59 FR 16251 (April 6, 1994). No comments were received on the proposal. This order approves the proposed rule change including both amendments.

II. Background

In 1984, the Commission amended Rule 19d–1(c) under the Act to allow the self-regulatory organizations ("SROs") to submit, for Commission approval, plans for the abbreviated reporting of minor rule violations.[6] The Commission approved the NYSE's Plan, as embodied in NYSE Rule 476A, in 1985.[7] Accordingly, the Exchange is relieved of current reporting requirements under section 19(d)(1) with respect to those disciplinary actions taken pursuant to its Plan.

The NYSE Plan provides that the Exchange shall designate those rules as to which a violation may be deemed a minor rule violation.[8] Under the procedures set forth in NYSE Rule 476A, if a member, member organization, allied member, approved person, or registered or non-registered employee of a member or member organization violates a designated rule, the Exchange may impose a fine, not to exceed $5,000,[9] by issuing a citation with a specific penalty. The disciplined person can either accept the penalty or opt for a hearing on the matter.[10] In addition, the Exchange retains the discretion to bring violations of those rules included in the NYSE Rule 476A List to full disciplinary proceedings, if the Exchange determines that the violation is not minor in nature.

In adopting Rule 19d–1, the Commission noted that the rule was an attempt to balance the informational needs of the Commission against the reporting burdens of the SROs.[11] Rule 19d–1(c) represented the Commission's attempt further to reduce such burdens, by permitting quarterly reporting of minor rule violations in those circumstances where immediate reporting was unnecessary. Accordingly, the abbreviated reporting was intended to be limited to SRO rules which could be adjudicated quickly and objectively.

III Description of the Proposal

The NYSE is proposing to adopt as a rule its policy regarding supervision of trades by new members and to add this policy to its Plan.[12] To become an NYSE Floor member, a candidate must participate in an orientation program[13] and successfully complete the required membership examination (Series 15), after which he or she must wear a temporary badge for a minimum of two weeks. During that probationary period, a new member may execute orders, but only under the direct supervision of a fully qualified NYSE member who is a disinterested third party to the transaction. The experienced member observes the trade, and reviews it for

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[34] 17 C.F.R. 200.30–3(a)(12) (1992).

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1991).

[3] *See* letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Sandra Sciole, Special Counsel, Division of Market Regulation, SEC, dated March 1, 1994.

[4] *See* letter from Donald Siemer, Director, Market Surveillance Division, NYSE, to Beth Stekler, Attorney, Division of Market Regulation, SEC, dated March 16, 1994 ("Amendment No. 1")

[5] *See* letter from Donald Siemer, Director, Market Surveillance Division, NYSE, to Beth Stekler, Attorney, Division of Market Regulation, SEC, dated June 15, 1994 ("Amendment No. 2").

[6] *See* Securities Exchange Act Release No. 21013 (June 1, 1994), 49 FR 23838 (June 8, 1994). Pursuant to Rule 19d–1(c)(1), an SRO is required to file promptly with the Commission notice of any "final" disciplinary action taken by that SRO. Pursuant to Rule 19d–1(c)(2), however, any disciplinary action taken by an SRO for a violation of an SRO rule, which has been designated as a minor rule violation pursuant to a Commission approved plan, shall not be considered "final" *if* the sanction imposed consists of a fine not exceeding $2,500 and the sanctioned person does not seek an adjudication, including a hearing, or otherwise exhaust his or her administrative remedies. By deeming that unadjudicated minor rule violations are not final, the Commission permits the SRO to report such violations on a periodic basis.

[7] *See* Securities Exchange Act Release No. 21688 (January 25, 1985), 50 FR 5025 (February 5, 1985). Subsequent additions of rules to the Rule 476A List were made in Securities Exchange Act Release Nos. 22037 (May 14, 1985), 50 FR 21008 (May 21, 1985); 23104 (April 11, 1986), 51 FR 13307 (April 18, 1986); 24985 (October 5 1987), 52 FR 41643 (October 29, 1987); 25763 (May 27, 1988), 54 FR 20925 (June 7, 1988); 27878 (April 4 1990), 55 FR 13345 (April 10, 1990); 28003 (May 8, 1990), 55 FR 20004 (May 14, 1990); 28505 (October 2, 1990), 55 FR 41288 (October 10, 1990); 28995 (March 21, 1991), 56 FR 12967 (March 28, 1991); 30280 (January 22, 1992), 57 FR 3452 (January 29, 1992); 30536 (March 31, 1992), 57 FR 12357 (April 9, 1992); 32421 (June 7, 1993), 58 FR 32973 (June 14, 1993); 33403 (December 28, 1993), 59 FR 641 (January 1, 1994); and 33816 (March 25, 1994), 59 FR 15471 (April 1, 1994).

[8] *See* Rule 476A(e). As noted above, *see supra* note 7, the Exchange has amended the Rule 476A List, from time to time, as it has gained experience with its Plan.

[9] Fines imposed pursuant to Rule 476A in excess of $2,500 are deemed final, and therefore are subject to the reporting requirements of Section 19(d)(1) of the Act.

[10] The procedures governing full disciplinary proceedings are set forth in NYSE Rule 476.

[11] *See* Securities Exchange Act Release No. 13762 (July 8, 1977), 42 FR 35411 (July 14, 1977).

[12] *See supra*, note 3.

[13] According to the NYSE, the New Member Orientation Program consists of six one-hour sessions which are designed to familiarize candidates with Exchange regulations, systems and trading practices. As part of this program, new members receive, and are expected to be familiar with, information regarding the requirement that an experienced member must supervise their trades during their probationary period. *See, e.g.*, NYSE Information Memorandum 92–10 (April 9, 1992); NYSE Memorandum to Members on Trading Floor (October 29, 1993).

compliance with the relevant Exchange rules.[14]

If a new Exchange member fails to adhere to the supervision requirement, the NYSE may extend his or her probationary period for an additional week. The proposed rule change will allow the NYSE to impose a fine pursuant to Rule 476A for subsequent violations of the new member order execution policy.[15] Upon Commission approval, the Exchange intends to distribute an Information Memorandum notifying members that they may be subject to a fine, and to include that Information Memorandum in the materials provided to new members during their orientation program.[16]

The NYSE states that the proposed rule change will advance the objectives of Section 6(b)(6) of the Act in that it will provide a procedure whereby members and member organizations can be "appropriately disciplined" in those instances where a rule violation is minor in nature, but a sanction more serious than a warning or cautionary letter is appropriate. According to the Exchange, the proposed rule change provides a fair procedure for imposing such sanctions, in accordance with the requirements of Sections 6(b)(7) and 6(d)(1).

IV. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of sections 6(b) (1), (6) and (7), 6(c)(3), 6(d)(1), and 19(d).[17] The Commission believes that the NYSE's policy regarding supervision of trades by new members, together with its orientation program, should be sufficient to ensure that new members receive adequate guidance and experience before they may execute orders on their own. In the Commission's opinion, this supervisory requirement should provide inexperienced Exchange members with training to help them acquire the practical skills necessary to comply with NYSE rules, the Act and the regulations thereunder.

The Commission finds that the proposed amendments to the Plan are consistent with the Section 6(b)(6) requirement that the rules of an exchange provide that its members and persons associated with its members shall be appropriately disciplined for violations of rules of the exchange. In this regard, the proposal provides an efficient procedure for appropriate disciplining of members for a rule violation that is technical and objective in nature. Moreover, because the Plan provides procedural rights to the person fined and permits a disciplined person to request a full hearing on the matter, the proposal provides a fair procedure for the disciplining of members and persons associated with members, consistent with Sections 6(b)(7) and 6(d)(1) of the Act.

The Commission also believes that the proposal provides an alternative means by which to deter violations of the NYSE's policy regarding the supervision of trades by new members, thus furthering the purposes of Section 6(b)(1) of the Act. An exchange's ability effectively to enforce compliance by its members and member organizations with Commission and Exchange rules is central to its self-regulatory functions. Inclusion of a rule in an exchange's minor rule violation plan should not be interpreted to mean that it is an unimportant rule. On the contrary, the Commission recognizes that inclusion of rules under a minor rule violation plan may not only reduce reporting burdens on an SRO but also may make its disciplinary system more efficient in prosecuting violations of these rules.

In addition, because the NYSE retains the discretion to bring a full disciplinary proceeding for any violation included on the Rule 476A List, the Commission believes that adding the new member order execution policy to the Rule 476A List will enhance, rather than reduce, the NYSE's enforcement capabilities regarding this Exchange policy. Indeed, the Commission expects the NYSE to bring full disciplinary proceedings for violations of this supervisory requirement where the violation is egregious or where there is a history or pattern of repeat violations.

Finally, the Commission believes that the inclusion of the policy regarding supervision of trades by new members on the Rule 476A Violations List will prove to be an effective alternative response to a violation when the initiation of a full disciplinary proceeding is unsuitable because such a proceeding may be more costly and time-consuming in view of the minor nature of the particular violation.

The Commission finds good cause for approving Amendment No. 2 prior to the thirtieth day after the date of publication of notice of filing thereof. Amendment No. 2 merely clarifies certain language in the text of the Rule 476A List, and provides additional details about the proposed notice to members. Finally, the Commission did not receive any comments on the original proposal, which was noticed for the full statutory period.

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 2 to the proposed rule change. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rules change that are filed with the Commission and all written communications relating to Amendment No. 2 between the Commission and any persons, 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, D.C. 20549. Copies of such filing will also be available at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–94–05 and should be submitted by July 15, 1994.

V. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[18] and Rule 19d–1(c)(2) under the Act,[19] that the proposed rule change (SR–NYSE–94–05), including Amendment No. 2 on an accelerated basis, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

Margaret H. McFarland,

Deputy Secretary.

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[14] This review is evidenced by placing the experienced member's badge number on the back of the order ticket. *See* Amendment No. 1, *supra*, note 4.

[15] Because the initial violation of this policy will result in an extension of the probationary period, the second violation will be subject to the first time fine provided by Rule 476A. *See* Amedment No. 1, *supra*, note 4.

[16] *See* Amendment No. 2, *supra*, note 5. For further discussion of the New Member Orientation Program, *see supra* note 13 and accompanying text.

[17] 15 U.S.C. 78f (b)(1), (6) and (7), 78f(c)(3), 78f(d)(1) and 78s(d) (1988).

[18] 15 U.S.C. 78s(b)(2) (1988).

[19] 17 CFR 240.19d–1(c)(2) (1991).

[20] 17 CFR 200.30–3(a)(12) (1991).

[Release No. 34–34234; File No. SR–Phlx–93–45]

Self-Regulatory Organizations; Order Approving and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 2, 3, 4, and 5 to a Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to the Listing and Trading of Quarterly Index Expiration Options on All Stock Indexes for Which Index Options Are Listed for Trading by the Phlx

June 17, 1994.

On November 24, 1993, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted to the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to provide for the listing and trading of quarterly index expiration ("QIX") options on the Gold and Silver ("XAU"), Utility ("UTY"), National Over-the-Counter ("XOC"), Value Line ("VLE"), and Bank ("BKK") indexes. Currently, all equity and stock index options traded on the Exchange expire on the Saturday immediately following the third Friday of the expiration month. the Phlx intends to trade QIXs in addition to the existing Exchange traded index options expiring at the middle of the month.

On March 21, 1994, the Exchange filed Amendment No. 1 to the proposed rule change.[3] Notice of the proposed rule change and Amendment No. 1 appeared in the Federal Register on March 31, 1994.[4] No comments were received on the proposed rule change. On April 8, 1994, the Exchange filed Amendment No. 2 to the proposed rule change.[5] On April 29, 1994, the Exchange filed Amendment No. 3 to the proposed rule change.[6] On May 9, 1994, the Exchange filed Amendment No. 4 to the proposed rule change.[7] On May 24, 1994, the Exchange filed Amendment No. 5 to the proposed rule change.[8] This order approved the proposal, as amended.

The Exchange proposes to add rules to provide for the listing of up to eight near-term quarterly expirations for trading on the XAU, VLE, UTY, BKX, XOC, and the Big Cap ("MKT")[9] indexes. The proposed QIX options would expire on the first business day following the end of each calendar quarter. All QIX options listed for trading on the Exchange will be P.M.-Settled.

For each of the above indexes, the Phlx would be permitted at any one time to have up to eight expiration series of QIX options open for trading. Presently, index options traded at the Phlx expire on the Saturday following the third Friday of the expiration month.[10] Accordingly, QIXs will have expirations approximately two weeks apart from regular index option expirations in the quarterly month expiration.

The proposed QIX options on each particular index will trade simultaneously with, and not independent of, currently listed and traded index option products on the same index. The proposed QIX options will be subject to the same rules that presently govern the trading of regular index options contracts, including sales practice rules, margin requirements, and floor trading procedures.[11] Contract terms for the QIX options on a particular index will be similar, for the most part, to the corresponding index options that presently trade on that index on the Exchange. For example, as with BKX index options, QIX options on the BKX Index will have European-style[12] exercise, however, QIXs on the BKX will be P.M.-Settled.

With regard to position and exercise limits,[13] the Phlx is proposing to provide that QIX options on an index will be aggregated with existing options contracts on the same index.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5).[14] In particular, the Commission believes that the proposed rule change is designed to provide investors with a tailored quarterly portfolio hedge that may be more suitable to their investment needs. Specifically, by providing investors with the ability to use QIX options, the Phlx proposal will allow investors increased flexibility to tailor their portfolio positions to satisfy their investment objectives. For instance, according to the Phlx, the performance of portfolio managers and institutional investors is judged on a quarterly

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[1] 15 U.S.C. Section 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1993).

[3] In Amendment No. 1, the Phlx: (1) states that the Exchange presently plans only to list QIXs with 12 months or less to expiration; and (2) amends several Phlx rules to add references to QIXs. See Letter from Catherine Humphrey, Law Clerk, Phlx, to Sharon Lawson, Assistant Director, Office of Derivatives and Equity Oversight ("ODEO"), Division of Market Regulation ("Division"), Commission, dated April 7, 1994.

[4] See Securities Exchange Act Release No. 33810 (March 24, 1994), 59 FR 15251 (March 31, 1994).

[5] In Amendment No. 2 the Phlx: (1) amends Rule 1101A(b)(iv) to state that Phlx rules governing regular index options also apply to QIX options; (2) agrees to submit a rule filing pursuant to Section 19(b) of the Act if the Exchange intends to list QIX options with a time to expiration of greater than 12 months; (3) makes certain other editorial changes to the proposed rule language; and (4) conforms Exhibit G, which is a draft memorandum to the Phlx Options Committee, to the proposal as amended. See Letter from Catherine Humphrey, Law Clerk, Phlx, to Sharon Lawson, Assistant Director, ODEO, Division, Commission, dated April 7, 1994 ("Amendment No. 2").

[6] In Amendment No. 3 the Phlx proposes to delete proposed Rule 1001A(d)(ii) which was added by the Phlx in Amendment No. 2 but which relates to a separate proposal filed by the Phlx pursuant to Section 19(b) of the Act (see File No. SR–Phlx–94–03). See Letter from Catherine Humphrey, Law Clerk, Phlx, to Brad Ritter, Attorney, ODEO, Division, Commission, dated April 26, 1994.

[7] In Amendment No. 4 the Phlx proposes to; (1) add the Big Cap Index as an index on which QIXs may be listed by the Exchange; (2) insert in proposed rule 1101A(b)(iv) the specific indexes on which QIX options may be listed by the Exchange; (3) amend language that the Phlx altered in Amendment No. 3 to again clarify that except as otherwise provided, all rules applicable to regular stock index options are also applicable to QIX options on the same index; and (4) make conforming changes to Exhibit C to reflect all amendments to the proposed rule change. See Letter from Catherine Humphrey, Law Clerk, Phlx, to Brad Ritter, Attorney, ODEO, Division, Commission, dated May 9, 1994 ("Amendment No. 4").

[8] In Amendment No. 5, the Phlx proposes that the exercise settlement values for all QIX options traded on the Exchange will be based on the closing values of the component securities underlying each index ("P.M.-Settled"). All QIX options would be P.M.-Settled regardless of whether the exercise settlement values for regular index options on the same index are P.M.-Settled or are based on the opening values of the component securities underlying the index ("A.M.-Settled"). See Letter from Michelle Weisbaum, Associate General Counsel, Phlx, to Brad Ritter, Attorney, ODEO, Division, Commission, dated May 24, 1994 ("Amendment No. 5").

[9] The Big Cap Index was not included in the original proposal because options on that index has not yet been approved for listing by the Commission. See Securities Exchange Act Release No. 33973 (April 28, 1994) 59 FR 23245 (May 5, 1994); and Amendment No. 4, *supra* note 6.

[10] The Exchange trades index options with expirations of up to one year in length that expire at three month intervals. The Exchange allows for up to six expiration months with none further out than twelve months. In addition, the Phlx also trades long-term index options that may expire three years from listing named "LEAPS." The Phlx is not now proposing to list or trade QIX options with more than twelve months to expiration. Any such proposal would be filed with the Commission for review under Section 19(b) of the Act. See Amendment No. 2, *supra* note 4.

[11] See Amendment No. 4, *supra* note 6.

[12] A European-style option is one that may be exercised only during a specified period prior to the expiration of the option.

[13] Position limits are the maximum number of option contracts permitted on the same side of the market with respect to a single underlying interest that may be held or written by a single investor or group of investors acting in concert. Exercise limits are the maximum number of option contracts on the same underlying interest that a single investor or group of investors acting in concert may exercise during any five consecutive business days.

[14] 15 U.S.C. Section 78f(b)(5) (1982).

basis.[15] Therefore, in the past, these investors have been forced to pursue "quarterly hedging strategies" in the over-the-counter ("OTC") market employing forwards, options, and/or swaps. Accordingly, the Commission believes the Phlx proposal is a reasonable response by the Exchange to meet the demands of sophisticated portfolio managers and other institutional investors who are increasingly using the OTC market in order to satisfy their hedging needs, and will thereby promote competition among these markets.[16]

In addition, the Commission believes that the Phlx proposal will help promote the maintenance of a fair and orderly market because the purpose of the proposal is to extend the benefits of a listed, exchange market in Phlx-listed index options to quarterly calendar expirations. The attributes of the Exchange's index options market versus an OTC market include, but are not limited to, a centralized market center, an auction market with posted market quotations and transaction reporting, standardized contract specifications, parameters and procedures for clearance and settlement, and the guarantee of the Options Clearing Corporation ("OCC") for all contracts traded on the Exchange.[17]

The Commission also notes that the Exchange's existing rules applicable to stock index options, including among others, strike price interval, bid/ask differential, price continuity, sales practice rules, and position and exercise limits will apply to QIX options.[18] In particular, positions in QIX options will be aggregated with positions in other Phlx index option products on the same index.

The Commission notes that for the most part QIX options will be treated like regular index options. The only exception is that for those indexes for which regular index options are A.M.-Settled (*i.e.*, the BKX and the MKT), QIXs on those indexes will be P.M.-Settled. Although the Commission continues to believe that basing the settlement of index products on opening, as opposed to closing prices on Expiration Fridays helps alleviate stock market volatility,[19] these concerns are reduced in the case of QIXs, because expiration of these stock index options will not correspond with the normal expiration of stock index options, stock index futures, and options on stock index futures. In particular, QIX options will never expire on an "Expiration Friday," thereby diminishing the impact that QIX options could have on the market. Accordingly, the Commission believes that QIX options will not compromise the protection of investors or have an adverse market effect. Of course, the Commission expects the Phlx to monitor the actual effects of QIXs once trading commences and take prompt action (including timely communication with marketplace self-regulatory organizations responsible for oversight of trading in component stocks) should any unanticipated adverse market effects develop.[20]

Additionally, the Commission notes that approval of this proposal represents the first time that the Commission has approved QIX options on narrow-based indexes. The Commission believes, however, that the proposal does not raise any new regulatory concerns that have not been adequately addressed in Phlx's proposed rules. Specifically, QIXs on the BKX, XAU, and UTY will be subject to the Exchange's existing rules applicable to index options based on these indexes, including sales practice rules, margin requirements, and floor trading procedures. Secondly, positions in these QIX options will be aggregated with positions in the related index options. Finally, the Exchange's existing surveillance procedures and disciplinary rules will apply to the trading of QIXs based on narrow-based stock indexes. Accordingly, the Commission believes that the listing and trading of QIX options on the Exchange's approved narrow-based stock indexes is consistent with the Act.

Lastly, based on representations from the Phlx, the Commission believes that the Phlx and the Options Price Reporting Authority ("OPRA") will have adequate systems processing capacity to accommodate the additional options listed in connection with QIX options.[21]

The Commission finds good cause for approving Amendments Nos. 2, 3, 4, and 5 to the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Commission finds that, with the exception of adding QIXs on the Big Cap index, these amendments: (1) More closely conform the Exchange's proposal to those previously approved by the Commission with respect to the listing and trading of QIX options;[22] and (2) clarify the proposed rule change to minimize the potential for investor confusion. With respect to QIXs on the Big Cap Index, for the reasons stated herein, the Commission believes that allowing QIXs on the Big Cap Index may provide investors with an additional hedging instrument and with increased flexibility to tailor their portfolio positions to satisfy their investment objectives. Therefore, the Commission believes it is consistent with the Act to approve Amendments Nos. 2, 3, 4, and 5 to the proposed rule change on an accelerated basis.

Interested persons are invited to submit written data, views and arguments concerning Amendments Nos. 2, 3, 4, and 5 to the proposed rule change. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and

[15] In addition, many investment strategies employed by these portfolio managers coverage at the calendar quarter. Hence, traditional exchange-type expirations provide a less than perfect hedge for many institutions.

[16] Pursuant to Section 6(b)(5) of the Act, the Commission must predicate approval of any new option proposal upon a finding that the introduction of such new derivations instrument is in the public interest. Such a finding would be difficult for a derivative instrument that served no hedging or other economic function, because any benefits that might be derived by market participants likely would be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns.

[17] See Securities Exchange Act Release No. 31898 (February 22, 1993), 58 FR 11878 (March 1, 1993).

[18] See Amendment No. 4, *supra* note 6.

[19] See Securities Exchange Act Release No. 30944 (July 21, 1992), 57 FR 33376 (July 28, 1992).

[20] The Commission notes that P.M.-Settlement of QIX options on indexes for which regular index options are A.M.-Settled, as proposed in Amendment No. 5 to the proposed rule change, is consistent with prior Commission approval orders. See Securities Exchange Act Release Nos. 31800 (February 1, 1993), 58 FR 7274 (February 5, 1993) (order approving QIX options on the Standard & Poor's ("S&P") 500 Index and the S&P 100 Index); 31844 (February 9, 1993), 58 FR 8796 (February 17, 1993) (order approving QIX options on the Major Market, S&P MidCap, and Institutional Indexes); and 32693 (July 29, 1993), 58 FR 41817 (August 5, 1993) (order approving QIX options on the Russell 2000 Index).

[21] See Memorandum from Jack McCarthy, Phlx, to Catherine Humphrey, Phlx, dated March 11, 1994; and Letter from Joe Corrigan, Executive Director, OPRA, to Catherine Humphrey, Phlx, dated March 11, 1994.

[22] See *supra* note 20.

copying at the principal office of the Phlx. All written submissions should refer to File No. SR–Phlx–93–45 and should be submitted by July 15, 1994.

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act,[23] that the proposed rule change (SR–Phlx–93–45) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[24]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–15358 Filed 6–23–94; 8:45 am]

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[Release No. 34–34233; File No. SR–Phlx–94–26]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 to the Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Listing of Long-Term Options, and $25.00 Strike Price Intervals for Far-Term Options Series, on the Big Cap Index

June 17, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on May 10, 1994, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Phlx. On June 14, 1994, the Exchange filed Amendment No. 1 to the proposed rule change.[2] 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 Phlx, pursuant to Rule 19b–4 under the Act,[3] proposes to amend Phlx Rule 1101A to allow the Phlx to list option strike prices in the far-term series (nine months to expiration) of the Big Cap Index ("Index") at $25.00 intervals, unless there is demonstrated customer interest in $5.00 strike price intervals, as well as to list and trade long-term options ("LEAPS") on the Index. The text of the proposed rule change is available at the Office of the Secretary, the Phlx, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx 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

On April 28, 1994, the Commission approved the Exchange's proposal to list and trade options on the Index.[4] Pursuant to Phlx Rule 1101A, the Exchange has the ability to list options on the Index with strike prices at $5.00 intervals. In December 1993, the Commission approved the Exchange's proposal to list the far-term options series (*i.e.*, nine months to expiration) of the National Over-the-Counter Index ("XOC") and the Value Line Index ("VLE") at $25.00 strike price intervals, unless there is "demonstrated customer interest" in $5.00 strike price intervals.[5] The Exchange had submitted its proposal regarding the XOC and VLE because trading data had indicated that there was limited volume in the far-term series of those indexes, and stated that its proposal would reduce the number of strikes listed in inactively-traded options series. At the time, XOC and VLE were the only broad-based indexes traded on the Exchange. Options on the Index, which is also broad-based, have been trading since May 17, 1994. The Exchange expects to list far-term options series (the March 1995 series) at the June expiration. Based on its experience with similar broad-based indexes, the Exchange believes it is likely that the volume in these far-term options series will be limited, although there is no evidence to that effect at this time.

By only listing the far-term Index options series at $25.00 strike price intervals instead of at $5.00 intervals, the Exchange will be able to reduce the number of new strikes that would have to be displayed on screens on the trading floor, disseminated to outside vendors, and monitored by the Exchange's specialists. The Exchange anticipates that options overlying the Index will trade similarly to options on other broad-based indexes. The Exchange believes that the far-term Index options series will be relatively inactive, and that bids and offers for the options at close intervals within that series often will be substantially similar because of low volatility levels. The Exchange does not believe that significant market opportunities will be lost if fewer strike prices are listed in the far-term series.

If experience in trading options on the Index proves to warrant $5.00 strike price intervals in the far-term series by evidence of institutional (firm), corporate, or legitimate customer (not ROT) interest expressed directly to the Exchange or through the customer's floor brokerage unit, the Exchange will list additional $5.00 strike prices in those far-term series.[6] Further, when there is six months remaining until expiration, the intervening strike prices will be listed at $5.00 intervals.

Since no trading records exist yet to prove that additional far-term Index options at $5.00 intervals will be inactively-traded, the Exchange will monitor carefully the trading in those far-term series, as well as customer' reactions, to assure that more strikes are not of interest to those customers.

The Exchange is requesting accelerated approval for the above described portion of the proposed rule change, since the first far-term series are proposed to be listed at June expiration (June 20, 1994). The Exchange believes that good cause exists for accelerating approval for this portion of the proposal, since this proposal is designed to treat the Index similarly to other broad-based indexes traded on the Phlx.

In addition to the foregoing, because Phlx Rule 1101A(b)(iii) generally provides the Exchange with the ability to list and trade LEAPS on stock

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[23] 15 U.S.C. section 78s(b)(2) (1988).

[24] 17 CFR 200.30–3(a)(12) (1993).

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] In Amendment No. 1, the Phlx requested that the Commission approve on an accelerated basis the portion of the Phlx's proposal relating to the listing of series of long-term options. *See* Letter from Michele R. Weisbaum, Associate General Counsel, Phlx, to Thomas McManus, Staff Attorney, Division of Market Regulation, Commission, dated June 13, 1994.

[3] 17 CFR 240.19b–4 (1993).

[4] *See* Securities Exchange Act Release No. 33973 (April 28, 1994), 59 FR 23245 (May 5, 1994).

[5] *See* Securities Exchange Act Release No. 33301 (December 8, 1993), 58 FR 65611 (December 15, 1993). Phlx Rule 1101A(c), Commentary .02, defines "demonstrated customer interest" to include institutional (firm), corporate, or customer interest expressed directly to the Exchange or through the customer's floor brokerage unit, but not interest expressed by a Registered Options Trader ("ROT") with respect to trading for the ROT's own account. *See also infra* note 6.

[6] The $5.00 strike prices that can be added as a result of demonstrated customer interest must be reasonably close to the Index value, pursuant to Phlx Rule 1012(a)(i) (which is applicable to stock index options by virtue of Phlx Rule 1000A(a)). *See infra* note 10 for discussion of the term "reasonably close."

indexes, the Exchange also requests that the Commission grant accelerated approval of the portion of the proposed rule change relating to the listing of series of LEAPS on the Index.

The Exchange believes the proposed rule change is consistent with Section 6 of the Act, and, in particular, Section 6(b)(5),[7] in that it will foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to and facilitating transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Phlx has requested that the proposed rule change be given accelerated effectiveness pursuant to section 19(b)(2) of the Act.

The Commission finds that this proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5). Specifically, the Commission believes that the portion of the proposed rule change relating to the listing of $25.00 strike price intervals is designed to protect investors and the public interest and to remove impediments to and perfect the mechanism of a free and open market, by allowing the Phlx to reduce the number of outstanding far-term Index options series in which there is limited investor interest, while preserving the Exchange's ability to list additional far-term options series in response to genuine customer requests. Because the strike prices for the far-term Index options series must be displayed on the Exchange's trading floor, disseminated to outside vendors, and monitored by specialists, the Commission believes that the listing of far-term Index options at $25.00 strike price intervals, rather than $5.00 intervals, should reduce the operational burden associated with the listing of strike prices in inactive series of Index options. In addition, the Commission believes that the proposal should help to eliminate potential investor confusion associated with the "wrap-around," when all 26 characters used to indicate the strike price have been taken and additional strike prices must be listed with a different root symbol.

The Commission believes that this portion of the Exchange's proposal strikes a reasonable balance between the Exchange's interest in limiting the number of outstanding strike prices in inactive far-term series and its interest in accommodating the needs of investors. In this regard, the Commission notes that the Phlx has stated that the listing of strike prices at $25.00 intervals in far-term Index options series should preserve key trading strategies. In addition, the Commission believes that the provision allowing the Exchange to list additional far-term series at $5.00 intervals in response to genuine customer requests should provide the Exchange with the flexibility to meet the needs of investors and, in turn, should allow investors to establish options positions that are tailored to meet their investment objectives.[8] The Commission further believes that the customer request provision should help to ensure the availability of Index options series that will provide investors with a means to hedge their portfolios adequately and implement their trading strategies.[9]

The Commission notes that Exchange rules require that strike prices for each series of Index options shall be fixed at a price per share which is reasonably close to the Index value at or about the time such series of options is first opened for trading.[10]

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register.** In light of the Exchange's intention to list far-term Index options series on June 20, 1994, accelerating effectiveness of this proposal will permit the change to become effective as soon as possible. Further, this proposal is substantially similar to the Exchange's proposal that was approved by the Commission in December 1993, relating to the listing of $25.00 strike price intervals on XOC and VLE options series. That proposal was published for the full 21-day comment period, and no comments were received. In addition, because Phlx Rule 1101A(b)(iii) generally permits the Exchange to list series of LEAPS on stock indexes, the Commission finds that the portion of the proposed rule change relating to the listing of series of LEAPS on the Index presents no new regulatory issues. Accordingly, the Commission believes that it is consistent with the Act to approve this proposed rule change on an accelerated basis.

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. Copies of such filing also will be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–94–26 and should be submitted by July 15, 1994.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change (File No. SR–Phlx–94–26), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

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[7] 15 U.S.C. § 78s(b)(5) (1988).

[8] *See supra* note 6.

[9] The Commission expects the Exchange to monitor the listing of additional strikes in order to ensure that new strikes are added only in response to "customer" requests.

[10] *See* Phlx Rule 1012(a)(i). The Commission interprets the term "reasonably close" to mean that the strike price can be within no more than the lesser of (i) 50 points of the Index value at or about the time the Index option series begins trading, or (ii) 15 percent of such Index value.

[11] 15 U.S.C. 78s(b)(2) (1988).

[12] 17 CFR 200.30–3(a)(12) (1993).

[Release No. 34–34232; Filed No. SR–DGOC–94–03]

Self-Regulatory Organization; Delta Government Options Corp.; Notice of Filing of a Proposed Rule Change Relating to the Investment of Federal Funds Deposited by Participants as Margin Collateral

June 17, 1994

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice if hereby given that on June 2, 1994, Delta Government Options Corp. ("DGOC") 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 DGOC. The Commission is publishing this notice to solicit comments on the proposed rle change from interested persons

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

DGOC is proposing amendments to its procedures relating to the investment of federal funds deposited by participants as margin collateral. The purpose of the proposed rule change is to expand the form of acceptable collateral that can be taken in connection with the investment of cash margin funds in repurchase agreements.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis For, the Proposed Rule Change

In its filing with the Commission, DGOC included statments 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. DGOC has prepared sumaries, set forth in section A, B, and C below, of the most significant aspects of such statments.

A. Self-Regulatory Organization's Statement of the Purpose Of, and Statutory Basis for, the Proposed Rule Change

DGOC's proposal will establish a six month pilot program testing a new service which will expand DGOC's allowable investments of federal funds deposited by participants as margin collateral. The purpose of the new service is threefold: first, to employ a prudent methodology to monetize the asset value of participants' net long positions; second, to provide a superior rate of return on repurchase agreements for those participants providing cash collateral; and third, to provide a commercial inducement for participants to effect a greater proportion of their over-the-counter transactions through a registered clearing facility.

The proposed rule change will amend Article VI, Section 601 of DGOC's procedures to permit DGOC's clearing bank or its affiliate to invest cash margin deposits in repurchase agreements which are collateralized by participants' long positions.[2] The maximum value of a repurcahse agreement collateralized by a participant's long position will be determined as follows.

First, the participant's long position will be calculated in accordance with DGOC's prescribed methodology whereby the long position equals the sum of the mark-to-market values of each option owned by a participant less the sum of the mark-to-market values of each option written by a participant. Second, the long position then will be reduced in value using DGOC's margin calculation which is comprised of a performance margin component and a mark-to-market margin component. Under DGOC's margining system, performance margin is calculated for both long positions and short positions because performance margin represents an estimate of the potential reduction in value of both long and short positions at the close of the next succeeding business day taking into account the most adverse market movement in the price of underlying Treasury securities which reasonable could be anticipated. Performance margin is always a negative number. Mark-to-market margin represents the net amount of the estimated cost to liquidate a participant's short positions offset by the estimated proceeds from the liquidation of its long positions. Mark-to-market margin can be a positive or negative amount depending upon whether a participant has a long or short position. Third, the adjusted long position valuation amount is then multiplied by a loan to value ration, which for the pilot program will be 35%. The product of this calcualtion is the maximum that can be loaned through a repurchase agreement to a participant using the participant's long positions in DGOC options as collateral.[3] To prevent an undue concentrated exposure to any single participant, the amount of such repurchase agreement with any single participant may not exceed a specified amount which will be determined during or at the end of the test period.

The proposed rule change is consistent with the requirements of Section 17A of the Exchange Act and the rules and regulations thereunder applicable to DGOC. Specifically, Section 17A(b)(3)(F) of the Exchange Act requires that a clearing agency be organized and its rules be designed among other things, to promote the prompt and accurate clearance and settlement of securities transactions and to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions.[4] The proposed rule change will enable DGOC to provide greater flexibility to its participants and permit more utilization of the system by DGOC's participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

DGOC perceives no impact on competition by reason of the propose rule change.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] The value of the repurchase agreements collateralized by a participant's long positions will be limited to 35% of the participant's long positions after adjusting for such participant's performance margin valuation. DGOC also added an Interpretation to Section 601 limiting the total of all repurchase agreements collateralized by participants' long positions to the difference between total cash margin and the greater of either $10 million or 10% of the total cash margin.

[3] As an example, if a participant has a long position of $15 million with a performance margin requirment of $5 million and a mark-to-market margin valuation of $15 million, the maximum repurchase agreement allowed would be $3.5 million calculated as follows: ($15M − $5M) × 35% =$3.5M.

[4] 15 U.S.C. 78q–1(b)(3)(F) (1988).

arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 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 submissions should refer to File No. SR–DGOC–94–03 and should be submitted by July 15, 1994.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–15427 Filed 6–23–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34221; File No. SR–NSCC–94–07]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Proposed Rule Change Modifying NSCC's Trade Comparison Service

June 16, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,[1] notice is hereby given that on June 3, 1994, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–NSCC–94–07) as described in Items I, II, and III below, which Items have been prepared primarily by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will modify NSCC's Rules and Procedures relating to trade comparison.

[1] 15 U.S.C. 78s(b)(1) (1988).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC 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. NSCC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to support the New York Stock Exchange, Inc. ("NYSE") and the American Stock Exchange, Inc. ("Amex") in their efforts to implement trade-date comparison systems.[2] To achieve trade-date comparison, the NYSE and Amex will require their member organizations to submit trade-comparison data to their respective exchanges rather than to NSCC for comparison processing.

Currently, NSCC receives locked-in trade data from the NYSE and Amex and initial two-sided, compared trade data from its member organizations. The uncompared trades data from its members are matched by NSCC and are reported back to the members on contract lists. The locked-in trade data, which is compared at the point of execution by the exchanges, bypass NSCC's comparison process but for record purposes is reported back to the member organizations on contract lists.

Under the proposed system, the NYSE and Amex will process the initial two-sided, uncompared trade data in their trade-date comparison systems. Some of these trades may not compare, and the NYSE and Amex will report such unmatched trades (known as "questioned trades" or "QTs" at the NYSE and "don't knows" or "DKs" at the Amex) to NSCC along with the matched, two-sided trades and the locked-in trades. The compared trades (including the locked-trades and the matched, two-sided trades) will bypass NSCC comparison processing, but the unmatched trades will be included in NSCC's comparison process and in NSCC's trade correction process if necessary.

NSCC states that the proposed rule change will permit the NYSE and Amex, on behalf of NSCC members, to submit uncompared trade data relating to trades for regular way, when-issued, cash, next day, and sellers-option settlement in equity securities executed on such exchanges directly to NSCC for inclusion in NSCC's comparison process. Even though NSCC's revised Rules and Procedures will require NSCC's members to submit their trade data to the exchanges, the revisions still will permit members to submit such data directly to NSCC in order to have the data included in that day's processing. This authority is necessary because a member may miss the exchanges' submission timeframes. NSCC notes that the NYSE and Amex have concurred in this procedure.

As member organizations become accustomed to the trade-date comparison systems, NSCC expects that the NYSE and Amex will no longer permit members to submit data directly to NSCC. At that time, NSCC, upon the request of the NYSE and Amex, will file a rule change eliminating the ability of members to submit such data directly to NSCC other than on an exception basis.

Because the proposed rule change will support efforts by the NYSE and Amex to implement trade-date comparison systems, NSCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules thereunder in that it will facilitate the prompt and accurate clearance and settlement of securities transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition

NSCC believes that the proposed rule changes will not have any impact or impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

NSCC has neither solicited nor received any written comments.

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 reason for so finding or (ii) as to which the self-regulatory

[2] For information on NYSE's trade-date comparison proposal, refer to Securities Exchange Act Release No. 34153 (June 3, 1994), 59 FR 30071 [File No. SR–NYSE–94–08] (order approving proposed rule change).

organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be approved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with 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 NSCC. All submissions should refer to File No. SR–NSCC–94–07 and should be submitted by July 15, 1994.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[3]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–15428 Filed 6–23–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34237; File No. SR–PHILADEP–93–03]

Self-Regulatory Organizations; Philadelphia Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Deposit Fees

June 20, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on December 22, 1993, the Philadelphia Depository Trust Company ("Philadep") 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 mainly by Philadep, a self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Philadep has modified its deposit fees for participations that use both Philadep's electronic deposit link and Philadep's customer name mailing services by making them eligible for: (1) A $0.40 credit per deposit or (2) the existing discounts for clearing 10,000 or more trades at the Stock Clearing Corporation of Philadelphia ("SCCP"), whichever is greater.

IIA. Self-Regulatory Organization's Statements Regarding the Proposed Rule Change

In its filing with the Commission, Philadep included statements concerning the purpose of and the 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. Philadep has prepared summaries, as set forth in sections A, B, and C below, of the most significant aspects of these statements.

A. Self-Regulatory Organization's Statement of the Purpose of and the Statutory Basis for the Proposed Rule Change

Philadep proposes to modify its deposit fee schedule by providing a discount credit for those participants who supply deposit information via data file transmissions. Philadep seeks to implement these changes to further provide participants with quality services at cost effective prices. In order to qualify for the foregoing credit, participants must utilize both Philadep's electronic deposit link service and Philadep's customer name mailing service. Participants qualifying for the credit will be entitled to the greater of: (1) The current trade discounts already afforded Philadep participants for using SCCP or (2) $.40 credit per deposit. Philadep imposes fees and grants discounts to each participant on a monthly basis.

Philadep states that the proposed rule change complies with Section 17A of the Act[2] and in particular with Section 17A(b)(3)(D)[3] in that the proposal provides for the equitable allocation of fees among its participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

Philadep believes that the proposed rule change will not impose any burden on competition but rather that it should foster competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Philadep has neither solicited nor received written comments concerning the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[4] and subparagraph (e)(2) of Rule 19b–4[5] thereunder because it establishes a due, fee, or other charge imposed by Philadep. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule 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 the 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 such submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements respecting the proposed rule change that are filed with the Commission, and all written communications concerning the proposed rule change between the Commission and any person, other than those that may be withheld from the public pursuant to 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 office of Philadep. All submissions should refer to File Number SR–PHILADEP–93–03 and should be submitted by July 15, 1994.

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[3] 17 CFR 200.30–3(a)(12) (1993).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 15 U.S.C. 78q–1 (1988).

[3] 15 U.S.C. 78q–1(b)(3)(D) (1988).

[4] 15 U.S.C. 78s(b)(3)(A)(ii) (1988).

[5] 17 CFR 240.19b–4(e)(2) (1993).

For the Commission by the Division of market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–15429 Filed 6–23–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34235; International Series Release No. 675; File No. SR–Phlx–93–31]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendments No. 1, 2, 3, and 4 Relating to New Listing and Maintenance Standards

June 17, 1994.

I. Introduction

On July 20, 1993, the Philadelphia Stock Exchange ("Phlx" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4[2] thereunder, a proposed rule change to establish new quantitative and qualitative listing standards with respect to common stock, preferred stock, bonds and debentures, various types of warrants, contingent value rights, and other securities. Subsequently, the Phlx filed Amendments No. 1, 2, 3 and 4, dated January 5, 1994, March 28, 1994, May 10, 1994 and June 17, 1994 respectively.[3]

Notice of the proposed rule change appeared in the **Federal Register** on September 28, 1993.[4] The Commission received no comment letters regarding the proposal. This order approves the rule change.[5]

II. Description of the Rule Change

This rule change enhances Phlx's current listing standards by adopting quantitative and qualitative standards that generally are more stringent than the current standards. The rule change eliminates all the current listing standards, except for the proxy rules,[6] and imposes new standards. In particular, the rule change establishes a two-tier structure for listing common stock, preferred stock, bonds and debentures, various types of warrants,[7] contingent value rights, and other securities. The rule change includes original listing and maintenance criteria and establishes qualitative standards and corporate governance policies applicable to all listed companies. Tier I and Tier II securities are distinguished with respect to quantitative initial listing and maintenance standards, transaction reporting symbols,[8] and listing fees. All listed issues will be traded pursuant to identical auction rules.

Tier I contains more stringent quantitative standards than the Phlx's current standards. Tier II, on the other hand, is substantially comparable to the current standards, although Tier II's numerical standards are higher than the Phlx's current minimum standard. Tier II is designed to provide mid-sized companies and research and development companies a forum for exchange listing without having to meet the higher Tier I numerical standards.

The rule change also establishes, for listed companies falling below the listing criteria or otherwise failing to comply with the listing agreement, suspension and delisting policies and procedures intended to ensure uniform treatment of issuers whose securities are subject to delisting. To prevent any appearance of disparate treatment between issues, the Phlx has represented that both tier standards for initial and continued listing of securities are mandatory and non-waivable.[9]

Under the proposed rule change, a new Allocation, Evaluation and Securities Committee ("Committee") has responsibility for administering the rules governing listing. Initial review of original listing applications continue to be the responsibility of the Exchange's Department of Securities.[10]

1. Tier I

The Phlx's new listing standards for Tier I common stock are based on standards established in a Memorandum of Understanding ("MOU") between the National Association of Securities Dealers, Inc. ("NASD") and the North American Securities Administrators Association ("NASAA").[11] The NASD and NASAA developed the MOU, entitled "A Model Uniform Marketplace Exemption," in an effort to provide Nasdaq National Market issuers a basis for obtaining an exemption from state securities registration requirements (*i.e.*, blue sky exemption).[12] The MOU created minimum quantitative initial inclusion and maintenance standard, corporate governance requirements and minimum voting rights for inclusion of a security in the Nasdaq National Market. The Phlx has adopted the MOU's two alternative minimum quantitative initial inclusion standards for common stock, as follows:

Description	Alt. No. 1	Alt. No. 2
Net Tangible Assets	$4,000,000	$12,000,000

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17 CFR 200.30–3(a)(12((1993).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1993).

[3] These amendments, which are available in the Commission's Public Reference Room, were largely technical in nature and generally had no substantive impact on the original filing. The Commission, therefore, is granting accelerated approval with respect to these amendments.

[4] Securities Exchange Act Release No. 32707; International Series Release No. 571 (Aug. 2, 1993), 58 FR 42591 (Aug. 10, 1993).

[5] The rule change was approved for filing with the Commission at a meeting the Phlx Board of Governors on March 17, 1993.

[6] The current proxy rules are found in rules 851–66. The rule change makes minor technical changes to the proxy rules and redesignates them as rules 860–66, respectively.

[7] These warrants include standard warrants, warrants based on established market indices and warrants based on currency.

[8] Both Tier I and Tier II securities will be subject to real-time last-sale reporting. Telephone conversation between Michele R. Weisbaum, Associate General Counsel, Phlx, and Beth Stekler, Attorney, SEC, on June 16, 1994.

[9] *See* Securities Exchange Act Release No. 32707; International Series Release No. 571 (Aug. 2, 1993), 58 FR 42591 (Aug. 10, 1993) (Phlx statement that "both tier standards for initial and maintenance listing of securities are mandatory and non-waivable").

[10] The rules include additional qualitative factors that the exchange may consider upon application for original listing. Such factors include the nature of a company's business, the market for a company's product, whether the company is a going concern or the successor thereof, and the company's history and growth prospects.

[11] The MOU criteria were approved by the NASAA membership on October 10, 1988 and published in Securities Exchange Act Release No. 6810 (Dec. 16, 1988), 53 FR 52550 (Dec. 28, 1988). NASAA is an association of securities administrators from each of the 50 states, the District of Columbia, Puerto Rico, Mexico and 12 Canadian provinces and territories.

[12] On January 9, 1989, the Commission approved an NASD rule change adopting the standards set forth in the MOU as its inclusion standards for Nasdaq National Market securities. Securities Exchange Act Release No. 26433 (Jan. 9, 1989), 54 FR 1463 (Jan. 13, 1989) (approving SR–NASD–88–36). Currently, every state but one treats Nasdaq National Market securities substantially similar to NYSE and Amex securities with respect to blue sky registration. Securities listed on the Phlx currently enjoy an exemption from the blue sky registration in 23 states. In an effort to provision issuers whose securities are listed under Tier I a greater opportunity to obtain a blue sky exemption, the Phlx is adopting the standards set forth in the MOU as the criteria under Tier I.

Description	Alt. No. 1	Alt. No. 2
Public Float	500,000	1,000,000
Pre-Tax Income	750,000	.....
Net Income	400,000	.....
Market Value of Float	3,000,000	15,000,000
Minimum Bid	$5/Share	$3/Share
Operating History	.....	3 Years

The minimum number of shareholders under each alternative is 800 for companies with 500,000 to 1,000,000 shares publicly held and 400 for companies with over 1,000,000 shares publicly held, or 400 for companies with over 500,000 publicly held and daily trading volume in excess of 2,000 shares per day for six months.[13]

Original listing criteria for preferred stock vary depending on where the issuer has common stock listed.[14] In all cases, a share of preferred stock must have a minimum share price of $10.00 to be eligible for listing.

With respect to bonds, debentures and notes, issuers will be evaluated according to the same net tangible assets and earnings applicable to equity issuers.[15] In addition, issuers' ability to satisfy the interest and principal payments as they became due would be evaluated. Current last sale information must be publicly available and independently certifiable with respect to the underlying security into which the bond or debenture is convertible.

In the case of warrants, issuers applying for Tier I listing must meet the same net tangible assets, net earnings and distribution criteria applicable to equity issuers.[16] The securities underlying the warrants must be listed on the Phlx, NYSE or Amex. With respect to warrants based on market indices or currency, the Phlx also will apply criteria previously approved for index warrants.[17]

The listing criteria applicable to hybrid products that has been previously approved by the Commission are being retained.[18] In addition, the Phlx has established listing standards, including some numerical standards, for contingent value rights ("CVR"), and will distribute a circular to members explaining specific risks associated with CVRs, which will emphasize the need to disclose their special characteristics to CVR investors and which will suggest that CVRs be recommended only to investors approved for options trading, or only after ascertaining their suitability for a customer.[19]

Alternative Tier I standards are being adopted to permit the listing of deserving companies who may be unable to meet the full listing criteria due to the nature of their business. The Phlx's alternative criteria are identical to the NASAA MOU, except that a $3 price per share standard has been added.

2. Tier II

For issuers not satisfying the Tier I standards, the Phlx is establishing listing criteria under Tier II. As noted above, Tier II standards are intended to provide mid-sized companies and research and development companies the opportunity to have their securities traded in an auction market, thus increasing liquidity and issuer access to the investment community. The Phlx intends that Tier II listed securities, however, will be limited to the current Phlx blue sky exemptions.

The numerical Tier II standards for common stock are lower than those for Tier I, but generally higher than the current Phlx listing criteria. Following are the initial listing standards for Tier II (including a comparison of the Phlx's current listing standards:[20]

Description	Current Std.	New Std.	New Std. Alt.
Net Tangible Assets	$1,000,000	$1,500,000	$2,000,000
Earnings—Net Income	Positive	100,000	N/A
Public Dist.—Shares	250,000	750,000	750,000
Public Dist.—Shrhldrs	1,000	500	500
Stock Price—Agg. MV	$500,000	$2,250,000	$2,250,000
Minimum Bid	N/A	$3.00/share	$3.00/share

[13] "Net Tangible Assets" include the value of patents, copyrights and trademarks but excludes the value of goodwill.

[14] Where the common stock is listed on the Phlx, NYSE or Amex, at least 100,000 shares of preferred stock must be publicly held with an aggregate market value of at least $2 million. Where the common stock is not so listed, the requirements are a minimum of 400,000 shares publicly held with an aggregate market value of at least $4 million.

[15] As with preferred stock, the requirements for aggregate market value and number of public holders vary depending on whether the common stock is listed and traded on the Phlx, NYSE or Amex. Numerical requirements are identical to those approved by the Commission for the Chicago Board Options Exchange ("CBOE"). *See* Securities Exchange Act Release No. 28556 (Oct. 19, 1990), 55 FR 43233 (Oct. 26, 1990) (approving SR-CBOE-90-8).

[16] Where sold as part of a unit, a minimum of 500,000 warrants must be held by not less than 400 holders. *See also infra* note 21.

[17] This criteria requires: issuer's total assets in excess of $100 million; minimum public distribution of 1,000,000 warrants with at least 400 public holders; and aggregate market value of $4 million; or the warrants have already been approved for listing on another national securities exchange. *See* Securities Exchange Act Release No. 28358 (Aug. 21, 1990), 55 FR 35288 (File No. SR-Phlx-90-07).

[18] *See* Securities Exchange Act Release No. 30466 (Mar. 11, 1992), 57 Fr 9301 (File No. SR-Phlx-92-01). As indicated in the Commission's approval of the Phlx's hybrid products listing standards, these standards are not intended to accommodate the listing of securities that raise significant new regulatory issues as these products would require separate filings with the Commission pursuant to rule 19b-4 of the Act.

[19] This circular will also remind members and member organizations that, before recommending a CVR transaction they must make the determination that such CVRs are suitable for such customer, even if that customer has been approved for options trading.

[20] All issues listed prior to the adoption of these rules must, within six months, demonstrate full compliance with all applicable maintenance criteria, or be subject to delisting.

The Phlx is also adopting new numerical Tier II listing standards for preferred stock; warrants; bonds, debentures or notes; units;[21] ADRs and ADSs. In many cases, the numerical standards are being increased by at least 50% from the current listing standards. In the case of shares of a foreign issuer, numerical standards are being adopted for the first time. With respect to ADRs and ADSs, the Phlx will consider the law and practice of the home country in evaluating the election and composition of the board of directors, shareholder approval, voting rights and quorum requirements for meetings, and the issuance of quarterly earnings statements.[22]

To distinguish between securities listed pursuant to Tier I and those listed pursuant to Tier II, the Phlx will identify Tier I securities with the suffix "TI" annexed to their ticker symbol and, if possible, the closing prices in Tier I and Tier II securities will be carried in separate newspaper tables. If a Tier I listed security fails to satisfy Tier I maintenance standards, the issuer will be delisted and may seek to relist pursuant to the Exchange's Tier II standards. Moreover, if a Tier II listed security matures to the point that it could meet the Tier I standards, the issuer must apply and receive approval to list the security pursuant to the Tier I standards before the Exchange will deem such a security to be a Tier I issue.

3. Initial Public Offerings ("IPOs")

The Phlx is adopting listing criteria specifically addressing IPOs for the first time. An IPO issuer must provide a letter of undertaking from the principal investment banker which opines that the company will meet the requisite level of shareholders, market value and price to be eligible for listing. The issuer must meet the applicable initial listing criteria prior to the offering or will have a one month grace period to satisfy the rules by meeting the applicable criteria for a majority of trading days of their first month.[23]

4. Tier I and Tier II Corporate Governance Standards

With respect to voting rights, the Phlx is retaining its current rule (renumbered) prohibiting listings by an issuer of any class of securities that has the effect of nullifying, restricting or desperately reducing the per share voting rights of holders of an outstanding class of common stock.

The Phlx also is adopting standards for: issuer disclosure policy; approval of certain corporate actions; dividends and stock splits; ex-dividend an ex-rights; issuer accounting procedures; annual and quarterly reports; and shareholders meetings. These standards closely parallel those adopted by the CBOE and approved by the Commission.[24] Where the CBOE standards conflict with the qualitative standards set forth in the NASAA MOU, the Phlx adopted the approach in the MOU.

The new corporate disclosure policies, patterned after CBOE rules, incorporate an issuer's duty to disclose as a term of the Phlx's listing agreement under Tier I or Tier II standards. The new rules provide guidelines regarding the content and preparation of public announcements and requires the issuer to provide all such announcements to the Exchange prior to release.

Many of the new rules regarding dividend and subscription rights merely articulate industry standards for processing and payment of stock dividends and subscription rights.[25] The Phlx codifies its expectation that companies and their auditors abide by the rules of conduct of the AICPA Code of Professional Ethics, and requires audit of financial statements by independent accountants. In addition, the Exchange must be notified when a company changes independent accountants.

Other new Exchange rules require companies to hold shareholder meetings unless, upon prior Phlx approval, the Phlx permits solicitation of written consents in lieu of such meeting. The new rules recognize the need for independent audit committees on corporate boards of directors, and require Tier I companies to have at least two independent directors on their boards.

5. Maintenance Requirements and Delisting Procedures

Tier I maintenance standards are patterned on CBOE Rules previously approved by the Commission.[26] Because Tier II maintenance standards are generally higher than current maintenance standards, all issues listed prior to adoption of these rules will be given six months to demonstrate full compliance with all applicable maintenance criteria or be subject to delisting. Maintenance reviews will be conducted quarterly and whenever the Securities Department staff becomes aware that a company no longer complies fully with applicable requirements. The delisting process may be triggered automatically by an issuer violating an enumerated standard. In addition, other types of events which may trigger suspension or delisting are enumerated including,for example, failure to comply with the Exchange's listing agreement; failure to pay Exchange fees; and the sale or disposal of an issuer's operating assets. The determination to continue trading regardless of whether the security satisfies the relevant numerical maintenance criteria depends on facts and circumstances to be decided by the Committee in light of the objectives of the Exchange's listing policies. Finally, the Exchange reserves the right to suspend trading or delist any security it considers unsuitable for continued trading on the Phlx, notwithstanding that it otherwise satisfies the applicable maintenance criteria.

If the quarterly or other review shows that an issuer fails to satisfy applicable maintenance criteria, the issuer will be subject automatically to delisting proceedings. The Exchange will furnish the company with a statement indicating the facts and circumstances suggesting delisting. The company may respond within 20 days with any reasons not to delist.[27] Where the Committee determines delisting is appropriate, the company has the right to appeal to the Board of Governors, which may hold a hearing and make a final determination.

III. Discussion

The Commission finds that the proposed rule change is consistent with

[21] When securities are listed as units, the applicable standards for each component of the unit would be those that pertain to the respective securities comprising the unit offering. For example, if a unit offering consists of one share of common stock and one share of preferred stock, the respective standards for both must be met for the offering to be listed. Letter from Michele R. Weisbaum, Associate General Counsel, Phlx, to Michael Ryan, Attorney, SEC (May 9, 1994).

[22] A company seeking relief under these provisions will be required to provide written certification from independent local counsel that the non-complying practice is not prohibited by home country law.

[23] Among other things, Amendment No. 3 amended the proposal to provide that an IPO issuer may not use the proceeds of the IPO to satisfy the net tangible asset listing requirement. Letter from Michele R. Weisbaum, Associate General Counsel, Phlx, to Michael J. Ryan, Jr. ATTORNEY, SEC (dated May 9, 1994).

[24] Securities Exchange Act Release No. 28556 (Oct. 19, 1990), 55 FR 43233 (Oct. 26, 1990) (approving SR–CBOE–90–8).

[25] For example, the rules relate to accounting, cash in settlement of fractional shares, record dates, procedures for ex-dividend and ex-rights, return of dividends, warrant splits, and other similar events.

[26] *See* Securities Exchange Act Release No. 28556 (Oct. 19, 1990), 55 FR 43233 (Oct. 26, 1990) (approving SR–CBOE–90–8).

[27] Where the Committee determines that the company's written response warrants a grace period to rectify the deficiency, the Committee may grant a grace period. Nonetheless, the Commission expects that any grace period will be limited in duration and that, as indicated in note 9 above, the listing standards are non-waivable.

the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular,the requirements of Section 6.[28] The Commission believes that the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to perfect the mechanism of a free and open market and a national market system and to protect investors and the public interest.

The development and enforcement of adequate standards governing the initial and continued listing of securities on an exchange is an activity of critical importance to financial markets and the investing public. Listing standards serve as a means for a self-regulatory organization to screen issuers and to provide listed status only to bona fide companies with sufficient float, investor base and trading interest to maintain fair and orderly markets. Once a security has been approved for initial listing, maintenance criteria allow an exchange to monitor the status and trading characteristics of that issue to ensure that it continues to meet the exchange's standards for market depth and liquidity. For the reasons set forth below, the Commission believes that the proposed rule change will provide the Phlx with greater flexibility in determining which securities warrant inclusion on the Exchange, without compromising the benefits that the Exchange's listing standards offer to investors.

The Commission notes that most of the Phlx's new listing standards are substantially similar to the rules of existing national securities exchanges and the Nasdaq National Market and, therefore, finds that these standards are equally acceptable for the Phlx. To the extent that Phlx's proposed rules do differ from those of existing national securities exchanges and the Nasdaq National Market, the Commission finds them also to be consistent with the Act.

In addition to the heightened quantitative standards, the other qualitative requirements, such as the establishment of audit committees, voting rights, shareholder approval, and disclosure policies ensure that companies trading on the Phlx will adequately protect the interests of public shareholders. The Commission also notes that because the listing and maintenance standards are non-waivable, only companies suitable for exchange listing are eligible for trading on the Phlx. Furthermore, the prohibition on IPO issuers of using the proceeds from the IPO to meet the listing standards will provide public investors greater protection.

Finally, the Commission believes that inclusion of a security for listing on an exchange, should not depend solely on meeting quantitative criteria, but should also entail an element of judgment given the expectations of investors and the imprimatur of listing on a particular market.[29] The Commission believes that this rule provides the necessary flexibility to determine whether to list an issuer while ensuring that certain minimum standards must be met. Thus, the Commission believes that the new listing and maintenance standards strike the appropriate balance between protecting investors and providing a marketplace for issuers satisfying the disclosure requirements under the federal securities laws. The new standards will provide important guidance to the Phlx review process, and will alert issuers seeking listing on the Phlx, as well as current Phlx issuers, of the Exchange's specific standards.

Finally, as indicated above, the amendments submitted by the Phlx were largely technical in nature and generally had no substantive impact on the original filing. Thus, the Commission has determined that good cause exists for granting accelerated approval with respect to these amendments.

IV. Conclusion

For the reasons stated above, the Commission believes the rule change is consistent with the Act and, therefore, has determined to approve it. The rule change provides enhanced listing standards for Phlx listed securities which provide greater protection of investors and the public interest.

The Commission does not believe that the rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[30] that the rule change SR–Phlx–93–31 be, and hereby is, approved, including Amendments No. 1, 2, 3 and 4 on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[31]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–15430 Filed 6–23–94; 8:45 am]

BILLING CODE 8010–01–M

[28] 15 U.S.C. 78f (1988).

[29] *See e.g.,* In the Matter of Silver Shield Mining and Milling Company, Securities Exchange Act Release No. 6214 (Mar. 18, 1960) ("use of the facilities of a national securities exchange is a privilege involving important responsibilities under the Exchange Act"); In the Matter of Consolidated Virginia Mining Co., Securities Exchange Act Release No. 6192 (Feb. 26, 1960) (same).

[30] 15 U.S.C. 78s(b)(2).

[31] 17 CFR 200.30–3(a)(12).

[Investment Company Act Rel. No. 20364; 812–8922]

Malaysia Fund, Inc., et al.; Notice of Application

June 20, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("the Act").

APPLICANTS: The Malaysia Fund, Inc.; The Thai Fund, Inc.; The Turkish Investment Fund, Inc.; The Brazilian Investment Fund, Inc.; Morgan Stanley Emerging Markets Fund, Inc.; The Latin American Discovery Fund, Inc.; Morgan Stanley Emerging Markets Debt Fund, Inc.; The Morgan Stanley High Yield Fund, Inc.; The Pakistan Investment Fund, Inc.; Morgan Stanley Africa Investment Fund, Inc.; Morgan Stanley India Investment Fund, Inc.; and all subsequently registered closed-end investment companies that in the future are advised by Morgan Stanley Asset management Inc. ("MSAM") or any entity controlling, controlled by, or under common control (within the meaning of section 2(a)(9) of the Act) with MSAM (the "Funds").

RELEVANT ACT SECTIONS: Order requested under section 6(c) for an exemption from sections 13(a)(2), 18(a), 18(c), and 23(a) and under section 17(d) and rule 17d-1 thereunder.

SUMMARY OF APPLICATION: Applicants seek an order to permit them to enter into deferred fee arrangements with certain of their directors.

FILING DATE: The application was filed on April 5, 1994 and amended on May 19, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 18, 1994, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such

notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, 1221 Avenue of the Americas, New York, New York 10020.

FOR FURTHER INFORMATION CONTACT: Marc Duffy, Staff Attorney, (202) 942–0565, or Robert A. Robertson, Branch Chief, (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. Each of the Funds is a closed-end management investment company organized as a Maryland corporation.[1] MSAM is a wholly-owned subsidiary of Morgan Stanley Group Inc. and currently serves as the investment adviser for each of the Funds. MSAM is registered under the Investment Advisers Act of 1940.

2. The majority of the members of the board of directors (the "Board") of each fund are not "interested persons" of such Fund within the meaning of section 2(a)(19) of the Act. Each of the directors who is not an "affiliated person" (within the meaning of section 2(a)(3) of the Act) of MSAM (or any other investment adviser or sub-adviser of one or more of the Funds) receives annual fees that collectively are, and are expected to continue to be, insignificant in comparison to the total net assets of the Funds. No director who is an affiliated person of MSAM (or any other investment adviser or sub-adviser of any of the Funds) receives any remuneration from the Funds.

3. Under the deferred fee arrangements (the "Deferred Fee Arrangements"), the directors who receive directors fees from one or more of the Funds (the "Eligible Directors") will be entitled to deter to a later date the receipt of all or part of such fees. The Deferred Fee Arrangements will be implemented by means of a form of deferred fee Agreement (the "Agreement") entered into between an Eligible Director and the appropriate Fund. The purpose of the Agreement will be to permit an Eligible Director to elect to defer receipt of his or her director's fees, to defer payment of income taxes on such fees, or for other reasons. The Funds believes the availability of the proposed Deferred Fee Arrangements will enhance the Funds' ability to attract and retain directors of the same high caliber as those who now serve on their Boards.

4. Under each Agreement, deferred director's fees payable by a Fund will be credited to a book reserve account established by such Fund (the "Deferred Fee Account"). Each Eligible Director may elect to have his or her deferred fees valued as if such fees (and all income earned thereon) had been invested and reinvested either: (i) In shares of the Fund from which such director is receiving the fees, or (ii) at a rate equal to the prevailing rate applicable to 90-day United States Treasury Bills, at the beginning of each calendar quarter for which this rate is in effect. The election made by execution of an Agreement will continue in effect for each subsequent calendar year unless, prior to January 1 of any such year, the Eligible Director delivers to the president of the appropriate Fund a written revocation or modification of such election.

5. Each Agreement provides that the obligation of each Fund to make payments from the Deferred Fee Account will be general obligations of each such Fund and payments made under the Agreement will be made from such Fund's general assets and property. With respect to the obligations created under the Agreements, the relationship of the Eligible Directors to the applicable Funds will be only that of general unsecured creditors. The Funds will be under no obligation to purchase, hold, or dispose of any investments under the Agreements, but, if one or more of the Funds choose to purchase investments to cover their obligations under the Agreements, then any and all such investments will continue to be part of the general assets and property of the Funds.

6. Under each Agreement, deferred director's fees (including the return accrued thereon) will become payable in cash upon such Eligible Director's resignation from the Board of the participating Fund in generally equal annual installments over a period of five years (unless the participating Fund has agreed to a longer payment period) beginning on the first day of the year following the year in which such Eligible Director's resignation occurred. In the event of an Eligible Director's death, remaining amounts payable to him or her under an Agreement will thereafter be payable to his or her designated beneficiary; in all other events, the Eligible Director's right to receive payments will be non-transferable. Each Agreement provides that the Funds in their sole discretion have reserved the right to accelerate payment of amounts in the Deferred Fee Account at any time after the termination of an Eligible Director's service as a director. In the event of the liquidation, dissolution, or winding up of the appropriate Fund or the distribution of all or substantially all of a Fund's assets and property to its shareholders (other than in connection with a reorganization or merger into another Fund), all unpaid amounts in the Deferred Fee Account maintained by such Fund shall be paid in a lump sum to the Eligible Directors.

7. The amounts paid to the Eligible Directors are expected to be insignificant in comparison to the total net assets of each Fund. Accordingly, deferral of director's fees in accordance with the Agreements is expected to have a negligible effect on any Fund's assets, liabilities, net assets, and net income.

Applicants' Legal Conclusions

1. In connection with the adoption and implementation of the Deferred Fee Arrangements, applicants seek an order under section 6(c) of the Act exempting the Funds from sections 13(a)(2), 18(a), 18(c), and 23(a) and under section 17(d) and rule 17d–1 thereunder. The order would permit the Funds to enter into deferred fee arrangements with certain of their directors, and to effect transactions incident to those arrangements. Section 6(c) authorizes the SEC to exempt any person, security, or transaction from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants believe that their proposal meets the section 6(c) standards.

2. Section 18(a) prohibits a registered closed-end investment company from issuing any class of senior security or selling any seniority security of which it is the issuer unless certain requirements are satisfied. In addition, section 18(c), in pertinent part, prohibits a registered closed-end investment company from issuing any senior security representing indebtedness if immediately thereafter such company will have outstanding more than one class of senior security representing indebtedness. Section 13(a)(2) requires each registered investment company to obtain authorization by a vote of a

[1] Although certain closed-end investment companies currently advised by MSAM do not presently intend to rely on the requested order, any such company would be covered by the order if it later proposed to enter into deferred fee arrangements with its directors who are not "affiliated persons" (as such term is defined under section 2(a)(3) of the Act) of MSAM (or any other investment adviser or sub-adviser, of one or more of the applicants), as described in the application.

majority of its outstanding voting securities before issuing any senior securities not contemplated by the recitals of policy contained in its registration statement.

3. Applicants contend that the Deferred Fee Arrangements possess none of the characteristics of senior securities that led Congress to enact sections 18(a), 18(c), and 13(a)(2). The Funds will not be borrowing from the Eligible Directors in the sense that concerned Congress. All liabilities created by credits to the Deferred Fee Account under the Deferred Fee Arrangements are expected to be offset by essentially equal amounts of assets of each Fund that would not otherwise exist if the fees were paid on a current basis. The Deferred Fee Arrangements will not induce speculative investments by any Fund or provide opportunity for manipulative allocation of the expenses and profits of any Fund; control of each Fund will not be affected; and the Deferred Fee Arrangements will not confuse investors or convey a false impression of safety.

4. Section 23(a) prohibits closed-end investment companies from issuing any of their securities for services or for property other than cash or securities. Section 23(a) is concerned primarily with the dilutive effect on the equity and voting power that can result when securities are issued for consideration that is not readily valued. The Deferred Fee Arrangements merely provide for the deferral of directors fees and thus should be viewed as being "issued" not in return for services, but in return for the Funds not being required to pay such fees on a current basis.

5. Section 17(d) and rule 17d–1 thereunder prohibit an affiliated person of a registered investment company, acting as principal, from participating in, or effecting any transaction in connection with, any joint enterprise or other joint arrangement or profit-sharing plan in which such registered company is a participant, without prior receipt of an order of the SEC. Deferral of Eligible Directors' fees in accordance with the Deferred Fee Arrangements will essentially maintain the parties in the same position as if the fees were paid on a current basis. When all payments under the Deferred Fee Arrangements have been made to an Eligible Director, the Eligible Director will be in a position relative to the Fund no better than if any deferred fees had been paid to such Eligible Director on a current basis and invested in shares of the relevant Fund.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–15431 Filed 6–23–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–26068]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

June 17, 1994.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by July 11, 1994, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

PP&L Resources, Inc., (70–8104)

PP&L Resources, Inc. ("Resources"), a Pennsylvania corporation not currently subject to the Act, Two North Ninth Street, Allentown, Pennsylvania, 18101–1179, has filed an application requesting an order (1) approving the direct acquisition by Resources, under sections 9(a)(2) and 10 of the Act, of all of the outstanding shares of common stock of Pennsylvania Power & Light Company ("PP&L"), and, through such acquisition, the indirect acquisition of 33.3% of the outstanding shares of Safe Harbor Waters Power Corporation ("Safe Harbor"), and (2) granting Resources and its subsidiary companies, upon consummation of the proposed transaction, an exemption under section 3(a)(1) of the Act from all provisions of the Act, except section 9(a)(2).

PP&L, a Pennsylvania public-utility company and a public-utility holding company exempt from registration by order of the Commission under section 3(a)(2) of the Act,[1] is principally engaged in the production, transmission, distribution and sale of electricity to approximately 1.2 million customers in central eastern Pennsylvania.[2] Total operating revenues and net income for 1993 were approximately $2.7 billion and $348 million, respectively. As of December 31, 1993, total assets were $9.8 billion.

Safe Harbor, a Pennsylvania corporation, owns and operates a hydroelectric plant on the Susquehanna River. The output of the plant is sold to the companies which own the outstanding capital stock of Safe Harbor, PP&L and Baltimore Gas & Electric Company ("BG&E"). PP&L purchased 139 megawatts of capacity from Safe Harbor in 1993. Its share of Safe Harbor's operating revenues for 1993 was approximately $9.9 million (BG&E's share was approximately $19.7 million). PP&L's share of Safe Harbor's net income for 1993 was $2,121,000 ($21.21 a share).

PP&L proposes to reorganize by forming a holding company over itself. The principal reasons for the proposed restructuring are (1) to establish a more appropriate corporate structure for nonutility activities, both in the United States and abroad, particularly power development activities permitted under the Energy Policy Act of 1992, (2) to facilitate participation in nonutility businesses, (3) to separate the utility and nonutility businesses, thereby providing a better structure for regulators to assure that there is no cross-subsidization of costs or transfer of business risk from unregulated to regulated lines of businesses, (4) to permit the use of financing techniques that are more directly suited to the particular requirements, characteristics and risks of unregulated and nonutility operations without affecting the capital structure or creditworthiness of PP&L, and (5) to provide additional flexibility for financing and for maintaining appropriate capitalization ratios.

Power Markets Development Company ("Power Markets"), a wholly owned subsidiary of CEP Group, Inc.

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[1] *Pennsylvania Power & Light Company*, Holding Co. Act Release No. 19725 (1976).

[2] PP&L, through direct and indirect subsidiary companies, also engages in nonutility businesses, including holding coal reserves, coal mining-related activities, oil pipeline operations, and passive investments.

("CEP"), a wholly owned subsidiary of PP&L engaged in holding passive investments, was formed to conduct PP&L's unregulated business activities. Power Markets was organized on March 9, 1994 and has received temporary funding of a $50 million capital contribution from PP&L.

Under an Agreement and Plan of Exchange ("Plan"), one share of common stock, $0.01 par value, of Resources, a corporation organized to facilitate the reorganization, will be exchanged for each share of common stock, $1.00 par value, of PP&L outstanding ("Exchange") at the effective time of the Plan, and the outstanding shares of the Resources's common stock held by PP&L prior to the effective time of the Plan of Exchange will be cancelled.

Following the Exchange, all of the outstanding common stock of Resources will be owned by the former PP&L common shareholders, and Resources will own all of the outstanding common stock of PP&L. Safe Harbor will remain a subsidiary of PP&L. PP&L will transfer the common stock of CEP to Resources. CEP will then transfer the common stock of Power Markets to Resources and Power Markets will become a direct, wholly owned subsidiary of Resources. It is expected that these transfers will be made in the form of stock dividends. There will be no exchange of the outstanding preferred stock or first mortgage bonds of PP&L in connection with the exchange.

PP&L proposes to submit the Plan to the holders of its common stock for approval at its 1995 annual meeting of shareholders, currently scheduled for April 26, 1995. The proposed Exchange will also require the approval of the Pennsylvania Utility Commission, the Federal Energy Regulatory Commission and the Nuclear Regulatory Commission ("NRC") will be requested to consent to the *de jure* transfer of NRC licenses.

The application states that following the restructuring, Resources and its subsidiaries will meet the requirements for an exemption under section 3(a)(1). Resources, PP&L and Safe Harbor are and will continue to be predominantly intrastate in character and will continue to carry on their business substantially in Pennsylvania, the State in which they are organized.

Central and South West Corporation, et al. (70-8133)

Central and South West Corporation ("CSW"), a registered holding company, and its nonutility subsidiaries, CSW Energy, Inc. ("Energy"), CSW Development-I, Inc. ("Energy Sub") and CSW Orange, Inc. ("CSWO"), each located at 1616 Woodall Rodgers Freeway, Dallas, Texas 75202, and ARK/CSW Development Partnership ("Joint Venture"), Orange Cogeneration Limited Partnership ("Project Venture") and Orange Cogeneration G.P., Inc. ("JV Sub"), each located at 23046 Avenida de la Carlota, Suite 400, Laguna Hills, California 92653 (collectively, "Applicants"), have filed a post-effective amendment under sections 6(a), 7, 9(a), 10, 12(b), and 12(f) of the Act and rules 43, 45, and 51 thereunder to their application-declaration filed under sections 6(a), 7, 9(a), 10 and 12(b) of the Act and rules 45 and 51 thereunder.

By order dated April 15, 1993 (HCAR No. 25796) ("1993 Order"), the Commission authorized the Applicants to form CSWO, JV Sub and the Project Venture, and to purchase a 103 megawatt qualifying cogeneration facility located in or near Bartow, Florida ("Project") from certain third parties. The Commission also authorized the Applicants to incur certain development expenses not to exceed $7 million in connection with the Project.

By order dated February 9, 1994 (HCAR No. 25988) ("1994 Order"), the Commission authorized the Applicants to obtain a credit facility ("Credit Facility") for the construction and operation of the Project in an amount up to $140 million. The Commission also authorized an investment in the Project Venture by a third party ("New Limited Partner") in lieu of term financing for the Project. The Applicants were authorized to advance certain funds ("Advances"), in the event the Project Venture is unable to obtain third party Project financing prior to the start of Project construction, in the form of loans, open account advances or additional equity contributions to the Project Venture from Energy in an aggregate amount not to exceed $125 million. In addition, the Commission authorized the issuance of corporate guaranties by the Applicants or stand-by letters of credit with the Applicants as account party in an amount not to exceed $50 million, such guaranties or letters of credit to support payment obligations of the Project Venture required by the provider of third party financing for the Project or fuel suppliers, fuel transportation or other third parties under various project agreements.

The Applicants now propose that Energy Sub organize a new special purpose wholly owned subsidiary under Delaware law, CSW Orange II, Inc. ("Orange LP Sub"). Orange LP Sub would have an authorized capital of up 1,000 shares of common stock, no par value. Energy Sub will assign to Orange LP Sub all of Energy Sub's right, title and interest in and to CSWO ("Assignment"). In exchange for the Assignment, Energy Sub would subscribe to all of Orange LP Sub's common stock.

The Applicants also propose that Joint Venture organize another special purpose wholly owned subsidiary under Delaware law, Orange Cogeneration GP II, Inc. ("Orange GP Sub"). Orange GP Sub would have an authorized capital of up to 1,000 shares of common stock, no par value. As above, Joint Venture proposes to assign to Orange GP Sub of all of its right, title and interest in and to JV Sub. Joint Venture would subscribe to all of Orange GP Sub's common stock.

The Applicants represent that organization of Orange LP Sub and Orange GP Sub will limit the liability of Energy and the Joint Venture in connection with other projects held by them and in the event that Project Venture defaults on its repayment obligations under the Credit Facility.

In the event that Orange LP Sub and Orange GP Sub are formed, the Applicants seek to include Orange LP Sub and Orange GP Sub in the flow of funds for equity contributions, open account advances and intercompany loans on the terms and in the manner authorized by the 1993 Order and 1994 Order.

The Applicants seek to organize Orange LP Sub and Orange GP Sub in order to aid in the procurement of the Credit Facility. It is anticipated that a pledge of the stock of CSWO and JV Sub by Energy Sub and the Joint Venture, respectively, will be required in connection with the Credit Facility.

If, as is anticipated, Orange LP Sub is assigned the stock of CSWO held by Energy Sub and Orange GP Sub is assigned the stock of JV Sub held by the Joint Venture, Orange LP Sub and Orange GP Sub would provide such pledges in lieu of such pledges by Energy Sub and the Joint Venture, respectively. The Applicants represent that, in the event that Orange LP Sub and Orange GP Sub become liable in connection with any such pledge, the interests of Energy Sub and the Joint Venture that are not associated with the Project will be protected.

Central and South West Corporation, et al. (70–8209)

Central and South West Corporation ("CSW"), a registered holding company, and CSW Energy, Inc. ("Energy"), its wholly owned nonutility subsidiary, both located at 1616 Woodall Rodgers

Freeway, P.O. Box 660164, Dallas, Texas 75202, have filed an application-declaration under Sections 6(a), 7, 9(a), 10 and 12(b) of the Act and Rules 45, 51 and 53 thereunder.

Pursuant to a letter of intent ("Letter of Intent") entered into on January 4, 1993,[3] CSW and Energy seek to enter into a joint venture ("Joint Venture") with Pentech Energy, Inc., a Delaware corporation ("Pentech"). The Joint Venture, which will be a general partnership whose general partners will be Pentech and a new subsidiary of Energy discussed below, will develop, construct, own and operate power projects, including: (1) Independent power projects that would constitute a part of CSW's "integrated public utility system" within the meaning of Section 2(a)(29)(A) of the Act; (2) qualifying facilities within the meaning of the Public Utility Regulatory Policies Act of 1978; and (3) exempt wholesale generators within the meaning of section 32(e) of the Act (collectively, "Facilities"). Joint Venture has specific plans to develop an energy facility ("Avon Lake Project") in Ohio through a limited partnership ("Project Partnership") to be organized.

Joint Venture will also, directly or indirectly, own and hold the securities and interests of special purpose corporations and partnerships ("Project Entities"). Energy, Energy Sub and the Joint Venture will seek the prior approval of the Commission, to the extent required by the Act, to invest initially in any particular Project Entity (other than the entities described below and the Project Venture and the Project Partnership, or any EWG) and to construct, own and operate Facilities (other than the Avon Lake Project).

CSW and Energy seek to make investments of up to $15 million in the Joint Venture. CSW and Energy also seek to acquire an interest in, and make advances to, Project Partnership. All investments, whether in the form of equity contributions, loans, development payments, or otherwise, will be included in the aggregate investment authority of $15 million ("Joint Venture Investment").

Energy will organize a new wholly owned subsidiary company ("Energy Sub") under Delaware law to make its investment in the Joint Venture. Energy will subscribe to all of Energy Sub's 1,000 shares of common stock, no par value, at $1.00 per share.

CSW proposes to make, through Energy and Energy Sub to Joint Venture, capital contributions, loans, open account advances and associated guarantees in an aggregate amount of up to $15 million, from time to time through December 31, 1995, to facilitate Energy Sub's investment in the Joint Venture.

Any advances or loans ("Loans") will have an interest rate per annum not in excess of Mellon Bank's prime commercial lending rate as announced from time to time plus four percentage points ("Maximum Interest Rate") and a final maturity not to exceed twenty years. The loans or advances will be repaid upon the earlier of, and from the proceeds of: (i) Construction- and/or term loan closing of any Facility developed or owned by the Joint Venture (directly or indirectly); (ii) the sale, lease or other disposition by the Joint Venture (directly or indirectly) of its interest in any Facility; or (iii) any financing, disposition or distribution of any project received by the Joint Venture, in which the Joint Venture has an interest (including a Facility).

Energy will own 65%,[4] and Pentech will own 35%, of each Facility to be developed by the Joint Venture. Energy does not anticipate owning less than 50% of facilities being developed by Pentech in partnership with other entities; however, the exact percentage will be subject to negotiation.[5]

Energy Sub will pay Pentech all the prior substantiated development expenses of the Facilities selected for the Joint Venture's development. The payment will serve as a development loan ("Development Loan") with interest compounded annually at the Maximum Interest Rate. The Development Loan will be repaid upon the earlier of, and from the proceeds of: (i) Construction- and/or term-loan closing of any Facility developed or owned by Pentech (directly or indirectly); (ii) the sale, lease or other disposition by Pentech or its affiliates of its interest in any Facility; or (iii) any financing, disposition or distribution received by Pentech or its affiliates of any project in which Pentech or any such affiliate has an interest (including the Facilities and regardless of whether Energy or any of its affiliates has participated in the development of any such project).

It is expected that Energy Sub will pay the budgeted development expenses for the Facilities. This payment also will be considered a Development Loan and will have the same repayment and interest terms.

It is further proposed that, based upon each Facility's development budget, Energy Sub will directly or indirectly fund, through loans, external development costs not otherwise funded. Energy Sub and Pentech will each pay its own internal development cost.[6] These external development costs will be repaid in the same manner, and with the same interest, as the Loans.

Energy Sub will, directly or indirectly, contribute each Facility's equity requirement (including any equity commitment of Pentech in the form of the Development Loans) not otherwise underwritten at the construction-loan closing; provided, however, that the equity requirement for each Facility will not exceed 20% if the total cost of each Facility. Pentech will arrange for its *pro rata* equity commitment not later than six months prior to the commencement of such Facility's commercial operation.

The Avon Lake Project is currently being developed by Avon Lake Partnership, a California limited partnership ("Project Venture").[7] The Project Venture is currently owned by Pentech Power Corporation, a Delaware corporation ("Pentech GP"), which is a ten percent (10%) general partner of the Project Venture, and by Avon Lake, Inc., a Delaware corporation ("Pentech LP"), which is a ninety percent (90%) limited partner of the Project Venture. Pentech GP and Pentech LP are both wholly owned by Pentech, which is in turn owned by the ultimate corporate parent of the group, Pentech Enterprises, Inc., also a Delaware corporation ("Pentech Enterprises"). None of these entities is an affiliate of CSW.

To hold its interest in the Avon Lake Project, Energy Sub will organize two new wholly owned subsidiaries under Delaware law: (i) CSWE Avon Lake GP, Inc. ("CSWE GP") and (ii) CSWE Avon Lake LP, Inc., a Delaware corporation ("CSWE LP").[8] Energy Sub (or Energy

[3] The Letter of Intent, between Energy, Pentech Energy, Inc., and Pentech Enterprises, Inc., was subsequently amended on February 28, 1993 and on March 3, 1993

[4] Energy may hold its ownership interests indirectly through subsidiaries. In addition, ownership may be held by persons or entities to whom Energy may sell its interests.

[5] In addition, to the extent the Facilities will be qualifying facilities under the Public Utility Regulatory Policies Act of 1978 ("PURPA"), Energy will not acquire or retain an ownership interest in excess of the maximum level consistent with qualifying facility status.

[6] Pentech's development costs will be paid by the Development Loan.

[7] The Project, which is still in the planning stage, is currently contemplated to be an exempt wholesale generator under the Act and/or a qualifying facility under PURPA. The Project Venture is negotiating contracts for the acquisition of certain rights to develop the Project, and it is contemplated that the construction of the Project will commence in 1995, and be completed in 1997

[8] Energy Sub will own CSWE LP and CSWE GP either directly or indirectly through a wholly owned special purpose subsidiary or affiliate

Continued

GP Sub) will subscribe to all of CSWE GP's 1,000 shares of common stock, no par value, at $1.00 per share, and Energy Sub (or Energy LP Sub) will subscribe to all of CSWE LP's 1,000 shares of common stock, no par value, at $1.00 per share.[9]

CSWE GP and CSWE LP will require an interest in the Avon Lake Project in the following steps: (1) CSWE GP will acquire a general partnership interest in the Project Venture from Pentech GP, for the purchase price of $1,000, pursuant to a to-be-negotiated subscription agreement ("Subscription Agreement"); (2) CSWE LP will acquire a limited partnership interest in the Project Venture from Pentech LP, for the purchase price of $1,000, pursuant to the Subscription Agreement; (3) Pentech GP, Pentech LP, CSWE GP, CSWE LP and Siemens Power Ventures, Inc., a nonaffiliate Delaware corporation ("Siemens") will execute a to-be-negotiated Amended and Restated Agreement of Limited Partnership; (4) the Project Venture will change its name from "Avon Lake Partnership, a California limited partnership" to "Avon Lake Limited Partnership"; and (5) the Project Venture will be reorganized as a limited partnership under Delaware law. The Project Venture will thereupon become the Project Partnership.

Alternatively, CSWE GP, CSWE LP, Pentech GP, Pentech LP and Siemens (directly or indirectly) will form the Project Partnership and merge the Project Venture into the Project Partnership such that the resulting entity is the Project Partnership.

Upon the organization of the entities and/or purchase of the interests in the Project Venture, each entity will bear the following relationship to the others. Pentech GOP will hold a 1% general partnership interest in the Project Partnership; CSWE Avon Lake GP will hold a 1% general partnership interest in the Project Partnership; Pentech LP will hold a 9% limited partnership interest in the Project Partnership; CSWE LP will hold a 49% limited partnership interest in the Project Partnership; and Siemens will hold a 1% general partnership interest and a 39% limited partnership interest in the Project Partnership.

Energy and the Project Partnership may incur certain development expenses ("Development Expenses") in connection with the Avon Lake Project. The total amount of the Development Expenses will not exceed such amount to be included in the Joint Venture Investment.

Energy will fund its *pro rata* share of the Development Expenses (whether incurred pursuant to the Subscription Agreement or otherwise) by capital contributions, loans or open account advances to the Project Partnership (directly or indirectly), by capital contributions, loans or open account advances from Energy to Energy Sub; from Energy Sub to Energy GP (if formed) and/or Energy LP Sub (if formed) or to CSWE GP and/or CSWE LP; from Energy GP Sub (if formed) to CSWE GP; from Energy LP Sub (if formed) to CSWE LP; and from CSWE GP and/or CSWE LP to the Project Partnership. Loans or advances extended for the purpose of funding the Development Expenses will be repaid with the same interest and repayment terms as the Loans.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–15359 Filed 6–23–94; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket 49547; Order 94–6–28]

Order Suspending Certain Air Service to and From Haiti

SUMMARY: We are publishing the order in its entirety as an appendix to this document.

DATES: Issued in Washington, DC, June 17, 1994.

EFFECTIVE DATE: June 20, 1994.

FOR FURTHER INFORMATION CONTACT: Peter Bloch, U.S. Department of Transportation, Office of the Assistant General Counsel for International Law, Room 10105, 400 Seventh Street, S.W., Washington, D.C. 20590. (202) 366–9183.

Patrick V. Murphy,

Acting Assistant Secretary for Aviation and International Affairs.

Order

By this order, we amend all certificates, permits, and exemptions necessary to suspend regularly scheduled commercial passenger flights of U.S. and Haitian air carriers between the U.S. and Haiti.

In Order 94–5–18, issued May 11, 1994, we found that the public interest required the regulatory prohibition of charter passenger and scheduled and charter all-cargo air services between the United States and Haiti except those flights that may be permitted pursuant to an Executive Order.[1] By Memorandum for the Secretary of Transportation issued on June 10, 1994, the President determined that it is in the essential foreign policy interests of the United States that additional action be taken regarding air transportation to Haiti, including the suspension of regularly scheduled commercial passenger flights of U.S. and Haitian air carriers between the U.S. and Haiti.

In light of the President's memorandum, we tentatively found in Order 94–6–21, issued on June 13, 1994, that the public interest required the regulatory prohibition of scheduled passenger air services of U.S. and Haitian air carriers between the United States and Haiti except those flights that may be permitted pursuant to the June 10, 1994, Presidential Memorandum.

In that order we proposed to add the following conditions to all U.S. air carrier certificates, all section 402 permits held by Haitian air carriers, and all exemptions held by U.S. and Haitian air carriers (these requirements would apply to indirect as well as direct air carriers):

Effective 11:59 p.m., Eastern Daylight Time on June 24, 1994, and until further order of the Department, the holder and its agents may not engage in scheduled passenger air transportation which includes a stop in Haiti.

As we stated in Order 94–6–21, under section 401(g) of the Act, the Department may alter, amend, modify or suspend any certificate if required by the public convenience and necessity. Section 401(e)(1) provides that the Department shall attach to the privileges granted by the certificate "such reasonable terms, conditions, and limitations as the public interest may require." Section 402 of the Act provides that the permits of foreign air carriers may be conditioned, amended or suspended if the Department determines that such an action would be in the public interest. Exemptions granted by the Department are granted subject to the public interest and may be

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companies to be organized under Delaware law ("Energy LP Sub" and "Energy GP Sub," respectively).

[9] Energy Sub will also subscribe to all of Energy GP Sub's and Energy LP Sub's and Energy LP Sub's 1,000 shares of common stock, no par value, at $1.00 per share, assuming these companies are organized.

[1] Our order was issued pursuant to Executive Order 12914, issued May 7, 1994, wherein the President ordered that certain economic sanctions be imposed against Haiti, including the suspension of certain air services operated between the United States and Haiti, in order to take additional steps with respect to the actions and policies of the de facto regime in Haiti beyond those steps taken in Executive Orders 12775, 12779, 12853 and 12872.

amended, modified or revoked at any time without a hearing. In view of the foreign policy concerns present, we tentatively found that this proposed action is required by both the public interest and the public convenience and necessity.

Comments in response to this order were required to be filed with the Department no later than 5:00 p.m., Wednesday, June 15, 1994. No comments were filed. Accordingly, we have decided to make final the tentative findings and conclusions in Order 94–6–21.

Accordingly

1. All U.S. air carrier certificates, all section 402 permits held by Haitian air carriers, and all exemptions held by U.S. and Haitian air carriers are hereby amended to add the following condition:

Effective 11:59 p.m., Eastern Daylight Time on June 24, 1994, and until further order of the Department, the holder and its agents may not engage in scheduled passenger air transportation which includes a stop in Haiti.

2. Effective 11:59 p.m., Eastern Daylight Time on June 24, 1994, and until further order of the Department, no indirect air carrier may engage in scheduled passenger air transportation which includes a stop in Haiti;

3. Unless disapproved by the President of the United States under section 801 of the Federal Aviation Act, this order and the certificate and permit amendments contained herein shall become effective on the 61st day after its submission for section 801 review or upon date of receipt of advice from the President or his designee under Executive Order 12597 and implementing regulations that the President does not intend to disapprove the Department's order under that section, whichever occurs earlier;[2]

4. We shall serve a copy of this order upon all U.S. and Haitian air carriers holding certificates of public convenience and necessity, foreign air carrier permits, or exemption authority, the Air Transport Association, the National Air Carrier Association, the International Air Transport Association, the American Society of Travel Agents, the Association of Retail Travel Agents, the Air Freight Association, the Ambassador of the Republic of Haiti in Washington, D.C., the Federal Aviation Administration, and the United States Department of State; and

5. We will publish this order in the **Federal Register.**

Patrick V. Murphy,

Acting Assistant Secretary for Aviation and International Affairs.

[FR Doc. 94–15375 Filed 6–23–94; 8:45 am]

BILLING CODE 4910–62–P

[2] This order was submitted for section 801 review on June 17, 1994. On June 20, 1994, we received notification that the President's designee under Executive Order 12597 and implementing regulations did not intend to disapprove the Department's order.

Coast Guard

[CGD 94–049]

Annual Certification of Cook Inlet Regional Citizens' Advisory Council

AGENCY: Coast Guard, DOT.

ACTION: Notice.

SUMMARY: Under the Oil Terminal and Oil Tanker Environmental Oversight and Monitoring Act of 1990, the Coast Guard may certify, on an annual basis, a voluntary advisory group in lieu of a Regional Citizen's Advisory Council for Cook Inlet, Alaska. This certification allows the advisory group to monitor the activities of oil tankers and facilities under the Cook Inlet Program established by the Act. The purpose of this notice is to inform the Public that the Coast Guard has recertified the alternative voluntary advisory group for Cook Inlet, Alaska.

EFFECTIVE DATE: June 1, 1994 through May 3, 1995.

FOR FURTHER INFORMATION CONTACT: Mrs. Janice Jackson, Project Manager, Marine Environmental Protection Division, (G–MEP–3), (202) 267–0500, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001.

SUPPLEMENTARY INFORMATION: As part of the Oil Pollution Act of 1990, Congress passed the Oil Terminal and Oil Tanker Environmental Oversight and Monitoring Act of 1990, (the Act), 33 U.S.C. 2732, to foster the long-term partnership among industry, government, and local communities in overseeing compliance with environmental concerns in the operation of crude oil terminals and oil tankers.

Section 2732(o) permits an alternative voluntary advisory group to represent the communities and interests in the vicinity of the oil terminal facilities in Cook Inlet, in lieu of a council of the type specified in 33 U.S.C. 2732(d), if certain conditions are met. The Act requires that the group enter into a contract to ensure annual funding and receive annual certification by the President that it fosters the general goals and purposes of the Act and is broadly representative of the community and interests in the vicinity of the terminal facilities. Accordingly, in 1991, the President granted certification to the Cook Inlet Regional Citizens' Advisory Council (CIRCAC). The authority to certify alternative advisory groups was subsequently delegated to the Commandant of the Coast Guard, and redelegated to the Chief, Office of Marine Safety, Security and Environmental Protection.

On April 19, 1994, the Coast Guard announced in the **Federal Register**, the availability of the application for recertification that it received from the CIRCAC, and requested comments (59 FR 18592). No comments were received. The Coast Guard reviewed the application in accordance with the policy statement published on July 7, 1993 in the **Federal Register** (58 FR 36505).

Recertification

By letter dated June 1, 1994, the Chief, Office of Marine Safety, Security and Environmental Protection certified that the Prince William Regional Citizens' Advisory Council qualifies as an alternative voluntary advisory group under the provisions of 33 U.S.C. 2732(o). This recertification terminates on May 31, 1995.

Dated: June 15, 1994.

J.F. McGowan,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 94–15391 Filed 6–23–94; 8:45 am]

BILLING CODE 4910–14–M

[CGD 94–051]

Differential Global Positioning System, Northwest Region; Environmental Assessment

AGENCY: Coast Guard, DOT.

ACTION: Notice of availability.

SUMMARY: The Coast Guard has prepared a Programmatic Environmental Assessment (EA) and findings of No Significant Impact (FONSI) for implementing a Differential Global Positioning System (DGPS) Service in the Northwest Region of the United States. The EA concluded that there will be no significant impact on the environment and that preparation of an Environmental Impact statement will not be necessary. This notice announces the availability of the EA and FONSI and solicits comments on them.

DATES: Comments must be received on or before July 25, 1994.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety

Council, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, or may be delivered to room 3406 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

Copies of the EA and FONSI may be obtained by contacting LTJG Randy Navarro at (202) 267–1058 or faxing a request at (202) 267–4427. A copy of the EA (less enclosures) is also available on the Electronic Bulletin Board System (BBS) at the GPS Information Center (GPSIC) in Alexandria, VA, (703) 313–5910. For information on the BBS, call the GPSIC watchstander at (703) 313–5900.

FOR FURTHER INFORMATION CONTACT:

LTJG Randy Navarro, Radionavigation Division, (202) 267–1048.

SUPPLEMENTARY INFORMATION:

Request for Comments

Copies of the Programmatic Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) are available as described under **ADDRESSES.** The Coast Guard encourages interested persons to comment on these documents. The Coast Guard may revise these documents in view of the comments. If revisions are warranted, availability of the revised documents will be announced by a later notice in the **Federal Register**.

Background

as required by Congress, the Coast Guard is preparing to install the equipment necessary to implement a Differential Global Positioning System (DGPS) service in the northwest area of the United States. DGPS is a new radionavigation service that improves upon the 100 meter accuracy of the existing Global Positioning System (GPS) to provide an accuracy of better than 10 meters. For vessels, this degree of accuracy is critical for precise electronic navigation in harbors and harbor approaches and will reduce the number of vessel groundings, collisions, personal injuries, fatalities, and potential hazardous cargo spills resulting from such incidents.

After extensive study, the Coast Guard has selected three sites along the northwest coastline for the DGPS equipment. The sites are in the vicinity of Fort Stevens, OR; Robinson Point, WA; and Whidbey Island, WA. The sites are used already for related purposes and were chosen, in part, because their proposed use is consistent with their past and present use, thus minimizing further impact on the environment. DGPS signal transmissions will be broadcast in the marine radiobeacon frequency band (283.5 to 325 KHz) using less than 40 watts (effective radiated power). Signal transmissions at these low frequency and power levels have not been found to be harmful to the surrounding environment.

Proposed Installations at Each Site

(a) Radiobeacon Antenna—The Coast Guard proposes to use either an existing antenna or install a 90 foot guyed antenna with an accompanying ground plane. A ground plane for this 90 foot antenna consists of approximately 120 copper radials (6 guage copper wire) installed 6 inches (or less) beneath the soil and projecting outward from the antenna base. The optimum radial length is 300 feet, but this length may be shortened to fit within property boundaries. Wherever possible, a cable plow method will be used in the radial installation to minimize soil disturbance. Installation of the ground plane may require some clearing of trees and bushes on the site.

(b) DGPS Antennas—Each site will require two 10 foot masts to support four small (4 inches by 18 inches diameter) receiving antennas. The masts will be installed on a concrete foundation measuring approximately 3 feet by 3 feet by 15 inches. These masts are needed to support the primary and backup reference receivers and integrity monitors. The location of the two masts will be in the vicinity of the electronic equipment building or hut, but at least 50 feet to 100 feet from existing structures. At Whidbey Island, WA, mast height must be increased to approximately 40 feet to ensure that the visibility of satellites is not blocked by existing structures.

(c) Equipment shelter—At each site, a 10 foot by 16 foot equipment hut will be needed to house the DGPS equipment.

(d) Utilities—The Coast Guard proposes to use available commercial power as the primary source for the electronic equipment. However, existing diesel generators are available at each of the proposed sites, if backup power is needed. A telephone line will be required at each site for remote monitoring and operation.

Description of Each Site

The Fort Steven, OR, site is located at the mouth of the Columbia River near Hammond, OR. The Coast Guard and OR State Historic Preservation Officer (SHPO) agree that the proposed project will have no effect on the historic property. The site will require installation of a 90 foot guyed transmit antenna and a 10 foot by 16 foot equipment building to house DGPS transmitting equipment.

The Robinson Point, WA, site will be collocated at the Robinson Point Lighthouse on Maury Island, near the town of Burton, WA. The lighthouse is listed in the National Register of Historic Places. The Coast Guard and WA SHPO agree that the proposed project will have no adverse effect on the historic property. This site is currently being used for radiobeacon operations and, as a result, has much of the infrastructure in place. The existing transmitting antenna will be used for DGPS transmissions. A 10 foot by 16 foot equipment hut will be installed to house the DGPS electronic equipment.

The Whidbey Island, WA, site will be collocated at the U.S. Naval Communication Station Detachment (NAVCOMSTADET), Whidbey Island. This site has been used for related operations in the past and, as a result, has much of the infrastructure in place. There is an existing antenna available that will be used for DGPS transmissions. DGPS electronic equipment will be housed in an existing equipment building.

Implementattion of a DGPS service in the Northwest Region is determined to have no significant effect on the quality of the human environment or requirement preparation of an Environmental Impact Statement.

Dated: June 16, 1994.

R.C. Houle,

Acting Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 94–15392 Filed 6–23–94; 8:45 am]

BILLING CODE 4910–14–M

Federal Aviation Administration

Notice of Closing of Program Solicitation No. 93.1, Grants for Aviation Research

AGENCY: Federal Aviation Administration. DOT.

ACTION: Notice of closing of solicitation.

SUMMARY: The Federal Aviation Administration (FAA) announces the closing of Program Solicitation No. 93.1, Grants for Aviation Research, effective August 5 1994. No proposals for Aviation Research Grants received after the closing date will be considered for award under Program Solicitation No. 93.1. The FAA intends to publish a new solicitation sometime after November 4, 1994.

The FAA has the authority to solicit proposals and award grants and cooperative agreements to address the

long-term technical needs of the National Airspace System (NAS) pursuant to Section 9205, Aviation Research Grant Program, and Section 9208, Catastrophic Failure Prevention Research Program, of the Federal Aviation Administration Research, Engineering, and Development Authorization Act of 1990 (Pub. L. 101–508) and Section 107 of the Aviation Security Improvement Act of 1990 (Pub. L. 101–604).

ADDRESSES: Inquiries regarding this subject matter should be directed to: Dr. Fred W. Snyder, Grants Officer, Office of Research and Technology Applications, ACL–1, Federal Aviation Administration Technical Center, Atlantic City International Airport, NJ 08405, Phone Number: (609) 485–5769 or (609) 485–5777, Fax Number: (609) 485–6509.

Harvey B. Safeer,

Director, FAA Technical Center, ACT–1.

[FR Doc. 94–15406 Filed 6–23–94; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement: Snohomish County, WA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Rescission of notice of intent.

SUMMARY: This notice rescinds the previous notice of intent issued on June 4, 1993, to prepare an Environmental Impact Statement (EIS) for a proposed highway project to improve 35th Avenue SE from 100th Street SE to Seattle Hill Road in Snohomish County, Washington.

FOR FURTHER INFORMATION CONTACT: Sharon R. Price, Area Engineer, Federal Highway Administration, Evergreen Plaza Building, 711 South Capitol Way, Suite 501, Olympia, Washington, 98501, Telephone: (206) 753–9558; Jerry W. Alb, Manager, Environmental Affairs Office, Washington State Department of Transportation, Transportation Building, Olympia, Washington, 98504, Telephone: (206) 705–7480; or John Andrews, Environmental Planner, Snohomish County Department of Public Works, 2930 Wetmore Avenue, Everett, Washington, 98201, Telephone: (206) 388–3488.

SUPPLEMENTARY INFORMATION: Snohomish County has decided not to pursue Alternative 3 that would widen 35th Avenue SE between 132nd Avenue SE and 100th Avenue SE from two to four lanes. As a result of this, the environmental studies conducted to date, and coordination with the U.S. Army Corps of Engineers; the FHWA, the Washington State Department of Transportation (WSDOT) and Snohomish County have determined that the project will probably not result in any significant impacts to the environment. An Environmental Assessment (EA) will be prepared on the proposal rather than an EIS.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of federal programs and activities apply to this program.)

Issued on: June 16, 1993.

José M. Miranda,

Environmental Program Manager, Olympia, Washington.

[FR Doc. 94–15367 Filed 6–23–94; 8:45 am]

BILLING CODE 4910–22–M

Intelligent Vehicle-Highway Society of America; Public Meeting

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of public meeting.

SUMMARY: The Intelligent Vehicle-Highway Society of America (IVHS AMERICA) will hold a meeting of its Board of Directors on August 1, 1994. The session is expected to focus on: (1) Report of the International Liaison Committee including IVHS World Congresses; (2) Report of the Membership Committee; (3) Actions Regarding Changing the Name of IVHS AMERICA; (4) Joint IVHS Program Planning and IVHS AMERICA Program Advice; (5) Identification of Early Deployment Possibilities; (6) Organizational Review Task Group Report Recommendations; (7) Board of Directors Policy Manual; (8) Procedures for Submission of Docket Comments for Communications Spectrum; (9) IVHS AMERICA Role in Public/Private Initiatives; (10) IVHS AMERICA System Architecture Role; and (11) IVHS AMERICA Regional Chapters Program.

DATES: The Board of Directors of IVHS AMERICA will meet on August 1 from 8:30 a.m. to 3 p.m., e.t.

ADDRESSES: J. Erik Jonsson, Woods Hole Center, 314 Quissett Avenue, Woods Hole, Massachusetts 02543, (508) 548–3760.

FOR FURTHER INFORMATION CONTACT: Materials associated with this meeting may be examined at the offices of IVHS AMERICA, 400 Virginia Avenue SW., suite 800, Washington, D.C. 20024. Persons desiring further information or to request to speak at this meeting should contact Ms. Dee Hamill at IVHS AMERICA by telephone at (202) 484–4548, or by FAX at (202) 484–3483. The DOT contact is Mr. Gary Euler, FHWA, HTV–10, Washington, DC 20590, (202) 366–2201. Office hours are from 7:30 a.m. to 4 p.m., e.t., Monday through Friday, except for legal Federal holidays.

SUPPLEMENTARY INFORMATION: IVHS AMERICA provides a forum for national discussion and recommendations on IVHS activities including programs, research needs, strategic planning, standards, international liaison, and priorities. The charter for the utilization of IVHS AMERICA establishes this organization as an advisory committee under the Federal Advisory Committee Act (FACA), 5 U.S.C. app. 2, when it provides advice or recommendations to DOT officials on IVHS policies and programs. 56 FR 9400, March 6, 1991.

(23 U.S.C. 315; 49 CFR 1.48)

Issued on: June 15, 1994.

Rodney E. Slater,

Federal Highway Administrator.

[FR Doc. 94–15422 Filed 6–23–94; 8:45 am]

BILLING CODE 4910–22–P

Intelligent Vehicle-Highway Society of America; Public Meeting

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of public meeting.

SUMMARY: The Intelligent Vehicle-Highway Society of America (IVHS AMERICA) will hold a meeting of its Coordinating Council on July 26, 1994. The session is expected to focus on: (1) National Intelligent Vehicle-Highway Systems (IVHS) Program Plan Report; (2) IVHS AMERICA Organizational Study; (3) Coordinating Council Charter Review and Handbook; (4) Operating Procedures for the Standards and Protocols Committee; (5) Plans for the IVHS AMERICA Board of Directors Retreat; (6) October Coordinating Council Agenda; and (7) Systems Architecture Video.

DATES: The Coordinating Council of IVHS AMERICA will meet on July 26 from 8:30 a.m. to 3 p.m. e.t.

ADDRESSES: Hyatt Regency Reston, Reston Town Center, 1800 Presidents Street, Reston, VA 22090, (703) 709–1234.

FOR FURTHER INFORMATION CONTACT: Materials associated with this meeting may be examined at the offices of IVHS AMERICA, 400 Virginia Avenue SW., suite 800, Washington, DC 20024. Persons desiring further information or to request to speak at this meeting

should contact Ms. Dee Hamill at IVHS AMERICA by telephone at (202) 484–4548, or by FAX at (202) 484–3483. The DOT contact is Ms. Susan Lauffer, FHWA, HTV–1, Washington, DC 20590, (202) 366–0372. Office hours are from 8 a.m. to 4:30 p.m., e.t., Monday through Friday, except for legal Federal holidays.

SUPPLEMENTARY INFORMATION: IVHS AMERICA provides a forum for national discussion and recommendations on IVHS activities including programs, research needs, strategic planning, standards, international liaison, and priorities. The charter for the utilization of IVHS AMERICA establishes this organization as an advisory committee under the Federal Advisory Committee Act (FACA), 5 U.S.C. app. 2, when it provides advice or recommendations to DOT officials on IVHS policies and programs. 56 FR 9400, March 6, 1991.

(23 U.S.C. 315; 49 CFR 1.48)

Issued on: June 15, 1994.

Rodney E. Slater,

Federal Highway Administrator.

[FR Doc. 94–15421 Filed 6–23–94; 8:45 am]

BILLING CODE 4910–22–P

Intelligent Vehicle-Highway Society of America; Public Meeting

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of public meeting.

SUMMARY: The Intelligent Vehicle-Highway Society of America (IVHS AMERICA) will hold a meeting of its Planning Committee Council on July 24 and 25, 1994. The session is expected to focus on: (1) Discussion of a draft report illustrating how the draft National Program Plan for Intelligent Vehicle Highway Systems (IVHS) could be used to facilitate the preparation of advice to the Department of Transportation on its future IVHS program; and (2) Presentation and discussion of issues raised through the review of the May 1994 second draft of the National Program Plan for IVHS.

DATES: The Planning Committee Council of IVHS AMERICA will meet on July 24 from 4 p.m. to 8 p.m., e.t., and on July 25 from 7:30 a.m. to 5:30 p.m., e.t.

ADDRESSES: Hyatt Regency Reston, Reston Town Center, 1800 Presidents Street, Reston, VA 22090, (703) 709–1234.

FOR FURTHER INFORMATION CONTACT: Materials associated with this meeting may be examined at the offices of IVHS AMERICA, 400 Virginia Avenue SW., suite 800, Washington, DC 20024. Persons desiring further information or to request to speak at this meeting should contact Ms. Dee Hamill at IVHS AMERICA by telephone at (202) 484–4548, or by FAX at (202) 484–3483. The DOT contact is Mr. Gary Euler, FHWA, HTV–10, Washington, DC 20590, (202) 366–2201. Office hours are from 8 a.m. to 4:30 p.m., e.t., Monday through Friday, except for legal Federal holidays.

SUPPLEMENTARY INFORMATION: IVHS AMERICA provides a forum for national discussion and recommendations on IVHS activities including programs, research needs, strategic planning, standards, international liaison, and priorities. The charter for the utilization of IVHS AMERICA establishes this organization as an advisory committee under the Federal Advisory Committee Act (FACA), 5 U.S.C. app. 2, when it provides advice or recommendations to DOT officials on IVHS policies and programs. 56 FR 9400, March 6, 1991.

(23 U.S.C. 315; 49 CFR 1.48)

Issued on: June 15, 1994.

Rodney E. Slater,

Federal Highway Administrator.

[FR Doc. 94–15420 Filed 6–23–94; 8:45 am]

BILLING CODE 4910–22–P

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit "Nineteenth-Century German, Austrian and Hungarian Drawings from Budapest" (see list),* imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with a foreign lender. I also determine that the temporary exhibition or display of the listed exhibit objects at the Cleveland Museum of Art, Cleveland, Ohio, beginning on or about July 12, 1994, to on or about August 28, 1994, at the University Art Museum, Berkeley, California, beginning on or about September 7, 1994, to on or about November 6, 1994, and at the Frick Art Museum, Pittsburgh, Pennsylvania, beginning on or about November 22, 1994, to on or about January 8, 1995, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register.**

Dated: June 22, 1994.

Les Jin,

General Counsel.

[FR Doc. 94–15490 Filed 6–23–94; 8:45 am]

BILLING CODE 8230–01–M

* A copy of this list may be obtained by contacting Lorie J. Nierenberg of the Office of the General Counsel, U.S. Information Agency. The telephone number is 202/619–6084; the address is U.S.I.A., 301–4th Street, S.W., Room 700, Washington, D.C. 20547.

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review: VA Transition Housing Loan Program

AGENCY: Department of Veterans Affairs.

ACTION: Note.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) the title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and support documents may be obtained from Ann Bickoff, Veterans Health Administration (161B4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 535–7407.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, Room 3002, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 30 days of this notice.

Dated: June 16, 1994.

By direction of the Secretary.

Donald L. Neilson,

Director, Records Management Service.

New Collection

1. VA Transitional House Loan Program
   a. VA Form 10–0146, Loan Application Transitional Housing for Veterans of Substance Abuse
   b. VA Form 10–0146A, Installment Loan Agreement
   c. VA Form 10–0146B, Request for Verification of Deposit
   d. VA Form 10–0146C, Incorporated Organization Borrowing Resolution
   e. VA Form 10–0146D, Loan Agreement
   f. VA Form 10–0146E, Applicant's History, Experience and Plans
2. Under the Transitional House Loan Program, VA will make loans to non-profit organizations to assist in the provision of transitional housing for veterans who are in recovery for the treatment of substance abuse. The forms constitute the applicant's agreement to the terms of the loan and repayment provision.
3. Non-profit institutions
4. 326 hour
5. Estimated Average burden hours per respondent 1 hour 33 minutes
   a. VA Form 10–0146—40 minutes
   b. VA Form 10–0146A—1 minute
   c. VA Form 10–0146B—20 minutes
   d. VA Form 10–0146C—1 minute
   e. VA Form 10–0146D—1 minute
   f. VA Form 10–0146E—9 hours 30 minutes
6. One-time
7. 210 respondents

[FR Doc. 94–15353 Filed 6–23–94; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 59, No. 121
Friday, June 24, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:00 a.m. on Tuesday, June 21, 1994, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's corporate and supervisory activities.

In calling the meeting, the Board determined, on motion of Acting Chairman Andrew C. Hove, Jr., seconded by Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), concurred in by Ms. Judith A. Walter, acting in the place and stead of Director Eugene A. Ludwig (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Dated: June 21, 1994.

Federal Deposit Insurance Corporation.

Leneta G. Gregorie,

Acting Assistant Executive Secretary.

[FR Doc. 94–15471 Filed 6–22–94; 8:59 am]

BILLING CODE 6714–01–M

BLACKSTONE RIVER VALLEY NATIONAL HERITAGE CORRIDOR

Notice of Public Meeting

The Blackstone River Valley National Heritage Corridor Commission will Hold a Public Meeting to solicit comments on the proposed Boundary expansion of the Blackstone River Valley National Heritage Corridor.

Notice is hereby given in accordance with Section 552b of Title 5, United States Code, that this meeting will be held. The Commission was established pursuant to Public Law 99–647, in order to establish a management framework to protect, enhance and interpret the nationally significant resources in the Blackstone Valley.

The meeting will be held at Worcester City Hall, 455 Main Street, Worcester, MA. It will be in the Council Chambers at 7:00 PM on Monday, July 11, 1994.

The Public is invited to discuss the boundary expansion at the meeting and/or provide written comments at that time.

James R. Pepper,

Executive Director, Blackstone River Valley National Heritage Corridor.

[FR Doc. 94–15542 Filed 6–22–94; 2:46 pm]

BILLING CODE 4310–70–P

BLACKSTONE RIVER VALLEY NATIONAL HERITAGE CORRIDOR

Notice of Public Meeting

The Blackstone River Valley National Heritage Corridor Commission will Hold a Public Meeting to solicit comments on the proposed Boundary expansion of the Blackstone River Valley National Heritage Corridor.

Notice is hereby given in accordance with Section 552b of Title 5, United States Code, that this meeting will be held. The Commission was established pursuant to Public Law 99–647, in order to establish a management framework to protect, enhance and interpret the nationally significant resources in the Blackstone Valley.

The meeting will be held at Smithfield Town Hall, Smithfield, RI. It will be at 7:00 PM on Thursday, July 14, 1994.

The Public is invited to discuss the boundary expansion at the meeting and/or provide written comments at that time.

James R. Pepper,

Executive Director, Blackstone River Valley National Heritage Corridor.

[FR Doc. 94–15543 Filed 6–22–94; 2:46 pm]

BILLING CODE 4310–70–P

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of June 27, 1994.

A closed meeting will be held on Tuesday, June 28, 1994, at 10:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Beese, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Tuesday, June 28, 1994, at 10:00 a.m., will be:

Institution of injunctive actions.

Institution of administrative proceedings of an enforcement nature.

Settlement of injunctive actions.

Settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Bruce Rosenblum, (202) 942–0500.

Dated: June 22, 1994.

Johathan G. Katz,

Secretary.

[FR Doc. 94–15554 Filed 6–22–94; 3:45 pm]

BILLING CODE 8010–01–M

Corrections

Federal Register
Vol. 59, No. 121
Friday, June 24, 1994

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Part 1191

[Docket No. 92-2]

RIN 3014 AA12

Americans with Disabilities Act (ADA) Accessibility Guidelines for Buildings and Facilities; State and Local Government Facilities

Correction

In rule document 94-14304 beginning on page 31676, in the issue of Monday, June 20, 1994, make the following correction.

On page 31676, in the first column, under *Comment date:* in the last line, "December 20, 1994." should read "August 19, 1994."

BILLING CODE 1505-01-D, 1994 / Corrections

federal register

Friday
June 24, 1994

Part II

Department of Health and Human Services

Health Care Financing Administration

42 CFR Parts 410 and 414

Medicare Program; Refinements to Geographic Adjustment Factor Values and Other Policies Under the Physician Fee Schedule; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 410 and 414

[BPD–789–P]

RIN 0938–AG52

Medicare Program; Refinements to Geographic Adjustment Factor Values and Other Policies Under the Physician Fee Schedule

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule discusses changes to the geographic adjustment factor values and fee schedule payment areas, proposed relative value units for certain physician services, revisions to payment policies for specific physician services, and a change to the Medicare Volume Performance Standard. This proposed rule also discusses implementation of the Omnibus Budget Reconciliation Act of 1993 (Public Law 103–66) provision regarding payment for antigens. This provision places antigens under the physician fee schedule and subjects them to charge limits. This proposed rule solicits public comments on the proposed changes.

DATES: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on August 23, 1994.

ADDRESSES: Mail written comments (1 original and 3 copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BPD–789–P, P.O. Box 7519, Baltimore, MD 21207–0519.

If you prefer, you may deliver your written comments to one of the following addresses:

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

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

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code BPD–789–P. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 309–G of the Department's offices at 200 Independence Avenue SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

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) 512–2250. The cost for each copy is $6. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information concerning the proposed refinements to the geographic adjustment factor values and changes to the geographic practice cost indices and payment areas, contact Bob Ulikowski of the Health Care Financing Administration, (410) 966–5721. For issues related to the proposed relative value units for certain physician services and payment policies for specific physician services and supplies, contact Elizabeth Holland of the Health Care Financing Administration, (410) 966–1309.

SUPPLEMENTARY INFORMATION: To assist readers in referencing sections contained in this proposed rule, we are providing the following table of contents:

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In addition, because of the many organizations and terms to which we refer by acronym in this final rule, we are listing those acronyms and their corresponding terms in alphabetical order below:

AMA—American Medical Association
ASC—Ambulatory surgical center
CF—Conversion factor
CFR—Code of Federal Regulations
CHER—Center for Health Economics Research
CMD—Carrier medical director
CMSA—Consolidated Metropolitan Statistical Area
CPT—[Physicians'] Current Procedural Terminology (4th Edition, 1994, copyrighted by the American Medical Association)
CRNA—Certified registered nurse anesthetist
CY—Calendar year
ESRD—End-Stage Renal Disease
FMR—Fair market rental
FY—Fiscal year
GAF—Geographic adjustment factor
GAO—General Accounting Office
GPCI—Geographic practice cost index
HCFA—Health Care Financing Administration
HCPCS—HCFA Common Procedure Coding System
HHA—Home health agency
HHS—[Department of] Health and Human Services
HUD—[Department of] Housing and Urban Development
JCAI—Joint Council of Allergy and Immunology
MCP—Monthly capitation payment
MEI—Medicare Economic Index
MSA—Metropolitan Statistical Area
MVPS—Medicare volume performance standards
NF—Nursing facility
NTIS—National Technical Information Service
OBRA—Omnibus Budget Reconciliation Act
PC—Professional component
RFA—Regulatory Flexibility Act
RUC—[AMA Specialty Society] Relative [Value] Update Committee
RVU—Relative value unit
SNF—Skilled Nursing Facility
TC—Technical component
UI—Urban Institute

I. Background

A. Legislative History

The Medicare program was established in 1965 by the addition of title XVIII to the Social Security Act (the Act). Until January 1, 1992, Medicare paid for physicians' services based on a reasonable charge system. This system led to payment variations among types of services, physician specialties, and geographic areas. Thus, the Congress included a physician payment reform provision in the Omnibus Budget Reconciliation Act of 1989 (OBRA '89), Public Law 101–239, enacted on December 19, 1989.

Section 6102 of OBRA '89 amended title XVIII of the Act by adding a new section 1848, "Payment for Physicians' Services." This section contains three major elements:

(1) A fee schedule for the payment of physicians' services;

(2) A Medicare volume performance standard (MVPS) for the rates of increase in Medicare expenditures for physicians' services; and

(3) Limits on the amounts that nonparticipating physicians can charge beneficiaries. The Act requires that payments under the fee schedule be based on national uniform relative value units (RVUs) based on the resources used in furnishing a service. Section 1848(c) of the Act requires that national RVUs be established for physician work, practice expense, and malpractice. The Omnibus Budget Reconciliation Acts of 1990 (OBRA '90) and 1993 (OBRA '93), Public Laws 101–508 and 103–66, enacted on November 5, 1990, and August 10, 1993, respectively, contained several modifications and clarifications to the OBRA '89 provisions that established the physician fee schedule.

Section 1848(e)(1)(C) of the Act requires us to review and, if necessary, adjust the geographic practice cost indices (GPCIs) at least every 3 years. This section also requires us to phase in the adjustment over 2 years and implement only one-half of any adjustment if more than 1 year has elapsed since the last GPCI revision. The GPCIs were first implemented in 1992 and have not been reviewed since that time. Thus, we are required to complete the first GPCI review and implement only one-half of any adjustment by 1995 and one-half in 1996.

The Act requires that payments vary among fee schedule areas according to geographic indices. In general, the fee schedule areas that existed under the prior reasonable charge system were retained under the fee schedule. A detailed discussion of fee schedule areas can be found in the June 5, 1991 proposed rule (56 FR 25832) and in the November 25, 1991 final rule (56 FR 59514). We are required by section 1848(e)(1)(A) of the Act to develop separate indices to measure relative cost differences among fee schedule areas compared to the national average for each of the three fee schedule components. While requiring that the practice expense GPCIs and malpractice GPCIs reflect the full relative cost differences, the Act requires that the work indices reflect only one-quarter of the relative cost differences compared to the national average.

B. Recent Federal Register Publications

We published a final rule on November 25, 1991, (56 FR 59502) to implement section 1848 of the Act by establishing a fee schedule for physicians' services furnished on or after January 1, 1992. In the November 1991 final rule (56 FR 59511), we stated our intention to update RVUs for new and revised codes in the American Medical Association's (AMA) Physicians' Current Procedural Terminology (CPT) through an "interim RVU" process every year. Our first update to the RVUs was published on November 25, 1992, as a final notice with a 60-day comment period on new and revised RVUs only (57 FR 55914).

On July 14, 1993, we published a proposed rule (58 FR 37994) to announce our intention to revise the refinement process used to establish physician work RVUs and to revise payment policies for specific physician services and supplies. On December 2, 1993, we published a final rule (58 FR 63626) announcing revised payment policies and RVUs for 1994 (we solicited comments on new and revised RVUs).

II. Specific Proposals for Calendar Year (CY) 1995

A. GPCI Changes

1. Development of the GPCIs

The GPCIs were developed by a joint effort of the Urban Institute (UI) and the Center for Health Economics Research (CHER) under contract to HCFA. Indices were developed that measured the relative cost differences among areas compared to the national average in a market basket of goods. In this case, the market basket consists of the resources used in operating a private medical practice. The resource inputs are: physician work or net income; employee wages; office rent; medical equipment, supplies, and other miscellaneous expenses; and malpractice insurance. Employee wages, rents, and miscellaneous expenses are combined to comprise the practice expense component of the GPCIs. The weights of these components in the current and the proposed revised GPCIs are as follows:

Input component	Percentage of practice expense	
	Current GPCI	Revised GPCI
Physician Work	54.2	54.2
Practice Expense	40.2	41.0
Employee Wages	15.7	16.3
Rent	11.1	10.3
Miscellaneous Expenses	13.4	14.4
Malpractice	5.6	4.8
Total	100.0	100.0

The resource inputs and their weights were obtained from the AMA's Socioeconomic Characteristics of Medical Practice. The weights for the current GPCIs are from the AMA's 1987 survey, while the weights for the revised GPCIs are from the AMA's 1989 survey. The 1987 weights were the latest available when the current GPCIs were being developed. The 1989 weights were used in revising the Medicare Economic Index (MEI) discussed in the November 1992 final rule (57 FR 55899). The MEI is a measure of annual increases in the cost of operating a private medical practice and is used in the annual update of the fee schedule conversion factor (CF). Since the GPCIs and the MEI use the same resource inputs to measure practice expenses—the GPCIs measure relative costs among areas while the MEI measures the national annual rate of increase in costs—we believe the same weights should be used.

Once the components and their weights were determined, data sources had to be found that were widely and consistently available in all fee schedule areas to measure costs. After examining many sources, the following proxies were selected as the best available sources for measuring each component of the current GPCIs:

- Physician work—The median hourly earnings, based on a 20-percent sample of 1980 census data, of workers in six professional specialty occupation categories (engineers, surveyors, and architects; natural scientists and mathematicians; teachers, counselors, and librarians; social scientists, social workers, and lawyers; registered nurses and pharmacists; writers, artists, and editors) with 5 or more years of college. Adjustments were made to produce a standard occupational mix in each area. The actual reported earnings of physicians were not used to adjust geographical differences in fees because these fees are, in large part, the determinants of the earnings. We believe that the earnings of physicians will vary among areas to the same degree that the earnings of other professionals vary.
- Employee wages—Median hourly wages of clerical workers, registered nurses, licensed practical nurses, and health technicians were also based on a 20-percent sample of 1980 census data.
- Office rents—Residential apartment rental data produced annually by the Department of Housing and Urban Development (HUD) were used because there were insufficient data on commercial rents across all fee schedule areas.
- Medical equipment, supplies, and other miscellaneous expenses—UI and CHER assumed that this component is represented by a national market and that costs do not vary appreciably among areas. This component's index is 1.000 for all areas to indicate no variation from the national average.
- Malpractice—Premiums in 1985 and 1986 for a mature "claims made" policy (a policy that covers malpractice claims during the covered period) providing $100,000/$300,000 of coverage were used. Adjustments were made to incorporate the costs of $1 million/$3 million coverage and mandatory patient compensation fund requirements. Premium data were collected for physicians in three risk classes: low-risk (general practitioners who do not do surgery), moderate risk (general surgeons), and high-risk (orthopedic surgeons).

The areas selected for measurement purposes were the Metropolitan Statistical Areas (MSAs). Non-MSA areas within a State were aggregated into one residual area. Using MSAs for measurement satisfied the criteria of (1) Homogeneity in resource input prices within the area, and (2) a large enough size so that market areas are self-contained to minimize border crossing; that is, physicians would not move their offices a few miles to secure higher payments and patients would tend to receive services within their area.

The law requires, however, that the GPCIs reflect cost differences among fee schedule areas. Section 1848(j)(2) of the Act defines a fee schedule payment area as a locality that existed under the prior reasonable charge system. These reasonable charge localities were established by Medicare carriers on the basis of their knowledge of physician charging patterns and have changed little since the inception of the program in 1965. There is little consistency among carriers in locality structure. Some States contain a single locality, while others contain as many as 32 localities. Localities are unique to Medicare and do not necessarily correspond directly to political boundaries (counties or cities), geographic areas, or to the MSA/non-MSA structure. It was thus necessary to map Medicare localities to the MSA and non-MSA aggregation of GPCI data. Where localities crossed MSA boundaries, MSA indices were converted to Medicare locality indices by population weights.

Detailed discussions of the methodology and data sources of the current GPCIs can be obtained by requesting the following studies from the National Technical Information Service (NTIS) by calling 1–800–553–NTIS, or (703) 487–4650 in Springfield, Virginia:

- The Urban Institute GPCI report "The Geographic Medicare Index: Alternative Approaches," NTIS PB89–216592.
- The supplement to "The Geographic Medicare Index: Alternative Approaches," NTIS PB91–113506. This interim version was published in the September 4, 1990 notice for the model fee schedule (55 FR 36238).
- The Urban Institute report "Refining the Malpractice Geographic Practice Cost Index," February 1991, NTIS PB91–155218. The related diskette is NTIS PB91–507491. This is the final version of the current GPCIs as published in the November 1991 final rule (56 FR 59785).

2. Proposed Revised GPCIs

The separate sections below on the revised GPCI components each contain a brief description of the differences in the current and the proposed revised GPCIs. The main criticism of the

existing GPCIs is that they are outdated because they are based on old data; for example, 1980 census data and 1985 and 1986 malpractice premiums, the most recent data available when the GPCIs were established. The revised GPCIs are based on the most current data available. As discussed in the brief descriptions of the revised indices, some minor changes from the current GPCI methodology were made in calculating some of the revised indices.

One methodological change was made that applied across all indices. As mentioned earlier, under the current GPCIs, where Medicare localities crossed MSA boundaries, MSA indices were converted to locality indices by population weights. Medicare expenditure weights were not used because the expenditures under the reasonable charge system contained large differences unrelated to relative cost differences among areas. In calculating the proposed revised GPCIs, where localities crossed MSA boundaries, locality indices were calculated by weights based on full fee schedule RVUs, which do reflect relative cost differences among areas. Full fee schedule RVUs were used rather than actual 1993 payments because some fee schedule payments are still affected by the transition and, thus, still reflect some reasonable charge payment levels and will continue to do so until the fee schedule transition period is over in 1996. The advantages of RVU weighting are that (1) The GPCIs will more closely reflect physician practice costs in the area where the services are furnished, whereas population weights reflect costs where the population lives, and (2) budget neutrality is preserved when combining multiple localities into larger areas, such as statewide localities.

a. *Work GPCIs.* Data from the 1990 20-percent sample of census data of median hourly earnings for the same six categories of professional specialty occupations as used in the current work GPCIs were used in calculating the revised work GPCIs. The current work GPCIs were calculated using 1980 census data of earnings for professionals with 5 or more years of college. That sample was no longer available in the 1990 census. The 1990 census educational classifications are by highest degree earned, rather than the 1980 census classification by years of schooling. Thus, it was not possible to obtain earnings exactly comparable to the 1980 data.

For 1990, data are available for all education and advanced degree samples, but not for 5 or more years of college. We elected to use the all education sample because its larger sample sizes make it more stable and accurate in less populous areas. Although it could be argued that physicians' earnings might more closely approximate the earnings of professionals with advanced degrees, the differences between the all education and advanced degree indices were negligible in all but a few of the smallest localities. We believe that the small sample size of advanced degree occupations in these small localities may produce inaccurate results.

The current work GPCIs utilize MSA-wide median wages for each county within an MSA. That is, all counties within an MSA are assigned the MSA-wide median wage even if there are wage variations within the MSA. We believe that this is appropriate for all but Consolidated Metropolitan Statistical Areas (CMSAs), the largest of the MSAs, such as New York. In these CMSAs, we replaced metropolitan-wide earnings with county-specific earnings. We believe that this change is appropriate because costs are, in fact, higher in central city areas (for example, Manhattan and San Francisco) than in the rest of the CMSA. County earnings better account for cost variations within these large metropolitan areas.

The work GPCIs reflect only one-fourth of the relative cost differences as required by law.

b. Practice expense GPCIs—(1) *Employee Wage Indices.* Data from the 1990 20-percent sample of census data of median hourly earnings for the same categories of medical and clerical occupations used in the current practice expense GPCIs were used in the revised practice expense GPCIs. These revised GPCIs use 1990 rather than 1980 census data. As with the work GPCIs, county level data were used for CMSAs to better reflect the cost variations within these large metropolitan areas.

(2) *Office Rent Indices.* As with the current practice expense GPCIs, HUD fair market rental (FMR) data for residential rents were again used as the proxy for physician office rents. The revised practice expense GPCIs reflect the final 1994 HUD FMRs. Like the work GPCIs and the employee wage index of the practice expense GPCIs, county level data were used in CMSAs to recognize the variations within the CMSA. This has the general effect of increasing the rent indices of Medicare localities comprised solely or primarily of central cities areas of CMSAs, for example, Manhattan and San Francisco.

The major criticism of the practice expense GPCIs rent index is that residential rather than commercial rent data were used. As mentioned earlier, for constructing the GPCIs we needed data that were widely and consistently available across all fee schedule areas. As with the current GPCIs, in revising the GPCIs, we again searched for private sources of commercial rent data that were widely and consistently available.

The private sources we found were not adequate. None of the sources contained data for nonmetropolitan areas, nor did any contain data for all metropolitan areas. The sources do not reflect the average commercial space in the area, but rather the particular type of space most relevant to the needs of the particular source's clients. In addition, the sample sizes were small. A comparison of the average rental for any particular city showed significant variation depending on the source. Also, we are not confident that the private commercial rent data that is available is representative of the type of office space used by physicians. In any case, the GPCIs measure relative differences among areas. We believe that commercial rents will generally vary among areas as residential rents vary.

No national data are readily available for physician office rent. Thus, some proxy must be used for this portion of the index. In addition, commercial rent data are not available for all areas from published statistical sources. We believe that the HUD FMR data remain the best available data for constructing the office rental index. They are available for all areas, are updated on an annual basis, and are consistent among areas and from year to year. Moreover, physicians frequently locate in areas and office space that are residential rather than commercial, for example, in apartment complexes and small strip commercial centers adjacent to residential areas. Residential rents may, in fact, be a better measure of the differences among areas in the physician office market than a general commercial rental index.

In any case, we are continuing to search for alternative sources of commercial rent data. We are currently analyzing rental data from the U.S. Postal Service, the General Services Administration, and the Internal Revenue Service. We are examining these data to assess their suitability for constructing rental indices.

(3) *Medical Equipment, Supplies, and Other Miscellaneous Expenses.* As mentioned earlier, the GPCIs assume that this component has a national market and that input prices do not vary among geographic areas. We were unable to find any data sources that demonstrated price differences by geographic area. Anecdotal and interview data with suppliers and manufacturers were inconclusive. While

some price differences may exist, they are more likely to be based on volume discounts rather than on geographic areas. Generally, it appears that manufacturers' prices do not vary among areas except for shipping costs. Since manufacturers and suppliers are located all over the country, shipping costs on the mainland do not vary significantly.

We did consider an add-on for shipping costs to Alaska, Hawaii, and Puerto Rico to recognize the added shipping distance. We decided against an add-on because there were no data to indicate how much the costs of shipping medical equipment and supplies to these areas increased their costs. We were able to ascertain that commercial shippers like United Parcel Service and Federal Express generally charge about 10 percent more to ship to Puerto Rico and about 20 percent more to ship to Alaska and Hawaii from the mainland. Medical equipment and supplies represent about 7 percent of physician practice costs. Even if shipping costs are 5 percent of the total equipment and supply costs, which we believe to be a high estimate, recognizing a 20-percent increase in shipping costs would increase payment levels by only 0.07 percent (.20 x .05 x .07 = .0007). The medical equipment, supplies, and miscellaneous expense index for all areas will continue to be 1.000 in the revised GPCIs.

c. *Malpractice GPCIs.* Malpractice premium data for a $1 million/$3 million mature "claims made" policy were collected and mandatory patient compensation funds were considered. However, more recent and comprehensive malpractice insurance data were used in calculating the revised malpractice GPCIs. The revised malpractice GPCIs are based on 1990 through 1992 premium data. Malpractice premiums are volatile and may change significantly from year to year. We decided to use the most recent 3-year average rather than the most recent single year to reduce the volatility and present a more accurate indication of malpractice premium trends over time.

We collected data on more specialties and from more insurers than were used to construct the current index. We collected data on 20 specialties, rather than on 3 as in the current malpractice GPCIs. The current malpractice GPCI data were largely drawn from a single nationwide insurer (St. Paul Fire and Marine) and were supplemented by several State-specific carriers in States in which St. Paul did not offer coverage. Subsequent analyses suggest that these data may no longer be representative of insurers operating in many States. For the revised malpractice GPCIs, data were collected from insurers that represent the great majority of the market in each State—about 82 percent on average with 60 percent as the lowest State market share. We believe that the more recent and comprehensive data greatly improve the accuracy of the malpractice GPCIs.

Detailed discussions of the technical aspects of the GPCIs including constructing a Laspereyes-type economic index, a discussion of other data sources that were examined and found to be inadequate and, therefore, not used, and many more detailed tables showing the differences among various alternatives for each of the GPCI studies can be obtained by requesting the following studies from NTIS by calling 1–800–553–NTIS, or (703) 487–4650 in Springfield, Virginia:

- "Updating the Geographic Practice Cost Index: Revised Cost Shares." Debra A. Dayhoff, John E. Schneider, and Gregory C. Pope. NTIS PB94–161072.
- "Updating the Geographic Practice Cost Index: The Physician Work GPCI." Gregory C. Pope and Debra A. Dayhoff. NTIS PB94–161080.
- "Updating the Geographic Practice Cost Index: The Practice Expense GPCI." Gregory C. Pope, Debra A. Dayhoff, Angella R. Merrill, and Killard W. Adamache. NTIS PB94–161098.
- "Updating the Geographic Practice Cost Index: The Malpractice GPCI." Stephen Zuckerman and Stephen Norton. NTIS PB94–161106.

3. Impact of Revised GPCIs

The proposed GPCIs would be implemented in a budget-neutral manner. They would not change the total national fee schedule payments that would have been made in 1995 had the current GPCIs been retained. The revised GPCIs will redistribute payments among fee schedule payment areas. The general geographic effects of this redistribution can be demonstrated by referring to Addenda A through F.

Fee schedule payments are the product of the RVUs, the GPCIs, and the CF. The current GPCIs were used in computing the original 1992 budget-neutral fee schedule CF. Updating the GPCIs changes the relative position of fee schedule areas compared to the national average. Since the changes represented by the proposed GPCIs could result in total payments either greater or less than what would have been paid if the GPCIs were not revised, it was necessary to rescale the proposed GPCIs to assure that their implementation is budget-neutral on a national basis. That is, the same total physician fee schedule payments would be made using the proposed GPCIs as would have been made were the current GPCIs retained.

We calculated that the proposed GPCIs would have resulted in slightly lower total national payments under the fee schedule. Since the law requires that each of the fee schedule component RVUs—work, practice expense, and malpractice—are separately adjusted by their respective GPCIs, we adjusted each of the GPCI components separately. To assure budget-neutrality, it was necessary to increase the proposed work GPCIs by 0.073 percent; to increase the practice expense GPCIs by 0.125 percent; and to increase the malpractice GPCIs by 2.307 percent. As all areas received the same percentage adjustments, the adjustments do not change the new relative positions among areas indicated by the proposed GPCIs.

Addendum A contains the current GPCIs. Addendum B contains the proposed fully revised GPCIs that would be effective in 1996. Addendum C contains the transition GPCIs for 1995, that is, one-half of the effect of the revised GPCIs, as required by section 1848(e)(1)(C) of the Act. For example, the current GPCIs for Birmingham, Alabama from Addendum A are: work, 0.981; practice expense, 0.913; and malpractice, 0.824. The revised 1996 GPCIs for Birmingham from Addendum B are: work, 0.994; practice expense, 0.912; and malpractice, 0.927. Thus, the proposed work GPCI for Birmingham represents an increase of about 1.3 percent, the revised practice expense GPCI represents a decrease of about 0.1 percent, and the revised malpractice GPCI represents an increase of about 12.5 percent. The 1995 transition GPCI changes shown in Addendum C would be about one-half of these amounts.

Because the three GPCI components have different weights, the overall effect of the changes cannot be estimated by summing the effects of the work, practice expense, and malpractice changes. For example, summing the changes would indicate an increase for Birmingham of 13.7 percent.

The overall effect of all three revised GPCI components on an area can be estimated by a comparison of area geographic adjustment factors (GAFs). The GAF for an area is the weighted composite of the three components. Using the revised practice cost weights in the table in section II.A.1, the current GAF for Birmingham is 0.946 ((.981×.542)+(.913×.410)+(.824×.048)). The revised GAF is 0.957. Thus, the overall effect of the revised GPCIs on Birmingham would be to generally

increase full fee schedule payments by about 1.2 percent. This is an estimate of the general overall effect on total payments across the entire Birmingham fee schedule area. Payment effects would vary for specific services as the component RVU weights for services vary from the GPCI component weights. (The closer the service component RVU weights are to the GPCI component weights, the closer the effect would be to the estimated GAF effect.) The effects on payments to individual physicians would vary depending on each physician's mix and volume of services. These are full fee schedule effects and do not reflect the 1992 through 1995 transition payment rules under which some payments are a blend of the fee schedule and the prior reasonable charge system.

To facilitate a comparison of the overall effect of the current and revised GPCIs, Addendum D contains a comparison of existing and revised fee schedule area GAFs in descending order of change. As this Addendum shows, no area GAF would increase by more than 7.8 percent or decrease by more than about 8.4 percent under the revised GPCIs. Thus, area full fee schedule payments would generally change by no more than about 8 percent under the revised GPCIs. Most areas would change by considerably less than this amount. About 75 percent of the areas would change by about 3 percent or less. Also, because of the 2-year transition, the effects in 1995 (the transition year) would be no more than one-half of the change indicated in Addendum D.

A comparison of the GAFs yields a more comprehensive comparison of the effects of the revised GPCIs than does a comparison of the changes in the individual GPCIs. For example, the work GPCIs for San Francisco, California would increase from 1.038 to 1.068, an increase of 2.9 percent. The malpractice GPCIs for San Francisco would decrease from 1.370 to 0.596, a decrease of 56.5 percent. However, as mentioned earlier, the work component would represent about 54 percent, and the malpractice component would represent about 5 percent of total resource costs. Thus, the 2.9-percent increase in the work GPCIs would generally increase payments by about 1.6 percent, while the 57-percent decrease in the malpractice GPCIs would generally decrease payments by about 2.8 percent, not 56.5 percent, in San Francisco. Overall, the San Francisco GAF would change from 1.163 to 1.153, a decrease of only about 0.9 percent.

Again we stress that the GPCIs measure relative cost differences among areas compared to the national average. The national average cost is represented by a value of about 1.000. (The value is not exactly 1.000 because of the budget neutrality rescaling discussed earlier.) A revised GPCI showing a decrease from the current value does not necessarily mean that absolute costs of an individual physician or absolute area costs have decreased. Instead, it means that costs in that area have decreased compared to national average costs. For example, a change in the malpractice GPCI from 0.990 to 0.950 does not necessarily mean that malpractice premiums for that area have decreased. Instead, it means that the more recent and comprehensive 1990 through 1992 malpractice data show that premiums in that area have decreased from 99 percent to 95 percent of the national average from the 1985 through 1986 premium data years.

We have included two additional informational tables in Addenda E and F. Addendum E contains 1996 revised statewide GPCIs and GAFs for States currently containing multiple payment areas. Addendum F contains 1995 transitional GPCIs and GAFs for these States. We are providing these tables so that States with multiple payment areas that are considering requesting a single statewide area can evaluate the effects of a change. These GPCIs are informational only and would have no effect unless a State changes to a single payment area.

B. Payment Area (Locality) Changes

As stated earlier, section 1848(j)(2) of the Act defines a physician fee schedule payment area as the locality existing under the reasonable charge system. This section did not, however, delete section 1842 of the Act, which gives us the authority to set localities. Thus, we believe that section 1848(j)(2) allows us to retain existing localities to facilitate changing to the physician fee schedule, but does not preclude us from making locality changes if warranted.

There is little consistency among carriers in locality structure. In the June 1991 proposed rule (56 FR 25832) and the November 1991 final rule (56 FR 59514) on the physician fee schedule, we stated that until we decide on ultimate large-scale changes, the only locality changes we would consider would be requests for converting individual States with multiple localities to a single statewide locality if "* * * overwhelming support from the physician community for the changes can be demonstrated." This willingness to consider applications from physicians in a State for conversion to a statewide locality, if overwhelming support on the part of winning and losing physicians has been demonstrated, reflects our belief that statewide localities generally are preferable to the present Medicare localities because they simplify program administration and encourage physicians to practice in rural areas by reducing urban/rural payment differentials.

We explained to States inquiring about conversions to a statewide payment area that these conversions involve taking a weighted average of the existing locality GPCIs to form a new statewide GPCI. This means that there may be "losing" (usually urban) areas, as well as "winning" (usually rural) areas within a State if a conversion is made. Overall, the change is budget neutral within the State. We further informed these States that a simple resolution passed by the State medical society is not sufficient proof of overwhelming support for the change among both rural and urban physicians. To assist States in deciding whether to convert to a statewide payment area, we published an informational list of projected statewide GPCIs in the June 1991 proposed rule (56 FR 25972). A slightly revised list of projected statewide GPCIs was published in the December 1993 final rule (58 FR 63638).

In most cases, States have been unable to generate the support of the losing physicians for the change. However, three States—Minnesota, Nebraska, and Oklahoma—were converted to statewide localities in 1992. (These conversions were announced in the November 1991 final rule (56 FR 59514).) Two additional States—North Carolina and Ohio—were converted to statewide localities in 1994. (These conversions were announced in the December 1993 final rule (58 FR 63638).)

We have since received formal petitions for statewide payment areas from Iowa and Pennsylvania. Only Iowa, however, presented evidence demonstrating sufficient support from "losing" areas to support the change. The Iowa Medical Society presented evidence that about 75 percent of its members, including about 70 percent of members in "losing" areas, support a statewide payment area. Therefore, we propose to convert Iowa to a statewide payment area effective January 1, 1995.

Section 1842 of the Act gives us the authority to set payment localities. We plan to review the existing payment locality structure for possible comprehensive changes in 1996. In the meantime, we will continue to consider statewide localities for those States in which physicians express a desire for a change. To ensure that the views of all physicians in an area are solicited and

not just the views of physicians who are members of the State medical societies, we will, of course, announce any proposed changes in the criteria for establishing localities or proposed changes to payment areas as part of the rulemaking process for the physician fee schedule.

C. Work RVUs—Carrier-Price and Non-Medicare CPT Codes

Several State Medicaid programs and commercial insurers have expressed interest in developing a resource-based fee schedule for physician services. To assist them, we are developing work RVUs for services not currently included in the Medicare physician fee schedule. These codes are currently noncovered, bundled, or carrier-priced under Medicare. We have no intention of changing our current payment policy regarding these services but, rather, wish to develop RVUs for these services to facilitate the adoption of the physician fee schedule by other payers.

1. Methodology (Includes Table 1—AMA RUC Recommendations and HCFA's Proposed RVUs)

As described in the November 1991 final rule on the 1993 fee schedule (56 FR 59511), we established a process, considering recommendations received from the AMA Relative Value Update Committee (RUC), for establishing interim RVUs for codes. RUC was formed in November 1991 and grew out of a series of discussions between the AMA and the major national medical specialty societies. RUC is comprised of 26 members; 22 are representatives of major specialty societies. The remaining members represent the AMA, the American Osteopathic Association, and the AMA's CPT Editorial Panel. The work of RUC is supported by an advisory committee made up of representatives of 65 specialty societies in the AMA House of Delegates. RUC uses a small group survey method to produce work RVUs that are voted on by RUC, with a two-thirds vote required for acceptance. RUC then submits to us those accepted RVUs as recommended values.

In December 1993, we received work RVU recommendations for approximately 90 codes from RUC. Physician panels consisting of carrier medical directors (CMDs) and HCFA staff reviewed the RUC recommendations by comparing them to other services on the fee schedule for which work RVUs had been established previously. The panels also considered the relationships among the codes for which we received RUC recommendations.

Work RVUs were not assigned to CPT code 54440 (plastic operation of penis for injury) for reasons discussed below. We propose allowing carriers to price this procedure. Also, we are not proposing RVUs for 18 preventive medicine procedures (CPT codes 99381 through 99404) for which we received RUC recommendations. We anticipate that these CPT codes will be revised and expect to receive new RUC recommendations for the revised codes. In addition, we received recommended RVUs for several transplant codes in December 1993. Since we were aware that RUC planned to address other transplant procedures in a subsequent meeting, we decided not to take action on the recommendations from the earlier meeting at this time. Instead, we plan to review the RUC RVUs for all transplant services during our refinement meeting scheduled for June 1994. Of the remaining CPT codes, based on the review described above by carrier medical directors and HCFA staff, we propose accepting the RUC recommendations for approximately 50 percent of the codes and propose decreasing the RUC recommendations for approximately 50 percent of the codes.

Table 1 is a listing of those codes for which we received recommended work RVUs. This table includes the following information:

- HCPCS (HCFA Common Procedure Coding System) code (Level 1 HCPCS code). This is the CPT code for a service.
- Description. This is an abbreviated version of the narrative description of the code.
- RUC-recommended work RVUs. This column identifies the work RVUs recommended by RUC.
- HCFA proposed work RVUs. An asterisk identifies codes for which a discussion can be found in the narrative.

TABLE 1.—AMA RUC RECOMMENDATIONS AND HCFA'S PROPOSALS

HCPCS[1]	Description	RUC recommended work RVUs	HCFA proposed work RVUs
11950	Therapy for contour defects	1.23	[2]0.85
11951	Therapy for contour defects	1.73	[2]1.20
11952	Therapy for contour defects	2.47	[2]1.71
11954	Therapy for contour defects	2.71	[2]1.87
15775	Hair transport punch grafts	5.31	[2]4.00
15776	Hair transport punch grafts	7.44	[2]5.60
15850	Removal of sutures	0.79	0.79
19396	Design custom breast implant	2.96	[2]1.70
21137	Reduction of forehead	11.84	[2]9.50
21138	Reduction of forehead	14.81	[2]11.85
21139	Reduction of forehead	17.77	[2]14.22
21150	Reconstruct midface, lefort	24.68	24.68
21151	Reconstruct midface, lefort	27.64	27.64
21154	Reconstruct midface, lefort	29.61	29.61
21155	Reconstruct midface, lefort	33.56	33.56
21159	Reconstruct midface, lefort	41.45	41.45
21160	Reconstruct midface, lefort	45.40	45.40
21172	Reconstruct orbit/forehead	27.14	27.14
21175	Reconstruct orbit/forehead	32.57	32.57
21179	Reconstruct entire forehead	21.71	21.71
21180	Reconstruct entire forehead	24.68	24.68
21181	Contour cranial bone lesion	15.30	[2]9.50
21182	Reconstruct cranial bone	31.58	31.58
21183	Reconstruct cranial bone	34.55	34.55
21184	Reconstruct cranial bone	37.51	37.51

TABLE 1.—AMA RUC RECOMMENDATIONS AND HCFA'S PROPOSALS—Continued

HCPCS[1]	Description	RUC recommended work RVUs	HCFA proposed work RVUs
21188	Reconstruction of midface	21.71	21.71
30400	Reconstruction of nose	9.87	[2]8.85
30410	Reconstruction of nose	13.82	[2]9.95
30420	Reconstruction of nose	16.62	[2]12.76
30430	Revision of nose	7.40	[2]5.60
30435	Revision of nose	13.57	[2]9.65
31582	Revision of larynx	20.18	[2]16.32
31588	Revision of larynx	11.95	11.95
31590	Reinnervate larynx	6.43	6.43
31755	Repair of windpipe	14.85	14.85
36460	Transfusion service, fetal	6.66	6.66
37788	Revascularization, penis	22.70	[2]15.00
40840	Reconstruction of mouth	9.87	[2]8.40
40842	Reconstruction of mouth	9.87	[2]8.40
40843	Reconstruction of mouth	13.82	[2]11.76
40844	Reconstruction of mouth	18.26	[2]15.54
40845	Reconstruction of mouth	21.32	[2]18.14
50320	Removal of donor kidney	22.37	[2]16.16
54440	Repair of penis	11.84	[2]0.00
54670	Repair of testis injury	6.50	[2]5.33
55870	Electroejaculation	3.95	[2]0.30
61556	Incise skull/sutures	21.59	21.59
61557	Incise skull/sutures	21.71	21.71
61558	Excision of skull/sutures	24.68	24.68
61563	Excision of skull tumor	26.16	26.16
62115	Reduction of skull defect	20.73	20.73
62116	Reduction of skull defect	22.70	22.70
62117	Reduction of skull defect	25.66	25.66
62120	Repair skull cavity lesion	22.59	22.59
63700	Repair of spinal herniation	15.79	15.79
63702	Repair of spinal herniation	17.77	17.77
63704	Repair of spinal herniation	19.74	19.74
63706	Repair of spinal herniation	22.70	22.70
69300	Revise external ear	10.86	[2]5.50
78351	Bone mineral, dual photon	0.30	0.30
92015	Refraction	0.53	[2]0.38
92310	Contact lens fitting	1.18	1.18
92314	Prescription of contact lens	0.79	[2]0.64
92340	Fitting of spectacles	0.37	0.37
92341	Fitting of specatacles	0.51	[2]0.44
92342	Fitting of spectacles	0.59	[2]0.51
92370	Repair & adjust spectacles	0.49	[2]0.17
99431	Initial care, normal newborn	1.23	[2]0.74
99432	Newborn care not in hospital	1.28	[2]1.15
99433	Normal newborn care, hospital	0.64	[2]0.44
99440	Newborn rsuscitation	2.96	[2]0.92

[1] All numeric CPT HCPCS Copyright 1993 American Medical Association.
[2] Discussion of HCFA rationale for proposed work RVUs follows this table.

2. RUC Recommendations That Were Not Accepted

The following is a summary of our rationale for not accepting particular RUC recommendations for assignment of RVUs for CPT codes that will appear in the 1995 CPT. It is arranged by type of service in CPT code order. In this summary, all references to assignment of RVUs pertain only to work RVUs unless we specify that they pertain to practice expense RVUs, malpractice expense RVUs, or total RVUs.

a. *Reconstructive and cosmetic plastic surgery.* (1) Subcutaneous injection of "filling" material (CPT codes 11950 through 11952 and 11954). The four CPT codes in this series are based on the amount of "filling" material that ranges from less than 1 cc (CPT code 11950) to over 10 ccs (CPT code 11954). RUC recommended RVUs for each of these CPT codes of 1.23, 1.73, 2.47, and 2.71, respectively. We agree with the relative relationship among the CPT codes proposed by RUC but believe that the recommended RVUs are too high. We agree with RUC's use of CPT codes 11900 and 11901 (injection into skin lesions codes) as reference procedures. However, we do not believe that contouring involves as much work as RUC indicates. RUC recommended 1.23 RVUs for CPT code 11950, which is the injection of 1 cc or less. These RVUs are 50 percent higher than the RVUs for CPT code 11901 (0.81 RVUs), which involve the injection of more than seven lesions. We do not believe that the difference in RVUs is as great as RUC recommends. We also used CPT code 20610 (injection into a major joint or bursa) as another reference code. This procedure involves 0.80 RVUs. Recognizing that CPT code 11950 involves more work than either of the two reference codes, we propose assigning it 0.85 RVUs. To determine RVUs for the other three codes, we first accepted RUC's relative relationships for the family of CPT codes. We then

multiplied the ratio of .85 to 1.23 (69 percent) by the RUC-recommended RVUs for CPT codes 11951, 11952, and 11954, which resulted in RVUs of 1.20, 1.71, and 1.87, respectively.

(2) Punch grafts for hair transplants (CPT codes 15775 and 15776). We agree with RUC's use of CPT code 15050 (pinch graft) as a reference service for valuing these CPT codes. However, we believe that the recommended RVUs, 5.31 for CPT code 15775 and 7.44 for CPT code 15776, are too high. The reference CPT code 15050 has a 90-day global period, and the hair transplant codes have no global period. Using the Harvard research team's data for intraservice work and same day preoperative and postoperative work, we first reduced the RVUs for CPT code 15050 to 2.43 to make the global period comparable to that of the hair transplant codes. Because we believe that the work of CPT code 15775 is greater than that of a pinch graft but not double the work as RUC contends, we propose establishing 4.00 RVUs for CPT code 15775. We used the RUC relative relationships between these two codes to develop 5.60 RVUs for CPT code 15776.

(3) Preparation of moulage for custom breast implant (CPT code 19396). RUC recommended 2.96 RVUs based on a multiple of the RVU assigned to CPT code 99241 (office consultation for a new or established patient). We agree with RUC's use of an evaluation and management code as a reference service but believe this procedure is comparable to CPT code 99204 (a new patient office visit lasting about 45 minutes). Also RUC's recommended 2.96 RVUs are higher than those of CPT code 31622 (a bronchoscopy) although preparation of a moulage is of lower intensity. Therefore, we propose establishing 1.70 RVUs for this procedure.

(4) Rhinoplasty (CPT codes 30400, 30410, 30420, 30430, and 30435). We propose decreasing all of RUC's recommended work RVUs for these CPT codes. RUC's survey data indicated that these services require an average of six post-hospital visits, including two level 4 office visits (CPT code 99214). We believe that these data overestimate past hospital work; this, in turn, contributed to an overestimation of the total work. In developing an RVU for CPT code 30400, we used three procedures as reference services: thyroid lobectomy (CPT code 60220, 9.97 RVUs), appendectomy (CPT code 44950, 6.13 RVUs), and septoplasty (CPT code 30520, 5.61 RVUs). We believe that the work of CPT code 30400 is less than that of CPT code 60220 but more than that of both CPT codes 44950 and 30520. Therefore, we are proposing 8.85 RVUs for CPT code 30400. These RVUs are comparable to the RVUs recommended by the Harvard research team rather than the RVUs recommended by RUC.

In developing RVUs for CPT code 30410, we used major thoracotomy with exploration and biopsy (CPT code 32100, 10.18 RVUs) as a reference service. We believe that CPT code 30410 involves less work than a thoracotomy (CPT code 32100) and, therefore, prefer Harvard research team's recommended 9.95 RVUs, rather than the RUC recommendation of 13.82 RVUs. We used CPT codes 30410 and 30520 (septoplasty) as the reference services for CPT code 30420 by summing the RVUs of the two services after applying the multiple-surgery rule to reduce the RVUs for the lesser valued service (CPT code 30520) by 50 percent. This resulted in 12.76 RVUs for CPT code 30420.

The reference service we used for CPT code 30430 was a septoplasty (CPT code 30520, 5.61 RVUs). We believe a septoplasty requires slightly more work than CPT code 30430. Therefore, we propose assigning 5.60 RVUs. These RVUs are comparable to the Harvard research team's 5.60 RVUs, rather than RUC's recommendation of 7.40 RVUs.

Because we believe that CPT code 30435 involves a similar level of work to CPT code 30410 (9.95 RVUs), we used RUC's rank ordering of these two codes (RUC rated CPT code 30435 slightly lower than CPT code 30410) and, therefore, propose establishing 9.65 RVUs for CPT code 30435.

(5) Otoplasty (CPT code 69300). The full CPT description for this CPT code is "otoplasty, protruding ear, with or without size reduction." In valuing this procedure, we interpreted the description as describing a unilateral procedure. However, the RUC vignette described a bilateral procedure, and RUC recommended 10.86 RVUs. We believe that the work for this procedure is approximately half of a complete rhinoplasty (CPT code 30410, 9.95 RVUs), less than an appendectomy (CPT code 44950, 6.13 RVUs) and slightly less than a septoplasty (CPT code 30520, 5.61 RVUs). Therefore, we propose establishing 5.50 RVUs for CPT code 69300. Also, we propose to establish a global period of 90 days as recommended by RUC.

b. *Maxillofacial surgery—(CPT codes 21137 through 21139 and 21181).* We believe that the RUC-recommended RVUs for procedures associated with forehead reductions (CPT codes 21137 through 21139) are too high but are correct in relation to each other. For CPT code 21137, RUC recommended 11.84 RVUs. We disagree, since a total lobectomy (CPT code 60220), which we believe is more complicated, is assigned 9.97 RVUs. We believe that the work involved in performing CPT code 21137 is 95 percent of that required for a total lobectomy. Therefore, we propose lowering the RVUs for CPT code 21137 by 5 percent resulting in 9.50 RVUs.

Since we agree with the RUC's recommended relationship among the procedures, we propose reducing proportionately the RVUs for CPT codes 21138 and 21139. This results in an assignment of 11.85 RVUs for CPT code 21138 and 14.22 RVUs for CPT code 21139.

We propose lowering the 15.30 RVUs recommended by RUC for CPT code 21181 (reconstruction by contouring of benign tumor of cranial bones) to 9.50 making them the same for CPT code 21137. We believe this procedure is similar to that of CPT code 21137 and is more of a functional repair than a cosmetic repair and, therefore, the work involved is not as intense.

c. *Respiratory System—Laryngoplasty (CPT code 31582) for laryngeal stenosis, with graft or core mold, including tracheotomy.* We disagree with RUC's recommended 20.18 RVUs for CPT code 31582. We believe the work of CPT code 31582 is similar to that of CPT code 31780 (excision of tracheal stenosis and anastomosis), which has 16.32 RVUs. Therefore, we propose lowering the RVUs for CPT code 31582 to 16.32. This comparison is validated by a comparison with CPT code 31580 (11.19 RVUs), which involves 30 to 60 minutes less operative time and a shorter inpatient stay. A decrease of 5.13 RVUs adequately accounts for this difference.

d. *Vascular—Penile revascularization (CPT code 37788), artery with or without vein graft.* We disagree with RUC's recommended 22.70 RVUs. We believe this procedure is not much more difficult than CPT code 35656 (femoral-popliteal bypass graft), which is assigned 14.00 RVUs. Thus, we propose adding 1.00 RVU to the RVUs for CPT code 35656, which results in 15.00 RVUs for CPT code 37788.

e. *Vestibuloplasty (CPT codes 40840 through 40845).* We believe the RUC-recommended RVUs for the vestibuloplasty CPT codes 40840 (9.87), 40842 (9.87), 40843 (13.82), 40844 (18.26), and 40845 (21.32) are high in relation to other oral procedures. However, we do agree with the work relationship among the procedures. We believe that CPT code 40840 (anterior vestibuloplasty) is no more difficult than CPT code 14060 (adjacent tissue transfer or rearrangement, eyelids, nose, ears and/or lips; defect 10 square cm or less), which is assigned 8.40 RVUs.

Therefore, we propose assigning 8.40 RVUs to CPT code 40840. This conclusion is supported by our belief that CPT code 40842 (unilateral posterior vestibuloplasty) is similar in nonoperative work to CPT code 40654 (complex lip repair) (5.19 RVUs). We consider the greater operative work (about 60 minutes) of CPT code 40842 to be worth the additional 3.21 RVUs that would give it the same total RVUs (8.40) as CPT code 40840. Since we agree with the relationship established by RUC among CPT codes 40843 through 40845 and CPT codes 40840 and 40842, we propose retaining that relationship by applying a reduction of 14.9 percent for each CPT code yielding 11.76 RVUs for CPT code 40843, 15.54 RVUs for CPT code 40844, and 18.14 RVUs for CPT code 40845.

f. *Urology.*

(1) Donor nephrectomy with preparation and maintenance of homograft from a living donor (CPT code 50320). We disagree with RUC's recommended 22.37 RVUs. We believe this procedure is equivalent to CPT code 50220 (nephrectomy including partial ureterectomy, including rib resection), which has 16.16 RVUs. Therefore, we would assign 16.16 RVUs to CPT code 50320.

(2) Plastic operation of penis for injury (CPT code 54440). We do not believe that the description for this procedure is sufficient to differentiate this procedure from the other plastic operation procedures of the penis (CPT codes 54352, 54360, 54380, 54385, and 54390), which have RVUs that range from 11.52 to 24.11. In addition, the description of the intraservice work furnished by RUC states that "the variations and severity of the injuries differ and each repair is predicated on the type of injury * * * No case is the same * * *." Thus, we do not believe there is sufficient clinical documentation to support RUC's recommended 11.84 RVUs, which would place it in the family of plastic operations of the penis.

Based on the description, we believe that the work reported for CPT code 54440 could be as justifiably compared to that of CPT code 13101 (complex repair, trunk, 2.6 cm to 7.5 cm), a procedure with 3.91 RVUs, as with the more complex family above. However, because of the lack of specificity in the CPT code description, we propose continuing allowing carriers to price this procedure.

(3) Suture or repair of testicular injury (CPT code 54670). RUC recommended 6.50 RVUs. We propose decreasing the RVUs for CPT code 54670 to 5.33 based on the determination that the work involved is comparable to the higher end of the spectrum of work associated with CPT code 13132 (complex repair, forehead, cheeks, chin, mouth, neck, axillae, genitalia, hands and/or feet, 2.6 cm to 7.5 cm) (4.26 RVUs) and should be valued 25 percent more than CPT code 13132.

(4) Electroejaculation (CPT code 55870). RUC recommended 3.95 RVUs. We propose decreasing the RVUs to 0.30. We believe that the work is similar to a level 1 emergency department visit (CPT code 99281), which has 0.28 RVUs. Also, the work is much less difficult than an ultrasound of the rectum (CPT code 76872), which has 0.70 RVUs or a diagnostic anoscopy (CPT code 46600), which has 0.51 RVUs. We believe that the time estimates furnished in the RUC recommendation are too high. If more intraoperative work than a proctoscopy is required, such as a catheterization to retrieve semen, we propose that the appropriate unusual services CPT modifier −22 be reported.

g. *Ophthalmology.* (1) Determination of refractive state (CPT code 92015). RUC recommended 0.53 RVUs for this procedure, slightly less than the 0.56 RVUs for its reference service CPT code 99213 (a 15-minute office visit for an established patient). The RUC survey data, however, indicate that the intraservice time is 11 minutes. Because 11 minutes correlates more closely to CPT code 99212 (a 10-minute office visit for established patient), we used CPT code 99212 (0.38 RVUs) as the reference service. Because we believe a determination of the refractive state to have slightly less intensity (work per unit time), we propose establishing 0.38 RVUs for CPT code 92015.

(2) Prescription of optical and physical characteristics and fitting of contact lens and direction of fitting by an independent technician, except for aphakia (CPT code 92314). We accepted the RUC recommendation of 1.18 RVUs for the prescription and fitting of corneal lens, both eyes, except for aphakia (CPT code 92310). These RVUs are 93 percent of the published 1.27 RVUs for CPT code 92312, which is the same service for aphakic patients. By accepting the RUC recommendation for CPT code 92310, we created a relationship between CPT codes that describe the same procedure except that one is "for aphakia" and one is "except for aphakia." To be consistent in valuing the nonaphakic CPT codes at 93 percent of the comparable aphakic CPT codes, we propose reducing the RUC recommendation of 0.79 RVUs for CPT code 92314 to 0.64 RVUs by multiplying the RVUs of corresponding CPT code 93216 (0.69 RVUs) by 93 percent.

(3) Fitting of spectacles, except for aphakia (CPT codes 92340 through 92342). In this family of CPT codes, RUC recommended that the fitting of monofocal spectacles except for aphakia (CPT code 92340) should be assigned the same RVUs as CPT code 92352 (0.37 RVUs), which is the same service for aphakic patients. We agree with this equivalence. Also, we propose establishing 0.51 RVUs for CPT code 92342 using the published 0.51 RVUs for CPT code 92353, which is the corresponding CPT code for aphakia. This results in a decrease from the RUC-recommended 0.59 RVUs. For the bifocal service (CPT code 92341), we propose establishing 0.44 RVUs for this CPT code by identifying the midpoint between the RVUs for CPT codes 92340 (0.37 RVUs) and 92342 (0.51 RVUs). RUC recommended 0.51 RVUS, which is valued between the monofocal and multifocal services. Our proposal agrees with this rank order.

(4) Repair and refitting of spectacles, except for aphakia (CPT code 92370). RUC recommended 0.49 RVUs. We reject RUC's use of CPT code 99213 (office or other outpatient visit for the evaluation and management of an established patient, 0.56 RVUs) as a reference service because the median intraservice time of CPT code 92370 is 10 minutes and this procedure involves considerably less intensity than the work described under CPT code 99213. Since we believe the work intensity to be half that of an evaluation and management service, we propose establishing 0.17 RVUs for CPT code 92370, the same work value as CPT code 99211 (a 5 minute visit).

h. *Newborn care.* (1) History and examination of the normal newborn infant (CPT code 99431). RUC recommended 1.23 RVUs for this CPT code. We believe these recommended RVUs, which are 15 percent higher than a level 1 hospital admission (CPT code 99221, 1.07 RVUs), are too high. We generally agree with the description of the work furnished to RUC but do not agree that the vignette used in the survey is consistent with the CPT code. The vignette states that issues such as feeding, immunizations, and car safety are discussed with both parents. We do not believe these services are included in this CPT code. We also disagree that the examination of a normal newborn requires more mental effort and judgment than the admission of a sick child or adult to the hospital. Therefore, we propose reducing the RVUs to 0.74, which is similar to a level two new patient visit (CPT code 99202).

(2) Normal newborn care in other than a hospital or birthing room including physical examination of baby and conference(s) with parent(s) (CPT code 99432). RUC recommended 1.28 RVUs for this CPT code, which is 0.05 RVUs higher than the recommended RVUs for normal newborn care in the hospital (CPT code 99431). Unlike the CPT code for normal newborn care in the hospital, this CPT code does include counseling. Therefore, we are not proposing to decrease the RVUs of CPT code 99432 as much as we are proposing to decrease the RVUs of CPT code 99431. We agree with the reference CPT code 99203 (level 3 office visit with a new patient (1.15 RVUs). We propose assigning the same RVUs of 1.15 to this normal newborn care code.

(3) Subsequent hospital care for the evaluation and management of a normal newborn, per day (CPT code 99433). RUC recommended 0.65 RVUs for this CPT code. We disagree with these RVUs that are based on a comparison to a level 1 subsequent hospital care (CPT code 99231), which has 0.56 RVUs. The specialty society recommendation to RUC states that the work of the two CPT codes is the same but that more mental effort and judgment are needed. We disagree with this conclusion because we believe the intensity of work for a normal newborn is less than the intensity of work for a sick person in the hospital. Therefore, we propose assigning 0.44 RVUs to this CPT code.

(4) Newborn resuscitation (CPT code 99440). RUC recommended 2.96 RVUs based on a comparison to an hour of critical care (CPT code 99291, 3.68 RVUs) and surveyed intraservice time of 45 minutes. We believe this recommendation is too high because the 45 minutes of intraservice time does not correspond to the actual time spent resuscitating the infant. We believe the survey has inadvertently included stand-by time for the C-section delivery that should be reported under CPT code 99360. We agree that the critical care CPT code 99291 is the appropriate reference but believe a more typical time for newborn resuscitation would be 10 to 15 minutes. Therefore, we propose establishing 0.92 RVUs based on 15 minutes of physician work time compared to the critical care CPT code 99291 (3.68 RVUs) (3.68/4=0.92).

3. Comment Process for Proposed RVUs

We will consider timely comments received on these proposed RVUs in developing final RVUs to be announced in the **Federal Register** in the fall of 1994, to be effective January 1, 1995.

While we welcome comments in any format, we have found from past experience that the most useful comments have followed a particular format. We prefer receiving a clinical description of the service in question, and how the work of that service is analogous to one or more suitable reference services. Reference services should be commonly performed services with established work RVUs that are also fairly well understood outside their specialty. We have included a list of suggested reference services in Addendum G. On this list we have included the following services:

- Services that are commonly performed.
- Services that span the entire spectrum of work RVUs.
- At least three services furnished by each of the major specialties.

If none of these services is suitable, we recommend choosing another service from the physician fee schedule and explaining why it is a better reference procedure.

The clinical analogy for many services can be strengthened by dividing the service into the following three time segments and comparing these segments with the respective segments of the reference services:

- Preservice work—Work performed before the actual procedure such as review of records, solicitation of informed consent, and preparation of equipment. For surgical procedures with global periods, include estimates of the number, time, and type of visits from the day before surgery until the time the patient enters the operating room. The visit when the decision to operate is made and those visits preceding it should not be included.
- Intraservice work—The actual performance of the procedure. For evaluation and management services, this would be described as "face-to-face" time. For surgical procedures, include the entire time period from when the patient enters the operating room until the patient is discharged from the recovery room.
- Postservice work—Analysis of data collected from the encounter, preparation of a report, and communication of the results. For surgical procedures with global periods, include the number, time, and type of surgeon visits from the time the patient leaves the recovery room until the end of the global period. Also, distinguish inpatient from outpatient visits.

In making these estimations, we encourage detailed clinical information such as data derived from operating logs, operative reports, and medical charts concerning the length of service, the amount of work performed before and after the service, and the length of stay in the hospital. The usefulness of these data is greatly enhanced if they are presented with comparable data for reference services. Also, we encourage evidence of why the data presented are nationally representative of the average work involved in providing the service.

The concept of work involves more than just time; it is the product of time and "intensity". Intensity is best compared by breaking it into the following elements:

- Mental effort and judgment—Compare the service in question with a reference service as to the amount of clinical data that needs to be considered, the fund of knowledge required, the range of possible decisions, the number of factors considered in making a decision, and the complexity of how these factors interact.
- Technical skill and physical effort—One useful measure of skill is the point in training when a resident is expected to be able to perform the procedure. Physical effort can be compared by dividing services into tasks and making direct comparisons of tasks. In making comparisons, it is necessary to show that the differences in physical effort are not reflected accurately by differences in the time involved; if they are, considerations of physical effort amount to double counting.
- Psychological stress—Two kinds of psychological stress are usually associated with physician work. The first is the pressure involved when outcome is heavily dependent on skill and judgment and a mistake has serious consequences. The second relates to unpleasant conditions connected with the work that are not affected by skill or judgment. These circumstances would include situations with high rates of mortality or morbidity regardless of skill or judgment, difficult patients or families, or physician physical discomfort. Of the two forms of stress, only the former is fully accepted as an aspect of work; many consider the latter to be a highly variable function of physician personality.

Intensity often varies significantly in the course of furnishing a service. One common mistake is to "anchor," to treat points of maximum intensity during the service as the basis for comparing services. It is unlikely that the maximum is an accurate reflection of the average intensity of a service: a lengthy procedure that is simple except for a few moments of extreme intensity is probably less work than one of equal length during which a fairly high level of intensity is maintained throughout.

4. Establishment of Practice Expense and Malpractice Expense RVUs

• To the extent possible, we would use Medicare charge data to establish practice expense and malpractice expense RVUs for these codes. The RVUs would be calculated according to the statutory formula that requires us to apply historical practice cost shares to a base allowed charge for the service. To determine the practice cost shares, we would use data from the AMA's Socioeconomic Monitoring Survey for physician specialties.

If Medicare charge data do not exist, are insufficient, or are unreliable for reasons such as variations in interpretation of the code, we propose to establish practice expense and malpractice expense RVUs by one of several extrapolation techniques. For example, if we have already established RVUs on the basis of reliable charge data for an analogous procedure with similar practice expenses, we propose to use the charges for the analogous code. If there is no analogous code, we would impute the practice expense and malpractice expense RVUs from the work RVUs. Essentially, we would derive the total RVUs from the work RVUs and then apply the practice cost shares for the specialty most closely associated with the procedure to determine the practice expense and malpractice expense RVUs. For example, if a procedure has 6.00 work RVUs, and the specialty practice cost percentages for the specialty furnishing the service are 60-percent work, 30-percent practice expenses, and 10-percent malpractice, then the total RVUs are 10.00 (6/.60), the practice expense RVUs would be 3.00 (.30 x 10), and the malpractice expense RVU would be 1.00 (.10 x 10).

D. Separate Payment for Physician Care Plan Oversight Services

1. Background

Under current Medicare policy, separate payment is not made for physician care plan oversight services. While the services are covered, they are considered part of the physician work involved in other services, both visits and procedures; payment for the visit or procedure encompasses payment for these services. We continue to believe that most of the tasks associated with care plan oversight are of this type and are accounted for in the pre- and post-work RVU components for the visit. However, we are aware that, in certain situations, physicians furnish significant medical management services for which our current policy may not provide adequate payment.

In the July 1993 **Federal Register**, we solicited comments regarding a possible policy change to pay separately for case management services. We received comments from specialty groups and individuals indicating that physicians spend considerable time furnishing these services to patients. Most commenters believed that we should pay separately for these services and supported the use of the CPT codes for care plan oversight (99375 and 99376), which were established in 1994. We believe the term "care plan oversight" more accurately describes the services referred to in our proposed rule than the term "case management."

The CPT defines care plan oversight (CPT code 99375) as "physician supervision of patients under care of home health agencies, hospice or nursing facility patients (patient not present) requiring complex or multidisciplinary care modalities involving regular physician development and/or revision of care plans, review of subsequent reports of patient status, review of related laboratory and other studies, communication (including telephone calls) with other health care professionals involved in patient's care, integration of new information into the medical treatment plan and/or adjustment of medical therapy, within a 30-day period; 30–60 minutes." The second code, CPT code 99376, is for services requiring more than 60 minutes of physician time. These codes are included in the 1994 fee schedule as codes that are bundled into the visits or other procedures; separate payment for them is not allowed.

We propose to allow separate payment for care plan oversight services furnished in 1995 but only for the oversight of beneficiaries who are receiving Medicare covered home health care services. We do not propose to recognize separate payment for care plan oversight for beneficiaries in hospices, beneficiaries under the care of a home health agency (HHA) but not receiving covered home health care, and beneficiaries residing in skilled nursing facilities (SNFs) and nursing facilities (NFs). Our reasons follow.

With respect to patients who are under the care of HHAs who are not receiving Medicare covered HHA benefits, we do not believe that many cases require the type of complex care plan oversight for which we are proposing to pay. Some of these patients are not homebound and could see the physician in the office (although absences from the house to receive medical treatment do not affect a patient's "homebound" status for purposes of qualifying for home health benefits). Other patients are receiving nonskilled services and do not require substantive care plan oversight. With respect to hospice patients, we do not believe that we should allow a separate payment for care plan oversight services furnished to these patients because payment for these services is included in the prospective rates paid to the hospices. Separate payment for complex medical management would result in a duplication of Medicare payments for these services when furnished to hospice patients.

As to SNF and NF patients, the work RVUs for the SNF and NF evaluation and management codes for new or established patients were specifically increased in 1993 by 0.21 for CPT code 99301, 0.63 for CPT code 99302, 0.91 for CPT code 99303, 0.07 for CPT code 99311, 0.22 for CPT code 99312, and 0.21 for CPT code 99313 to account for care plan oversight performed in conjunction with those visits. Physicians are required to see patients in SNFs for an initial comprehensive assessment at least once every 30 days for the first 90 days and at least once every 60 days thereafter. Also, physicians are required to perform reassessments annually and after any episodes when the patient's condition changes significantly. Therefore, the frequency of visits and payment for periodic reassessments ensure that physicians receive payment for care plan oversight services furnished to SNF patients.

Although the home visit codes were also increased in 1993, we do not believe that a similar conclusion can be made for HHA patients since there is no direct correlation between those patients and the home visit codes. Further, the amount of care plan oversight required for HHA patients can be considerable. While we currently wish to limit payment for care plan oversight services to those furnished to patients receiving HHA services that are covered by Medicare, we will reconsider our decision to pay for these services in other situations in the future if we find good cause to do so.

Since the conditions for which we would pay for these services differ from the CPT definition, we propose to establish a new alpha-numeric code (level 2 HCPCS code).

2. Physicians Eligible to Receive Payment

We believe, in general, only one physician is responsible for signing the plan of care for HHA patients. Furthermore, because the complex care plan oversight services for which we

would pay require at least 30 minutes per month per patient, we believe that only one physician per month would meet our requirements. This policy conforms with the CPT instructions that only one physician may report services for a given period of time. We consider the care plan oversight services that are directly related to a surgical procedure and furnished during the global period of the surgery to be included in the global fee for the procedure. However, surgeons can be paid for care plan oversight during the global fee period if the service is not related to the surgery. (Modifier -24 with documentation would be used to report these services.) We expect that most of these services would be reported by primary care physicians.

We would not allow payment to a physician who has a significant ownership interest in, or a significant financial or contractual relationship with, an HHA (see § 424.22(d) regarding the limitations on certification of home health services).

3. Level of Payment

We propose to establish one level of payment for all care plan oversight services requiring at least 30 minutes per month. We do not propose to establish a second level of payment for care plan oversight activities requiring 60 or more minutes, as indicated by the CPT definitions, because we believe that the typical case for which we propose payment requires 30 to 60 minutes per month.

We believe the physician work involved in care plan oversight is similar to that described as hospital discharge day service (CPT code 99238), and we would assign the same level of RVUs to the code we establish for care plan oversight. Currently CPT code 99238 is assigned 1.63 total RVUs (1.07 work, 0.52 practice expense, and 0.06 malpractice). We propose to subject these services to the CF for nonsurgical services other than primary care. We will make a final determination, based upon our review of the public comments, in the final rule.

4. Budget Neutrality

As indicated above, we do not consider care plan oversight to be a new service. Medicare payment to the physician for covered visits and procedures has always included payment for covered care plan oversight services. Medicare has never paid separately for these covered services under the physician fee schedule. We also believe our long-standing policy of bundling care plan oversight into the primary service furnished by the physician has reflected physicians' historic billing practices in this regard. Since we do not consider care plan oversight to be a new service but rather an "unbundling" of the service from payment for existing services, we consider this a change requiring a budget neutrality adjustment.

Section 1848(c)(2)(B) of the Act provides that adjustments in RVUs may not cause total fee schedule payments to differ by more than $20 million from what they would have been had the adjustments not been made. We believe it is appropriate to adjust RVUs across all physician services to pay an additional amount for this service under the conditions described below.

We would consider this adjustment to be "interim" for three years, during which time we would monitor the use of this service. If the use of this service is determined to be significantly higher than expected, we would make an additional adjustment to achieve budget neutrality.

5. Conditions for Payment

We propose to allow separate payment for care plan oversight for a patient receiving HHA services that are covered by Medicare. The care plan oversight services must require recurrent physician supervision of therapy (patient not present) involving 30 or more minutes of the physician's time in a 30-day period. The patient must require complex or multidisciplinary care modalities involving regular physician development or revision of care plans, review of subsequent reports of patient status, review of related laboratory and other studies, communication (including telephone calls) with other health care professionals involved in the patient's care, integration of new information into the medical treatment plan, or adjustment of medical therapy. Since the conditions for which we would pay for these services differ from the CPT definition, we would establish a level 2 HCPCS code with the aforementioned definition.

We would allow payment to one physician per patient during a 30-day period. We would not allow payment to a physician who has a significant financial or contractual relationship with an HHA (§ 424.22(d)). Furthermore, we would not allow payment unless the physician has seen the patient within the 6-month period before the 30-day period for which the physician first bills for care plan oversight to ensure physician involvement in establishing the plan of care.

We would pay for this service during a global period of another service if the care plan oversight is documented to be unrelated to the surgery and identified by modifier -24. However, we would not pay for this service during the same month a physician bills for the hospital discharge under CPT code 99238 because the payment for CPT code 99238 includes payment for care plan oversight.

Physicians must document in their records the care plan oversight services they furnish, including the duration of time spent on the services for which payment is claimed. We plan to conduct post-pay monitoring on the use of these codes. The monitoring may be performed on a sample basis or focused on physicians who are high users of the code. The purpose of the monitoring would be, in part, to furnish additional provider education on the proper use of the code and the conditions for which Medicare recognizes payment.

While we are proposing to establish an allowance for home health care plan oversight under the physician fee schedule, we have two major concerns that need to be resolved before we would implement the proposal. The first concern relates to the interaction of this proposal with another initiative to improve the Medicare home health benefit. We have begun a major review of this benefit and will be working with beneficiary and provider groups and other interested parties. Our examination will include the recent rapid cost growth as well as options for simplifying the benefit. Another purpose of this initiative is to examine options for assuring the quality of care and enhancing outcomes. Some of these options may require legislation. While this proposed rule is intended to reimburse physicians for carrying out responsibilities currently mandated by Medicare, the new home health initiative will also examine all home health requirements, including care plan oversight. One specific issue is the extent to which nurse practitioners and clinical nurse specialists can substitute for physicians in overseeing certain aspects of patient care. The OBRA '89 amendments, for example, permit nurse practitioners and clinical nurse specialists to certify and recertify SNF care when working in collaboration with a physician. Therefore, we would like comments from beneficiaries, their families, consumer groups, physicians, nurses, and HHA providers regarding the following issues:

- To what extent are physicians involved in developing, monitoring, and altering the plan of care? What specific management activities do they perform

and for what proportion of their caseload do these activities require 30 or more minutes each month?

- Which patient characteristics or services require physician case management and which do not?
- Can some patients who require case management be safely managed by nurses or nurse practitioners rather than physicians, and if so, what are their characteristics?
- Are there any lessons relevant to home health from the SNF experience in which nurse practitioners and clinical nurse specialists have been permitted to certify SNF care?

We will consider the responses to these questions as well as recommendations resulting from the home health initiative when deciding whether to adopt or modify this proposal to reimburse physicians separately for care plan oversight services effective January 1, 1995.

Our second major concern relates to the impact of the provision on beneficiaries, that is, additional beneficiary liability due to the coinsurance payments for care plan oversight. Since we would implement this in a budget-neutral manner by reducing the RVUs for all other services, the coinsurance amounts for all other physician services would actually decrease. We estimate that the average HHA beneficiary will be liable only for approximately $16 in coinsurance for care plan oversight services per year. We believe that approximately 75 percent of these beneficiaries have some type of supplemental insurance that will cover the additional coinsurance amount.

Also, we are aware of concerns that beneficiaries may be liable for additional out-of-pocket expenses for services that they may not realize are being provided because the work in care plan oversight does not necessarily require a face-to-face encounter between the patient and the physician. We will work with HHA and physician groups to encourage providers to inform beneficiaries that physicians may bill and that Medicare will pay for these services when the specified conditions are met. Our discussions with medical societies indicate that physicians would do this as a matter of course. In addition, we would advise beneficiaries of this change in policy through special mailings or in the Explanation of Medicare Benefits.

We considered requiring beneficiaries to designate a particular physician as the provider of care plan oversight. However, designating a physician would not qualify that physician for payment if the conditions were not met and could, therefore, place an unnecessary burden on the patient or the patient's family. In addition, it would be difficult and costly for the carriers to administer.

Our reason for proposing separate payment for care plan oversight is to provide fair compensation for services physicians are already required to perform. Also, it has been suggested that paying for these services could be an incentive for greater physician involvement in the care of HHA beneficiaries.

We request comments on all aspects of our proposal, and are particularly interested in receiving comments from beneficiaries, their families, beneficiary advocacy groups, physicians, and HHAs on beneficiary liability concerns.

E. Payment for Multiple Surgical Procedures

We propose to revise our regular multiple surgery reduction rules to base payment on the lesser of the actual charge or 100 percent of the fee schedule amount for the procedure with the highest fee schedule payment and to base payment on the lesser of the actual charge or 50 percent of the fee schedule amount for the second through the fifth surgical procedures when the procedures are performed on the same patient on the same day by the same surgeon. Surgical procedures beyond the fifth procedure would be priced by carriers "by report" based on documentation of the services furnished.

We currently reduce payment for subsequent surgeries when a physician performs more than one surgery on a patient on the same day. We also reduce payment for the second procedure when a physician does a bilateral procedure (for example, bilateral knee replacements). We implemented the multiple and bilateral surgery reduction policies when the fee schedule was implemented in 1992 because carriers had historically reduced payment when more than one surgery was performed by a physician for a patient on the same day. The carriers and we believed that there was less physician work involved when a physician did multiple procedures on the same day than when the surgeries were performed separately.

We currently have three different sets of multiple surgery rules: special dermatology rules, special endoscopy rules, and standard multiple surgery rules. The special dermatology rules base payment for the highest priced procedure on the lesser of the actual charge or 100 percent of the fee schedule amount, base payment for the second through fifth procedures on the lesser of the actual charge or 50 percent of the fee schedule amount, and base payment for subsequent procedures "by report." The special endoscopy rules base payment for the highest priced procedure on the lesser of the actual charge or 100 percent of the fee schedule amount (unless the regular multiple procedure rules apply to it) and base payment for subsequent procedures in the same endoscopy family on the incremental increase in payment over the base code. We are not proposing changes to the special dermatology rules or the endoscopy rules.

The standard multiple surgery rules that apply to most other surgical procedures require carriers to rank the procedures by payment amount in descending order and base payment for the highest priced procedure on the lesser of the actual charge or 100 percent of the fee schedule payment. Carriers base payment for the second procedure at 50 percent; the third, fourth, and fifth procedures at 25 percent each; and procedures subsequent to the fifth procedure "by report." In addition, the bilateral procedure policy (a variation of multiple surgery but treated as a different policy) requires carriers to base payment for the first procedure on the lesser of the actual charge or 100 percent of the fee schedule payment and to base payment for the second procedure on the lesser of the actual charge or 50 percent of the fee schedule payment for the code.

Many physicians have objected to the standard multiple procedure reductions. They believe the work included in the global payment for the surgery is not reduced when they do more than one procedure on the same day and, therefore, that they should be paid the full global fee for all procedures they perform on a patient on the same day. As a result of these comments, we contracted for a study of the work in multiple and bilateral surgical procedures. This study was performed by the research team at the Harvard School of Public Health that furnished the data on which the work RVUs for many services in the fee schedule are based. The results of this study are available from NTIS by calling 1–800–553–NTIS, or (703) 487–4650 in Springfield, Virginia and requesting the following study:

- "A National Study of Resource Based Relative Value Scales for Physician Services: MFS Refinement Final Report; Phase IV." Hsiao, Braun, Dunn, Cohen, Dernberg, Sacher, and Stamenovic. Department of Health Policy and Management, Harvard

School of Public Health. HCFA contract 500–92–0025. July 30, 1993. NTIS PB94–115094.

The Harvard study found that when more than one procedure is performed on the same day, the level of physician work for each subsequent procedure is approximately 50 percent of what the work would have been had each procedure been the only procedure performed that day. This finding implies that an appropriate multiple surgery reduction would be to pay 100 percent for the highest priced procedure and 50 percent for the second and subsequent procedures. In addition, the Harvard study found that when the physician performs a bilateral procedure, the work required by the second procedure is only 40 percent of the work that would have been required had both procedures not been done on the same day.

Based on the findings of this study, we propose to revise the current multiple surgery policy to base payment on the lesser of the actual charge or 100 percent of the fee schedule for the highest priced service and the lesser of the actual charge or 50 percent of the fee schedule for the second through the fifth services. Under this proposed change, the standard multiple surgery policy would be identical to the current special dermatology policy that now applies to some dermatology services. This change would also simplify Medicare policy because we would have two rather than three multiple surgery policies since the services now under the special dermatology policy and those under the standard multiple surgery policy would be under the same multiple surgery policy.

Carriers would continue to pay for surgical procedures subsequent to the fifth procedure on a "by report" basis. We believe that this review of the documentation for procedures after the fifth procedure is necessary to ensure proper coding and payment for these services. The frequency of more than five surgeries performed by the same physician on the same day is very small, and the study did not look at these occurrences. Moreover, our CMDs advise us that review of these occurrences often results in a determination that the services are incorrectly coded, or, rarely, a finding that the case is an extraordinarily difficult situation in which more payment may be appropriate than the multiple surgery rules would otherwise permit. Therefore, we continue to believe that "by report" review and payment is appropriate for the sixth and subsequent procedures performed on the same day.

We are not proposing any changes to the current policy for payment of bilateral procedures at this time, notwithstanding the findings of the Harvard study that it may be appropriate to decrease our payment from 150 percent to 140 percent when the service is bilateral. As we indicated above, the bilateral policy is a variation of the multiple surgery policy. We prefer to retain a consistent policy of payment at 50 percent for a second surgical procedure performed on the same day as another surgery even when the second procedure is the same CPT code as the first.

F. Application of Site-of-Service Payment Differential

Services that are performed more than 50 percent of the time in office settings are subject to a payment limit if they are performed in hospital outpatient departments and inpatient settings. For these procedures, the practice expense RVUs are reduced by 50 percent. This limitation reflects the fact that practice expenses are lower for services performed in hospital settings using hospital equipment, personnel, and space. Because procedures that are on the list of Medicare-approved ASC procedures are generally furnished less than 50 percent of the time in office settings, these procedures are not subject to this reduction.

We used 1989 data to establish the current list of ASC procedures subject to this site-of-service limitation. We propose to update this list using 1993 data to be effective for services furnished on or after January 1, 1995. To avoid any concern about the statistical validity of the data for low volume procedures, we would exclude any procedure performed less than 100 times annually. However, if the procedure is part of a "family" of codes that are otherwise on the site-of-service list, we would include it even if the volume is less than the 100-procedure threshold. (The current list excludes all procedures with volumes less than 1,000 in 1989.)

In addition, we propose to add certain procedures to the list that were proposed for removal from the list of approved ASC procedures. (The proposed notice listing the proposed deletions was entitled "Proposed Additions to and Deletions from the Current List of Covered Procedures for Ambulatory Surgical Centers" and was published in the **Federal Register** on December 14, 1993 (58 FR 65357).) If these procedures are ultimately not removed from the ASC list by the time we publish the final rule, the procedures would not be included as additions to the list.

The procedures we propose to add to the site-of-service list based on the more current data and the criteria outlined above are in Addendum H. We propose removing the following procedures from the site-of-service list:

HCPCS	Description
29530	Strapping of knee.
36425	Establish access to vein.
36500	Insertion of catheter, vein.
64425	Injection for nerve block.
64640	Injection treatment of nerve.
92018	New eye exam and treatment.
96440	Chemotherapy, intracavitary.
99275	Confirmatory consultation.

G. Bundled Services

1. Generation and Interpretation of Automated Data (CPT Codes 78890 and 78891)

The CPT states that CPT codes 78890 and 78891 should be reported in addition to a primary procedure. The Medicare charge data show that in 1992 (the latest year for which we have complete data), CPT codes 78890 and 78891 were billed in addition to a primary procedure only 12.7 percent and 2.5 percent of the time, respectively. The data indicate that these codes are being used incorrectly.

In addition, the work involved in the primary procedures with which CPT codes 78890 and 78891 have been billed includes the generation and interpretation of automated data. The RVUs for these primary procedures, for example, nuclear medicine procedures and cardiac stress tests, include a data component.

Therefore, we propose to bundle payment for CPT codes 78890 and 78891 into the payment for the primary procedure and assign a "B" status indicator to show that payment would be bundled into the payment for another service. By bundling these CPT codes, we avoid paying twice for the same service. We do not believe that separate payment should be made for these codes. We would redistribute the RVUs associated with CPT codes 78890 and 78891 across all codes.

2. Noninvasive Ear or Pulse Oximetry (CPT Code 94760)

At present, we allow separate payment for pulse oximetry testing (CPT code 94760) under the fee schedule. However, we believe this is a simple monitoring test that should be considered part of the larger procedure with which it is performed. Pulse oximetry is performed either as part of

anesthesia monitoring or as part of a study or assessment such as sleep studies and pulmonary function tests. Therefore, we propose to assign a "B" status indicator to CPT code 94760. Thus, payment for this procedure would be bundled into the RVUs of the procedure requiring the pulse oximetry testing. Because pulse oximetry may be performed in conjunction with a variety of physician services, we propose to implement this in a budget-neutral manner by redistributing the current RVUs across all services.

H. RVUs for Doppler Echocardiography (CPT Code 93325)

We are proposing to redistribute the RVUs assigned to CPT code 93325 (Doppler color flow velocity mapping). In 1992, the procedure was classified as a technical component (TC) service only (without a professional component (PC)). As a result of the refinement process for physician work RVUs, for 1993 we assigned 0.07 physician work RVUs to the code, and we established a PC for the procedure. We redistributed slightly more than half of the practice expense and malpractice RVUs to the PC from the TC. As a result, the PC was assigned 0.07 work RVUs, 1.44 practice expense RVUs, and 0.13 malpractice RVUs, and the TC was assigned 1.40 practice expense and 0.12 malpractice RVUs. While physicians and other entities billing for the complete or global services were unaffected by this change, physiological laboratories billing the TC saw their payments reduced by more than one-half. As a result of comments received, we propose to adjust the practice expense and malpractice RVUs as follows:

Modifier	Work	Practice expense	Malpractice	Total
−26	0.07	0.04	0.01	0.12
TC	0.00	2.79	0.24	3.03
Global	0.07	2.83	0.25	3.15

The practice expense and malpractice RVUs were determined by using practice expense data for cardiovascular disease specialists and extrapolating from the work RVUs using the methodology discussed in the November 1991 final rule (56 FR 59569).

I. Nuclear Medicine

The American College of Nuclear Physicians and The Society of Nuclear Medicine have brought a matter to our attention involving certain nuclear medicine multiple diagnostic procedures. The issue was not previously addressed in our regulations or instructions. The organizations noted that most carriers are denying payment for one of the procedures when both are performed on the same day. They also believed that, for patients with certain malignancies, it is necessary to perform a whole body planar study before a SPECT study, both to determine if tomography is needed and to deduce the region to be selectively imaged. They proposed that the CPT modifier −51 for multiple procedures be used in these situations, which would result in full fee schedule payment for the procedure with the highest payment level and a 50-percent payment for the second procedure. The procedures in question follow:

- CPT code 78306 (Bone imaging; whole body) when followed by CPT code 78320 (Bone imaging; SPECT).
- CPT code 78802 (Radionuclide localization of tumor; whole body) when followed by CPT code 78803 (Tumor localization; SPECT).
- CPT code 78806 (Radionuclide localization of abscess; whole body) when followed by CPT code 78807 (Radionuclide localization of abscess; SPECT).

We propose to implement the suggestion for the 1995 physician fee schedule.

J. End-Stage Renal Disease (ESRD)

1. Hospital Inpatient Dialysis on the Same Day as an Evaluation and Management Service

Presently, under the physician fee schedule we pay for the physician services associated with dialysis (CPT codes 90935, 90937, 90945, and 90947) in hospital inpatient settings. (In outpatient settings, these services are included in the monthly capitation fee (CPT codes 90918 through 90922).) Hospital inpatient dialysis is considered to be a global service; that is, a single fee is paid for all necessary services normally furnished with the procedure. Hospital inpatient dialysis has been assigned a 0-day global period. This means that payment is not made for a visit by the same physician on the same day that he or she bills the dialysis service unless the visit was not related to the treatment of the patient's ESRD and the service was not, and could not have been, furnished during the dialysis treatment.

In general, for evaluation and management services furnished in hospital settings, only one evaluation and management service can be billed per day. This includes, for example, multiple hospital visits on the same day and a hospital visit and inpatient psychotherapy service. One of the few exceptions that existed was ventilation management; however, effective January 1, 1994, payment is not made for both ventilation management and a hospital visit on the same day as stated in the December 1993 final rule (58 FR 63640). We consider physician dialysis services to be an evaluation and management service and believe dialysis should be treated similarly to all other evaluation and management services. Like ventilation management, dialysis management consists of evaluating the patient, making medical decisions, and writing orders for therapy to be furnished by hospital staff. Therefore, we propose to pay for either an evaluation and management code or a dialysis code, but not both, on the same day. Thus, physicians would no longer be paid for dialysis in addition to an evaluation and management service, even if the evaluation and management service is billed under CPT modifier -25.

In selecting the level of evaluation and management service to bill, physicians may, as indicated above, bill either the hospital visit or the dialysis service. Moreover, in selecting the level of the hospital visit that may be billed, the physician could consider the management of dialysis in determining the appropriate level of evaluation and management code. If it is appropriate, the physician may also bill the applicable prolonged service code in addition to the evaluation and management code. If a dialysis service and an evaluation and management service performed on the same day are both billed, the dialysis service may be paid, but the evaluation and management service will be rejected.

We propose implementing the proposal in a budget neutral manner by redistributing the payment for an evaluation and management service performed on the same day as dialysis into the payment for the dialysis service. We would determine the

current evaluation and management payment allowed when dialysis and evaluation and management are performed on the same day and make the appropriate adjustments to the work, practice expense, and malpractice RVUs to each of the four dialysis codes so that the payments remain budget neutral.

The following example using CPT code 90935 illustrates the proposed methodology for increasing the work, practice expense, and malpractice RVUs:

- Determine the aggregate allowed amounts and allowed services for CPT code 90935 (hemodialysis with a single physician evaluation).
- Determine the aggregate allowed amounts for the evaluation and management services performed on the same day as CPT code 90935.
- Divide the aggregate allowed payment for CPT code 90935 and evaluation and management services performed on the same day by the product of the sum of the national CF and the aggregate allowed services for CPT code 90935. This computation results in the increased total RVUs for CPT code 90935.
- Apportion the additional RVUs to the work, practice expense, and malpractice RVUs currently assigned to CPT code 90935 based on the current RVU shares.

2. Payment for Outpatient ESRD-Related Services Under the Physician Fee Schedule

a. *Development of the monthly capitation payment (MCP).* The MCP was implemented in 1983 in accordance with section 1881(b)(3) of the Act. It is a prospective, comprehensive, monthly payment for all outpatient ESRD-related physicians' services. The payment amount was originally set based on the most current reasonable charge data available (fiscal year (FY) 1981) for internists' office visits for established patients adjusted by a factor for home dialysis patients, reflecting the fact that physician effort for a home patient is 70 percent that of a facility patient. The payment amounts for the original MCP ranged from a minimum of $144 to a maximum of $220 reflecting the geographical variation in physicians' billing patterns. In 1985, the General Accounting Office (GAO) found that the relative physician effort for home dialysis patients should have been 26 percent of the effort for a patient dialyzed in a facility (GAO study GAO/HRD–85–14). Accordingly, in 1986, the MCP was reduced resulting in a current range of payment amounts from a minimum of $132 to a maximum of $203 and an average of approximately $180. These services are reported with CPT codes 90918 through 90921.

b. *Proposed inclusion of the MCP under the physician fee schedule.* We are proposing to include the MCP (CPT codes 90918 through 90921) under the physician fee schedule. Physicians' services are defined in section 1848(j)(3) of the Act as items and services described in, among other provisions, section 1861(s)(1). Those section 1861(s)(1) physicians' services include services furnished to beneficiaries with ESRD. However, at the inception of the fee schedule, we relied on the authority in section 1848(j)(3) to exclude these services from the fee schedule, in part because the authority to pay a comprehensive monthly rate for services to ESRD patients was derived from section 1881(b)(3).

We now propose instead to include the physicians' monthly routine professional services furnished to ESRD patients in the fee schedule. We believe, and understand that the nephrologists agree, that payment for these services should be established in the same way as all other physicians' services.

We are not proposing RVUs for these codes at this time. While the Harvard Phase I study assigned a work RVU of 1.60 RVUs to the service, concerns were expressed about the vignette used to survey the procedure. In light of these concerns and since RUC is currently reviewing the work for this service, we are not proposing an RVU now. Rather, we are requesting comments from nephrologists and other interested parties on the work RVU for this service and the basis for their recommendations. Commenters may consider the original Harvard RVU, the results of the RUC process, and any other information in making their recommendations. We plan to take these comments and the RVU proposed by RUC into account in establishing an interim final work RVU for the service for 1995. As with all interim RVUs, the RVU will be subject to comment and may be modified based on these comments for services furnished in 1996.

We propose to base the practice expense and malpractice expense RVUs on current payment allowances by applying the nephrologists' practice expense shares to the current allowance. We would apply the nonsurgical update to these codes. The MCP is paid to physicians for physicians' services. Therefore, this change will have no impact on payments to ESRD facilities for facility services.

K. Services Considered To Be Medicare Part A Services

Therapeutic apheresis (CPT code 36520) is included in the current fee schedule as a professional service with work RVUs. However, after further consideration, we do not believe this service requires physician work but rather that it is performed by the physician's staff. Moreover, because this procedure is usually performed in a hospital by hospital staff, payment is part of the Part A payment to the hospital. Therefore, we propose to remove the physician work RVUs for this code from the fee schedule and make this code an "incident-to" service on the fee schedule. The practice expense and malpractice expense RVUs for CPT code 36520 were originally calculated on a historical charge basis. We recalculated those RVUs for the "incident-to" code using the historical charges for this procedure. We propose to assign the following RVUs for this "incident-to" service: Practice expense—1.87; malpractice expense—0.12; total RVUs—1.99. Under this proposed rule, the code could be billed for the service only if it is performed in the office. The savings resulting from this proposal would be included in the budget-neutrality calculations for CY 1995.

III. Implementation of Omnibus Budget Reconciliation Act of 1993—Payment for Antigens (Allergen Immunotherapy)

A. Background and Legislative Change

Under allergen immunotherapy, patients with allergies are injected subcutaneously with extracts of the specific agents to which they are allergic. At the outset, small amounts are injected, but the dosage is gradually increased until a maintenance level is achieved and the patient is desensitized. The allergen extracts used for this therapy are called antigens.

Medicare coverage for antigens prepared by a physician is established in section 1861(s)(2)(G) of the Act, and they are currently paid for under the reasonable charge payment method. Unlike many other services for which Medicare payment is made to physicians, antigens were not included within the scope of services paid under the Medicare physician fee schedule. This was changed by section 13518 of OBRA '93. Subject to the Secretary's discretion, that section made services covered under section 1861(s)(2)(G) of the Act—that is, antigens prepared by a physician—subject to the Medicare physician fee schedule. This change is effective for services furnished beginning January 1, 1995.

In this proposed rule, we describe the RVUs and other policy provisions that we plan to implement in bringing antigens under the Medicare physician fee schedule.

B. CPT and HCPCS Codes

There are five J codes (level 2 HCPCS codes) that represent antigens in the 1994 HCPCS. Those codes are:

HCPCS code	Description
J0220	Injection, allergy desensitization, aqueous preparation.
J0230	Injection, allergy desensitization, Allpyral.
J0240	Injection, allergy desensitization, emulsion not specified.
J7010	Vial of allergy vaccine, single dose.
J7020	Vial of allergy vaccine, multiple dose.

These codes are infrequently used and do not represent a significant number of Medicare-allowed charges. (In 1993, there were only about 380,000 allowed services, representing $2.3 million.) Instead of using these J codes, most physicians bill for antigens under appropriate CPT codes. We are proposing to eliminate the use of these antigen J codes, thereby requiring all physicians to bill under the CPT codes.

To understand the antigen CPT codes and their use by allergists, we consulted with the Joint Council of Allergy and Immunology (JCAI). The JCAI is an organization of allergists and immunologists whose sponsors are the American Academy of Allergy and Immunology and the American College of Allergy and Immunology.

Within the CPT codes there are currently three types of codes. The first type is the injection-only code. It does not include the extract or the preparation of the extract. CPT code 95115 represents a single injection, and CPT code 95117 represents multiple (that is, two or more) injections. Because they do not include antigen extract, these codes are already being paid under the Medicare physician fee schedule and have been paid in that manner since fee schedule payments began in January 1992.

The second type of antigen code is the extract/extract preparation code. These codes represent the preparation of the antigen, the antigen extract itself, and the physician's assessment of the history and skin testing to determine which antigens to use, in which concentrations, and in what volumes. These codes include CPT code 95144 (single dose vials) and CPT code 95165 (multiple dose vials). However, for stinging insect venoms, the extract/extract preparation codes are the following:

- CPT code 95145, multiple dose vials for single venom.
- CPT code 95146, multiple dose vials for two venoms.
- CPT code 95147, multiple dose vials for three venoms.
- CPT code 95148, multiple dose vials for four venoms.
- CPT code 95149, multiple dose vials for five venoms.

Also, a final extract/extract preparation CPT code is 95170 (multiple dose vials of whole body extract of biting insect or other arthropod). For all of these codes, the biller is required to specify the number of doses for which he or she is billing. For the venom extracts, if a code represents more than one venom, when there is one dose of each venom furnished, that constitutes one overall dose for the code. In other words, in order for there to be one dose of a multiple venom code, there has to be one dose of *each* of the venoms.

The third type of antigen code is the complete service code. These codes include the injection as well as the extract and the extract preparation. The complete service codes include:

- CPT code 95120, single injection, including extract. This code is equivalent to CPT code 95115 plus CPT code 95165 (one dose).
- CPT code 95125, multiple injections, including extract. This code is equivalent to CPT code 95117 plus CPT code 95165 (two doses). We have been advised that the complete CPT codes (95120 and 95125) never equal the single dose vial CPT code 95144 plus CPT code 95115 or CPT code 95117 because there are virtually no circumstances when an allergist who is administering an injection should be doing so from a single dose vial. Supposedly, all allergists administering the shots themselves do so from multiple dose vials. They mix and furnish single dose vials only for administration by some other physician and that other physician would be billing an injection-only code—either CPT code 95115 or 95117.)
- CPT code 95130, injection for single stinging insect venom. This code is equivalent to CPT code 95115 plus CPT code 95145 (one dose of one venom).
- CPT code 95131, injections for two stinging insect venoms. This code is equivalent to CPT code 95117 plus CPT code 95146 (one dose each of two venoms—which is equal to one overall dose of code CPT code 95146).
- CPT code 95132, injections for three stinging insect venoms. This code is equivalent to CPT code 95117 plus CPT code 95147 (one dose each of three venoms—which is equal to one overall dose of CPT code 95147).
- CPT code 95133, injections for four stinging insect venoms. This code is equivalent to CPT code 95117 plus CPT code 95148 (one dose each of four venoms—which is equal to one overall dose of CPT code 95148).
- CPT code 95134, injections for five stinging insect venoms. This code is equivalent to CPT code 95117 plus CPT code 95149 (one dose each of five venoms—which is equal to one overall dose of CPT code 95149).

The first two types of CPT code (that is, injection-only and extract/extract preparation) are frequently used in situations when the allergist who prepares and furnishes the extract does not perform the injection. In many cases, those injections may be furnished by primary care physicians to whom the allergist has sent the extract for a particular patient. In those instances, the injection code is billed by the primary care physician and the extract/extract preparation code is billed by the allergist. About 50 percent of allergists also use these two types of codes in tandem, rather than billing the complete service code. In other words, they bill separately for the two services that they furnish. The complete service codes are billed by the other half of the allergists when they furnish both the injection and the extract.

We are proposing to no longer permit payment under the complete service codes. Although approximately half of the allergists are using these codes, we believe that it is virtually impossible to guarantee accurate payment under them. As has been recommended to us by JCAI, payment for the complete codes should be the same as payment for the equivalent component codes. However, in our judgment, that cannot be accomplished under the "complete" codes. For example, CPT code 95120 is equivalent to CPT code 95115 plus CPT code 95165, one dose. Thus, we would recommend single or constant RVUs for CPT code 95120—equalling one injection and one dose of extract. Presumably, if on the same day an allergist provides a 10-dose vial to a patient and also gives one dose of it in one injection, the allergist could bill either CPT code 95120 and CPT code 95165 (nine doses), or the allergist could bill CPT code 95115 (single injection) plus CPT code 95165 (10 doses). The payment result would be the same, but we believe that the first approach is too complicated and prone to errors on the part of both physicians and Medicare carriers. Similarly, we are not entirely convinced that no allergists furnishing injections would bill for CPT code

95144 (single dose vial of extract). Under our payment system, a complete service code must have a one per dose price. However, that is not possible if more than one option for furnishing the complete service is available and those options have different resource costs. If indeed an allergist does furnish and inject from a single dose vial, then the pricing of the complete service is not easily determined. The price for the complete service could be the sum of the injection plus a dose from a multiple dose vial or the sum of the injection plus a dose from a single dose vial. The permutations of what the complete codes could represent are numerous and, therefore, no single appropriate price could be established. Finally, we believe the terminology of CPT codes 95120 and 95125 is confusing and could lead some nonallergists to bill these codes if they provide allergenic extract furnished by an allergist who has also billed for the extract using CPT code 95144 or CPT code 95165. Therefore, we propose keeping billing and pricing simple by having only component billing and eliminating the use of the complete codes. Commenters recommending retaining the complete codes should address our concerns about establishing one fair price for each complete code (although the code might represent more than one means of delivering the service and those means have different resource costs).

C. Proposed RVUs

We are proposing to accept the RVUs that have been recommended to us by JCAI. The JCAI recommendations include not only RVUs for the antigen codes, but also RVUs for the injection-only codes. The JCAI recommendations for the injection-only codes are slightly less than the 1994 RVUs for those codes. The proposed RVUs are:

CPT Code	Work	Practice expense	Malpractice expense	Total
95115	.....	.37	.02	.39.
95117	.....	.49	.02	.51.
95144	.06/dose ...	.13/dose ...	.01/dose ...	.20/dose.
95165	.06/dose ...	.10/dose ...	.01/dose ...	.17/dose.
95145	.06/dose ...	.34/dose ...	.03/dose ...	.43/dose.
95146	.06/dose ...	.62/dose ...	.03/dose ...	.71/dose.
95147	.06/dose ...	.92/dose ...	.03/dose ...	1.01/dose.
95148	.06/dose ...	.92/dose ...	.03/dose ...	1.01/dose.
95149	.06/dose ...	1.15/dose .	.03/dose ...	1.24/dose.
95170	.06/dose ...	.35/dose ...	.03/dose ...	.44/dose.

D. Budget Neutrality

Section 13518 of OBRA '93 requires that, in 1995, we spend the same for antigens under the fee schedule that we would have spent for them under the current payment system. Because of the variations in the current payment system, it is impossible to implement this budget neutrality requirement. Currently, there is wide variation in the way in which Medicare carriers pay for antigens. Some pay per dose. Some pay on the basis of volume, and still others pay on the basis of volume and concentration. There is no single reliable and uniform unit of service across all carriers. This means, therefore, that we are unable to precisely relate current frequencies to those that would occur under the fee schedule and, in the absence of doing so, we are unable to guarantee budget neutrality within the antigen category. We believe, however, that the allowances being proposed are reasonable, and we have no basis for concluding that they would result in either increased or decreased expenditures compared with the existing system.

Since CPT codes 95115 and 95117 (injection-only) are currently paid under the physician fee schedule and since we propose changes in the allowances for these services, we are subjecting these RVU changes to the overall budget neutrality adjustment for fee schedule changes (that is, the $20 million threshold).

E. Transition

Because of the wide variation in the carriers' current descriptions of antigen services, we are not proposing transition to the full fee schedule. Instead, antigen fee schedule payments would, from the outset, be based on the full fee schedule amount. In our judgment, it is appropriate to transition payments only when the units of service are the same, or at least roughly the same, under the old and new payment systems. In this way, one would be transitioning payments only, not the definitions of the services. Since we have no assurance that most carriers use the antigen definitions to be used under the fee schedule, we propose no transition from those prior carrier payment amounts.

IV. Change in the MVPS Calculation for FY 1996

We propose changing the method for calculating the MVPS for FY 1996 by expanding the medical and other health services in the performance standard to include clinical laboratory tests performed in hospital outpatient settings. Currently, the performance standard includes clinical laboratory services performed in physicians' offices and in independent laboratories.

The MVPS, as defined in the December 29, 1989 notice (54 FR 53819), currently excludes clinical laboratory services furnished in hospital outpatient departments because the hospital cost reports related to these services were not readily available under data collection systems in place at the time. Because we now have the capacity to use this information, and because physicians are responsible for the volume and intensity of tests performed regardless of the setting, we propose to include clinical laboratory services furnished in hospital outpatient departments in the MVPS calculation beginning in FY 1996. The physician fee schedule update would, therefore, be affected by this change beginning CY 1998.

V. Changes to the Regulations

In § 410.152(b)(4), concerning payment under Part B, we would recognize that payment may be based on other payment methodologies (for example, the physician fee schedule) than simply on a reasonable change basis.

In § 414.2 ("Definitions"), we would add the definition of "antigens" under the definition of "physicians' services."

In § 414.4 ("Fee schedule areas"), in paragraph (b), we would add Iowa as an additional statewide fee schedule area.

We would add a new § 414.39 ("Special rules for payment of care plan oversight").

In § 414.314 ("Monthly capitation payment method"), we would revise

paragraph (c) ("Determination of payment amount") to indicate that the MCP is paid under the Medicare physician fee schedule described in part 414. We would also remove paragraph (d) ("Publication of payment amount") of this section because the MCP rate would be published with all other physician services paid under the physician fee schedule.

VI. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

VII. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, if we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

VIII. Regulatory Impact Analysis

A. Regulatory Flexibility Act

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a rule would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all physicians are considered to be small entities.

This proposed rule would not have a significant economic impact on a substantial number of small entities. Nevertheless, we are preparing a regulatory flexibility analysis because the provisions of this rule are expected to have varying effects on the distribution of Medicare physician payments across specialties and across geographic areas. We anticipate that virtually all of the approximately 500,000 physicians who furnish covered services to Medicare beneficiaries would be affected by one or more provisions of this rule. In addition, physicians who are paid by private insurers for non-Medicare services would be affected to the extent that they are paid by private insurers that choose to use the proposed RVUs. However, with few exceptions, we expect that the impact would be limited.

If these proposals result in increases in Medicare payment amounts, beneficiary liability would also increase because the coinsurance amounts would increase. In addition, if nonparticipating physicians do not accept assignment, the amount that they may bill above the fee schedule amount would also increase because the limiting charge for the service would increase. If a proposal results in a decrease in Medicare payment amounts or the bundling of payment for one service into payment for another, beneficiary liability would decrease.

With respect to the proposal to include the MCP under the Medicare physician fee schedule, we are unable to estimate the impact at this time because we are not proposing RVUs for the service.

Section 1848(c)(2)(B) of the Act requires that adjustments to RVUs in a year may not cause the amount of expenditures for the year to differ by more than $20 million from the amount of expenditures that would have been made if these adjustments had not been made. If this threshold is exceeded, we make adjustments to the RVUs in order to preserve budget neutrality. The proposals discussed in sections B through F below would have no impact on total Medicare expenditures because the effects of these changes would be neutralized in the establishment of RVUs for 1995.

In accordance with the provisions of Executive Order 12866, this proposed rule was reviewed by the Office of Management and Budget.

B. Effects of Implementing Proposed Changes to GPCIs

The revised GPCIs would be implemented in a budget-neutral manner. They would not change the total national physician fee schedule payments that would have been made in 1995 had the current GPCIs been retained. The revised GPCIs would merely redistribute payments among fee schedule payment areas. The general geographic effects of this redistribution are set forth in Addendum D.

The overall effect of the GPCI changes cannot be estimated by summing the effects of the work, practice expense, and malpractice changes. Merely summing the changes would result in an incorrect increase or decrease. The effects are not additive because each of the three GPCI components have different weights. A complete discussion, with examples, of the revised GPCIs can be found in section II.A.3. of this proposed rule.

Again, we stress that the GPCIs measure relative cost differences among areas compared to the national average. The national average cost is represented by a value of about 1.0. (It is not exactly 1.0 because of budget-neutrality rescaling.) A revised GPCI showing a decrease from the current value does not necessarily mean that absolute costs of an individual physician or absolute costs in an area have decreased. Rather, it means that costs in that area have decreased compared to national average costs. In other words, national average costs increased more than did area costs.

C. Payment Area (Locality) Changes

The change to convert Iowa to a statewide payment area effective January 1, 1995, would be made on a budget-neutral basis within the State. However, some modest redistribution in payments could occur within the State. From our past experience, redistribution of payments would flow from urban areas, which usually have had higher GPCIs before the change, to rural areas, which usually have had lower GPCIs before the change. We estimate this redistribution to be generally in the range of 1 to 3 percent. These estimates represent aggregate effects among the areas of the State. The effect on individual physicians would vary depending on factors such as the mix and volume of their services to Medicare beneficiaries.

D. Effects of Proposed Work RVUs for Carrier-Priced and Non-Medicare CPT Codes

We are proposing to create RVUs for 11 CPT codes for services not covered by Medicare and for 60 codes for services that are currently carrier-priced. An example of a service not covered by Medicare is CPT code 92340 (fitting of monofocal spectacles, except for aphakia). In general, the services that are currently carrier-priced are rarely furnished to Medicare beneficiaries. An example of a carrier-priced service is CPT code 99431 (history and examination of the normal newborn infant). This effort would benefit State Medicaid programs and private insurers that base their payment, in whole or in part, on the Medicare physician fee schedule. We are not able to estimate the total national impact of the creation of these RVUs because we do not know the frequency of the use of RVUs by payers other than Medicare. Also, we do not know how third-party payments based on our RVUs would compare to the payments currently made by these payers.

E. Effects of Proposed Payment Policy Revisions

1. Separate Payment for Physician Care Plan Oversight Services

We propose to pay for care plan oversight services for patients receiving HHA services that are covered by Medicare. We propose to establish a fee schedule payment amount based on 1.63 RVUs, which, by applying the nonsurgical CF, results in a monthly payment amount of approximately $54.

Preliminary studies based on HHA utilization data indicate that payment for this service would be allowed for approximately 5.25 million claims per year and would result in increased Medicare expenditures of approximately $210 million for 1995. Thus, we estimate that a reduction of approximately 0.7 percent in the RVUs for other services would be required to offset this amount to retain budget neutrality. We would consider this adjustment to be "interim" for three years, during which time we would monitor utilization of this service. If utilization is significantly higher than our estimate, we would make an additional adjustment to achieve budget neutrality.

If we implement this policy, beneficiaries overall would not sustain any change in coinsurance amounts or out-of-pocket costs. Because we are making this a budget-neutral change, we would therefore be reducing the allowed fee for all other physician services in order to pay for care plan oversight. We estimate that the average HHA beneficiary would be liable for approximately $16 in coinsurance for care plan oversight services each year. Since an estimated 75 percent of beneficiaries have either Medigap policies or Medicaid coverage for the coinsurance amounts, only a limited number of beneficiaries would see any financial impact due to this change. Approximately 10 percent of beneficiaries receive services from nonparticipating physicians. These beneficiaries would be liable for any amount that exceeds the Medicare-approved amount up to the limiting charge for this service. We believe the additional monthly amount because of the limiting charge provision would be approximately $8. Any impact on physicians who do not furnish this service would result from our reducing the RVUs for other physician services to achieve budget neutrality.

2. Payment for Multiple Surgical Procedures

We propose to revise our method of payment for multiple surgical procedures performed on the same patient on the same day by the same physician. We currently have three different sets of multiple surgery rules. We are not proposing to change the dermatology or endoscopy multiple surgery rules. We are proposing to revise only the standard multiple surgery rule that currently requires carriers to rank the procedures by payment amount and base payment on the highest priced procedure at the lesser of actual charges or 100 percent of the fee schedule amount; the second procedure at 50 percent; the third, fourth, and fifth procedures at 25 percent; and procedures subsequent to the fifth procedure "by report" based on documentation of the services furnished.

We propose to revise the current standard multiple surgery policy to base payment to physicians on the lesser of actual charges or 100 percent for the highest priced procedure, and the lesser of actual charges or 50 percent for the second through fifth procedures. Procedures performed subsequent to the fifth procedure would continue to be paid "by report" based on documentation of the services furnished. Under this proposed change, the standard multiple surgery policy would be the same as the current policy that applies to multiple dermatology procedures. This change in payment policy would simplify carrier payment procedures because we would have two, rather than three, multiple surgery policies.

Preliminary studies of 1992 utilization and cost data indicate that this change to the 100/50/50/50/50 percent payment policy would result in increased Medicare payments of approximately $37 million, were it not for the budget-neutrality adjustment to all RVUs that we would make if we implement this change. Our preliminary estimate is that this change would require a reduction in all RVUs of about 0.1 percent. This estimate may change in the final rule based on a review of 1993 utilization and the level of the updates for 1995.

If we implement this proposal, beneficiary liability would increase because the coinsurance for the third through fifth services would increase. This would occur because physicians who perform multiple procedures that are now paid on the basis of the lesser of the actual charge or 25 percent of the fee schedule payment for the third through fifth procedures would be paid twice as much for the third through fifth procedures performed on the same day for a patient, and the coinsurance is a fixed percent of the amount Medicare pays. In addition, the amount that nonparticipating physicians may bill over the fee schedule amount if they do not accept assignment would also increase because the limiting charge is a percent of the fee schedule amount. However, beneficiary liability may be reduced slightly in the aggregate as a result of slightly lower payments for other services.

Physicians who do not perform the surgical procedures to which this policy applies may have the RVUs for the services they perform slightly reduced as a result of this policy change.

3. Application of Site-of-Service Payment Differential

We propose to revise the current list of surgical procedures subject to the site-of-service limitation using 1993 data. The revised list would be effective for services furnished beginning January 1, 1995. To avoid any concern about the statistical validity of the data for low volume procedures, we would exclude any procedure performed less than 100 times a year unless the procedure is part of a "family" of codes that meets the requirements to be on the site-of-service list. We are proposing to add approximately 230 codes and remove 8 codes from the site-of-service list based on 1993 data and criteria. Were it not for budget-neutrality adjustments, we estimate that these additions would result in an $11.9 million reduction in Medicare payments.

4. Bundled Services

The proposed bundling of the following services would mean that physicians who are currently billing for and receiving separate payment for the services would no longer do so.

a. *Generation and interpretation of automated data (CPT codes 78890 and 78891).* These two codes should be billed in addition to the primary procedure, but in CY 1992, CPT codes 78890 and 78891 were billed in combination with another procedure only 12.7 and 2.5 percent of the time, respectively. The data indicate that these codes are being reported incorrectly. We would implement the proposal to bundle these codes into the codes for the primary procedure in a budget-neutral manner by redistributing the RVUs currently assigned to CPT codes 78890 and 78891 across all codes. The expenditure for these services in CY 1992 was $1.6 million for approximately 38,000 services. The effect of this change on individual physicians would be minimal.

b. *Noninvasive ear or pulse oximetry (CPT code 94760).* We propose that payment for this procedure be

considered bundled into the RVUs of the procedure requiring the pulse oximetry testing. We would implement this proposal in a budget-neutral manner by redistributing the 0.27 RVUs currently assigned to CPT code 94760 across all services. The expenditure for this procedure in CY 1992 was $5.3 million for 4 million services. Since both the RVUs and the current frequency for code 94760 are small, any effect of redistributing the RVUs over all services would be minimal.

5. RVUs for Doppler Echocardiography (CPT Code 93325)

We are proposing to redistribute the RVUs assigned to CPT code 93325 (Doppler color flow velocity mapping). This procedure was originally classified as a TC service only, without a PC. As a result of the refinement process for 1993, we established a PC for the procedure primarily at the expense of the TC. While physicians and other entities billing for the complete or global services were unaffected by this change, physiological laboratories billing the TC saw their payments reduced by more than one-half.

If adopted, this proposed rule would approximately double the fee schedule payment amount for the TC of CPT code 93325 when the service is furnished in nonhospital settings. Payment for the PC of the procedure in settings such as hospitals, in which the PC only is billed, would be reduced by over 90 percent. Global payments for procedures furnished in physicians' offices and other nonhospital settings would be unaffected by adoption of this proposed rule.

6. Nuclear Medicine

It is our understanding that many carriers currently do not pay for the second procedure of certain nuclear medicine multiple diagnostic procedures. However, we believe that patients with certain malignancies may require multiple nuclear medicine diagnostic procedures. Under this proposal, carriers would pay the full fee schedule payment for the procedure with the highest payment and 50 percent for the second procedure. We believe that the overall effect of this proposal would be minimal. If there are carriers that currently pay in full for the second procedure, payments for these services would be reduced. Further, there would be a slight increase in payments by carriers that currently do not pay for the second procedure.

7. ESRD—Hospital Inpatient Dialysis on the Same Day as an Evaluation and Management Service

We consider physician dialysis services to be an evaluation and management service and believe dialysis should be treated similarly to all other evaluation and management services. Therefore, we propose to pay for either an evaluation and management code or a physician dialysis code, but not both, when furnished on the same day. According to CY 1992 data, evaluation and management services were furnished on the same day as dialysis services approximately 263,500 times and allowed amounts for these services approximated $9.5 million. Our proposal would be implemented in a budget-neutral manner because the RVUs for the evaluation and management codes would be redistributed across the four dialysis codes. This change would increase payments for the four dialysis services.

8. Services Considered To Be Medicare Part A Services

Therapeutic apheresis (CPT code 36520) is currently performed in the office setting 5.39 percent of the time, in the inpatient hospital setting 62.09 percent of the time, and in the outpatient hospital setting 30.47 percent of the time. In 1992, total expenditures for therapeutic apheresis in these settings were $1,904,036. By designating this service as an "incident-to" service and allowing payment only when the service is performed in the office setting, we estimate that an additional $1.8 million would be saved. These savings would be included in the budget neutrality calculations and, thus, redistributed among the other services under the fee schedule. We do not anticipate that this proposal would have an impact on hospitals.

F. Effects of Payment for Antigens (Allergen Immunotherapy)

Effective for services furnished beginning January 1, 1995, we are proposing to eliminate the use of HCPCS antigen J codes and require all physicians to bill for allergy therapy services using the CPT codes described in detail in section III of this preamble. We are also proposing to no longer permit payment under the CPT allergy complete service codes that are used by approximately half of the allergists.

Because of the variations in the current payment system, we are unable to precisely relate current frequencies to those that would occur under the fee schedule. Therefore, we are unable to ensure budget neutrality within the antigen category. We believe, however, that the allowances being proposed are reasonable and we have no basis for concluding that the RVUs would result in a significant change in expenditures compared with the existing system.

G. Change in the MVPS Calculation for FY 1996

We believe that clinical laboratory services performed in hospital outpatient settings should be included in the MVPS beginning in FY 1996. Under present law, these services would be included in the "other nonsurgical" MVPS category. This proposal would affect the update beginning in CY 1998, which is based on the 1996 MVPS. Based on current assumptions, this change would result in estimated savings of $25 million in FY 1998, $75 million in FY 1999, and $125 million in FY 2000.

H. Rural Hospital Impact Statement

Section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

This proposed rule would have little direct effect on payments to rural hospitals since this rule would change only payments made to physicians and certain other practitioners under Part B of the Medicare program and would make no change in payments to hospitals under Part A. We do not believe the changes would have a major, indirect effect on rural hospitals.

Therefore, we are not preparing an analysis for section 1102(b) of the Act since we have determined, and the Secretary certifies, that this rule would not have a significant impact on the operations of a substantial number of small rural hospitals.

List of Subjects

42 CFR Part 410

Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Rural areas, X-rays.

42 CFR Part 414

Administrative practice and procedure, Health facilities, Health professions, Medicare, Physicians, Reporting and recordkeeping requirements.

42 CFR chapter IV would be amended as set forth below:

PART 410—SUPPLEMENTARY MEDICAL INSURANCE (SMI) BENEFITS

A. Part 410 is amended as set forth below:

1. The authority citation for part 410 continues to read as follows:

Authority: Secs. 1102, 1832, 1833, 1834, 1835, 1861(r), (s), (aa), (cc), and (ff), 1871, and 1881 of the Social Security Act (42 U.S.C. 1302, 1395k, 13951, 1395m, 1395n, 1395x(r), (s), (aa), (cc), and (ff), 1395hh, and 1395rr).

Subpart E—Payment of SMI Benefits

2. In § 410.152, the introductory text of paragraph (b) is republished and paragraph (b)(4) is revised to read as follows:

§ 410.152 Amounts of payment.

* * * * *

(b) *Basic rules for payment.* Except as specified in paragraphs (c) through (h) of this section, Medicare Part B pays the following amounts:

* * * * *

(4) For services furnished by a person or an entity other than those specified in paragraphs (b)(1) through (b)(3) of this section, 80 percent of the reasonable charges or other payment basis for the services.

* * * * *

PART 414—PAYMENT FOR PART B MEDICAL AND OTHER HEALTH SERVICES

B. Part 414 is amended as set forth below:

Subpart A—General Provisions

1. The authority citation for part 414, subpart A continues to read as follows:

Authority: 1102, 1832, 1833, 1834, 1842, 1848, 1861(b) and (s), 1862, 1866, 1871, and 1881 of the Social Security Act as amended (42 U.S.C. 1302, 1395k, 13951, 1395m, 1395u, 1395w-4, 1395x(b) and (s), 1395y, 1395cc, 1395hh, and 1395rr).

2. In § 414.2, in the definition of *"Physicians' services"*, a new paragraph (6) is added to read as follows:

§ 414.2 Definitions.

* * * * *

Physicians' services * * *

(6) Antigens, as described in section 1861(s)(2)(G) of the Act.

* * * * *

3. In § 414.4, paragraph (b) is revised to read as follows:

§ 414.4 Fee schedule areas.

* * * * *

(b) *Statewide areas.* HCFA recognizes statewide fee schedule areas for Iowa, Minnesota, Nebraska, North Carolina, Ohio, and Oklahoma.

* * * * *

4. A new § 414.39 is added to read as follows:

§ 414.39 Special rules for payment of care plan oversight.

(a) *General.* Except as specified in paragraph (b) of this section, payment for care plan oversight is included in payment for visits and other services under the physician fee schedule.

(b) *Exception.* Separate payment is made under the following conditions for beneficiaries who receive HHA services that are covered by Medicare:

(1) The care plan oversight services require recurrent physician supervision of therapy involving 30 or more minutes of the physician's time in a 30-day period.

(2) Only one physician per patient may receive payment for a 30-day period. The physician must have furnished a service requiring a face-to-face encounter with the patient at least once during the 6-month period before the month for which care plan oversight payment is first billed. The physician may not have a significant financial or contractual relationship with an HHA in accordance with § 424.22(d).

(3) Payment for care plan oversight during a global period of a surgery is made when the care plan oversight is documented to be unrelated to the surgery.

5. In § 414.314, paragraph (d) is removed and paragraph (c) is revised to read as follows:

§ 414.314 Monthly capitation payment method.

* * * * *

(c) *Determination of payment amount.* The MCP is paid under the Medicare physician fee schedule described in this part 414.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: May 31, 1994.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Dated: June 15, 1994.

Donna E. Shalala,

Secretary.

Note: The following addenda will not appear in the annual Code of Federal Regulations.

ADDENDUM A—1994 GEOGRAPHIC PRACTICE COST INDICES BY MEDICARE CARRIER AND LOCALITY

Carrier No.	Locality No.	Locality Name	Work	Practice expense	Malpractice
510	5	Birmingham, AL	0.981	0.913	0.824
510	4	Mobile, AL	0.964	0.911	0.824
510	2	North Central AL	0.970	0.867	0.824
510	1	Northwest AL	0.985	0.869	0.824
510	6	Rest of AL	0.975	0.851	0.824
510	3	Southeast AL	0.972	0.869	0.824
1020	1	Alaska	1.106	1.255	1.042
1030	5	Flagstaff (city), AZ	0.983	0.911	1.255
1030	1	Phoenix, AZ	1.003	1.016	1.255
1030	7	Prescott (city), AZ	0.983	0.911	1.255
1030	99	Rest of Arizona	0.987	0.943	1.255
1030	2	Tucson (city), AZ	0.987	0.989	1.255
1030	8	Yuma (city), AZ	0.983	0.911	1.255
520	13	Arkansas	0.960	0.856	0.302
2050	26	Anaheim-Santa Ana, CA	1.046	1.220	1.370
542	14	Bakersfield, CA	1.028	1.050	1.370
542	11	Fresno/Madera, CA	1.006	1.009	1.370
542	13	Kings/Tulare, CA	0.999	1.001	1.370
2050	18	Los Angeles, CA (1st of 8)	1.060	1.196	1.370
2050	19	Los Angeles, CA (2nd of 8)	1.060	1.196	1.370

ADDENDUM A—1994 GEOGRAPHIC PRACTICE COST INDICES BY MEDICARE CARRIER AND LOCALITY—Continued

Carrier No.	Locality No.	Locality Name	Work	Practice expense	Malpractice
2050	20	Los Angeles, CA (3rd of 8)	1.060	1.196	1.370
2050	21	Los Angeles, CA (4th of 8)	1.060	1.196	1.370
2050	22	Los Angeles, CA (5th of 8)	1.060	1.196	1.370
2050	23	Los Angeles, CA (6th of 8)	1.060	1.196	1.370
2050	24	Los Angeles, CA (7th of 8)	1.060	1.196	1.370
2050	25	Los Angeles, CA (8th of 8)	1.060	1.196	1.370
542	3	Marin/Napa/Solano, CA	1.012	1.198	1.370
542	10	Merced/surr. cntys, CA	1.018	1.009	1.370
542	12	Monterey/Santa Cruz, CA	1.023	1.108	1.370
542	1	N. coastal cntys, CA	1.003	1.072	1.370
542	2	NE rural CA	1.001	0.990	1.370
542	7	Oakland-Berkeley, CA	1.028	1.258	1.370
542	27	Riverside, CA	1.026	1.080	1.370
542	4	Sacramento/surr. cntys, CA	1.026	1.088	1.370
542	15	San Bernardino/E. cntrl CA	1.025	1.077	1.370
2050	28	San Diego/Imperial, CA	1.026	1.090	1.370
542	5	San Francisco, CA	1.038	1.303	1.370
542	6	San Mateo, CA	1.038	1.303	1.370
2050	16	Santa Barbara, CA	1.012	1.073	1.370
542	9	Santa Clara, CA	1.048	1.286	1.370
542	8	Stockton/surr. cntys, CA	1.019	1.027	1.370
2050	17	Ventura, CA	1.034	1.132	1.370
550	1	Colorado	0.999	0.988	0.683
10230	4	Eastern CT	0.999	1.053	1.036
10230	1	NW and N. central CT	1.002	1.071	1.025
10230	3	South central CT	1.018	1.103	1.188
10230	2	SW CT	1.053	1.139	1.231
570	1	Delaware	1.026	1.018	0.664
580	1	DC + MD/VA suburbs	1.059	1.168	0.947
590	3	Fort Lauderdale, FL	0.993	0.981	1.376
590	4	Miami, FL	1.034	1.025	1.641
590	2	N/NC Florida cities	0.975	0.932	1.108
590	1	Rest of Florida	0.966	0.871	1.108
1040	1	Atlanta, GA	0.975	1.022	0.752
1040	4	Rest of Georgia	0.956	0.841	0.752
1040	2	Small GA cities 02	0.962	0.895	0.752
1040	3	Small GA cities 03	0.961	0.869	0.752
1120	1	Hawaii	1.003	1.094	1.025
5130	12	North Idaho	0.965	0.917	0.889
5130	11	South Idaho	0.967	0.936	0.889
621	10	Champaign-Urbana, IL	0.965	0.920	1.137
621	16	Chicago, IL	1.044	1.114	1.773
621	3	De Kalb, IL	0.978	0.925	1.137
621	11	Decatur, IL	0.981	0.927	1.137
621	12	East St. Louis, IL	0.989	0.958	1.579
621	6	Kankakee, IL	0.972	0.925	1.137
621	8	Normal, IL	0.997	0.968	1.137
621	1	Northwest, IL	0.974	0.896	1.137
621	5	Peoria, IL	1.009	1.031	1.137
621	7	Quincy, IL	0.974	0.896	1.137
621	4	Rock Island, IL	0.995	0.958	1.137
621	2	Rockford, IL	1.010	1.018	1.137
621	13	Southeast IL	0.974	0.896	1.137
621	14	Southern IL	0.974	0.896	1.137
621	9	Springfield, IL	0.996	0.966	1.137
621	15	Suburban Chicago, IL	1.020	1.097	1.137
630	1	Metropolitan Indiana	0.998	0.963	0.547
630	3	Rest of Indiana	0.979	0.896	0.516
630	2	Urban Indiana	0.980	0.905	0.516
640	5	Des Moines (Polk/Warren), IA	0.997	0.966	0.666
640	3	North Central Iowa	0.971	0.916	0.666
640	2	Northeast Iowa	0.972	0.918	0.666
640	6	Northwest Iowa	0.969	0.890	0.666
640	4	S. cen. IA (excl Des Moines)	0.962	0.881	0.666
640	1	SE Iowa (incl Iowa City)	0.976	0.933	0.666
640	7	Southwest Iowa	0.968	0.900	0.666
740	5	Kansas City, KS	0.978	0.964	1.134
650	1	Rest of Kansas	0.953	0.893	1.134
740	4	Suburban Kansas City, KS	0.978	0.964	1.134
660	1	Lexington & Louisville, KY	0.984	0.917	0.667
660	3	Rest of Kentucky	0.974	0.875	0.667

ADDENDUM A—1994 GEOGRAPHIC PRACTICE COST INDICES BY MEDICARE CARRIER AND LOCALITY—Continued

Carrier No.	Locality No.	Locality Name	Work	Practice expense	Malpractice
660	2	Sm cities (city limits) KY	0.976	0.898	0.667
528	7	Alexandria, LA	0.985	0.889	0.808
528	3	Baton Rouge, LA	0.991	0.966	0.808
528	6	Lafayette, LA	0.982	0.928	0.808
528	4	Lake Charles, LA	0.975	0.907	0.808
528	5	Monroe, LA	0.979	0.880	0.808
528	1	New Orleans, LA	0.994	1.003	1.185
528	50	Rest of Louisiana	0.972	0.880	0.824
528	2	Shreveport, LA	1.003	0.940	0.808
21200	2	Central Maine	0.942	0.903	0.716
21200	1	Northern Maine	0.947	0.912	0.716
21200	3	Southern Maine	0.956	0.980	0.716
690	1	Baltimore/surr. cntys, MD	1.027	1.040	0.927
690	3	South + E. shore MD	1.011	1.010	0.820
690	2	Western Maryland	1.006	1.013	0.843
700	2	Mass. suburbs/rural (cities)	0.997	1.072	0.855
700	1	Massachusetts urban	1.002	1.131	0.855
710	1	Detroit, MI	1.059	1.091	1.736
710	2	Michigan, not Detroit	1.010	0.971	1.196
720	00	Minnesota (blue shield)	0.999	0.971	0.748
10240	00	Minnesota (travelers)	0.999	0.971	0.748
10250	1	Rest of Mississippi	0.960	0.838	0.650
10250	2	Urban MS (city limits)	0.966	0.902	0.650
740	3	K.C. (Jackson county), MO	0.978	0.964	1.179
740	2	N. K.C. (Clay/Platte), MO	0.978	0.964	1.179
11260	3	Rest of MO	0.950	0.847	1.179
740	6	Rural NW counties, MO	0.953	0.866	1.179
11260	2	Sm. E. cities, MO	0.954	0.838	1.179
740	1	St. Joseph, MO	0.950	0.867	1.179
11260	1	St. Louis/lg. E. cities, MO	0.988	0.964	1.352
751	1	Montana	0.967	0.926	0.718
655	00	Nebraska	0.960	0.883	0.435
1290	3	Elko & Ely (cities), NV	0.984	1.026	1.144
1290	1	Las Vegas, et al (cities), NV	1.036	1.082	1.144
1290	2	Reno, et al (cities), NV	1.008	1.141	1.144
1290	99	Rest of Nevada	1.020	1.079	1.144
780	40	New Hampshire	0.962	1.011	0.602
860	2	Middle New Jersey	1.034	1.070	1.153
860	1	Northern New Jersey	1.040	1.131	1.153
860	3	Southern New Jersey	1.016	1.030	1.153
1360	5	New Mexico	0.981	0.925	0.767
801	1	Buffalo/surr. cntys, NY	1.006	0.942	0.963
803	1	Manhattan, NY	1.059	1.255	1.647
801	3	N. central cities, NY	0.997	0.952	0.963
803	2	NYC suburbs/Long Is., NY	1.060	1.229	1.929
803	3	Poughkpsie/N. NYC suburbs	1.004	1.018	1.325
14330	4	Queens, NY	1.059	1.255	1.861
801	2	Rochester/surr. cntys, NY	1.021	1.017	0.963
801	4	Rest of New York	0.988	0.935	0.963
5535	00	North Carolina	0.968	0.902	0.378
820	1	North Dakota	0.965	0.895	0.688
16360	00	Ohio	0.993	0.951	0.920
1370	00	Oklahoma	0.969	0.911	0.516
1380	2	Eugene, et al (cities), OR	0.968	1.008	0.951
1380	1	Portland, et al (cities), OR	0.993	1.033	0.951
1380	99	Rest of Oregon	0.979	0.997	0.951
1380	3	Salem, et al (cities), OR	0.974	0.990	0.951
1380	12	SW OR. cities (city limits)	0.974	0.988	0.951
865	2	Lg. Pennsylvania cities	1.008	1.001	1.440
865	1	Philly/Pitt med schs/hosps	1.014	1.014	1.552
865	4	Rest of Pennsylvania	0.975	0.929	0.986
865	3	Small Pennsylvania cities	0.984	0.945	0.986
973	20	Puerto Rico	0.882	0.763	0.466
870	1	Rhode Island	1.009	0.998	0.734
880	1	South Carolina	0.971	0.874	0.448
820	2	South Dakota	0.951	0.857	0.688
5440	35	Tennessee	0.969	0.896	0.407
900	29	Abilene, TX	0.971	0.888	0.504
900	26	Amarillo, TX	0.972	0.900	0.504
900	31	Austin, TX	0.969	0.968	0.504
900	20	Beaumont, TX	0.998	0.955	0.504

ADDENDUM A—1994 GEOGRAPHIC PRACTICE COST INDICES BY MEDICARE CARRIER AND LOCALITY—Continued

Carrier No.	Locality No.	Locality Name	Work	Practice expense	Malpractice
900	9	Brazoria, TX	1.025	0.955	0.504
900	10	Brownsville, TX	0.980	0.888	0.504
900	24	Corpus Christi, TX	0.976	0.944	0.504
900	11	Dallas, TX	0.996	0.971	0.504
900	12	Denton, TX	0.996	0.971	0.504
900	14	El Paso, TX	0.995	0.894	0.504
900	28	Fort Worth, TX	0.973	0.936	0.504
900	15	Galveston, TX	0.982	0.968	0.504
900	16	Grayson, TX	0.964	0.903	0.504
900	18	Houston, TX	1.014	0.982	0.656
900	33	Laredo, TX	0.968	0.856	0.504
900	17	Longview, TX	0.968	0.929	0.504
900	21	Lubbock, TX	0.950	0.881	0.504
900	19	McAllen, TX	0.945	0.873	0.504
900	23	Midland, TX	1.023	0.998	0.504
900	2	Northeast rural Texas	0.968	0.883	0.504
900	13	Odessa, TX	1.008	0.971	0.504
900	25	Orange, TX	0.998	0.955	0.504
900	30	San Angelo, TX	0.954	0.902	0.504
900	7	San Antonio, TX	0.973	0.929	0.504
900	3	Southeast rural Texas	0.973	0.895	0.504
900	6	Temple, TX	0.969	0.886	0.504
900	8	Texarkana, TX	0.953	0.883	0.504
900	27	Tyler, TX	0.984	0.931	0.504
900	32	Victoria, TX	0.976	0.973	0.504
900	22	Waco, TX	0.981	0.871	0.504
900	4	Western rural Texas	0.961	0.852	0.504
900	34	Wichita Falls, TX	0.969	0.896	0.504
910	9	Utah	0.993	0.952	0.739
780	50	Vermont	0.942	0.941	0.533
10490	1	Richmond + Charlottesvl, VA	0.975	0.953	0.462
10490	4	Rest of Virginia	0.967	0.888	0.522
10490	3	Sm. town/industrial VA	0.971	0.892	0.531
10490	2	Tidewater + n. VA counties	0.989	0.994	0.703
973	50	Virgin Islands	1.000	1.000	1.000
1390	2	Seattle (King cnty), WA	1.019	1.049	1.064
1390	3	Spokane + Richlnd (cities), WA	0.996	0.995	1.064
1390	1	W + SE WA (excl Seattle)	1.008	0.992	1.064
16510	16	Charleston, WV	0.987	0.962	0.688
16510	18	Eastern valley, WV	0.962	0.881	0.688
16510	19	Ohio River valley, WV	0.962	0.881	0.688
16510	20	Southern valley, WV	0.960	0.876	0.688
16510	17	Wheeling, WV	0.975	0.900	0.688
951	13	Central Wisconsin	0.960	0.888	0.762
951	40	Green Bay, WI (northeast)	0.979	0.913	0.762
951	54	Janesville, WI (s-central)	0.970	0.905	0.762
951	19	La Crosse, WI (w-central)	0.976	0.919	0.762
951	15	Madison, WI (Dane county)	0.977	0.979	0.762
951	46	Milwaukee suburbs, WI (SE)	1.010	1.008	0.762
951	4	Milwaukee, WI	1.008	1.009	0.762
951	12	Northwest Wisconsin	0.966	0.898	0.762
951	60	Oshkosh, WI (E-central)	0.974	0.911	0.762
951	14	Southwest Wisconsin	0.960	0.888	0.762
951	36	Wausau, WI (N-central)	0.971	0.898	0.762
825	21	Wyoming	0.988	0.938	0.641

Note: Work GPCI is the ¼ work GPCI required by Section 1848(e)(1)(A)(iii) of the Social Security Act.

ADDENDUM B—1996 GEOGRAPHIC PRACTICE COST INDICES BY MEDICARE CARRIER AND LOCALITY

Carrier No.	Locality No.	Locality name	Work	Practice expense	Malpractice
00510	05	Birmingham, AL	0.994	0.912	0.927
00510	04	Mobile, AL	0.975	0.858	0.927
00510	02	North Central AL	0.973	0.850	0.927
00510	01	Northwest AL	0.990	0.873	0.927
00510	06	Rest Of AL	0.964	0.818	0.927
00510	03	Southeast AL	0.970	0.858	0.927
01020	01	Alaska	1.064	1.155	1.617
01030	05	Flagstaff, AZ	0.971	0.936	1.321

ADDENDUM B—1996 GEOGRAPHIC PRACTICE COST INDICES BY MEDICARE CARRIER AND LOCALITY—Continued

Carrier No.	Locality No.	Locality name	Work	Practice expense	Malpractice
01030	01	Phoenix, AZ	1.004	0.963	1.321
01030	07	Prescott, AZ	0.971	0.912	1.321
01030	99	Rest Of AZ	0.989	0.948	1.321
01030	02	Tucson, AZ	0.978	0.942	1.321
01030	08	Yuma, AZ	0.984	0.925	1.321
00520	13	Arkansas	0.954	0.853	0.427
02050	26	Anaheim/Santa Ana, CA	1.037	1.205	0.752
00542	14	Bakersfield, CA	1.023	0.992	0.686
00542	11	Fresno/Madera, CA	1.000	0.977	0.596
00542	13	Kings/Tulare, CA	0.987	0.954	0.596
02050	18	Los Angeles (1St Of 8)	1.056	1.207	0.752
02050	19	Los Angeles (2Nd Of 8)	1.056	1.207	0.752
02050	20	Los Angeles (3Rd Of 8)	1.056	1.207	0.752
02050	21	Los Angeles (4Th Of 8)	1.056	1.207	0.752
02050	22	Los Angeles (5Th Of 8)	1.056	1.207	0.752
02050	23	Los Angeles (6Th Of 8)	1.056	1.207	0.752
02050	24	Los Angeles (7Th Of 8)	1.056	1.207	0.752
02050	25	Los Angeles (8Th Of 8)	1.056	1.207	0.752
00542	03	Marin/Napa/Solano, CA	1.015	1.180	0.596
00542	10	Merced/Surr.Cntys, CA	1.002	0.988	0.596
00542	12	Monterey/Santa Cruz, CA	1.008	1.143	0.596
00542	01	N. Coastal Cntys, CA	1.003	1.090	0.596
00542	02	Ne Rural, CA	0.982	0.953	0.596
00542	07	Oakland/Berkley, CA	1.042	1.215	0.596
00542	27	Riverside, CA	1.011	1.059	0.667
00542	04	Sacramento/Surr. Cntys, CA	1.020	1.069	0.596
00542	15	San Bernadino/E.Ctrl Cntys CA	1.015	1.056	0.749
02050	28	San Diego/Imperial, CA	1.017	1.077	0.618
00542	05	San Francisco, CA	1.068	1.330	0.596
00542	06	San Mateo, CA	1.049	1.300	0.596
02050	16	Santa Barbara, CA	1.016	1.119	0.686
00542	09	Santa Clara, CA	1.064	1.289	0.596
00542	08	Stockton/Surr. Cntys, CA	1.001	1.041	0.596
02050	17	Ventura, CA	1.028	1.192	0.686
00550	01	Colorado	0.989	0.951	0.827
10230	04	Eastern CT	1.033	1.132	1.001
10230	01	Nw And N. Cntrl CT	1.049	1.159	1.001
10230	03	S. Cntrl CT	1.056	1.226	1.001
10230	02	Sw CT	1.055	1.275	1.001
00570	01	Delaware	1.021	1.032	0.792
00580	01	DC+MD/VA Suburbs	1.051	1.192	0.980
00590	03	Fort Lauderdale, FL	0.998	1.036	1.867
00590	04	Miami, FL	1.016	1.087	2.456
00590	02	N/Nc FL Cities	0.978	0.952	1.417
00590	01	Rest Of Florida	0.971	0.914	1.417
01040	01	Atlanta, GA	1.007	1.030	0.902
01040	04	Rest Of GA	0.965	0.856	0.902
01040	02	Small GA Cities 02	0.981	0.917	0.902
01040	03	Small GA Cities 03	0.966	0.884	0.902
01120	01	Hawaii/Guam	0.999	1.220	0.921
05130	12	North Idaho	0.957	0.864	0.588
05130	11	South Idaho	0.963	0.887	0.588
00621	10	Champaign-Urbana, IL	0.952	0.884	1.008
00621	16	Chicago, IL	1.028	1.080	1.382
00621	03	De Kalb, IL	0.953	0.873	0.780
00621	11	Decatur, IL	0.962	0.864	0.880
00621	12	East St. Louis, IL	0.988	0.929	1.202
00621	06	Kankakee, IL	0.959	0.881	0.901
00621	08	Normal, IL	0.969	0.893	0.731
00621	01	Northwest, IL	0.951	0.842	0.731
00621	05	Peoria, IL	0.980	0.906	0.731
00621	07	Quincy, IL	0.946	0.824	0.731
00621	04	Rock Island, IL	0.972	0.858	0.731
00621	02	Rockford, IL	0.978	0.941	0.813
00621	13	Southeast IL	0.946	0.814	0.731
00621	14	Southern IL	0.946	0.822	0.822
00621	09	Springfield, IL	0.981	0.936	0.946
00621	15	Suburban Chicago, IL	1.007	1.093	1.159
00630	01	Metropolitan IN	0.989	0.937	0.363
00630	03	Rest Of IN	0.973	0.872	0.346
00630	02	Urban IN	0.974	0.896	0.346

ADDENDUM B—1996 GEOGRAPHIC PRACTICE COST INDICES BY MEDICARE CARRIER AND LOCALITY—Continued

Carrier No.	Locality No.	Locality name	Work	Practice expense	Malpractice
00640	05	Des Moines (Polk/Warren), IA	0.980	0.941	0.679
00640	03	North Central Iowa	0.956	0.845	0.679
00640	02	Northeast Iowa	0.964	0.873	0.679
00640	06	Northwest Iowa	0.947	0.846	0.679
00640	04	S Cntrl Ia (Excl. Des Moines)	0.941	0.837	0.679
00640	01	Southeast Iowa	0.963	0.892	0.679
00640	07	Southwest Iowa	0.953	0.860	0.679
00740	05	Kansas City, Kansas	0.989	0.949	1.191
00650	01	Rest Of Kansas	0.958	0.877	1.191
00740	04	Suburban Kansas City, Kansas	0.989	0.949	1.191
00660	01	Lexington & Louisville, KY	0.989	0.904	0.819
00660	03	Rest Of Kentucky	0.957	0.821	0.819
00660	02	Sm Cities (City Limits) KY	0.960	0.850	0.819
00528	07	Alexandria, LA	0.958	0.864	0.911
00528	03	Baton Rouge, LA	0.984	0.894	0.911
00528	06	Lafayette, LA	0.971	0.857	0.911
00528	04	Lake Charles, LA	0.974	0.901	0.911
00528	05	Monroe, LA	0.958	0.867	0.911
00528	01	New Orleans, LA	0.999	0.946	0.997
00528	50	Rest Of LA	0.965	0.850	0.913
00528	02	Shreveport, LA	0.971	0.889	0.911
21200	02	Central Maine	0.961	0.929	0.759
21200	01	Northern Maine	0.964	0.920	0.759
21200	03	Southern Maine	0.980	1.034	0.759
00690	01	Baltimore/Surr. Cntys, MD	1.021	1.036	1.115
00690	03	South & E. Shore MD	0.985	0.972	0.862
00690	02	Western MD	0.982	0.930	0.862
00700	02	MA Suburbs/Rural Cities	1.015	1.101	0.978
00700	01	Urban MA	1.030	1.167	0.978
00710	01	Detroit, MI	1.043	1.038	3.051
00710	02	Michigan, Not Detroit	0.998	0.935	1.844
00720	00	Minnesota (Blue Shield)	0.990	0.965	0.594
10240	00	Minnesota (Travelers)	0.990	0.965	0.594
10250	01	Rest Of Mississippi	0.950	0.813	0.726
10250	02	Urban Mississippi	0.964	0.868	0.726
00740	03	K.C. (Jackson Cnty), MO	0.989	0.949	1.207
00740	02	N K.C. (Clay/Platte), MO	0.989	0.949	1.204
11260	03	Rest Of MO	0.944	0.810	1.159
00740	06	Rural Nw Counties, MO	0.950	0.835	1.159
11260	02	Sm E. Cities, MO	0.940	0.809	1.159
00740	01	St Joseph, MO	0.952	0.850	1.159
11260	01	St. Louis/Lg E. Cities, MO	0.983	0.921	1.193
00751	01	Montana	0.952	0.864	0.756
00655	00	Nebraska	0.951	0.872	0.444
01290	03	Elko & Ely (Cities), NV	0.984	0.986	0.887
01290	01	Las Vegas, Et Al. (Cities), NV	1.012	1.022	0.887
01290	02	Reno, Et Al. (Cities), NV	0.997	1.049	0.887
01290	99	Rest Of Nevada	0.997	1.013	0.887
00780	40	New Hampshire	0.988	1.034	0.916
00860	02	Middle NJ	1.032	1.137	0.762
00860	01	Northern NJ	1.059	1.215	0.762
00860	03	Southern NJ	1.024	1.082	0.762
01360	05	New Mexico	0.975	0.903	0.792
00801	01	Buffalo/Surr. Cntys, NY	1.003	0.936	0.821
00803	01	Manhattan, NY	1.095	1.359	1.546
00801	03	N. Central Cities, NY	1.005	0.967	0.821
00803	02	Nyc Suburbs/Long I., NY	1.068	1.235	1.759
00803	03	Poughkpsie/N Nyc Suburbs NY	1.011	1.081	1.218
14330	04	Queens, NY	1.058	1.240	1.686
00801	04	Rest Of New York	0.989	0.937	0.821
00801	02	Rochester/Surr. Cntys, NY	1.012	0.992	0.821
05535	00	North Carolina	0.971	0.918	0.435
00820	01	North Dakota	0.951	0.860	0.617
16360	00	Ohio	0.991	0.940	1.049
01370	00	Oklahoma	0.970	0.882	0.481
01380	02	Eugene, Et Al. (Cities), OR	0.959	0.938	0.637
01380	01	Portland, Et Al. (Cities), OR	0.997	1.000	0.637
01380	99	Rest Of Oregon	0.962	0.907	0.637
01380	03	Salem, Et Al. (Cities), OR	0.965	0.929	0.637
01380	12	Sw OR Cities (City Limits)	0.967	0.954	0.637
00865	02	Lg PA Cities	1.006	1.002	0.936

ADDENDUM B—1996 GEOGRAPHIC PRACTICE COST INDICES BY MEDICARE CARRIER AND LOCALITY—Continued

Carrier No.	Locality No.	Locality name	Work	Practice expense	Malpractice
00865	01	Philly/Pitt Med Shcls/Hosps. PA	1.027	1.040	1.213
00865	04	Rest Of PA	0.973	0.899	0.719
00865	03	Sm PA Cities	0.983	0.917	0.736
00973	20	Puerto Rico	0.883	0.739	0.268
00870	01	Rhode Island	1.019	1.074	1.569
00880	01	South Carolina	0.976	0.899	0.361
00820	02	South Dakota	0.936	0.856	0.443
05440	35	Tennessee	0.976	0.899	0.524
00900	29	Abilene, TX	0.960	0.851	0.827
00900	26	Amarillo, TX	0.975	0.883	0.827
00900	31	Austin, TX	0.987	0.986	0.827
00900	20	Beaumont, TX	0.993	0.893	1.428
00900	09	Brazoria, TX	0.993	0.966	1.428
00900	10	Brownsville, TX	0.955	0.848	0.827
00900	24	Corpus Christi, TX	0.983	0.898	0.827
00900	11	Dallas, TX	1.012	1.012	0.893
00900	12	Denton, TX	0.968	0.952	0.827
00900	14	El Paso, TX	0.973	0.893	0.893
00900	28	Fort Worth, TX	0.989	0.972	0.893
00900	15	Galveston, TX	0.989	0.966	1.428
00900	16	Grayson, TX	0.959	0.874	0.827
00900	18	Houston, TX	1.021	1.005	1.428
00900	33	Laredo, TX	0.957	0.851	0.827
00900	17	Longview, TX	0.973	0.863	0.827
00900	21	Lubbock, TX	0.955	0.894	0.827
00900	19	Mc Allen, TX	0.961	0.837	0.827
00900	23	Midland, TX	0.991	0.900	0.827
00900	02	Northeast Rural TX	0.960	0.857	0.827
00900	13	Odessa, TX	0.991	0.900	0.827
00900	25	Orange, TX	0.993	0.893	0.827
00900	30	San Angelo, TX	0.948	0.844	0.827
00900	07	San Antonio, TX	0.978	0.926	0.827
00900	03	Southeast Rural TX	0.963	0.872	0.889
00900	06	Temple, TX	0.968	0.884	0.827
00900	08	Texarkana, TX	0.955	0.872	0.827
00900	27	Tyler, TX	0.971	0.894	0.827
00900	32	Victoria, TX	0.983	0.868	0.827
00900	22	Waco, TX	0.966	0.877	0.827
00900	04	Western TX	0.956	0.818	0.827
00900	34	Wichita Falls, TX	0.950	0.857	0.827
00910	09	Utah	0.978	0.891	0.644
00780	50	Vermont	0.974	0.988	0.452
00973	50	Virgin Islands	0.966	0.978	1.023
10490	04	Rest Of VA	0.976	0.876	0.504
10490	01	Richmond & Charlottesville, VA	1.004	0.991	0.511
10490	03	Sm Town/Industrial VA	0.974	0.897	0.517
10490	02	Tidewater & N VA Cntys	0.990	0.965	0.530
01390	03	E Cntrl & Ne WA	0.985	0.943	0.748
01390	02	Seattle (King Cnty), WA	1.006	1.077	0.748
01390	01	W & Se WA (Excl Seattle)	0.982	0.968	0.748
16510	16	Charleston, WV	0.980	0.881	1.004
16510	18	Eastern Valley, WV	0.960	0.899	1.004
16510	19	Ohio River Valley, WV	0.959	0.833	1.004
16510	20	Southern Valley, WV	0.952	0.815	1.004
16510	17	Wheeling, WV	0.957	0.840	1.004
00951	13	Central WI	0.959	0.849	1.160
00951	40	Green Bay (Northeast), WI	0.976	0.894	1.160
00951	54	Janesville (S Cntrl), WI	0.966	0.895	1.160
00951	19	La Crosse (W Cntrl), WI	0.972	0.879	1.160
00951	15	Madison (Dane Cnty), WI	0.990	1.000	1.160
00951	46	Milwaukee Surburbs (Se), WI	0.990	0.959	1.160
00951	04	Milwaukee, WI	1.001	0.978	1.160
00951	12	Northwest WI	0.961	0.850	1.160
00951	60	Oshkosh (E Cntrl), WI	0.973	0.886	1.160
00951	14	Southwest WI	0.959	0.850	1.160
00951	36	Wausau (N Cntrl), WI	0.962	0.866	1.160
00825	21	Wyoming	0.968	0.881	0.811

Note: Work GPCI is the ¼ work GPCI required by Section 1848(e)(1)(A)(iii) of the Social Security Act.
GPCIs rescaled by the following factors to assure budget neutrality: Work=1.00074; Practice expense=1.00125; Malpractice=1.02307.

ADDENDUM C—1995 GEOGRAPHIC PRACTICE COST INDICES BY MEDICARE CARRIER AND LOCALITY

Carrier No.	Locality No.	Locality name	Work	Practice expense	Malpractice
00510	05	Birmingham, AL	0.988	0.912	0.876
00510	04	Mobile, AL	0.970	0.884	0.876
00510	02	North Central AL	0.972	0.858	0.876
00510	01	Northwest AL	0.988	0.871	0.876
00510	06	Rest Of AL	0.970	0.834	0.876
00510	03	Southeast AL	0.971	0.864	0.876
01020	01	Alaska	1.085	1.205	1.330
01030	05	Flagstaff, AZ	0.977	0.924	1.288
01030	01	Phoenix, AZ	1.004	0.990	1.288
01030	07	Prescott, AZ	0.977	0.912	1.288
01030	99	Rest Of AZ	0.988	0.946	1.288
01030	02	Tucson, AZ	0.982	0.966	1.288
01030	08	Yuma, AZ	0.984	0.918	1.288
00520	13	Arkansas	0.957	0.854	0.364
02050	26	Anaheim/Santa Ana, CA	1.042	1.212	1.061
00542	14	Bakersfield, CA	1.026	1.021	1.028
00542	11	Fresno/Madera, CA	1.003	0.993	0.983
00542	13	Kings/Tulare, CA	0.993	0.978	0.983
02050	18	Los Angeles (1st Of 8)	1.058	1.202	1.061
02050	19	Los Angeles (2nd Of 8)	1.058	1.202	1.061
02050	20	Los Angeles (3rd Of 8)	1.058	1.202	1.061
02050	21	Los Angeles (4th Of 8)	1.058	1.202	1.061
02050	22	Los Angeles (5th Of 8)	1.058	1.202	1.061
02050	23	Los Angeles (6th Of 8)	1.058	1.202	1.061
02050	24	Los Angeles (7th Of 8)	1.058	1.202	1.061
02050	25	Los Angeles (8th Of 8)	1.058	1.202	1.061
00542	03	Marin/Napa/Solano, CA	1.014	1.189	0.983
00542	10	Merced/Surr.Cntys, CA	1.010	0.998	0.983
00542	12	Monterey/Santa Cruz, CA	1.016	1.126	0.983
00542	01	N. Coastal Cntys, CA	1.003	1.081	0.983
00542	02	Ne Rural, CA	0.992	0.972	0.983
00542	07	Oakland/Berkley, CA	1.035	1.236	0.983
00542	27	Riverside, CA	1.018	1.070	1.018
00542	04	Sacramento/Surr. Cntys,	1.023	1.078	0.983
00542	15	San Bernadino/E.Ctrl Cntys	1.020	1.066	1.060
02050	28	San Diego/Imperial, CA	1.022	1.084	0.994
00542	05	San Francisco, CA	1.053	1.316	0.983
00542	06	San Mateo, CA	1.044	1.302	0.983
02050	16	Santa Barbara, CA	1.014	1.096	1.028
00542	09	Santa Clara, CA	1.056	1.288	0.983
00542	08	Stockton/Surr. Cntys, CA	1.010	1.034	0.983
02050	17	Ventura, CA	1.031	1.162	1.028
00550	01	Colorado	0.994	0.970	0.755
10230	04	Eastern CT	1.016	1.092	1.018
10230	01	Nw And N. Cntrl CT	1.026	1.115	1.013
10230	03	S. Cntrl CT	1.037	1.164	1.094
10230	02	Sw CT	1.054	1.207	1.116
00570	01	Delaware	1.024	1.025	0.728
00580	01	DC + MD/VA Suburbs	1.055	1.180	0.964
00590	03	Fort Lauderdale, FL	0.996	1.008	1.622
00590	04	Miami, FL	1.025	1.056	2.049
00590	02	N/Nc FL Cities	0.976	0.942	1.262
00590	01	Rest Of Florida	0.968	0.892	1.262
01040	01	Atlanta, GA	0.991	1.026	0.827
01040	04	Rest Of GA	0.960	0.848	0.827
01040	02	Small GA Cities 02	0.972	0.906	0.827
01040	03	Small GA Cities 03	0.964	0.876	0.827
01120	01	Hawaii/Guam	1.001	1.157	0.973
05130	12	North Idaho	0.961	0.890	0.738
05130	11	South Idaho	0.965	0.912	0.738
00621	10	Champaign-Urbana, IL	0.958	0.902	1.072
00621	16	Chicago, IL	1.036	1.097	1.578
00621	03	De Kalb, IL	0.966	0.899	0.958
00621	11	Decatur, IL	0.972	0.896	1.008
00621	12	East St. Louis, IL	0.988	0.944	1.390
00621	06	Kankakee, IL	0.966	0.903	1.019
00621	08	Normal, IL	0.983	0.930	0.934
00621	01	Northwest, IL	0.962	0.869	0.934
00621	05	Peoria, IL	0.994	0.968	0.934
00621	07	Quincy, IL	0.960	0.860	0.934
00621	04	Rock Island, IL	0.984	0.908	0.934

ADDENDUM C—1995 GEOGRAPHIC PRACTICE COST INDICES BY MEDICARE CARRIER AND LOCALITY—Continued

Carrier No.	Locality No.	Locality name	Work	Practice expense	Malpractice
00621	02	Rockford, IL	0.994	0.980	0.975
00621	13	Southeast IL	0.960	0.855	0.934
00621	14	Southern IL	0.960	0.859	0.980
00621	09	Springfield, IL	0.988	0.951	1.042
00621	15	Suburban Chicago, IL	1.014	1.095	1.148
00630	01	Metropolitan IN	0.994	0.950	0.455
00630	03	Rest Of IN	0.976	0.884	0.431
00630	02	Urban IN	0.977	0.900	0.431
00640	05	Des Moines (Polk/Warren) IA	0.988	0.954	0.672
00640	03	North Central Iowa	0.964	0.880	0.672
00640	02	Northeast Iowa	0.968	0.896	0.672
00640	06	Northwest Iowa	0.958	0.868	0.672
00640	04	S Cntrl IA (Excl. Des Moines	0.952	0.859	0.672
00640	01	Southeast Iowa	0.970	0.912	0.672
00640	07	Southwest Iowa	0.960	0.880	0.672
00740	05	Kansas City, Kansas	0.984	0.956	1.162
00650	01	Rest Of Kansas	0.956	0.885	1.162
00740	04	Suburban Kansas City, Kansas	0.984	0.956	1.162
00660	01	Lexington & Louisville, KY	0.986	0.910	0.743
00660	03	Rest Of Kentucky	0.966	0.848	0.743
00660	02	Sm Cities (City Limits), KY	0.968	0.874	0.743
00528	07	Alexandria, LA	0.972	0.876	0.860
00528	03	Baton Rouge, LA	0.988	0.930	0.860
00528	06	Lafayette, LA	0.976	0.892	0.860
00528	04	Lake Charles, LA	0.974	0.904	0.860
00528	05	Monroe, LA	0.968	0.874	0.860
00528	01	New Orleans, LA	0.996	0.974	1.091
00528	50	Rest Of LA	0.968	0.865	0.868
00528	02	Shreveport, LA	0.987	0.914	0.860
21200	02	Central Maine	0.952	0.916	0.738
21200	01	Northern Maine	0.956	0.916	0.738
21200	03	Southern Maine	0.968	1.007	0.738
00690	01	Baltimore/Surr. Cntys, MD	1.024	1.038	1.021
00690	03	South & E. Shore MD	0.998	0.991	0.841
00690	02	Western MD	0.994	0.972	0.852
00700	02	MA Suburbs/Rural Cities	1.006	1.086	0.916
00700	01	Urban MA	1.016	1.149	0.916
00710	01	Detroit, MI	1.051	1.064	2.394
00710	02	Michigan, Not Detroit	1.004	0.953	1.520
00720	00	Minnesota (Blue Shield)	0.994	0.968	0.671
10240	00	Minnesota (Travelers)	0.994	0.968	0.671
10250	01	Rest Of Mississippi	0.955	0.826	0.688
10250	02	Urban Mississippi	0.965	0.885	0.688
00740	03	K.C. (Jackson Cnty), MO	0.984	0.956	1.193
00740	02	N K.C. (Clay/Platte), MO	0.984	0.956	1.192
11260	03	Rest Of MO	0.947	0.828	1.169
00740	06	Rural Nw Counties, MO	0.952	0.850	1.169
11260	02	Sm E. Cities, MO	0.947	0.824	1.169
00740	01	St Joseph, MO	0.951	0.858	1.169
11260	01	St. Louis/Lg E. Cities, MO	0.986	0.942	1.272
00751	01	Montana	0.960	0.895	0.737
00655	00	Nebraska	0.956	0.878	0.440
01290	03	Elko & Ely (Cities), NV	0.984	1.006	1.016
01290	01	Las Vegas, Et Al. (Cities), NV	1.024	1.052	1.016
01290	02	Reno, Et Al. (Cities), NV	1.002	1.095	1.016
01290	99	Rest Of Nevada	1.008	1.046	1.016
00780	40	New Hampshire	0.975	1.022	0.759
00860	02	Middle NJ	1.033	1.104	0.958
00860	01	Northern NJ	1.050	1.173	0.958
00860	03	Southern NJ	1.020	1.056	0.958
01360	05	New Mexico	0.978	0.914	0.780
00801	01	Buffalo/Surr. Cntys, NY	1.004	0.939	0.892
00803	01	Manhattan, NY	1.077	1.307	1.596
00801	03	N. Central Cities, NY	1.001	0.960	0.892
00803	02	Nyc Suburbs/Long I., NY	1.064	1.232	1.844
00803	03	Poughkpsie/N Nyc Suburbs	1.008	1.050	1.272
14330	04	Queens, NY	1.058	1.248	1.774
00801	04	Rest Of New York	0.988	0.936	0.892
00801	02	Rochester/Surr. Cntys, N	1.016	1.004	0.892
05535	00	North Carolina	0.970	0.910	0.406
00820	01	North Dakota	0.958	0.878	0.652

ADDENDUM C—1995 GEOGRAPHIC PRACTICE COST INDICES BY MEDICARE CARRIER AND LOCALITY—Continued

Carrier No.	Locality No.	Locality name	Work	Practice expense	Malpractice
16360	00	Ohio	0.992	0.946	0.984
01370	00	Oklahoma	0.970	0.896	0.498
01380	02	Eugene, Et Al. (Cities), OR	0.964	0.973	0.794
01380	01	Portland, Et Al. (Cities), OR	0.995	1.016	0.794
01380	99	Rest Of Oregon	0.970	0.952	0.794
01380	03	Salem, Et Al. (Cities),	0.970	0.960	0.794
01380	12	Sw OR Cities (City Limits)	0.970	0.971	0.794
00865	02	Lg PA Cities	1.007	1.002	1.188
00865	01	Philly/Pitt Med Shcls/Hosps, PA	1.020	1.027	1.382
00865	04	Rest Of PA	0.974	0.914	0.852
00865	03	Sm PA Cities	0.984	0.931	0.861
00973	20	Puerto Rico	0.882	0.751	0.367
00870	01	Rhode Island	1.014	1.036	1.152
00880	01	South Carolina	0.974	0.886	0.404
00820	02	South Dakota	0.944	0.856	0.566
05440	35	Tennessee	0.972	0.898	0.466
00900	29	Abilene, TX	0.966	0.870	0.666
00900	26	Amarillo, TX	0.974	0.892	0.666
00900	31	Austin, TX	0.978	0.977	0.666
00900	20	Beaumont, TX	0.996	0.924	0.966
00900	09	Brazoria, TX	1.009	0.960	0.966
00900	10	Brownsville, TX	0.968	0.868	0.666
00900	24	Corpus Christi, TX	0.980	0.921	0.666
00900	11	Dallas, TX	1.004	0.992	0.698
00900	12	Denton, TX	0.982	0.962	0.666
00900	14	El Paso, TX	0.984	0.894	0.698
00900	28	Fort Worth, TX	0.981	0.954	0.698
00900	15	Galveston, TX	0.986	0.967	0.966
00900	16	Grayson, TX	0.962	0.888	0.666
00900	18	Houston, TX	1.018	0.994	1.042
00900	33	Laredo, TX	0.962	0.854	0.666
00900	17	Longview, TX	0.970	0.896	0.666
00900	21	Lubbock, TX	0.952	0.888	0.666
00900	19	Mc Allen, TX	0.953	0.855	0.666
00900	23	Midland, TX	1.007	0.949	0.666
00900	02	Northeast Rural TX	0.964	0.870	0.666
00900	13	Odessa, TX	1.000	0.936	0.666
00900	25	Orange, TX	0.996	0.924	0.666
00900	30	San Angelo, TX	0.951	0.873	0.666
00900	07	San Antonio, TX	0.976	0.928	0.666
00900	03	Southeast Rural TX	0.968	0.884	0.696
00900	06	Temple, TX	0.968	0.885	0.666
00900	08	Texarkana, TX	0.954	0.878	0.666
00900	27	Tyler, TX	0.978	0.912	0.666
00900	32	Victoria, TX	0.980	0.920	0.666
00900	22	Waco, TX	0.974	0.874	0.666
00900	04	Western TX	0.958	0.835	0.666
00900	34	Wichita Falls, TX	0.960	0.876	0.666
00910	09	Utah	0.986	0.922	0.692
00780	50	Vermont	0.958	0.964	0.492
00973	50	Virgin Islands	0.983	0.989	1.012
10490	04	Rest Of VA	0.972	0.882	0.513
10490	01	Richmond & Charlottesville, VA	0.990	0.972	0.486
10490	03	Sm Town/Industrial VA	0.972	0.894	0.524
10490	02	Tidewater & N VA Cntys	0.990	0.980	0.616
01390	03	E Cntrl & Ne WA	0.990	0.969	0.906
01390	02	Seattle (King Cnty), WA	1.012	1.063	0.906
01390	01	W & Se WA (Excl Seattle)	0.995	0.980	0.906
16510	16	Charleston, WV	0.984	0.922	0.846
16510	18	Eastern Valley, WV	0.961	0.890	0.846
16510	19	Ohio River Valley, WV	0.960	0.857	0.846
16510	20	Southern Valley, WV	0.956	0.846	0.846
16510	17	Wheeling, WV	0.966	0.870	0.846
00951	13	Central WI	0.960	0.868	0.961
00951	40	Green Bay (Northeast), WI	0.978	0.904	0.961
00951	54	Janesville (S Cntrl), WI	0.968	0.900	0.961
00951	19	La Crosse (W Cntrl), WI	0.974	0.899	0.961
00951	15	Madison (Dane Cnty), WI	0.984	0.990	0.961
00951	46	Milwaukee Surburbs (Se), WI	1.000	0.984	0.961
00951	04	Milwaukee, WI	1.004	0.994	0.961
00951	12	Northwest WI	0.964	0.874	0.961

ADDENDUM C—1995 GEOGRAPHIC PRACTICE COST INDICES BY MEDICARE CARRIER AND LOCALITY—Continued

Carrier No.	Locality No.	Locality name	Work	Practice expense	Malpractice
00951	60	Oshkosh (E Cntrl), WI	0.974	0.898	0.961
00951	14	Southwest WI	0.960	0.869	0.961
00951	36	Wausau (N Cntrl), WI	0.966	0.882	0.961
00825	21	Wyoming	0.978	0.910	0.726

Note: Work GPCI is the ¼ work GPCI required by Section 1848(e)(1)(A)(iii) of the Social Security Act.
GPCIs rescaled by the following factors to assure budget neutrality: Work=1.00073; Practice expense=1.00125; Malpractice=1.02307.

ADDENDUM D.—CHANGES IN GEOGRAPHIC ADJUSTMENT FACTOR 1996 VS. 1994 (in Descending Order)

Carrier No.	Locality No.	Locality name	1996 GAF	1994 GAF	Change	Percent change
00870	01	Rhode Island	1.068	0.991	0.077	7.8
10230	03	S. Cntrl CT	1.123	1.061	0.062	5.8
10230	01	Nw And N. Cntrl CT	1.092	1.031	0.061	5.9
00803	01	Manhattan, NY	1.225	1.168	0.057	4.9
00590	04	Miami, FL	1.114	1.059	0.055	5.2
00900	18	Houston, TX	1.034	0.984	0.050	5.1
10230	04	Eastern CT	1.072	1.023	0.049	4.8
00590	03	Fort Lauderdale, FL	1.055	1.006	0.049	4.9
00900	15	Galveston, TX	1.001	0.953	0.048	5.0
10230	02	Sw CT	1.143	1.097	0.046	4.2
01120	01	Hawaii/Guam	1.086	1.041	0.045	4.3
00900	11	Dallas, TX	1.006	0.962	0.044	4.6
00900	28	Fort Worth, TX	0.977	0.935	0.042	4.5
00780	40	New Hampshire	1.003	0.965	0.038	3.9
21200	03	Southern Maine	0.992	0.954	0.038	4.0
00700	01	Urban MA	1.084	1.048	0.036	3.4
00590	01	Rest of Florida	0.969	0.934	0.035	3.7
00951	15	Madison (Dane Cnty), WI	1.002	0.968	0.034	3.5
10490	01	Richmond & Charlottesville, VA	0.975	0.941	0.034	3.6
00780	50	Vermont	0.955	0.922	0.033	3.6
00900	31	Austin, TX	0.979	0.946	0.033	3.5
00900	09	Brazoria, TX	1.003	0.971	0.032	3.3
00710	01	Detroit, MI	1.137	1.105	0.032	2.9
01040	01	Atlanta, GA	1.011	0.984	0.027	2.7
01040	02	Small GA Cities 02	0.951	0.924	0.027	2.9
00700	02	MA Suburbs/Rural Cities	1.048	1.021	0.027	2.6
00860	01	Northern NJ	1.109	1.083	0.026	2.4
00803	03	Poughkpsie/N NYC Suburb, NY	1.050	1.025	0.025	2.4
00590	02	N/Nc FL Cities	0.988	0.964	0.024	2.5
00900	21	Lubbock, TX	0.924	0.900	0.024	2.7
21200	02	Central Maine	0.938	0.915	0.023	2.5
16510	18	Eastern Valley, WV	0.937	0.916	0.021	2.3
01040	04	Rest Of GA	0.917	0.899	0.018	2.0
00900	07	San Antonio, TX	0.949	0.932	0.017	1.8
01040	03	Small GA Cities 03	0.929	0.913	0.016	1.8
00900	20	Beaumont, TX	0.973	0.957	0.016	1.7
21200	01	Northern Maine	0.936	0.922	0.014	1.5
00900	06	Temple, TX	0.927	0.913	0.014	1.5
00951	54	Janesville (S Cntrl), WI	0.946	0.933	0.013	1.4
00900	08	Texarkana, TX	0.915	0.903	0.012	1.3
00510	05	Birmingham, AL	0.957	0.946	0.011	1.2
05535	00	North Carolina	0.924	0.913	0.011	1.2
05440	35	Tennessee	0.923	0.912	0.011	1.2
00570	01	Delaware	1.015	1.005	0.010	1.0
00710	02	Michigan, Not Detroit	1.013	1.003	0.010	1.0
00900	26	Amarillo, TX	0.930	0.920	0.010	1.1
00900	19	Mc Allen, TX	0.904	0.894	0.010	1.1
00900	22	Waco, TX	0.923	0.913	0.010	1.1
00510	01	Northwest AL	0.939	0.930	0.009	1.0
01030	08	Yuma, AZ	0.976	0.967	0.009	0.9
00880	01	South Carolina	0.915	0.906	0.009	0.0
00951	40	Green Bay (Northeast), W	0.951	0.942	0.009	1.0
00860	02	Middle NJ	1.062	1.054	0.008	0.8
00951	60	Oshkosh (E Cntrl), WI	0.946	0.938	0.008	0.9
00900	33	Laredo, TX	0.907	0.900	0.007	0.8
00580	01	DC + MD/VA Suburbs	1.105	1.098	0.007	0.6
00860	03	Southern NJ	1.035	1.028	0.007	0.7
01030	05	Flagstaff, AZ	0.973	0.967	0.006	0.6

ADDENDUM D.—CHANGES IN GEOGRAPHIC ADJUSTMENT FACTOR 1996 VS. 1994 (in Descending Order)—Continued

Carrier No.	Locality No.	Locality name	1996 GAF	1994 GAF	Change	Percent change
01030	99	Rest Of AZ	0.988	0.982	0.006	0.6
00900	14	El Paso, TX	0.936	0.930	0.006	0.6
00660	01	Lexington & Louisville, KY	0.946	0.941	0.005	0.5
00690	01	Baltimore/Surr. Cntys, MD	1.032	1.028	0.004	0.4
00801	03	N. Central Cities, NY	0.981	0.977	0.004	0.4
00900	03	Southeast Rural TX	0.922	0.919	0.003	0.3
10490	03	Sm Town/Industrial VA	0.920	0.917	0.003	0.3
00951	13	Central WI	0.924	0.921	0.003	0.3
00951	14	Southwest WI	0.924	0.921	0.003	0.3
00740	05	Kansas City, Kansas	0.982	0.980	0.002	0.2
00740	04	Suburban Kansas City, Kansas	0.982	0.980	0.002	0.2
00528	04	Lake Charles, LA	0.941	0.939	0.002	0.2
00951	04	Milwaukee, WI	0.999	0.997	0.002	0.2
00520	13	Arkansas	0.887	0.886	0.001	0.1
00740	03	K.C. (Jackson Cnty), MO	0.983	0.982	0.001	0.1
00740	02	N K.C. (Clay/Platte), MO	0.983	0.982	0.001	0.1
16360	00	Ohio	0.973	0.972	0.001	0.1
00900	24	Corpus Christi, TX	0.941	0.940	0.001	0.1
00900	16	Grayson, TX	0.918	0.917	0.001	0.1
00951	19	La Crosse (W Cntrl), WI	0.943	0.942	0.001	0.1
00951	36	Wausau (N Cntrl), WI	0.932	0.931	0.001	0.1
00865	01	Philly/Pitt Med Shcls/Hosps, PA	1.041	1.040	0.001	0.1
00900	02	Northeast Rural TX	0.911	0.911	0.000	0.0
00510	02	North Central AL	0.920	0.921	−0.001	−0.1
00510	03	Southeast AL	0.922	0.923	−0.001	−0.1
00650	01	Rest Of Kansas	0.936	0.937	−0.001	−0.1
00900	04	Western TX	0.893	0.894	−0.001	−0.1
10490	04	Rest Of VA	0.912	0.913	−0.001	−0.1
00803	02	Nyc Suburbs/Long I., NY	1.170	1.171	−0.001	−0.1
01030	07	Prescott, AZ	0.964	0.967	−0.003	−0.3
00951	12	Northwest WI	0.925	0.928	−0.003	−0.3
00801	04	Rest Of New York	0.960	0.965	−0.005	−0.5
00900	29	Abilene, TX	0.909	0.915	−0.006	−0.7
00900	27	Tyler, TX	0.933	0.939	−0.006	−0.6
16510	19	Ohio River Valley, WV	0.910	0.916	−0.006	−0.7
00621	15	Suburban Chicago, IL	1.050	1.057	−0.007	−0.7
00900	12	Denton, TX	0.955	0.962	−0.007	−0.7
00740	01	St Joseph, MO	0.920	0.927	−0.007	−0.8
00655	00	Nebraska	0.894	0.903	−0.009	−1.0
00900	17	Longview, TX	0.921	0.930	−0.009	−1.0
01390	02	Seattle (King Cnty), WA	1.023	1.033	−0.010	−1.0
00542	05	San Francisco, CA	1.153	1.163	−0.010	−0.9
00510	04	Mobile, AL	0.925	0.936	−0.011	−1.2
01360	05	New Mexico	0.937	0.948	−0.011	−1.2
00801	01	Buffalo/Surr. Cntys, NY	0.967	0.978	−0.011	−1.1
00900	30	San Angelo, TX	0.900	0.911	−0.011	−1.2
00900	34	Wichita Falls, TX	0.906	0.917	−0.011	−1.2
02050	17	Ventura, CA	1.079	1.090	−0.011	−1.0
02050	16	Santa Barbara, CA	1.042	1.054	−0.012	−1.1
00528	05	Monroe, LA	0.918	0.930	−0.012	−1.3
00528	50	Rest Of LA	0.915	0.927	−0.012	−1.3
10250	01	Rest Of Mississippi	0.883	0.895	−0.012	−1.3
10250	02	Urban Mississippi	0.913	0.925	−0.012	−1.3
00951	46	Milwaukee Surburbs (Se), WI	0.985	0.997	−0.012	−1.2
00550	01	Colorado	0.966	0.979	−0.013	−1.3
01370	00	Oklahoma	0.910	0.923	−0.013	−1.4
00900	25	Orange, TX	0.944	0.957	−0.013	−1.4
00720	00	Minnesota (Blue Shield)	0.961	0.975	−0.014	−1.4
10240	00	Minnesota (Travelers)	0.961	0.975	−0.014	−1.4
00900	10	Brownsville, TX	0.905	0.919	−0.014	−1.5
14330	04	Queens, NY	1.163	1.178	−0.015	−1.3
00510	06	Rest Of AL	0.902	0.917	−0.015	−1.6
00630	02	Urban IN	0.912	0.927	−0.015	−1.6
00740	06	Rural Nw Counties, MO	0.913	0.928	−0.015	−1.6
16510	20	Southern Valley, WV	0.898	0.913	−0.015	−1.6
00640	05	Des Moines (Polk/Warren), IA	0.950	0.968	−0.018	−1.9
01030	01	Phoenix, AZ	1.002	1.020	−0.018	−1.8
10490	02	Tidewater & N VA Cntys	0.958	0.977	−0.019	−1.9
00973	20	Puerto Rico	0.794	0.813	−0.019	−2.3
16510	17	Wheeling, WV	0.911	0.930	−0.019	−2.0
00528	07	Alexandria, LA	0.917	0.937	−0.020	−2.1

ADDENDUM D.—CHANGES IN GEOGRAPHIC ADJUSTMENT FACTOR 1996 VS. 1994 (in Descending Order)—Continued

Carrier No.	Locality No.	Locality name	1996 GAF	1994 GAF	Change	Percent change
11260	03	Rest Of MO	0.899	0.919	−0.020	−2.2
11260	02	Sm E. Cities, MO	0.897	0.917	−0.020	−2.2
00820	02	South Dakota	0.880	0.900	−0.020	−2.2
16510	16	Charleston, WV	0.941	0.962	−0.021	−2.2
00660	02	Sm Cities (City Limits), KY	0.908	0.929	−0.021	−2.3
01030	02	Tucson, AZ	0.980	1.001	−0.021	−2.1
00630	03	Rest Of IN	0.901	0.923	−0.022	−2.4
00640	02	Northeast Iowa	0.913	0.935	−0.022	−2.4
00801	02	Rochester/Surr. Cntys, N	0.995	1.017	−0.022	−2.2
00900	13	Odessa, TX	0.946	0.969	−0.023	−2.4
00640	01	Southeast Iowa	0.920	0.943	−0.023	−2.4
00630	01	Metropolitan IN	0.938	0.962	−0.024	−2.5
00865	03	Sm PA Cities	0.944	0.968	−0.024	−2.5
00640	07	Southwest Iowa	0.902	0.926	−0.024	−2.6
00660	03	Rest Of Kentucky	0.895	0.919	−0.024	−2.6
00900	32	Victoria, TX	0.928	0.952	−0.024	−2.5
00865	02	Lg PA Cities	1.001	1.026	−0.025	−2.4
00820	01	North Dakota	0.898	0.923	−0.025	−2.7
00973	50	Virgin Islands	0.974	1.000	−0.026	−2.6
00825	21	Wyoming	0.925	0.951	−0.026	−2.7
01380	01	Portland, Et Al. (Cities), OR	0.981	1.007	−0.026	−2.6
00542	09	Santa Clara, CA	1.134	1.161	−0.027	−2.3
00865	04	Rest Of PA	0.930	0.957	−0.027	−2.8
00690	03	South & E. Shore MD	0.974	1.001	−0.027	−2.7
00528	03	Baton Rouge, LA	0.944	0.972	−0.028	−2.9
02050	18	Los Angeles (1st Of 8)	1.103	1.131	−0.028	−2.5
02050	19	Los Angeles (2nd Of 8)	1.103	1.131	−0.028	−2.5
02050	20	Los Angeles (3rd Of 8)	1.103	1.131	−0.028	−2.5
02050	21	Los Angeles (4th Of 8)	1.103	1.131	−0.028	−2.5
02050	22	Los Angeles (5th Of 8)	1.103	1.131	−0.028	−2.5
02050	23	Los Angeles (6th Of 8)	1.103	1.131	−0.028	−2.5
02050	24	Los Angeles (7th Of 8)	1.103	1.131	−0.028	−2.5
02050	25	Los Angeles (8th Of 8)	1.103	1.131	−0.028	−2.5
00621	10	Champaign-Urbana, IL	0.927	0.955	−0.028	−2.9
11260	01	St. Louis/Lg E. Cities, MO	0.968	0.996	−0.028	−2.8
00621	09	Springfield, IL	0.961	0.990	−0.029	−2.9
00640	06	Northwest Iowa	0.893	0.922	−0.029	−3.1
00640	04	S Cntrl IA (Excl. Des Moines)	0.886	0.915	−0.029	−3.2
01290	03	Elko & Ely (Cities), NV	0.980	1.009	−0.029	−2.9
00542	01	N. Coastal Cntys, CA	1.019	1.049	−0.030	−2.9
00528	01	New Orleans, LA	0.977	1.007	−0.030	−3.0
00542	12	Monterey/Santa Cruz, CA	1.044	1.075	−0.031	−2.9
00528	06	Lafayette, LA	0.921	0.952	−0.031	−3.3
00751	01	Montana	0.907	0.938	−0.031	−3.3
00621	12	East St. Louis, IL	0.974	1.005	−0.031	−3.1
00542	06	San Mateo, CA	1.130	1.163	−0.033	−2.8
00528	02	Shreveport, LA	0.935	0.968	−0.033	−3.4
01380	12	Sw OR Cities (City Limits)	0.946	0.979	−0.033	−3.4
01020	01	Alaska	1.128	1.164	−0.036	−3.1
00621	06	Kankakee, IL	0.924	0.961	−0.037	−3.9
05130	11	South Idaho	0.914	0.951	−0.037	−3.9
00640	03	North Central Iowa	0.897	0.934	−0.037	−4.0
00910	09	Utah	0.926	0.964	−0.038	−3.9
01390	01	W & Se WA (Excl Seattle)	0.965	1.004	−0.039	−3.9
02050	26	Anaheim/Santa Ana, CA	1.092	1.133	−0.041	−3.6
00542	08	Stockton/Surr. Cntys, CA	0.998	1.039	−0.041	−3.9
05130	12	North Idaho	0.901	0.942	−0.041	−4.4
00900	23	Midland, TX	0.946	0.988	−0.042	−4.3
00542	03	Marin/Napa/Solano, CA	1.063	1.105	−0.042	−3.8
00621	16	Chicago, IL	1.066	1.108	−0.042	−3.8
01390	03	E Cntrl & Ne WA	0.956	0.999	−0.043	−4.3
00542	15	San Bernadino/E.Ctrl Cntys, CA	1.019	1.063	−0.044	−4.1
01380	03	Salem, Et Al. (Cities), OR	0.934	0.979	−0.045	−4.6
00690	02	Western MD	0.955	1.001	−0.046	−4.6
00542	07	Oakland/Berkley, CA	1.092	1.139	−0.047	−4.1
02050	28	San Diego/Imperial, CA	1.022	1.069	−0.047	−4.4
00621	11	Decatur, IL	0.918	0.966	−0.048	−5.0
00542	04	Sacramento/Surr. Cntys, CA	1.020	1.068	−0.048	−4.5
01380	02	Eugene, Et Al. (Cities), OR	0.935	0.984	−0.049	−5.0
01290	01	Las Vegas, Et Al. (Cities), NV	1.010	1.060	−0.050	−4.7
00542	27	Riverside, CA	1.014	1.065	−0.051	−4.8

ADDENDUM D.—CHANGES IN GEOGRAPHIC ADJUSTMENT FACTOR 1996 VS. 1994 (in Descending Order)—Continued

Carrier No.	Locality No.	Locality name	1996 GAF	1994 GAF	Change	Percent change
00621	03	De Kalb, IL	0.912	0.964	−0.052	−5.4
01290	99	Rest Of Nevada	0.998	1.050	−0.052	−5.0
00542	11	Fresno/Madera, CA	0.971	1.025	−0.054	−5.3
00542	10	Merced/Surr.Cntys, CA	0.977	1.031	−0.054	−5.2
00621	01	Northwest, IL	0.896	0.950	−0.054	−5.7
01290	02	Reno, Et Al. (Cities), NV	1.013	1.069	−0.056	−5.2
00542	14	Bakersfield, CA	0.994	1.053	−0.059	−5.6
01380	99	Rest Of Oregon	0.924	0.985	−0.061	−6.2
00621	14	Southern IL	0.889	0.950	−0.061	−6.4
00542	02	Ne Rural, CA	0.952	1.014	−0.062	−6.1
00542	13	Kings/Tulare, CA	0.955	1.018	−0.063	−6.2
00621	07	Quincy, IL	0.886	0.950	−0.064	−6.7
00621	02	Rockford, IL	0.955	1.019	−0.064	−6.3
00621	08	Normal, IL	0.926	0.992	−0.066	−6.7
00621	13	Southeast IL	0.882	0.950	−0.068	−7.2
00621	04	Rock Island, IL	0.914	0.987	−0.073	−7.4
00621	05	Peoria, IL	0.938	1.024	−0.086	−8.4

Note: Work GPCI is the ¼ work GPCI required by Section 1848 (e)(1)(A)(iii) of the Social Security Act.
GPCIs rescaled by the following factors to assure budget neutrality: Work=1.00073; Practice expense=1.00125; Malpractice=1.02307.

ADDENDUM E.—1996 GEOGRAPHIC PRACTICE COST INDICES AND GEOGRAPHIC ADJUSTMENT FACTORS FOR STATES WITH MULTIPLE LOCALITIES

State name	Work	Practice expense	Malpractice	1996 GAF
Alabama	0.980	0.870	0.927	0.932
Arizona	0.996	0.956	1.321	0.995
California	1.033	1.145	0.668	1.061
Connecticut	1.050	1.192	1.001	1.106
Florida	0.988	0.991	1.697	1.023
Georgia	0.986	0.948	0.902	0.966
Idaho	0.961	0.882	0.538	0.911
Illinois	1.002	1.007	1.157	1.011
Indiana	0.982	0.916	0.356	0.925
Iowa	0.960	0.877	0.679	0.912
Kansas	0.964	0.892	1.191	0.945
Kentucky	0.971	0.868	0.819	0.921
Louisiana	0.979	0.896	0.940	0.943
Maine	0.969	0.969	0.759	0.959
Maryland*	1.012	1.016	1.056	1.016
Massachusetts	1.026	1.150	0.978	1.075
Michigan	1.023	0.992	2.509	1.082
Mississippi	0.958	0.844	0.726	0.900
Missouri	0.974	0.900	1.188	0.954
Nevada	1.007	1.029	0.887	1.010
New Jersey	1.047	1.173	0.762	1.085
New York	1.050	1.167	1.410	1.115
Oregon	0.974	0.952	0.637	0.949
Pennsylvania	1.002	0.982	0.933	0.990
Texas	0.985	0.930	0.974	0.962
Virginia*	0.986	0.938	0.518	0.944
Washington	0.990	0.998	0.748	0.982
West Virginia	0.964	0.851	1.004	0.920
Wisconsin	0.982	0.926	1.160	0.968

*The Maryland and Virginia state GPCIs do not include the parts of Maryland, Virginia included in the District of Columbia physician fee schedule area. The District of Columbia fee schedule area includes Washington, D.C.; Prince Georges and Montgomery Counties in Maryland; and Fairfax and Arlington Counties and the City of Alexandria in Virginia.
Note: Work GPCI is the ¼ work GPCI required by Section 1848(e)(1)(A)(iii) of the Social Security Act.
GPCIs rescaled by the following factors to assure budget neutrality: Work=1.00073; Practice expense=1.00125; Malpractice=1.02307.

ADDENDUM F.—1995 GEOGRAPHIC PRACTICE COST INDICES AND GEOGRAPHIC ADJUSTMENT FACTORS FOR STATES WITH MULTIPLE LOCALITIES

State name	Work	Practice expense	Malpractice	1995 GAF
Alabama	0.978	0.878	0.876	0.932
Arizona	0.996	0.978	1.288	1.003
California*	1.034	1.148	1.019	1.080

ADDENDUM F.—1995 GEOGRAPHIC PRACTICE COST INDICES AND GEOGRAPHIC ADJUSTMENT FACTORS FOR STATES WITH MULTIPLE LOCALITIES—Continued

State name	Work	Practice expense	Malpractice	1995 GAF
Connecticut	1.032	1.140	1.051	1.077
Florida	0.988	0.972	1.480	1.005
Georgia	0.976	0.941	0.827	0.954
Idaho	0.964	0.907	0.738	0.930
Illinois	1.010	1.028	1.311	1.032
Indiana	0.986	0.926	0.445	0.935
Iowa	0.968	0.898	0.672	0.925
Kansas	0.961	0.900	1.162	0.946
Kentucky	0.975	0.885	0.743	0.927
Louisiana	0.983	0.920	0.939	0.955
Maine	0.959	0.953	0.738	0.946
Maryland*	1.017	1.024	0.980	1.018
Massachusetts	1.014	1.133	0.916	1.058
Michigan	1.030	1.015	2.001	1.070
Mississippi	0.960	0.859	0.688	0.906
Missouri	0.976	0.918	1.232	0.965
Nevada	1.017	1.063	1.016	1.036
New Jersey	1.040	1.136	0.958	1.075
New York	1.045	1.156	1.484	1.112
Oregon	0.977	0.980	0.794	0.969
Pennsylvania	1.002	0.984	1.128	1.001
Texas	0.984	0.931	0.752	0.951
Virginia*	0.982	0.938	0.540	0.943
Washington	1.000	1.004	0.906	0.997
West Virginia	0.968	0.882	0.846	0.927
Wisconsin	0.985	0.940	0.961	0.965

*The Maryland and Virginia state GPCIs do not include the parts of Maryland and Virginia included in the District of Columbia physician fee schedule area. The District of Columbia fee schedule area includes Washington, D.C.; Prince George's and Montgomery Counties in Maryland; and Fairfax and Arlington Counties and the City of Alexandria in Virginia.

Note: Work GPCI is the ¼ work GPCI required by Section 1848(e)(1)(A)(iii) of the Social Security Act.
GPCI is rescaled by the following factors to assure budget neutrality: Work=1.00073; Practice expense=1.00125; Malpractice=1.02307.

ADDENDUM G.—REFERENCE SET WITH 1994 WORK RVUS

HCPCS*	Work RVU	Description (short)
11200	0.70	Removal of skin tags.
11401	1.28	Removal of skin lesion.
11446	4.49	Removal of skin lesion.
11750	1.68	Removal of nail bed.
13101	3.91	Repair of wound or lesion.
17002	0.19	Destruction of add'l lesion.
19140	4.95	Removal of breast tissue.
20610	0.80	Drain/inject joint/bursa.
22600	18.25	Neck spine fusion.
25605	5.42	Treat fracture radius/ulna.
26055	2.59	Incise finger tendon sheath.
27130	18.89	Total hip replacement.
27235	11.14	Repair of thigh fracture.
27244	14.51	Repair of thigh fracture.
27447	19.91	Total knee replacement.
27590	10.35	Amputate leg at thigh.
29881	7.54	Knee arthroscopy/surgery.
30115	4.30	Removal of nasal polyp(s).
31500	2.36	Insert emergency airway.
31505	0.62	Diagnostic laryngoscopy.
31575	1.11	Diagnostic laryngoscopy.
31622	2.83	Diagnostic bronchoscopy.
31625	3.41	Bronchoscopy with biopsy.
32000	1.56	Drainage of chest.
32020	4.02	Insertion of chest tube.
32100	10.18	Exploration/biopsy of chest.
33870	38.16	Transverse aortic arch graft.
35081	22.40	Repair defect of artery.
35301	16.13	Rechanneling of artery.
35371	10.61	Rechanneling of artery.
35656	14.01	Artery bypass graft.
36620	1.16	Insertion catheter, artery.
37140	22.40	Revision of circulation.

ADDENDUM G.—REFERENCE SET WITH 1994 WORK RVUs—Continued

HCPCS*	Work RVU	Description (short)
37609	2.30	Temporal artery procedure.
38300	1.50	Drainage lymph node lesion.
41100	1.60	Biopsy of tongue.
43450	1.40	Dilate esophagus.
43832	10.80	Place gastrostomy tube.
44130	11.21	Bowel to bowel fusion.
44950	6.13	Appendectomy.
45110	21.92	removal of rectum.
45305	1.02	Proctosigmoidoscopy; biopsy.
46221	1.40	Ligation of hemorrhoid(s).
46936	4.22	destruction of hemorrhoids.
47100	6.83	Wedge biopsy of liver.
48150	34.55	Partial removal of pancreas.
52000	2.03	Cystoscopy.
54161	3.26	Circumcision.
55700	1.59	Biopsy of prostate.
58120	2.48	Dilation and curettage (d&c).
58150	13.14	Total hysterectomy.
58260	11.52	Vaginal hysterectomy.
58720	6.27	Removal of ovary/tubes(s).
60220	9.97	Partial removal of thyroid.
60500	15.57	Explore parathyroid glands.
62270	1.14	Spinal fluid tap, diagnostic.
63047	12.90	Removal of spinal lamina.
63780	6.29	Insert spinal canal catheter.
64721	4.03	Carpal tunnel surgery.
65285	12.19	Repair of eye wound.
65730	11.96	Corneal transplant.
65855	4.70	Laser surgery of eye.
66821	2.81	After cataract laser surgery.
67036	11.46	Removal of inner eye fluid.
67107	14.15	Repair detached retina.
67801	1.87	Remove eyelid lesions.
69433	1.49	Creat eardrum opening.
69641	12.43	Revise middle ear & mastoid.
70150	0.26	X-ray exam of facial bones.
70450	0.86	cat scan of head or brain.
70470	1.28	Contrast cat scans of head.
70551	1.5	Magnetic image, brain (mri).
71010	0.18	Chest x-ray.
72020	0.15	X-ray exam of spine.
73620	0.16	X-ray exam of foot.
76516	0.55	Echo exam of eye.
76700	0.82	Echo exam of abdomen.
77425	2.47	Weekly radiation therapy.
78306	0.87	Bone imaging, whole body.
78465	1.48	Heart image (3d) multiple.
80500	0.37	Lab pathology consultation.
85060	0.46	Blood smear interpretation.
88300	0.08	Surg path, gross.
88309	2.31	Tissue exam by pathologist.
90844	1.74	Psychotherapy 45–50 min.
91010	1.67	Esophagus motility study.
92225	0.59	Special eye exam, initial.
99201	0.38	Office/outpatient visit, new.
99202	0.76	Office/outpatient visit, new.
99204	1.73	Office/outpatient visit, new.
99205	2.31	Office/outpatient visit, new.
99211	0.17	Office/outpatient visit, est.
99212	0.38	Office/outpatient visit, est.
99213	0.56	Office/outpatient visit, est.
99214	0.95	Office/outpatient visit, est.
99215	1.53	Office/outpatient visit, est.
99221	1.07	Initial hospital care.
99222	1.86	Initial hospital care.
99223	2.6	Initial hospital care.
99231	0.52	Subsequent hospital care.
99232	0.89	Subsequent hospital care.
99233	1.26	Subsequent hospital care.
99251	0.55	Initial inpatient consult.
99252	1.14	Initial inpatient consult.
99253	1.58	Initial inpatient consult.

ADDENDUM G.—REFERENCE SET WITH 1994 WORK RVUS—Continued

HCPCS*	Work RVU	Description (short)
99254	2.3	Initial inpatient consult.
99255	3.17	Initial Inpatient consult.
99281	0.28	Emergency dept visit.
99282	0.48	Emergency dept visit.
99285	2.66	Emergency dept visit.

*All numeric CPT HCPCS copyright 1993 American Medical Association.

ADDENDUM H.—PROCEDURE CODES SUBJECT TO THE SITE-OF-SERVICE DIFFERENTIAL

HCPCS	Description
10040	Acne surgery.
10060	Drainage of skin abscess.
10061	Drainage of skin abscess.
10080	Drainage of pilonidal cyst.
*10081	Drainage of pilonidal cyst.
10120	Remove foreign body.
10121	Remove foreign body.
10140	Drainage of hematoma/fluid.
10160	Puncture drainage of lesion.
11000	Surgical cleansing of skin.
11001	Additional cleansing of skin.
11040	Surgical cleansing, abrasion.
11041	Surgical cleansing of skin.
11050	Trim skin lesion.
11051	Trim 2 to 4 skin lesions.
11052	Trim over 4 skin lesions.
11100	Biopsy of skin lesion.
11101	Biopsy, each added lesion.
11200	Removal of skin tags.
11201	Removal of added skin tags.
11300	Shave skin lesion.
11301	Shave skin lesion.
11302	Shave skin lesion.
*11303	Shave skin lesion.
11305	Shave skin lesion.
11306	Shave skin lesion.
11307	Shave skin lesion.
*11308	Shave skin lesion.
11310	Shave skin lesion.
11311	Shave skin lesion.
11312	Shave skin lesion.
*11313	Shave skin lesion.
11400	Removal of skin lesion.
11401	Removal of skin lesion.
11402	Removal of skin lesion.
11403	Removal of skin lesion.
11420	Removal of skin lesion.
11421	Removal of skin lesion.
11422	Removal of skin lesion.
11423	Removal of skin lesion.
11440	Removal of skin lesion.
11441	Removal of skin lesion.
11442	Removal of skin lesion.
11443	Removal of skin lesion.
11600	Removal of skin lesion.
11601	Removal of skin lesion.
11602	Removal of skin lesion.
11603	Removal of skin lesion.
11620	Removal of skin lesion.
11621	Removal of skin lesion.
11622	Removal of skin lesion.
11623	Removal of skin lesion.
11640	Removal of skin lesion.
11641	Removal of skin lesion.
11642	Removal of skin lesion.
11643	Removal of skin lesion.
11700	Scraping of 1–5 nails.
11701	Scraping of additional nails.

ADDENDUM H.—PROCEDURE CODES SUBJECT TO THE SITE-OF-SERVICE DIFFERENTIAL—Continued

HCPCS	Description
11710	Scraping of 1–5 nails.
11711	Scraping of additional nails.
11730	Removal of nail plate.
11731	Removal of second nail plate.
11732	Removal of additional nail plate.
11740	Drain blood from under nail.
11750	Removal of nail bed.
*11752	Remove nail bed/finger tip.
11760	Reconstruction of nail bed.
11762	Reconstruction of nail bed.
11765	Excision of nail fold, toe.
11900	Injection into skin lesions.
11901	Added skin lesion injections.
*12031	Layer closure of wound(s).
*12032	Layer closure of wound(s).
*12041	Layer closure of wound(s).
*12042	Layer closure of wound(s).
*12051	Layer closure of wound(s).
*12052	Layer closure of wound(s).
*15780	Abrasion treatment of skin.
*15781	Abrasion treatment of skin.
*15782	Abrasion treatment of skin.
*15783	Abrasion treatment of skin.
*15786	Abrasion treatment of lesion.
*15787	Abrasion, added skin lesions.
15851	Removal of sutures.
*15852	Dressing change, not for burn.
16000	Initial treatment of burn(s).
16010	Treatment of burn(s).
16020	Treatment of burn(s).
16025	Treatment of burn(s).
17000	Destroy benign/premal lesion.
17001	Destruction of add'l lesions.
17002	Destruction of add'l lesions.
17010	Destruction skin lesion(s).
17100	Destruction of skin lesion.
17101	Destruction of 2nd lesion.
17102	Destruction of add'l lesions.
17104	Destruction of skin lesions.
17105	Destruction of skin lesions.
*17106	Destruction of skin lesions.
*17107	Destruction of skin lesions.
*17110	Destruction of skin lesions.
17200	Electrocautery of skin tags.
17201	Electrocautery added lesions.
17250	Chemical cautery, tissue.
*17260	Destruction of skin lesions.
*17261	Destruction of skin lesions.
*17262	Destruction of skin lesions.
*17263	Destruction of skin lesions.
*17264	Destruction of skin lesions.
*17266	Destruction of skin lesions.
*17270	Destruction of skin lesions.
*17271	Destruction of skin lesions.
*17272	Destruction of skin lesions.
*17273	Destruction of skin lesions.
*17274	Destruction of skin lesions.
*17276	Destruction of skin lesions.

ADDENDUM H.—PROCEDURE CODES SUBJECT TO THE SITE-OF-SERVICE DIFFERENTIAL—Continued

HCPCS	Description
*17280	Destruction of skin lesions.
*17281	Destruction of skin lesions.
*17282	Destruction of skin lesions.
*17283	Destruction of skin lesions.
*17284	Destruction of skin lesions.
*17286	Destruction of skin lesions.
*17304	Chemosurgery of skin lesion.
17305	2nd stage chemosurgery.
17306	3rd stage chemosurgery.
17307	Followup skin lesion therapy.
17310	Extensive skin chemosurgery.
17340	Cryotherapy of skin.
17360	Skin peel therapy.
19000	Drainage of breast lesion.
*19001	Drain added breast lesion.
20000	Incision of abscess.
20500	Injection of sinus tract.
20520	Removal of foreign body.
20550	Inj tendon/ligament/cyst.
20600	Drain/inject joint/bursa.
20605	Drain/inject joint/bursa.
20610	Drain/inject joint/bursa.
20615	Treatment of bone cyst.
*20974	Electrical bone stimulation.
*21029	Contour of face bone lesion.
21030	Removal of face bone lesion.
*21031	Remove exostosis, mandible.
*21032	Remove exostosis, maxilla.
*21079	Prepare face/oral prosthesis.
*21080	Prepare face/oral prosthesis.
*21081	Prepare face/oral prosthesis.
*21082	Prepare face/oral prosthesis.
*21083	Prepare face/oral prosthesis.
*21084	Prepare face/oral prosthesis.
*21085	Prepare face/oral prosthesis.
*21086	Prepare face/oral prosthesis.
*21087	Prepare face/oral prosthesis.
*21088	Prepare face/oral prosthesis.
*21089	Prepare face/oral prosthesis.
*21110	Interdental fixation.
*21499	Head surgery procedure.
*23031	Drain shoulder bursa.
*24200	Removal of arm foreign body.
24650	Treat radius facture.
25500	Treat fracture of radius.
*25530	Treat fracture of ulna.
*25600	Treat fracture radius/ulna.
*25622	Treat wrist bone fracture.
*25630	Treat wrist bone fracture.
*25650	Repair writst bone fracture.
26010	Drainage of finger abscess.
26600	Treat metacarpal fracture.
26720	Treat finger fracture, each.
*26725	Treat finger fracture, each.
*26740	Treat finger fracture, each.
28001	Drainage of bursa of foot.
28010	Incision of toe tendon.
*28011	Incision of toe tendons.

ADDENDUM H.—PROCEDURE CODES SUBJECT TO THE SITE-OF-SERVICE DIFFERENTIAL—Continued

HCPCS	Description
*28022	Exploration of a foot joint.
*28024	Exploration of a toe joint.
*28052	Biopsy of foot joint lining.
28108	Removal of toe lesions.
28124	Partial removal of toe.
28126	Partial removal of toe.
28153	Partial removal of toe.
28160	Partial removal of toe.
28190	Removal of foot foreign body.
*28220	Release of foot tendon.
28230	Incision of foot tendon(s).
28232	Incision of toe tendon.
28234	Incision of foot tendon.
28270	Release of foot contracture.
28272	Release of toe joint, each.
*28430	Treatment of ankle fracture.
*28450	Treat midfoot fracture, each.
*28455	Treat midfoot fracture, each.
28470	Treat metatarsal fracture.
28475	Treat metatarsal fracture.
28490	Treat big toe fracture.
*28495	Treat big toe fracture.
28510	Treatment of toe fracture.
28515	Treatment of toe fracture.
*28530	Treat sesamoid bone fracture.
*28540	Treat foot dislocation.
*28570	Treat foot dislocation.
*28600	Treat foot dislocation.
*28630	Treat toe dislocation.
*29015	Application of body cast.
*29020	Application of body cast.
*29025	Application of body cast.
*29035	Application of body cast.
*29049	Application of shoulder cast.
29065	Application of long arm cast.
29075	Application of forearm cast.
29085	Apply hand/wrist cast.
29105	Apply long arm splint.
29125	Apply forearm splint.
29126	Apply forearm splint.
29130	Application of finger splint.
*29131	Application of finger splint.
29200	Strapping of chest.
*29220	Strapping of low back.
29260	Strapping of elbow or wrist.
*29280	Strapping of hand or finger.
29345	Application of long leg cast.
29355	Application of long leg cast.
*29358	Apply long leg cast brace.
29365	Application of long leg cast.
29405	Apply short leg cast.
29425	Apply short leg cast.
29435	Apply short leg cast.
29440	Addition of walker to cast.
*29450	Application of leg cast.
29515	Application lower leg splint.
29520	Strapping of hip.
29540	Strapping of ankle.
29550	Strapping of toes.
29580	Application of paste boot.
*29590	Application of foot splint.
29700	Removal/revision of cast.
29705	Removal/revision of cast.
*29710	Removal/revision of cast.
*29715	Removal/revision of cast.
*29720	Repair of body cast.
*29730	Windowing of cast.
*29740	Wedging of cast.
*29750	Wedging of clubfoot cast.
*29850	Knee arthroscopy/surgery.

ADDENDUM H.—PROCEDURE CODES SUBJECT TO THE SITE-OF-SERVICE DIFFERENTIAL—Continued

HCPCS	Description
*30000	Drainage of lose lesion.
*30020	Drainage of lose lesion.
30100	Intranasal biopsy.
30110	Removal of nose polyp(s).
30200	Injection treatment of nose.
30210	Nasal sinus therapy.
*30220	Insert nasal septal button.
*30300	Remove nasal foreign body.
30901	Control of nosebleed.
31000	Irrigation maxillary sinus.
*31002	Irrigation sphenoid sinus.
*31040	Exploration behind upper jaw.
31505	Diagnostic laryngoscopy.
31575	Diagnostic laryngoscopy.
*31579	Diagnostic laryngoscopy.
*33415	Revision, subvalvular tissue.
*33420	Revision of mitral valve.
*36000	Place needle in vein.
36400	Drawing blood.
*36405	Drawing blood.
*36406	Drawing blood.
*36410	Drawing blood.
*36430	Blood transfusion service.
*36450	Exchange transfusion service.
36470	Injection therapy of vein.
36471	Injection therapy of veins.
*36510	Insertion of catheter, vein.
40490	Biopsy of lip.
*40700	Repair cleft lip/nasal.
*40800	Drainage of mouth lesion.
*40804	Removal foreign body, mouth.
40808	Biopsy of mouth lesion.
40810	Excision of mouth lesion.
40812	Excise/repair mouth lesion.
41100	Biopsy of tongue.
41108	Biopsy of floor of mouth.
*41825	Excision of gum lesion.
*41826	Excision of gum lesion.
42100	Biopsy of roof of mouth.
42330	Removal of salivary stone.
*42400	Biopsy of salivary gland.
42650	Dilation of salivary duct.
*42660	Dilation of salivary duct.
42800	Biopsy of throat.
*43420	Repair esophagus opening.
45300	Proctosigmoidoscopy.
45303	Proctosigmoidoscopy.
45330	Sigmoidoscopy, diagnostic.
*45520	Treatment of rectal prolapse.
46083	Incise external hermorrhoid.
46221	Ligation of hemorrhoid(s).
46230	Removal of anal tabs.
46320	Removal of hemorrhoid clot.
46500	Injection into hemorrhoids.
46600	Diagnostic anoscopy.
46604	Anoscopy and dilation.
*46606	Anoscopy and biopsy.
46614	Anoscopy; control bleeding.
46615	Anoscopy.
46900	Destruction, anal lesion(s).
*46910	Destruction, anal lesion(s).
*46916	Cryosurgery, anal lesion(s).
*46917	Laser surgery, anal lesion(s).
46934	Destruction of hemorrhoids.
*46935	Destruction of hemorrhoids.
46936	Destruction of hemorrhoids.
*46940	Treatment of anal fissure.
*46942	Treatment of anal fissure.
46945	Ligation of hemorrhoids.
*46946	Ligation of hemorrhoids.

ADDENDUM H.—PROCEDURE CODES SUBJECT TO THE SITE-OF-SERVICE DIFFERENTIAL—Continued

HCPCS	Description
51700	Irrigation of bladder.
51705	Change of bladder tube.
51720	Treatment of bladder lesion.
*52265	Cystoscopy & treatment.
*53270	Removal of urethra gland.
53600	Dilate urethra stricture.
53601	Dilate urethra stricture.
53620	Dilate urethra stricture.
53621	Dilate urethra stricture.
53660	Dilation of urethra.
53661	Dilation of urethra.
53670	Insert urinary catheter.
*54050	Destruction, penis lesion(s).
*54055	Destruction, penis lesion(s).
*54056	Cryosurgery, penis lesion(s).
*54200	Treatment of penis lesion.
*54230	Prepare penis study.
54235	Penile injection.
55000	Drainage of hydrocele.
*55250	Removal of sperm duct(s).
*56420	Drainage of gland abscess.
56501	Destruction, vulva lesion(s).
*56606	Biopsy of vulva/perineum.
*57061	Destruction, vagina lesion(s).
57100	Biopsy of vagina.
57150	Treat vagina infection.
57160	Insertion of pessary.
*57170	Fitting of diaphragm/cap.
57452	Examination of vagina.
57454	Vagina examination & biopsy.
*57460	Leep procedure.
57500	Biopsy of cervix.
57505	Endocervical curettage.
57510	Cauterization of cervix.
57511	Cryocautery of cervix.
58100	Biopsy of uterus lining.
*58300	Insert intrauterine device.
*58301	Remove intrauterine device.
*59200	Insert cervical dilator.
*59300	Episiotomy or vaginal repair.
59425	Antepartum care only.
59426	Antepartum care only.
*59430	Care after delivery.
60100	Biopsy of thyroid.
*61000	Remove cranial cavity fluid.
*61001	Remove cranial cavity fluid.
*63690	Analysis of neuroreceiver.
*63691	Analysis of neuroreceiver.
64400	Injection for nerve block.
64405	Injection for nerve block.
*64408	Injection for nerve block.
*64412	Injection for nerve block.
64413	Injection for nerve block.
64418	Injection for nerve block.
*64435	Injection for nerve block.
64440	Injection for nerve block.
64441	Injection for nerve block.
64445	Injection for nerve block.
64450	Injection for nerve block.
64505	Injection for nerve block.
*64508	Injection for nerve block.
64550	Apply neurostimulator.
*64553	Implant neuroelectrodes.
*64555	Implant neuroelectrodes.
*64560	Implant neuroelectrodes.
64565	Implant neuroelectrodes.
*64612	Destroy nerve, face muscle.
*64613	Destroy nerve, spine muscle.
65205	Remove foreign body from eye.
65210	Remove foreign body from eye.

ADDENDUM H.—PROCEDURE CODES SUBJECT TO THE SITE-OF-SERVICE DIFFERENTIAL—Continued

HCPCS	Description
65220	Remove foreign body from eye.
65222	Remove foreign body from eye.
*65286	Repair of eye wound.
65430	Corneal smear.
65435	Curette/treat cornea.
*65436	Curette/treat cornea.
*65600	Revision of cornea.
*65772	Correction of astigmatism.
*65855	Laser surgery of eye.
*65860	Incise inner eye adhesions.
66761	Revision of iris.
*66770	Removal of inner eye lesion.
67145	Treatment of retina.
67210	Treatment of retinal lesion.
67228	Treatment of retinal lesion.
*67345	Destroy nerve of eye muscle.
67505	Inject/treat eye socket.
67515	Inject/treat eye socket.
67700	Drainage of eyelid abscess.
*67710	Incision of eyelid.
67800	Remove eyelid lesion.
67801	Remove eyelid lesions.
*67805	Remove eyelid lesions.
67810	Biopsy of eyelid.
67820	Revise eyelashes.
67825	Revise eyelashes.
67840	Remove eyelid lesion.
67850	Treat eyelid lesion.
*67915	Repair eyelid defect.
*67922	Repair eyelid defect.
*67930	Repair eyelid wound.
*67938	Remove eyelid foreign body.
68020	Incise/drain eyelid lining.
*68040	Treatment of eyelid lesions.
*68100	Biopsy of eyelid lining.
68110	Remove eyelid lining lesion.
*68135	Remove eyelid lining lesion.
68200	Treat eyelid by injection.
*68400	Incise/drain tear gland.
*68420	Incise/drain tear sac.
68440	Incise tear duct opening.
*68530	Clearance of tear duct.
*68705	Revise tear duct opening.
68760	Close tear duct opening.
68761	Close tear duct opening.
*68770	Close tear system fistula.
68800	Dilate tear duct opening(s).
68820	Explore tear duct system.
68830	Reopen tear duct channel.
68840	Explore/irrigate tear ducts.
69000	Drain external ear lesion.
*69005	Drain external ear lesion.
69020	Drain outer ear canal lesion.
69100	Biopsy of external ear.
*69105	Biopsy of external ear canal.
69200	Clear outer ear canal.
69210	Remove impacted ear wax.

ADDENDUM H.—PROCEDURE CODES SUBJECT TO THE SITE-OF-SERVICE DIFFERENTIAL—Continued

HCPCS	Description
69220	Clean out mastoid cavity.
69222	Clean out mastoid cavity.
69400	Inflate middle ear canal.
69401	Inflate middle ear canal.
*69405	Catheterize middle ear canal.
*69410	Inset middle ear baffle.
69420	Incision of eardrum.
69433	Create eardrum opening.
*69540	Remove ear lesion.
69610	Repair of eardrum.
*69949	Inner ear surgery procedure.
*69979	Temporal bone surgery.
*90749	Immunization procedure.
92002	Eye exam, new patient.
92004	Eye exam, new patient.
92012	Eye exam established pt.
92014	Eye exam & treatment.
*92019	Eye exam & treatment.
92020	Special eye evaluation.
92070	Fitting of contact lens.
92100	Serial tonometry exam(s).
92120	Tonography & eye evaluation.
92130	Water provocation tonography.
92140	Glaucoma provocative tests.
92225	Special eye exam, initial.
92226	Special eye exam, subsequent.
92230	Eye exam with photos.
*92260	Ophthalmoscopy/dynamometry.
*92287	Internal eye photography.
92311	Contact lens fitting.
92312	Contact lens fitting.
*92313	Contact lens fitting.
*92315	Prescription of contact lens.
*92316	Prescription of contact lens.
*92317	Prescription of contact lens.
*92330	Fitting of artificial eye.
*92335	Fitting of artificial eye.
92352	Special spectacles fitting.
92353	Special spectacles fitting.
*92354	Special spectacles fitting.
*92371	Repair & adjust spectacles.
92504	Ear microscopy examination.
92506	Speech & hearing evaluation.
92507	Speech/hearing therapy.
*92508	Speech/hearing therapy.
92511	Nasopharyngoscopy.
*92512	Nasal function studies.
92516	Facial nerve function test.
*92520	Laryngeal function studies.
*92565	Stenger test, pure tone.
*92571	Filtered speech hearing test.
*92575	Sensorineural acuity test.
*92576	Synthetic sentence test.
*92577	Stenger test, speech.
*92582	Conditioning play audiometry.
*93205	Special phonocardiogram.
*93221	Vectorcardiogram tracing.

ADDENDUM H.—PROCEDURE CODES SUBJECT TO THE SITE-OF-SERVICE DIFFERENTIAL—Continued

HCPCS	Description
*93721	Plethysmography tracing.
93797	Cardiac rehab.
93798	Cardiac rehab/monitor.
*95010	Sensitivity skin tests.
*95015	Sensitivity skin tests.
*95056	Photosensitivity tests.
*95065	Nose allergy test.
*95075	Ingestion challenge test.
*95180	Rapid desensitization.
95831	Limb muscle testing, manual.
95832	Hand muscle testing, manual.
95833	Body muscle testing, manual.
95834	Body muscle testing, manual.
95851	Range of motion measurements.
95852	Range of motion measurements.
95857	Tensilon test.
*95880	Cerebral aphasia testing.
*95881	Cerebral developmental test.
96405	Intralesional chemo admin.
96406	Intralesional chemo admin.
*96445	Chemotherapy, intracavitary.
*96450	Chemotherapy, into cns.
*96542	Chemotherapy injection.
*97221	Extended hydrotherapy.
99201	Office/outpatient visit, new.
99202	Office/outpatient visit, new.
99203	Office/outpatient visit, new.
99204	Office/outpatient visit, new.
99205	Office/outpatient visit, new.
99211	Office/outpatient visit, est.
99212	Office/outpatient visit, est.
99213	Office/outpatient visit, est.
99214	Office/outpatient visit, est.
99215	Office/outpatient visit, est.
99241	Office consultation.
99242	Office consultation.
99243	Office consultation.
99244	Office consultation.
99245	Office consultation.
99271	Confirmatory consultation.
99272	Confirmatory consultation.
99273	Confirmatory consultation.
99274	Confirmatory consultation.
99354	Prolonged service, office.
99355	Prolonged service, office.
A2000	Chiropractor manip of spine.
H5300	Occupational therapy.
M0005	Off visit 2/more modalities.
M0006	Off vis 1 modality + 15 min.
M0007	Off vis comb modality 30 min.
M0008	Off vis comb modality 15 min.
M0101	Cutting/remov corns/calluses.

* Proposed addition to the site-of-service list.

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federal register

Friday
June 24, 1994

Part III

Department of Education

Institute for International Public Policy Program; Final Definitions and Priority and Invitation to Apply for New Awards for Fiscal Year 1994; Notices

DEPARTMENT OF EDUCATION

Institute for International Public Policy; Final Definition and Priority for Fiscal Year 1994

AGENCY: Department of Education.

ACTION: Notice of final definitions and priority for fiscal year 1994.

SUMMARY: The Secretary announces a competitive priority for fiscal year (FY) 1994 under the Institute for International Public Policy Program. This program is designed to significantly increase the number of African Americans, Hispanic Americans, Asian Americans, American Indians, Alaskan Natives, Native Hawaiians and Pacific Islanders in the international service. The Secretary takes this action to focus Federal financial assistance on this identified national need. The priority is intended to encourage applicants to develop consortial arrangements that include historically Black colleges and universities, institutions of higher education serving substantial numbers of African American, Hispanic American, Asian American, American Indian, Alaskan Native, Native Hawaiian or Pacific Island students, and institutions of higher education with programs to train foreign service professionals.

EFFECTIVE DATE: This priority takes effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of this priority, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Ralph Hines, U.S. Department of Education, 400 Maryland Avenue SW., Washington, DC 20202–5332. Telephone: (202) 732–6066. 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 Institute for International Public Policy program will provide a grant to a consortium of institutions of higher education to conduct a program designed to significantly increase the number of African Americans, Hispanic Americans, Asian Americans, American Indians, Alaskan Natives, Native Hawaiians and Pacific Islanders in the international service.

Title VI, Part C, section 621 of the Higher Education Act of 1965, as amended, states that an eligible recipient is a consortium that consists of at least one or more of the following: (1) An institution eligible for assistance under Part B of title III of the Higher Education Act of 1965, as amended; (2) an institution of higher education that serves substantial numbers of African American or other underrepresented minority students; or (3) an institution of higher education with programs in training foreign service professionals.

Many of the students this program is designed to serve are enrolled in institutions in categories (1) and (2). The Secretary believes that the purposes of the legislation can be best carried out by a consortium that includes institutions from each of these categories. Therefore, the Secretary establishes a competitive priority for applications for consortia that include historically Black colleges and universities, institutions serving substantial numbers of African American, Hispanic American, Asian American, American Indian, Alaskan Native, Native Hawaiian or Pacific Island students, and institutions that offer programs to train foreign service professionals.

On April 8, 1994, the Secretary published a notice of proposed priority for this program in the **Federal Register** (59 FR 1679–80).

Note: This notice of final priority does not solicit applications. A notice inviting applications under this competition is published in a separate notice in this issue of the **Federal Register**.

Public Comment

In the notice of proposed priority, the Secretary invited comments on the proposed priority. The Secretary received one substantive comment.

Comment: The commenter suggested that the list of eligible institutions be revised to expressly include "tribal colleges." The commenter felt that tribal colleges should be recognized by name instead of being categorized under the "underrepresented minorities" rubric.

Discussion: The statute lists three types of institutions as eligible recipients. The statutory language cannot be altered to add tribal colleges to the list of eligible institutions. The list includes institutions serving substantial numbers of "African American or other underrepresented minority students." A listing by name of underrepresented minorities was included under the definitions section in the notice of proposed priority. The definitions section includes American Indians. Therefore, institutions serving substantial numbers of American Indians, such as tribal colleges, are already eligible. The Secretary intended that the program be viewed as more inclusive rather than exclusive. Therefore, the Secretary has decided to identify all of the underrepresented minority groups by name. American Indians are included among these groups.

Changes: The notice of final priority has been amended to recognize by name all underrepresented minority groups.

Priority

Under 34 CFR 75.105(c)(2)(i) the Secretary gives preference to applications that meet the following competitive priority. The Secretary awards 15 points to an application that meets this competitive priority in a particularly effective way. These points would be in addition to any points the application earns under the selection criteria for this program:

Consortia that include at least one institution from each of the following categories: (1) historically Black colleges and universities as defined in section 322 of the Higher Education Act of 1965, as amended; (2) institutions of higher education that serve substantial numbers of African American, Hispanic American, Asian American, American Indian, Alaskan Native, Native Hawaiian or Pacific Island students; and (3) institutions of higher education with programs in training foreign service professionals.

Definitions

The statute states that one of the members of an eligible consortium may be an institution of higher education that serves substantial numbers of African American or other underrepresented minority students. The Secretary defines "substantial" to mean at least 25 percent of the enrolled undergraduate student population at an institution. The Secretary also defines "underrepresented minorities" to include African Americans, Hispanic Americans, Asian Americans, American Indians, Alaskan Natives, Native Hawaiians, and Pacific Islanders.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with this order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Program Authority: 20 U.S.C. 1131–1131f.

(Catalog of Federal Domestic Assistance Number 84.269)

Dated: June 15, 1994.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 94–15354 Filed 6–23–94; 8:45 am]

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DEPARTMENT OF EDUCATION

[CFDA No.: 84.269]

Institute for International Public Policy; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1994

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program and applicable regulations governing the program, including the Education Department General Administrative Regulations (EDGAR), the notice contains all of the information, application forms, and instructions needed to apply for a grant under this competition.

Purpose of Program: To provide a grant that establishes an Institute for International Public Policy, which will conduct a program to significantly increase the number of African Americans, Hispanic Americans, Asian Americans, American Indians, Alaskan Natives, Native Hawaiians and Pacific Islanders in the international service, including private international voluntary organizations and the foreign service of the United States.

Eligible Applicants: Consortia consisting of one or more of the following entities: (1) an institution eligible for assistance under Part B of Title III of the Higher Education Act of 1965, as amended (HEA); (2) an institution of higher education that serves substantial numbers of African Americans or other underrepresented minority students; or (3) an institution of higher education with programs in training foreign service professionals. Institutions of higher education are defined in section 1201(a) of the HEA. The Secretary defines "substantial" to mean at least 25 percent of the enrolled undergraduate population at an institution. The Secretary also defines "underrepresented minorities" to include African Americans, Hispanic Americans, Asian Americans, American Indians, Alaskan Natives, Native Hawaiians, and Pacific Islanders.

Deadline for Transmittal of Applications: August 8, 1994.

Deadline for Intergovernmental Review: September 8, 1994.

Available Funds: $1,000,000.

Estimated Range of Awards: $1,000,000.

Estimated Average Size of Awards: $1,000,000.

Estimated Number of Awards: One.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Applicable Regulations:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations).

(2) 34 CFR Part 75 (Direct Grant Programs).

(3) 34 CFR Part 77 (Definitions that Apply to Department Regulations).

(4) 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) 34 CFR Part 82 (New Restrictions on Lobbying).

(6) 34 CFR Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(7) 34 CFR Part 86 (Drug-Free Schools and Campuses).

Description of Program: A consortium receiving funds under this program shall establish an Institute for International Public Policy to undertake activities listed in sections 621, 622, 623, 624 and 625 of the Higher Education Act of 1965, as amended (20 USC 1131–1131j). These activities must include the following:

(1) A junior year abroad program of no more than nine months of academic study and related activities designed to foster a greater understanding of, and familiarity with, the language, culture, economics, and governance of the host country. The Institute will pay no more than one-half the cost of each participant in the junior year abroad program. This program shall be open to eligible students at institutions of higher education, including historically Black colleges and universities as defined in section 322 of the HEA, tribally controlled Indian community colleges as defined in the Tribally Controlled Community College Assistance Act of 1978, and other institutions of higher education with significant minority student populations. An eligible student is one who is enrolled full-time in a baccalaureate degree program at an institution of higher education and who is entering the third year of study. An institution wishing to send students on this program must enter into an agreement with the Institute under which the institution agrees to provide requisite academic preparation for these students and to pay one-half the cost of each student it nominates for this program.

(2) A program of study leading to a masters degree in international relations designed by the consortium and offered in cooperation with the participating members of the consortium. Fellowship support may be granted by the Institute to recipients who agree to undertake full-time study and to enter the international service, including private international voluntary organizations and the foreign service of the United States.

(3) Academic year internships during the junior and senior year, summer internships following the sophomore and junior year, and work placements with international voluntary and governmental agencies and organizations. To provide these internships, the Institute shall enter into agreements with historically Black colleges and universities, with tribally controlled Indian community colleges, with institutions of higher education with significant numbers of minority students, and with institutions of higher education with programs to train foreign service professionals. The Institute shall also conduct intensive academic programs such as summer institutes and intensive language training programs that contribute to the purpose of the program. The Institute shall also prepare an annual report on the activities of the Institute.

The consortium receiving the grant shall designate a participating institution of higher education as the host institution for the Institute. The recipient shall contribute to the conduct of the program supported by the grant an amount from non-Federal sources equal to at least one-fourth of the amount of the grant, which contribution may be in cash or in kind.

Priority: The competitive priority in the notice of final definitions and priority for this program, as published elsewhere in this issue of the **Federal Register**, applies to this competition.

Selection Criteria:

(a) (1) The Secretary uses the following selection criteria to evaluate applications for new grants under this competition.

(2) The maximum score for all of these criteria is 100 points.

(3) The maximum score for each criterion is indicated in parentheses.

The regulations in 34 CFR 75.210(a) and (c) provide that the Secretary may award up to 100 points for the selection criteria, including distribution of an additional 15 points. For this

competition, the Secretary distributes the 15 additional points as folllows: 10 points to selection criterion 34 CFR 75.210(b)(3) (Plan of operation) for a possible total of 25 points; and 5 points to selection criterion 34 CFR 75.210(b)(6) (Evaluation plan) for a possible total of 10 points.

(b) *The criteria.*—(1) *Meeting the purposes of the authorizing statute.* (30 points) The Secretary reviews each application to determine how well the project will meet the purpose of the Institute for International Public Policy Program, including consideration of—

(i) The objectives of the project; and

(ii) How the objectives of the project further the purposes of the Institute for International Public Policy Program.

(2) *Extent of need for the project.* (20 points) The Secretary reviews each application to determine the extent to which the project meets specific needs recognized in the program, including consideration of—

(i) The needs addressed by the project;

(ii) How the applicant identified those needs;

(iii) How those needs will be met by the project; and

(iv) The benefits to be gained by meeting those needs.

(3) *Plan of operation.* (25 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(i) The quality of the design of the project;

(ii) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(iii) How well the objectives of the project relate to the purpose of the program;

(iv) The quality of the applicant's plan to use its resources and personnel to achieve each objective; and

(v) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition.

(4) *Quality of key personnel.* (7 points)

(i) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(A) The qualifications of the project director (if one is to be used);

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraphs (b)(4)(i)(A) and (B) will commit to the project; and

(D) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(ii) To determine personnel qualifications under paragraphs (b)(4)(i)(A) and (B), the Secretary considers—

(A) Experience and training in fields related to the objectives of the project; and

(B) Any other qualifications that pertain to the quality of the project.

(5) *Budget and cost effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(i) The budget is adequate to support the project; and

(ii) Costs are reasonable in relation to the objectives of the project.

(6) *Evaluation plan.* (10 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(i) Are appropriate to the project; and

(ii) To the extent possible, are objective and produce data that are quantifiable.

(Cross-reference: See 34 CFR 75.590 Evaluation by the grantee.)

(7) *Adequacy of resources.* (3 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

Intergovernmental Review of Federal Programs: This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR Part 79.

The objective of the Executive order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive Order 12372. Applicants proposing to perform activities in more than one State should immediately contact the Single Point of Contact for each of those States and follow the procedure established in each State under the Executive order. If you want to know the name and address of any State Single Point of Contact, see the list published in the **Federal Register** on May 3, 1994 (59 FR 22904–22905).

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372—CFDA #84.269, U.S. Department of Education, Room 4161, 400 Maryland Avenue, S.W., Washington, D.C. 20202–0125.

Proof of mailing will be determined on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, D.C. time) on the date indicated in this notice.

Please Note That the Above Address Is Not the Same Address as the One to Which the Applicant Submits its Completed Application. Do Not Send Applications to the Above Address.

Instructions for Transmittal of Applications:

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U. S. Department of Education, Application Control Center, Attention: (CFDA #84.269), Washington, D.C. 20202–4725 or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, D.C. time) on the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA #84.269), Room #3633, Regional Office Building #3, 7th and D Streets SW., Washington, D.C.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The Application Control Center will mail a Grant Application Receipt Acknowledgment to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 708–9494.

(3) The applicant must indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and suffix letter, if any—of the competition under which the application is being submitted.

Application Instructions and Forms: The appendix to this application is divided into three parts plus a statement regarding estimated public reporting burden and various assurances and certifications. These parts and additional materials are organized in the same manner that the submitted application should be organized. The parts and additional materials are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

Part II: Budget Information—Non-Construction Programs (Standard Form 424A) and instructions.

Part III: Application Narrative.

Additional Materials: Estimated Public Reporting Burden.

Assurances—Non-Construction Programs (Standard Form 424B).

Certifications regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013).

Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED 80–0014, 9/90) and instructions. (NOTE: ED 80–0014 is intended for the use of grantees and should not be transmitted to the Department.)

Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions; and Disclosure of Lobbying Activities Continuation Sheet (Standard Form LLL–A).

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an original signature. No grant may be awarded unless a completed application form has been received.

For Applications or Information Contact: Ralph Hines, U.S. Department of Education, 400 Maryland Avenue, S.W., Washington, D.C. 20202–5332. Telephone: (202) 732–6066. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, D.C. 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Program Authority: 20 U.S.C. 1131–1131f.

Dated: June 15, 1994.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

BILLING CODE 4000–01–P

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

2. DATE SUBMITTED	Applicant Identifier
3. DATE RECEIVED BY STATE	State Application Identifier
4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

1. TYPE OF SUBMISSION:

Application	Preapplication
☐ Construction	☐ Construction
☒ Non-Construction	☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, state, and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ — ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify): _____

8. TYPE OF APPLICATION:

☒ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):

9. NAME OF FEDERAL AGENCY:

U.S. Department of Education

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 8 4 . 2 6 9

TITLE: Institute for International Public Policy

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT:		14. CONGRESSIONAL DISTRICTS OF:	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:		
a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

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INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. if more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A – BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B – BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY (1)	(2)	(3)	(4)	Total (5)
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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Standard Form 424A (4-88)
Prescribed by OMB Circular A-102

SECTION C - NON-FEDERAL RESOURCES				
(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS					
	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT				
(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 -19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION (Attach additional Sheets if Necessary)	
21. Direct Charges:	22. Indirect Charges:
23. Remarks	

SF 424A (4-88) Page 2
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INSTRUCTIONS FOR THE SF-424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A,B,C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A,B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary
Lines 1-4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column* (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g.)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

Lines 1-4, Columns (c) through (g.) (continued)

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 — Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a-i — Show the totals of Lines 6a to 6h in each column.

Line 6j – Show the amount of indirect cost.

Line 6k – Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

INSTRUCTIONS FOR THE SF-424A *(continued)*

Line 7 – Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Lines 8-11 – Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) – Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) – Enter the contribution to be made by the applicant.

Column (c) – Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) – Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) – Enter totals of Columns (b), (c), and (d).

Line 12 — Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 – Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 – Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 – Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16 - 19 – Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 – Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 – Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 – Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 – Provide any other explanations or comments deemed necessary.

SUPPLEMENTARY BUDGET INFORMATION

Under 34 CFR 75.562, the Secretary accepts an indirect cost rate of 8 percent of the total direct cost of the project.

Applicants should provide an itemized budget, showing both Federal and non-Federal contributions, for each year for which funding is requested.

PART III -- APPLICATION NARRATIVE

INSTRUCTIONS FOR PART III---APPLICATION NARRATIVE

Before preparing the Application Narrative, an applicant should carefully read all the information included in the notice, especially the program purpose, description of program, and the selection criteria the Secretary uses to evaluate applications.

1. Begin with a one-page abstract; that is, a summary of the proposed project.

2. Describe the Institute to be developed and the programs it will carry out.

3. Be sure to identify the students to be served, and how they are being recruited; describe in detail how program activities will be accomplished.

4. Describe the proposed project in light of each of the selection criterion in the order the criteria are listed in this notice.

5. Applicants should include a plan of operation for each year for which program funds are requested.

6. Include all of the above and any other pertinent information that might assist the Secretary in reviewing the application.

The Secretary strongly recommends the applicant to limit the Application Narrative to no more than 75 double-spaced typed pages (on one side only), although the Secretary will consider applications of greater length.

INSTRUCTIONS FOR ESTIMATED PUBLIC REPORTING BURDEN

Under terms of the Paperwork Reduction Act of 1980, as amended, and the regulations implementing that Act, the Department of Education invites comment on the public reporting burden in this collection of information. Public reporting burden for this collection of information is estimated to average 50 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. You may send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and to the Office of Management and Budget Paperwork Reduction Project, OMB 1840-0670 , Washington, D.C. 20503.

(Information collection approved under OMB control number 1840-0670. Expiration date: 1/31/97).

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

Standard Form 424B (4-88)
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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

SF 424B (4-88) Back

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110 –

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about–

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will–

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office

Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted--

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE
(GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 --

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV. 12/88), which is obsolete)

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0346-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:
☐ a. contract
b. grant
c. cooperative agreement
d. loan
e. loan guarantee
f. loan insurance

2. Status of Federal Action:
☐ a. bid/offer/application
b. initial award
c. post-award

3. Report Type:
☐ a. initial filing
b. material change
For Material Change Only:
year _____ quarter _____
date of last report _____

4. Name and Address of Reporting Entity:
☐ Prime ☐ Subawardee
Tier _____, *if known:*
Congressional District, *if known:*

5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:
Congressional District, *if known:*

6. Federal Department/Agency:

7. Federal Program Name/Description:
CFDA Number, *if applicable:* _____

8. Federal Action Number, *if known:*

9. Award Amount, *if known:*
$

10. a. Name and Address of Lobbying Entity
(if individual, last name, first name, MI):

b. Individuals Performing Services *(including address if different from No. 10a)*
(last name, first name, MI):

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment *(check all that apply):*
$ _____ ☐ actual ☐ planned

12. Form of Payment *(check all that apply):*
☐ a. cash
☐ b. in-kind; specify: nature _____
value _____

13. Type of Payment *(check all that apply):*
☐ a. retainer
☐ b. one-time fee
☐ c. commission
☐ d. contingent fee
☐ e. deferred
☐ f. other; specify: _____

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: _____
Print Name: _____
Title: _____
Telephone No.: _____ **Date:** _____

Federal Use Only:

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Standard Form - LLL

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.

13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.

14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.

15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 mintues per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET

Approved by OMB
0348-0046

Reporting Entity: _____ Page _____ of _____

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Standard Form - LLL-A

federal register

Friday
June 24, 1994

Part IV

Department of Housing and Urban Development

Office of the Assistant Secretary for Public and Indian Housing

Funding Availability for Technical Assistance and Training for Public and Indian Housing (PIH); Crime Prevention Through Environmental Design (CPTED); Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N–94–3780; FR–3687–N–01]

Notice of Funding Availability for Technical Assistance and Training for Public and Indian Housing (PIH) Crime Prevention Through Environmental Design (CPTED)

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

ACTION: Notice of funding availability for training and technical assistance for public and Indian housing CPTED.

SUMMARY: This NOFA announces the availability of $200,000 for a grant to provide technical assistance and training to public and Indian housing authorities (HAs) in the development and training of HA staff and residents in the subject of crime prevention through environmental design (CPTED). The U.S. Department of Housing and Urban Development (HUD) is seeking proposals for a grant to be executed through a Cooperative Agreement to provide technical assistance and training for Public and Indian Housing CPTED. For purposes of this announcement, CPTED is defined as the redesign, renovation, or rehabilitation of existing environmental conditions to improve the safety of staff and residents and eliminate conditions which may contribute to instances of crime. The purpose of this grant is to provide state-of-the-art CPTED training and technical assistance to housing authority (HA) staff, residents, Resident Councils (RC), Resident Management Corporations (RMC), housing authority security directors, local law enforcement officials, local government officials, architects, and other community leaders.

DATES: Proposals must be received at HUD Headquarters on or before 3 p.m. Eastern Daylight Time, August 8, 1994. This application deadline is firm as to date and hour. In the interest of fairness to all competing applicants, the Department will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by any unanticipated or delivery-related problems. Applications received after the deadline will not be considered. Applications received by facsimile machine will not be considered.

APPLICATION SUBMISSION: An original and two copies of the application must be sent to the Drug-Free Neighborhoods Division, Office of Resident Initiatives, Public and Indian Housing, Department of Housing and Urban Development, Room 4116, 451 Seventh Street, S.W., Washington, D.C. 20410.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Cocke, Drug-Free Neighborhoods Division, Office of Resident Initiatives, Public and Indian Housing, Department of Housing and Urban Development, Room 4116, 451 Seventh Street, S.W., Washington, D.C. 20410, telephone (202) 708–1197. A telecommunications device for hearing or speech impaired persons (TDD) is available at (202) 708–0850. (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this notice have been submitted to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520). No person may be subjected to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number. The OMB control number, when assigned, will be announced in the **Federal Register**.

Public reporting burden for the collection of information requirements contained in this NOFA are estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden for all of the technical assistance NOFAs under this program is provided below. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street, SW, Room 10276, Washington, DC 20410–0500; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for HUD, Washington, DC 20503.

Number of NOFAs affected	Number of respondents per NOFA	Number of respondents per NOFA	Total respondents	Hours per respondents	Total number hours
Per year:					
6	10	1	60	40	2,400
Total for three years:					
18	10	1	180	40	7,200

I. Purpose and Substantive Description

(a) Purpose. The U.S. Department of Housing and Urban Development is seeking proposals for a grant to provide state-of-the-art technical assistance and training to public and Indian housing authorities (HAs) for crime prevention through environmental design (CPTED). For the purposes of this announcement, CPTED is defined as the redesign, renovation, or rehabilitation of existing environmental elements to improve the safety of residents and to eliminate conditions which may contribute to instances of crime. The purpose of this grant is to provide state-of-the-art CPTED training and technical assistance to housing authority staff, residents, Resident Councils (RC), Resident Management Corporations (RMC), and where appropriate, architects, engineers, local law enforcement officials, local government officials, and other community leaders.

(b) Authority. This grant is authorized under Chapter 2, Subtitle C, Title V of the Anti-Drug Abuse Act of 1988 (42 U.S.C. 11901 *et. seq.*), as amended by Section 581 of the National Affordable Housing Act of 1990 (NAHA), approved November 28, 1990, Pub. L. 101–625, and Section 161 of the Housing and Community Development Act of 1992 (HCDA 1992) (Pub. L. 102–550, approved October 28, 1992).

The Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act 1993, (approved October 28, 1993, Pub. L. 103–124), (94 App. Act) appropriated $265 million for the Drug Elimination Program of which

$5 million will be used for funding drug elimination technical assistance and training.

(c) Award Amounts. One cost-reimbursable grant not to exceed $200,000.

(d) Objectives. The overall objectives of this grant are to:

(1) Provide training and technical assistance in a conference format to assist housing authority staff and residents in understanding the contributing factors of CPTED and to develop CPTED action plans for their developments.

(2) Design and develop a technical assistance reference guide for conference participants.

(3) Design and develop an impact/process evaluation methodology for conference participants to use in measuring their progress after implementing CPTED elements.

(4) Successfully complete all tasks within a 12 month period.

(e) Scope of Work.

(1) General Requirements.

(i) The grantee shall furnish all necessary personnel, materials, services, and equipment and shall otherwise do all things necessary for, or incidental to the performance of the tasks set forth in this Statement of Work.

(ii) The work to be performed under this grant includes, but is not limited to: preparation of CPTED training presenting issues and strategies peculiar to public housing; delivery of CPTED training to housing authority staff, residents, Resident Councils, Resident Management Corporations, housing authority security directors, local law enforcement officials, local government officials, architects, and other community leaders; provision of technical assistance; and evaluation of the CPTED programs. In addition, the grantee shall attend one or more meetings at HUD Headquarters for the purpose of discussing HUD's comments pertaining to the grantee's products.

(2) Specific Requirements. The grantee shall perform the following tasks in accordance with the objectives and general scope of the grant.

Task 1—Orientation

Within the first week after the effective date of the grant Agreement, the Project Director and other key personnel shall attend a meeting at HUD Headquarters in Washington, DC, for the purpose of establishing a common understanding and strategy with respect to the grant objectives, and the scope of work necessary to achieve the objectives, the time frame, methodology, and deliverables.

Task 2—Management and Work Plan

The grantee shall develop a draft management and work plan that addresses all of the requirements contained in the approved grant strategy and provide an updated and detailed work plan for the entire project. This draft plan shall be submitted to the HUD Grant Technical Representative (GTR) for review and comment by the end of the second week of the grant, setting forth the timing of all stages of the project. The plan shall include a detailed allocation of grant resources and a schedule for the accomplishment of the grant work. HUD shall submit its comments and suggestions to the grantee within one week from receipt of the draft plan. A Final Management and Work Plan incorporating HUD's comments and suggestions shall be submitted by the end of the 5th week of the grant.

Task 3—Applications

The grantee shall work with HUD to identify housing authorities and resident groups with plans to implement elements of CPTED. The grantee shall develop an application package to be sent to the housing authorities and resident groups identified above. The package shall contain a description of CPTED, the training to be offered, and a request for housing authorities to send teams comprised of housing authority staff and, as appropriate, residents, local law enforcement officials, local government officials, architects, and other community leaders. The draft application package and criteria for selecting public housing participants will be provided to the GTR five weeks after award of the grant. HUD will review and comment on the package and criteria and return to the grantee within one week. The final application package and criteria incorporating HUD's comments and suggestions shall be submitted by the end of the 8th week of the grant.

Task 4—Preliminary Outreach

The grantee is responsible for identifying and contacting public housing authorities and resident groups which have implemented CPTED programs to discuss factors of successful CPTED strategies and technical assistance. The grantee shall prepare and submit to the GTR for approval by the end of the 6th week a plan and schedule for contacting the appropriate agencies. HUD will review the plan and provide comments to the grantee within one week. The final outreach plan incorporating HUD's comments and suggestions shall be submitted to the GTR by the end of the 9th week of the grant.

Task 5—Develop and Conduct CPTED Training Program

HUD proposes the training to be offered at a minimum of three to four locations in a conference format, although alternative strategies will be considered. The grantee will submit a list of proposed training sites with a short description of the advantages and disadvantages of each site as a training site including the effectiveness of CPTED at the local public housing authority. HUD and the grantee will choose the final list of conference sites. The conference will be open for attendance by anyone interested in CPTED in public housing. Housing authorities with plans to implement CPTED activities will be encouraged to send teams comprised of housing authority staff and, as appropriate, residents, local law enforcement officials, local government officials, architects, and other community leaders. The training conferences shall begin no later than the 5th month, and be completed within one year from the date of the grant award.

In addition to conventional seminar formats, the grantee should consider innovative training techniques such as, but not limited to, on-site visits to a local housing authority with a successful CPTED program, or situational training using architectural drawings, photos, or other appropriate materials brought to the training session by the participants. The grantee should also consider separate or concurrent training sessions addressing factors such as housing authority and development size, building styles, site locations, site lay-outs, or other factors. The training should use speakers or panelists from public housing communities with successful CPTED implementation, including housing authority staff, residents, and representatives from law enforcement agencies to emphasize the first-hand experiences of these groups. The grantee will provide to HUD a draft agenda and related items for the proposed conferences and HUD will provide comments within two weeks of receiving the draft.

The grantee, in consultation with HUD, will be responsible for making all arrangements for the training, including classroom space and sleeping rooms for participants. Conference attendees will be responsible for their own travel, lodging and per diem costs. The grantee will be responsible for all costs associated with facilities, materials and

training staff costs of travel, lodging and per diem at non-governmental rates.

The CPTED training session shall be no more than 4 days in length. The grantee shall prepare and submit to the GTR for approval by the end of the 9th week of the grant a plan which includes, among other things: an agenda and description for the first CPTED technical assistance and training conference including the session topics, and proposed background or qualifications for the session leaders or panelists; a list of proposed materials training participants will be expected to bring to the training; a list of the proposed handouts/student materials, videos, and other student aids; and preliminary plans for the remaining training. HUD will provide comments on the draft program to the grantee within one week. The final agenda and other handouts/ student materials, state-of-the art videos and other student aids will be provided to the GTR by the grantee by the 12th week of the grant.

The CPTED conferences should incorporate at least the following elements:

(1) Information on how to develop, fund, and implement CPTED in public housing. The information should focus on practical rather than theoretical development and implementation strategies.

(2) Information on successful CPTED initiatives in public housing, the benefits housing authorities and residents have gained as a result of implementation of CPTED elements.

(3) Information on and case studies illustrating the successful combination of CPTED elements and other crime-prevention activities in low-income neighborhoods such as resident patrols, community policing, etc.

(4) Group exercises to assist participants in identifying certain types of public housing designs and environments which support criminal activity, and those which can stem criminal activity.

(5) Opportunities for each housing authority team attending the training to meet one-on-one with expert advisors to review and discuss specific plans and to obtain technical assistance on specific design and implementation plans.

(6) Agenda, participant manual, student materials, and state-of-art videos and other supporting student aids.

(7) An impact/process evaluation to assist housing authorities in tracking outcome measures for their CPTED strategies.

Task 6—Technical Assistance

The grantee will develop a resource guide for the use of the training participants containing at a minimum the following:

(1) Published and unpublished pieces on CPTED activities and programs, especially in multi-family, high-density, urban, low-income environments.

(2) A bibliography of printed resources on the development and implementation of a CPTED program.

(3) A list of housing authority contacts throughout the U.S. with successful CPTED programs willing to discuss CPTED issues.

(4) Other technical assistance and funding resources available to housing authorities for the implementation of a CPTED program.

(5) Evaluation instruments a housing authority can use to measure the effectiveness of the environmental changes in reducing crime in the public housing community.

The grantee will prepare and submit to the GTR for approval by the end of the 9th week of the grant term, a draft outline of the resource guide including an index of the material to be included. HUD will review the draft outline and provide comments to the grantee within one week. The final resource guide, incorporating HUD's comments and suggestions, shall be submitted to the GTR by the 12th week of the grant.

Task 7—Evaluation

The grantee will develop a mechanism for evaluating the effectiveness of the training conference. The draft instrument shall be provided to the GTR by the end of the 14th week of the grant term. HUD will review and comments will be provided to the grantee within one week. A final evaluation instrument incorporating HUD's comments shall be provided by the end of the 17th week.

The grantee will strive to receive an evaluation from all conference participants. The grantee shall provide a synopsis of the evaluations, along with an overall assessment of the effectiveness of the conference sessions. The synopsis should include any recommendations for timing, format, curriculum, or other changes needed to improve the effectiveness of the training. Copies of all completed evaluations and the grantee's synopsis shall be provided to the GTR within one week of completion of each session. The grantee will then work with HUD to consider program changes to accommodate any necessary changes.

(f) Eligibility. Organizations that can demonstrate experience with conference planning and implementation, working with public and Indian housing authorities and resident groups, and in crime prevention programs in public and Indian housing are eligible to apply.

(g) Application submission requirements.

(1) Applicants must submit a completed Application for Federal Assistance (Standard Form 424). The SF–424 is the face sheet for the application. Budget Information (Standard Form 424A), including a program narrative, a detailed budget with budget narrative with supporting cost analysis and legal and accounting services.

(2) Application format requirements. Each application must include the items listed in the following format:

(i) Cover letter

(ii) Tab 1—Standard Form 424, Application for Federal Assistance.

(iii) Tab 2—Standard Form 424A, Budget Information with attached program narrative.

Applicants must provide a budget with detailed justification for all costs, including the basis for computation of these costs. The program budget must be complete, reasonable, and cost-effective in relation to the proposed program. This explanation must include the applicant's financial capability, i.e., the fiscal controls and accounting procedures which assure that Federal funds will be accounted for properly. Applicant must demonstrate that they have the financial capability to effectively implement a project of this size and scope.

(iv) Tab 3—Organizational Qualifications:

Applicants must fully describe their organizational structure and staff size, and demonstrate that they are sufficient to implement effectively a project of this size and scope. Applicants should outline a list of housing authorities where similar activities were conducted, the dates and numbers of persons involved, any current points of contact, and the results of any evaluations of the work.

(v) Tab 4—Staff Qualifications:

Applicants must fully describe the capabilities and work experience of the proposed director, and all key staff. Applicants must fully describe their knowledge and experience with the proposed activities, preferably in public housing. Applicants must include a staffing plan to fulfill the requirements of the statement of work, including staff titles, related educational background, experience, and skills of the director and the staff; and the time each will be required to contribute to the project.

(vi) Tab 5—Project Experience:

Applicants must fully describe prior experience in designing and delivering conference training programs.

Applicants must demonstrate that their organization, staff size, and prior experience is sufficient to effectively implement a project of this size and scope. Applicants should outline a list of housing authorities or other sites where similar training was offered, the dates of the training, numbers of persons trained, any current points of contact, and the results of any evaluations of the training and TA.

(vii) Tab 6—Implementation Plan:

Applicants must submit a plan outlining the major activities of implementation and describe how available resources will be allocated. The plan must include an annotated organizational chart depicting the roles and responsibilities of key organizational and functional components and a list of key personnel responsible for managing and implementing the major elements of the program. There must be a time-task plan which clearly identifies the major milestones and products, organizational responsibility, and schedule for the completion of activities and products.

(viii) Tab 7—Representations, certifications, and other statements of offerors or quoters.

(A) Certification Regarding Federal Employment.

(B) Certification of Procurement Integrity.

(C) Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions.

(D) SF–LLL Disclosure of Lobbying Activities.

(E) Certification Regarding Debarment, Suspension, Proposed Debarment, and other Responsibility Matters.

(F) Certification Regarding Drug-Free Workplace Requirements.

(h) Selection Criteria. The Department will review and rate proposals according to the extent to which they meet the following criteria, and will make an award to the applicant that best meets all of the below criteria and receives the highest score, out of a possible 100 points, according to the criteria listed below:

(1) Corporate/Organizational Management Qualifications (20 points).

(i) Organizational Structure (10 points).

Applicants must concisely describe how the organization has the structure, staff size, financial reporting capacity and internal controls that will maximize successful implementation of the tasks described in this notice.

(ii) Administrative Experience (10 points).

Applicants must demonstrate their experience in the successful administration of programs of a similar budget and staff size. Applicant should provide a short list of names and current phone numbers of individuals or firms for which previous work was accomplished.

(2) Staff Qualifications (20 points).

(i) Project Director (10 points).

Applicants should provide a project director with the experience and capacity to manage the budget and staff of the proposed grant; showing evidence of the ability to quickly and efficiently complete the proposed activities. Applicant should provide a short list of names and current phone numbers of individuals or firms for which the proposed project director has previously accomplished work.

(ii) Project Staff (10 points).

Applicants should provide staff with the experience and capacity to quickly and efficiently organize and implement the workshops. Staff should have sufficient experience working with public housing staff and residents to minimize any issues specific to implementing activities in public housing, and sufficient experience in the subject area to maximize success.

Applicants must identify the specific personnel to be assigned to the project, their experience with successful planning and implementation of conferences, multi-family housing security programs, and building and environmental re-design, preferably in public housing.

(3) Project Experience (30 points).

Applicants should be able to demonstrate knowledge and experience in the following program specifics: Successful planning and implementation of conferences, multi-family housing security programs, and building and environmental re-design, preferably in public housing. (15 points)

Applicants should be able to demonstrate experience with and understanding of the target population. (15 points)

(4) Quality of the Plan (30 points).

Applicants should demonstrate that the proposed plan will accomplish the goals outlined above with the following elements:

(i) Detailed narrative of the proposed structure, strategy and activities that will allow staff to effectively reach the stated goals. (10 points).

(ii) Tasks, timetable and staff assignments for the proposed activities. (10 points).

(iii) State-of-the-art conference techniques and program elements. (10 points).

(i) Review Process. Applications submitted in response to this competitive announcement will be reviewed by a panel of HUD representatives, which will make recommendations to the Assistant Secretary for Public and Indian Housing, Department of Housing and Urban Development. The panel will assign numerical values based on the weighted selection criteria. In the case of a numerical tie, preference will be given to the applicant with the highest numerical score for the Quality of the Plan. The final award decision will be made by the Assistant Secretary for Public and Indian Housing, Department of Housing and Urban Development. Letters will be sent to all applicants notifying them that their proposal has been selected or the reason(s) it was not selected. HUD will then negotiate specific terms of the award with the selected applicant.

(j) Administrative requirements.

(1) Award Period. The grant will be cost reimbursable, and awarded for a 1-year base period, with optional years if the plan requires and is approved.

(2) Cooperative Agreement. After the grant has been awarded, HUD and the applicant shall enter into a grant (Form HUD–1044) setting forth the amount of the grant and its applicable terms, conditions, financial controls, payment mechanism/schedule, and special conditions.

(3) Prior to award execution, a successful applicant must submit a certification that it will comply with:

(i) Section 3 of the Housing and Community Development Act of 1968, Employment Opportunities for Lower Income Persons in Connection with Assisted Projects (12 U.S.C. 1701u), and with implementing regulations at 24 CFR part 135. Section 3 requires, that to the greatest extent feasible, opportunities for training and employment be given to lower income residents of the project area within the unit of local government or metropolitan area (or nonmetropolitan county) and for work in connection with the project to be awarded to eligible businesses located in or owned in substantial part by persons residing in the area;

(ii) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2000d–4) (Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24 CFR part 1; and

(iii) The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101–07) and implementing regulations at 24 CFR part 146, and the prohibitions against discrimination against persons with disabilities individuals under section 504 of the Rehabilitation Act of 1973 (29 U.S.C.

794) and implementing regulations at 24 CFR part 8.

(k) Other Matters.

Environmental Review. Grants under this program are categorically excluded from review under the National Environmental Policy Act of 1969 (NEPA) in accordance with 24 CFR part 50.20(p). However, prior to an award of grant funds, HUD will perform an environmental review to the extent required by HUD's environmental regulations at 24 CFR part 50, including the applicable related authorities at 24 CFR 50.4.

Federalism Impact. The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this notice will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government and, therefore, the provisions of this notice do not have "federalism implications" within the meaning of the Order. The notice only makes available technical assistance for housing authorities to address the problem of drug-related crime.

Family Impact. The General Counsel, as the Designated Official for Executive Order 12606, *the Family*, has determined that the provisions of this notice have the potential for a positive, although indirect, impact on family formation, maintenance and general well-being within the meaning of the Order. This notice is intended to irovide funding for technical assistance that will improve the quality of life of public and Indian housing development residents, including families, by reducing the incidence of drug-related crime.

Section 102 HUD Reform Act—Documentation and Public Access Requirements; Applicant/Recipient Disclosures

Documentation and public access. HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its quarterly **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these requirements.)

Disclosures. HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period generally less than three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. (See 24 CFR subpart C, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these disclosure requirements.)

Section 103 HUD Reform Act. HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 was published May 13, 1991 (56 FR 22088) and became effective on June 12, 1991. That regulation, codified as 24 CFR Part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants.

HUD employees involved in the review of applications and in the making of funding decisions are limited by Part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR Part 4.

Applicants who have questions should contact the HUD Office of Ethics (202) 708–3815. (This is not a toll-free number.) The Office of Ethics can provide information of a general nature to HUD employees, as well.

Section 112 HUD Reform Act. Section 13 of the Department of Housing and Urban Development Act contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department and those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance. Section 13 was implemented by final rule published in the **Federal Register** on May 17, 1991 (56 FR 22912). If readers are involved in any efforts to influence the Department in these ways, they are urged to read the final rule, particularly the examples contained in Appendix A of the rule.

Prohibition Against Lobbying Activities. The use of funds awarded under this grant is subject to the disclosure requirements and prohibitions of section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) (The "Byrd Amendment") and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative branches of the federal government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying.

Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance exceeding $100,000 must certify that no federal funds have been or will be spent on lobbying activities in connection with the assistance.

Authority: Sec. 5127, Public Housing Drug Elimination Act of 1988 (42 U.S.C. 11901 et. seq.); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: June 15, 1994.

Michael B. Janis,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 94–15383 Filed 6–23–94; 8:45 am]

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Federal Register

Friday
June 24, 1994

Part V

Department of Housing and Urban Development

Office of the Assistant Secretary for Public and Indian Housing

Training of Trainers and Technical Assistance for Public Housing Resident Patrols; Funding Availability; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N–94–3781; FR–3693–N–01]

Notice of Funding Availability for Training of Trainers and Technical Assistance for Public Housing Resident Patrols

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

ACTION: Notice of Funding Availability for Training of Trainers and Technical Assistance for Public Housing Resident Patrols.

SUMMARY: This NOFA announces funding available up to $300,000 for the development and implementation of training-of-trainers for resident patrols in public and Indian housing. The U.S. Department of Housing and Urban Development is seeking proposals for a Grant to be executed through a Cooperative Agreement to develop and implement the training-of-trainers training. The purpose of this training is to provide state-of-the-art resident patrol training and technical assistance to housing authority staff, residents, Resident Councils (RC), Resident Management Corporations (RMC), housing authority security staff, and local law enforcement personnel.

DATES: Proposals must be received at HUD Headquarters at the address below on or before 3 pm, Eastern Daylight Time, August 8, 1994. This application deadline is firm as to date and hour. In the interest of fairness to all competing applicants, the Department will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by any unanticipated or delivery-related problems. Applications received after the deadline will not be considered.

APPLICATION SUBMISSION: An original and two copies of the application must be sent to the Drug-Free Neighborhoods Division, Office of Resident Initiatives, Public and Indian Housing, Department of Housing and Urban Development, Room 4116, 451 Seventh Street, S.W., Washington, D.C. 20410.

FOR FURTHER INFORMATION, CONTACT: Elizabeth A. Cocke, Drug-Free Neighborhoods Division, Office of Resident Initiatives, Public and Indian Housing, Department of Housing and Urban Development, Room 4116, 451 Seventh Street, S.W., Washington, D.C. 20410, telephone (202) 708–1197. A telecommunications device for hearing or speech impaired persons (TDD) is available at (202) 708–0850. (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this notice have been submitted to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520). No person may be subjected to a penalty for failure to comply with these information collection requirements until they have been assigned an OMB control number. The OMB control number, when assigned, will be announced in the **Federal Register**.

Public reporting burden for the collection of information requirements contained in this NOFA are estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden for all of the technical assistance NOFAs under this program is provided below. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street, SW, Room 10276, Washington, DC 20410–0500; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for HUD, Washington, DC 20503.

Number of NOFAs affected	Number of respondents per NOFA	No. respdts. per NOFA	Total resps.	Hours per resp.	Total No. hrs.
Per year: 6	10	1	60	40	2,400
Total for three years: 18	10	1	180	40	7,200

I. Purpose and Substantive Description

(a) Purpose. The U.S. Department of Housing and Urban Development is seeking proposals for a Grant to provide resident patrol training and technical assistance in public housing. The purpose of this training is to provide state-of-the-art training and technical assistance for resident patrols to housing authority management and security staff, residents, Resident Councils (RC), Resident Management Corporations (RMC), and local law enforcement personnel. Training participants will be able to return to their localities and train others on resident patrols in public housing.

(b) Authority. This Grant is authorized under Chapter 2, Subtitle C, Title V of the Anti-Drug Abuse Act of 1988 (42 U.S.C. 11901 *et. seq.*), as amended by Section 581 of the National Affordable Housing Act of 1990 (NAHA), approved November 28, 1990, Pub. L. 101–625, and Section 161 of the Housing and Community Development Act of 1992 (HCDA 1992) (Pub. L. 102–550, approved October 28, 1992).

The Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act 1993, (approved October 28, 1993, Pub. L. 103–124), (94 App. Act) appropriated $265 million for the Drug Elimination Program of which $5 million, a portion of which is made available through this NOFA, will be used for funding drug elimination technical assistance and training.

(c) Award Amounts. A cost-reimbursable Grant not to exceed $300,000.

(d) Objectives. The overall objectives of this Grant are to:

(1) Design, develop and implement resident patrol training necessary for developing and implementing an effective resident patrol in public housing, and for training other housing authority staff and residents in effective training and implementation of resident patrols.

(2) Design and develop an impact/process evaluation to be used by groups which implement resident patrol programs.

(e) Scope of Work.

(1) General Requirements.

(A) The grantee shall furnish all necessary personnel, materials, services, and equipment and shall otherwise do all things necessary for, or incidental to, the performance of the tasks set forth in this Statement of Work.

(B) The work to be performed under this Grant includes, but is not limited to: brief review of the administration and effectiveness of current resident patrols in public housing, and the policies and procedures currently in place at housing authorities with resident patrols; preparation and delivery of resident patrol training to housing authority management and security staff, residents, Resident Councils, Resident Management Corporations, and local law enforcement personnel; provision of technical assistance during and after training sessions; and the development of an evaluation program for resident patrol programs. In addition, the grantee shall attend one or more meetings at HUD Headquarters for the purpose of discussing HUD's comments pertaining to the grantee's services.

(2) Specific Requirements. The grantee shall perform the following tasks in accordance with the objectives and general scope of the Grant.

TASK 1—Orientation

Within the first week after the effective date of the Grant, the Project Director and other key personnel shall attend a meeting at HUD Headquarters in Washington, DC, for the purpose of establishing a common understanding and strategy with respect to the Grant objectives, the scope of work necessary to achieve the objectives, the time frame, methodology, and deliverables.

TASK 2—Management and Work Plan

The grantee shall develop a draft management and work plan that addresses all of the requirements contained in the approved Grant strategy and provide an updated and detailed work plan for the entire project. This draft plan shall be submitted to the HUD Government Technical Representative (GTR) for review and comment by the end of the second week of the Grant, setting forth the timing of all stages of the project, describing the training techniques, materials, and experiences of trainers for this project. The plan shall include a detailed allocation of Grant resources and a schedule for the accomplishment of the Grant work. HUD shall submit its comments and suggestions to the grantee within one week from receipt of the draft plan. A Final Management and Work Plan incorporating HUD's comments and suggestions shall be submitted by the end of the 5th week of the Grant.

TASK 3—Review of Resident Patrols Currently in Public Housing

Using a list prepared by HUD of public housing authorities and resident councils with planned or operational resident patrols, the grantee will select a shorter list of housing authorities and resident councils to discuss technical issues of resident patrol training, formation and implementation for use in the grantee's development of the training curriculum and technical assistance agenda. The grantee will prepare and submit to the GTR for approval by the end of the 7th week of the Grant, a plan for reviewing current public housing resident patrol programs. The plan should include a detailed description of the strategy for conducting the review, and a list of housing authorities and resident councils proposed to be contacted. Results of the review should address the numbers and types of patrols and implementation plans, common successes, and common problems. HUD will review the draft plan and provide comments to the grantee within one week. The final plan, incorporating HUD's comments and suggestions, shall be submitted to the GTR by the 10th week of the Grant.

TASK 4—Applications

The grantee shall define the target audience for the training and make recommendations for participant selection criteria. A participant team must include from three to five members representing housing authority staff, residents and law enforcement. Participant teams should have the commitment and ability to return to their local sites after the training, and train others on resident patrol activities. The grantee shall develop an application package to be sent to eligible housing authorities and resident groups. The draft application package selection criteria and schedule and plan for approaching eligible HAs will be provided to the GTR within eight weeks after award of the Grant. HUD will review and comment on the package and criteria and return to the grantee within one week. The final application package and criteria incorporating HUD's comments and suggestions shall be submitted two weeks after the GTR has provided comments from HUD.

Once the deadline for applications from HA teams has passed, the grantee will submit the list of all applicants and a list of proposed training teams to the GTR. HUD will review the applications with the grantee and submit within two weeks the final list of approved attendees.

TASK 5—Pre-class Preparation by Participants

The grantee is responsible for providing each of the teams selected for training with instructions and data collection requirements the participants may need to prepare for and participate in the training. For instance, each participant team might be required to bring to the training a 3 to 5 page description of some targeted developments: the buildings, surrounding facilities and community, the local population, and a preliminary action plan for providing training at those local sites. The grantee will prepare and submit to the GTR for approval, by the end of the 10th week of the Grant, a list of instructions and data collection requirements for the participants. HUD will review the draft list and provide comments to the grantee within one week. The final instructions and data collection requirements, incorporating HUD's comments and suggestions, shall be submitted to the GTR by the 14th week of the Grant.

TASK 6—Develop and Conduct Resident Patrol Training Program

This training will be offered to the chosen teams comprised of three to five individuals from selected housing authorities at a minimum of six locations in a conference and seminar-like format. Training attendees will be responsible for their own travel, lodging and per diem costs. The grantee will be responsible for all costs associated with facilities, training materials, and training staff costs of travel, lodging and per diem at non-governmental rates. The training sessions must begin no later than week 16 and must be completed within one year of the date of the Grant.

The grantee will submit a list of proposed training sites with a short description of the advantages and disadvantages of each site as a training site including the quality of the local resident patrol to be highlighted at the training. HUD and the grantee will choose the final list of training sites two weeks after the curriculum outline is submitted to HUD.

The Resident Patrol Program training shall be no more than five days in length. The training will be provided with a train-the-trainer focus. All participant team members shall be provided a Participant's Manual and a Trainer's Manual complete with lesson

plans, overheads, handouts and visual aids.

The grantee shall prepare and submit to the GTR for approval by the end of the 10th week of the Grant a plan which includes, among other things: an outline and description of the Resident Patrol Training Program curriculum and a list of the proposed handouts/student materials, videos, and other student aids; and the number and timing of the training sessions planned. HUD will provide comments on the draft program to the grantee within one week. The draft curriculum, instructor manual, participant manual and other handouts/student materials, state-of-the art videos and other student aids will be provided to the GTR by the grantee. HUD will provide comments on the draft curriculum and related materials within two weeks of receiving the draft. The grantee will submit to the GTR the final version of the materials at least four weeks before the first training session.

The grantee shall design, develop and implement a Resident Patrol training program with at least the following elements:

(1) Provide information on how to develop and implement resident patrols in public housing programs. The training should include, but not necessarily be limited to: outlining and understanding the role of the participants; identifying available funding resources; recruiting, screening and organizing patrol members; the curriculum and training of patrol members; written policies, practices and procedures; the working relationships and necessary communications between patrols and local law enforcement agencies; patrol techniques; insurance and legal issues; deportment of patrol members; clothing and equipment needs, and community relations.

(2) Provide group exercises that develop team cohesion, action planning for each team, and improving training skills. Specific skill building sessions should include working in teams, team decision-making processes, conflict management, and group dynamics.

(3) Provide participants at least one on-site opportunity for hands-on observation of a successful local, operating resident patrol in the city where the training session is being held.

(4) Provide information and group exercises that develop the participants' skills in presenting training classes to others.

(5) Provide curriculum, instructor manual, participant manual, student materials, and state-of-art videos and other supporting student aids.

(6) Provide participants with an impact/process evaluation to track outcome measures for their resident patrols.

(7) At the end of the course, the attendees shall have developed a specific plan of action for implementing resident patrols in their public housing community, and a plan for training others at the housing authority on implementing resident patrols.

(8) After the first training session the grantee shall develop an analysis and evaluation of the training and proposed changes to the curriculum based on the completed evaluations of the participants and direction from the GTR and submit that analysis to the GTR no later than 2 weeks after the first training is completed.

TASK 7—Technical Assistance

At each training session, the grantee will consult with each participating team to assist them in identifying and addressing any local problems or issues which could delay or inhibit resident patrol training and implementation. After the training session is complete, the grantee will provide telephone technical assistance on an as needed basis to the training participants. The telephone TA will be documented in writing and provided to the GTR on at least a monthly basis.

TASK 8—Analysis, Evaluation and Reporting

The grantee will develop and use a student evaluation form to assess the effectiveness of the training. The draft evaluation form shall be provided to the GTR by the end of the 10th week of the Grant. HUD will review and comments will be provided to the grantee within one week. A final evaluation form incorporating HUD's comments shall be provided by the end of the 13th week.

The student evaluation forms shall be provided to all participants. The grantee shall provide the GTR a synopsis of the evaluations, along with an overall assessment of the effectiveness of the session. The synopsis should include any recommendations for timing, format, curriculum, or other changes needed to improve the effectiveness of the training. Copies of all completed evaluations and the grantee's synopsis shall be provided to the GTR within one week of completion of each session.

(f) Eligibility. Organizations that can demonstrate experience with successful implementation and continuation of resident patrols, working with public and Indian housing authorities and resident groups, and in resident training programs are eligible to apply.

(g) Application submission requirements.

(1) Applicants must submit a completed Application for Federal Assistance (Standard Form 424). The SF–424 is the face sheet for the application. Budget Information (Standard Form 424A), including a program narrative, a detailed budget with budget narrative with supporting cost analysis and legal and accounting services.

(2) Application format requirements. Each application must include the items listed in the following format:

(a) Cover letter

(b) Tab 1—Standard Form 424, Application for Federal Assistance.

(c) Tab 2—Standard Form 424A, Budget Information with attached program narrative. Applicants must provide a budget with detailed justification for all costs, including the basis for computation of these costs. The program budget must be complete, reasonable, and cost-effective in relation to the proposed program. This explanation must include the applicant's financial capability, i.e., the fiscal controls and accounting procedures which assure that Federal funds will be accounted for properly. Applicants must demonstrate that they have the financial capability to effectively implement a project of this size and scope.

(d) Tab 3—Organizational Qualifications. Applicants must fully describe their organizational structure and staff size, and demonstrate that they are sufficient to effectively implement a project of this size and scope. Applicants should outline a list of housing authorities where similar activities were conducted, the dates and numbers of persons involved, any current points of contact, and the results of any evaluations of the work.

(e) Tab 4—Staff Qualifications. Applicants must fully describe the capabilities and work experience of the proposed director, and all key staff. Applicants must fully describe their knowledge and experience with the proposed activities, preferably in public housing. Applicants must include a staffing plan to fulfill the requirements of the statement of work, including staff titles, related work and educational background, experience, and skills of the director and the staff; and the time each will be required to contribute to the project.

(f) Tab 5—Project Experience. Applicants must fully describe prior experience in designing and delivering conference training programs. Applicants must demonstrate that their organization, staff size, and prior experience is sufficient to effectively implement a project of this size and

scope. Applicants should outline a list of housing authorities or other sites where similar training was offered, the dates of the training, numbers of persons trained, any current points of contact, and the results of any evaluations of the training and TA.

(g) Tab 6—Implementation Plan. Applicants must submit a plan outlining the major activities of implementation and describe how available resources will be allocated. The plan must include an annotated organizational chart depicting the roles and responsibilities of key organizational and functional components and a list of key personnel responsible for managing and implementing the major elements of the program. There must be a time-task plan which clearly identifies the major milestones and products, organizational responsibility, and schedule for the completion of activities and products.

(h) Tab 7—Representations, certifications, and other statements of offerors or quoters.

(i) Certification Regarding Federal Employment.

(ii) Certification of Procurement Integrity.

(iii) Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions.

(iv) SF–LLL Disclosure of Lobbying Activities.

(v) Certification Regarding Debarment, Suspension, Proposed Debarment, and other Responsibility Matters.

(vi) Certification Regarding Drug-Free Workplace Requirements.

(vii) Prior to award execution, a successful applicant must submit a certification that it will comply with:

(A) Section 3 of the Housing and Community Development Act of 1968, Employment Opportunities for Lower Income Persons in Connection with Assisted Projects (12 U.S.C. 1701u), and with implementing regulations at 24 CFR part 135. Section 3 requires, that to the greatest extent feasible, opportunities for training and employment be given to lower income residents of the project area within the unit of local government or metropolitan area (or nonmetropolitan county) and for work in connection with the project to be awarded to eligible businesses located in or owned in substantial part by persons residing in the area;

(B) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2000d–4) (Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24 CFR part 1; and

(C) The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101–07) and implementing regulations at 24 CFR part 146, and the prohibitions against discrimination against persons with disabilities individuals under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8.

(h) Selection Criteria. The Department will review and rate proposals according to the extent to which they meet the following criteria, and will make an award to the applicant that best meets all of the below criteria and receives the highest score out of a possible 100 points divided according to the criteria listed below:

(1) Corporate/Organizational Management Qualifications (20 points).

(i) Organizational Structure (10 points). Applicants must concisely describe how the organization has the structure, staff size, financial reporting capacity and internal controls that will maximize successful implementation of the tasks described in this notice.

(ii) Administrative Experience (10 points). Applicants must demonstrate their experience in the successful administration of programs of a similar budget and staff size. (10 points)

(2) Staff Qualifications (20 points).

(i) Project Director (10 points). Applicants should provide a project director with the experience and capacity to manage the budget and staff of the proposed grant; showing evidence of the ability to successfully complete proposed activities on-time and within budget. Applicant should provide a short list of names and current phone numbers of individuals or firms for which the proposed project director has previously accomplished work.

(ii) Project Staff (10 points). Applicants should provide staff with the experience and capacity to quickly and efficiently organize and implement the workshops. Staff should have sufficient experience working with public housing staff and residents to minimize any issues specific to implementing activities in public housing, and sufficient experience in the subject area to maximize success.

Applicants must identify the specific personnel to be assigned to the project, their experience with training conference organization and resident patrol issues and elements, preferably in public housing.

(3) Project Experience (30 points).

(i) Applicants should be able to demonstrate knowledge and experience in the following program specifics: successful conference organization, state-of-the-art training and program elements (15 points).

(ii) Applicants should be able to demonstrate experience with and understanding of the target population (15 points).

(4) Quality of the Plan (30 points).

(i) Applicants should demonstrate that the proposed plan will accomplish the goals outlined above with the following elements:

(A) Detailed narrative of the proposed structure, strategy and activities that will allow staff to effectively reach the stated goals (10 points).

(B) Tasks, timetable and staff assignments for the proposed activities (10 points).

(C) State-of-the-art training and program elements (10 points).

(i) Review Process. Applications submitted in response to this competitive announcement will be reviewed by a panel of HUD representatives, which will make recommendations to the Assistant Secretary for Public and Indian Housing, Department of Housing and Urban Development. The panel will assign numerical values based on the weighted selection criteria. In the case of a numerical tie, preference will be given to the applicant with the highest numerical score for the Program Implementation Plan. The final award will be made by the Assistant Secretary for Public and Indian Housing, Department of Housing and Urban Development. Letters will be sent to all applicants notifying them that their proposal has been selected or the reason(s) it was not selected. HUD will then negotiate specific terms of the award with the selected applicant.

(j) Administrative requirements.

(1) Award Period. The Grant will be cost-reimbursable and awarded for a 1-year base period, with optional years if the approved plan provides for additional years, subject to the availability of funding.

(2) Cooperative Agreement. After the application has been approved and the grant awarded, HUD and the applicant shall enter into a Cooperative Agreement (Form HUD–1044) setting forth the amount of the Cooperative Agreement and its applicable terms, conditions, financial controls, payment mechanism/schedule, and special conditions.

(k) Other Matters.

Environmental Impact. A Finding of No Significant Impact with respect to the environment has been made in accordance with the Department's regulations at 24 CFR Part 50 which implement Section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for

public inspection between 7:30 a.m. and 5:30 p.m. weekdays at the Office of the Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

Federalism Impact. The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this NOFA will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government and, therefore, the provisions of this rule do not have "federalism implications" within the meaning of the Order. The NOFA makes funds available to help housing authorities organize and train tenant patrols. As such, it would help housing authorities combat serious drug-related crime problems in their developments, thereby strengthening their role as instrumentalities of the States.

Family Impact. The General Counsel, as the Designated Official for Executive Order 12606, *the Family*, has determined that the provisions of this NOFA have the potential for a positive, although indirect, impact on family formation, maintenance and general well-being within the meaning of the Order. As such, this NOFA is intended to improve the quality of life of public and Indian housing development residents, including families, by reducing the incidence of drug-related crime.

Section 102 HUD Reform Act—Documentation and Public Access Requirements; Applicant/Recipient Disclosures.

Documentation and public access. HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its quarterly **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these requirements.)

Disclosures. HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period less than three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. (See 24 CFR subpart C, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these disclosure requirements.)

Section 103 HUD Reform Act. HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 was published May 13, 1991 (56 FR 22088) and became effective on June 12, 1991. That regulation, codified as 24 CFR Part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants.

HUD employees involved in the review of applications and in the making of funding decisions are limited by Part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR Part 4.

Applicants who have questions should contact the HUD Office of Ethics (202) 708–3815. (This is not a toll-free number.) The Office of Ethics can provide information of a general nature to HUD employees, as well.

Section 112 HUD Reform Act. Section 13 of the Department of Housing and Urban Development Act contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department *and* those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance. Section 13 was implemented by final rule published in the **Federal Register** on May 17, 1991 (56 FR 22912). If readers are involved in any efforts to influence the Department in these ways, they are urged to read the final rule, particularly the examples contained in Appendix A of the rule.

Prohibition Against Lobbying Activities. The use of funds awarded under this Cooperative Agreement is subject to the disclosure requirements and prohibitions of section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) (The "Byrd Amendment") and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative branches of the federal government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying.

Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance exceeding $100,000 must certify that no federal funds have been or will be spent on lobbying activities in connection with the assistance.

Authority: Sec. 5127, Public Housing Drug Elimination Act of 1988 (42 U.S.C. 11901 et. seq.); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: June 15, 1994.

Michael B. Janis,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 94–15384 Filed 6–23–94; 8:45 am]

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federal register

Friday
June 24, 1994

Part VI

Federal Communications Commission

47 CFR Part 2, et al.
New Personal Communication Services; Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 15, and 24

[GEN Docket No. 90–314; FCC 94–144]

New Personal Communications Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: By this *Memorandum Opinion and Order* (*MO&O*) the Commission amends certain aspects of its rules governing broadband personal communications services (PCS). The *MO&O* modifies these rules to consolidate broadband PCS into the 1850–1990 MHz band from the 1850–1970, 2130–2150, and 2180–2200 MHz bands originally allocated. This action will result in lower costs for the broadband PCS industry and lower prices for consumers. This action facilitates implementation of a broad range of new wireless services and participation in the broadband PCS industry by small businesses, rural telephone companies, and businesses owned by women and minorities.

EFFECTIVE DATE: July 25, 1994, except that §§ 15.311 and 24.204(f)(1), (2), (3)(i), and (3)(ii) are effective September 22, 1994.

FOR FURTHER INFORMATION CONTACT: Robert Pepper or Donald Gips, Office of Plans and Policy, (202) 418–2030.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Memorandum Opinion and Order*, adopted June 9, 1994, and released June 13, 1994. The full text of this Commission decision is available for inspection and copying during regular business hours in the FCC Reference Center (Room 239), 1919 M Street NW., Washington, DC. The complete text of this decision also may be purchased from the Commission's duplication contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037. The following collection of information is being submitted to the Office of Management and Budget for review under Section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3504(h)). Persons wishing to comment on this collection of information should direct their comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Federal Communications Commission. A copy of any comments filed with the Office of Management and Budget should also be sent to the following address at the Commission: Federal Communications Commission, Office of Managing Director, Paperwork Reduction Project, Washington, DC 20554. For further information contact Judy Boley, 632–7513.

OMB Number: None.

Title: Part 24, Amendment of the Commission's Rules to Establish New Personal Communications Services (GEN Docket No. 90–314).

Respondents: Businesses or other for profit.

Estimated annual burden and frequency of response: Five hundred and ninety-five 30 Mhz broadband PCS licensees will need to spend approximately 7,000 hours total at the two construction benchmarks, and 1,972 10 MHz broadband PCS licensees will need to spend approximately 2,000 hours at a single construction benchmark to verify to the Commission that the construction requirements have been met. Total burden-hours on all licensees will therefore be approximately 9,000.

Needs and Uses: Information received by the Commission will be used to verify that each broadband PCS licensee has met its construction requirements. Without this information, such verification would be impossible.

Summary of Memorandum Opinion and Order

Introduction and Executive Summary

1. By this action, the Commission amends certain aspects of its rules governing broadband personal communications services (PCS). It takes this action in response to 67 petitions for reconsideration or clarification of the rules and policies adopted in the *Second Report and Order*[1] in this proceeding.

2. PCS encompasses a broad range of new radio communications services that will free individuals from the limitations of the wireline public switched telephone network and will enable individuals to communicate when they are away from their home or office telephones. Broadband PCS devices are likely to be portable and have their own unique telephone numbers. A basic feature of PCS is expected to be the ability to communicate person-to-person, rather than station-to-station.

3. The Commission takes this action to foster rapid creation of a competitive market to deliver these new mobile digital voice and data services to the American public. Personal communications needs are changing rapidly as our society becomes more mobile and people demand rapid communications no matter where they are or what time it is. A competitive market is the best way to introduce broadband PCS to help meet these demands. The Commission expects that PCS will provide a variety of mobile services competitive with existing cellular, paging and other land mobile services as well as new services offering communications capabilities not currently available. These services will be provided on an entire family of new communications devices that will include small, lightweight multi-function portable phones, portable facsimile and other imaging devices, new types of multi-channel cordless phones, and advanced paging devices with two-way data capabilities. The Commission expects that these new services and devices will affect the future development and configuration of all telecommunications networks by significantly improving their flexibility and increasing the number of functions they can perform.

4. The Commission is amending the broadband PCS spectrum allocation and regulatory structure to better achieve what have been and continue to be its four primary goals in this proceeding: competitive delivery, a diverse array of services, rapid deployment, and wide-area coverage. Furthermore, the PCS rules as modified will partner with the Commission's competitive bidding procedures to meet Congressional objectives that include promoting economic growth and competition, enhancing widespread access to telecommunications service offerings, and ensuring that PCS licenses are disseminated to a wide variety of applicants.

5. The actions the Commission is taking are designed to enable PCS providers to compete effectively with each other and with other wireless providers so that the American public can enjoy the greatest benefit from the delivery of these new services. To promote competitive delivery, the Commission has modified its band plan to ensure there is an opportunity for a sufficient number of competitors to offer PCS services. Further, providers will have the flexibility to determine the amount of spectrum needed for their particular service or services. However, the Commission has also set limits on the total amount of spectrum that can be acquired by new entrants and by incumbent cellular providers. This ensures that there will be a significant number of competitors in each area.

[1] *See Second Report and Order*, GEN Docket No. 90–314, 58 FR 59174 (November 8, 1993).

6. The Commission purposely adopted a broad definition of PCS to encourage a variety of firms with their own visions of PCS to bid for various combinations of licenses and to provide a diverse array of new services. Firms will compete not only on price, but also on quality and the types of new products and services they offer. The Commission has allocated spectrum both in different sized blocks and in different sized service areas because it wants to encourage businesses to be able to acquire the spectrum and service areas that best suit their business plans. This additional flexibility will result in a greater diversity of products and services for consumers.

7. Rapid deployment is important so that consumers do not have to wait for the benefits of the new services. To ensure rapid deployment, the Commission has allocated two different sized spectrum blocks, which can be aggregated to form other block sizes. It has also altered the allocation of some of the PCS spectrum to reduce the cost of moving microwave incumbents that must be relocated. Both of these decisions will allow more rapid introduction of service because of the reduced costs of microwave relocation.

8. The revised bank plan also will reduce the cost of service and equipment to consumers. In addition, the Commission has increased the power level available for PCS service. Together with the decisions to license some Basic Trading Areas (BTAs) and 10 MHz blocks, these changes will make PCS service more viable in rural areas, help ensure wide-area coverage and increase access for all Americans.

9. Many of the actions taken are directed toward ensuring that a wide variety of applicants have an opportunity to acquire PCS licenses. In addition to providing for different and spectrum blocks and geographic areas, the Commission is modifying its ownership rules to encourage participation in PCS by rural telephone companies, small businesses and businesses owned by minorities and women.

10. The most significant of the changes involves modification of the band plan that was adopted in the *Second Report and Order*. In that *Order*, the Commission allocated 120 MHz of spectrum to PCS, some of which was in the lower portion of the 2 GHz band allocated for emerging technologies and some of which was in the upper portion of that band. Under the revised plan, all of the 120 MHz of spectrum allocated to PCS is located in the lower band. The previous band plan would have required those who wished to operate in both the upper and lower bands to utilize more expensive dual mode handsets capable of operating on both bands. Providing PCS licenses in only the 1850–1990 MHz band will lower costs to consumers by permitting use of a single-band handset. Reducing the costs of equipment to customers should also increase consumer demand and strengthen the economic viability of the PCS providers. Placing all the licensed and unlicensed spectrum in a single contiguous band also will decrease the cost of handsets that can operate in both licensed and unlicensed blocks. In addition, these changes will preserve spectrum in the upper band that is allocated internationally for the emerging Mobile Satellite Services (MSS) industry to provide worldwide service. Taken together, these changes will increase the competitiveness of PCS service providers in urban, suburban, and rural areas which should lower prices and stimulate demand, thereby increasing investment and economic growth. Lower prices will also enhance consumer access to PCS services.

11. Having all blocks in a single contiguous band also will increase the value of the 10 MHz blocks. These blocks would have been less desirable in the upper band because upper band equipment is expected to be available from manufacturers twelve or more months after lower bank equipment. In addition, the upper band contains a higher concentration of microwave facilities that would have had to share spectrum with broadband PCS licensees or be relocated from the broadband PCS spectrum to avoid interference. This action avoids the expense and potential delay associated with relocating the numerous microwave links currently operating in the upper band. The change made to the band plan also makes it more feasible to aggregate a 10 MHz block with a 30 MHz block for a total of 40 MHz. Taken together, these factors will reduce the time and the cost of PCS providers offering their services to the American public. The overall allocation of 120 MHz for broadband PCS remains unchanged.

12. In the *Second Report and Order*, the Commission divided 120 MHz of spectrum into seven blocks: two 30 MHz blocks, one 20 MHz block, and four 10 MHz blocks. In this *Order*, the Commission is amending its band plan to provide six blocks: three 30 MHz blocks and three 10 MHz blocks. The Commission changed the 20 MHz block to a 30 MHz block and eliminated one 10 MHz block primarily because it was persuaded that a single 20 MHz block would not provide enough spectrum to support a viable competitor to the 30 MHz PCS MTA licensees, or to the two existing cellular licensees currently serving most areas. As a primary goal of the proceeding was to promote competitive delivery of PCS services, the Commission believes that it is essential to make available an additional 30 MHz block. The Commission anticipates that the three 10 MHz blocks will be used in a variety of ways that may include "niche services" and other functions, or as an enhancement for PCS or cellular providers that choose to purchase a 10 MHz block to complement a 30 MHz or 25 MHz block, respectively. Thus, the revised band plan provides for an additional competitor to cellular service and to the other PCS providers, while also providing three 10 MHz blocks for multiple uses.

13. In addition to modifying the band plan, the Commission also makes significant amendments to the rules relating to participation in PCS by holders of cellular interests. In the *Second Report and Order*, the Commission recognized that unfettered participation in PCS by cellular operators could lessen the potential competition that could develop between PCS and cellular systems. At the same time, it recognized that cellular licensees could foster rapid development of PCS for a variety of reasons, including their expertise with commercial mobile radio services. Promoting competition and providing for rapid deployment of PCS are both among the objectives that Congress instructed the Commission to promote in Section 309(j) of the Communications Act, as amended by the Reconciliation Act. The Commission has balanced those competing interests by allowing entities with a 20 or more percent investment interest in a cellular license to acquire a 10 MHz PCS license in the same area. The Commission adheres to that decision. However, it has decided that as of January 1, 2000, it will afford cellular operators the same overall 40 MHz spectrum cap as other PCS operators, and allow them to acquire an additional 5 MHz for a total of 15 MHz of PCS spectrum in the same service areas as their cellular interests. Each cellular operator currently holds 25 MHz of spectrum.

14. In Section 309(j), Congress also directed the Commission to promote economic opportunity by disseminating licenses to a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women ("designated entities"). The Commission is modifying its PCS cellular eligibility rules to promote that

goal as well. Specifically, it is relaxing its cellular ownership attribution rules to allow designated entities with up to a 40 percent non-controlling interest in a cellular license to obtain a PCS license in the same area. One effect of this change will be to allow some rural telephone companies with non-controlling cellular interests, to provide PCS service in areas that might otherwise not be served in a timely manner.

15. The Commission also is relaxing its cellular attribution rules to allow any entity with up to a 40 percent non-controlling ownership interest in a cellular license covering 10 percent or more of the population in a PCS service area to also attain a non-controlling investment interest in a PCS license held by a business owned by minorities or women. While there is some risk that relaxing the cellular eligibility rule will limit the vigor of competition in some markets, the Commission thinks that risk is sufficiently limited where the party holding interests in two licenses holds a minority interest in the cellular license and the PCS license is controlled by another entity. The Commission has concluded that it should take that risk in order to advance the goal of promoting economic opportunity for these groups.

16. The Commission's cellular eligibility rules balance the goals that Congress has established—promoting competition, ensuring rapid deployment of PCS, and providing economic opportunity for designated entities. It has decided that limited participation by cellular providers will serve the public interest by promoting rapid deployment of PCS, participation by designated entities, and overall competition.

17. The Commission has made a number of minor modifications to its rules. With these changes, it intends to proceed expeditiously toward licensing providers of broadband personal communications services. The following is a summary of all of the specific actions taken to promote the goals outlined above:

a. Adopting a band plan that provides for three 30 MHz licenses (Blocks A, B, and C) and three 10 MHz licenses (Blocks D, E, and F), all of which are within the 1850–1990 MHz band;

b. Providing that the A and B Blocks be licensed within 51 service areas based on the Major Trading Areas (MTAs) and that the C, D, E, and F Blocks be licensed within 493 smaller service areas based on the Basic Trading Areas (BTAs) set forth in the Rand McNally *Commercial Atlas & Marketing Guide* (123rd ed. 1992);[2]

c. Maintaining the allocation of spectrum at 1910–1930 MHz for unlicensed PCS devices, and committing to initiate a proceeding in the near future to examine allocation of additional spectrum for unlicensed PCS operations. Within this band, the Commission has adopted a 1.25 MHz channelization scheme for isochronous (voice) devices and eliminated channelization requirements for asynchronous (data) devices;

d. Continuing to permit all eligible entities to acquire broadband PCS spectrum up to a cap of 40 MHz;

e. Retaining the five percent equity attribution threshold for PCS licenses so that the same entity may not own more than five percent of PCS licenses constituting more than 40 MHz within the same area;

f. Retaining the cellular attribution threshold of 20 percent equity ownership of a cellular licensee and the service area overlap test of 10 percent of the population of the relevant PCS market, so that the same entity generally may not own more than 20 percent of the cellular license and more than 5 percent of PCS license(s) that would place the entity above the spectrum limit in an overlapping service area;

g. Relaxing the eligibility rules to permit entities with attributable interests in cellular companies whose combined cellular geographic service areas overlap between 10 and 20 percent of the PCS service area population to submit bids for more than 10 MHz of PCS spectrum provided that, prior to the auction, they commit to divest themselves of sufficient cellular interests to come into compliance with the eligibility rules within 90 days of license grant;

h. Providing that voting stock, general partnership interests, interlocking directorates and certain other controlling interests and relationships will be considered in determining attributable interests under the spectrum caps;

i. Raising from a 20 percent to a 40 percent non-controlling interest the threshold for determining attributable cellular equity ownership for rural telephone companies, small businesses and businesses owned by minorities and women that are collectively termed "designated entities" under 47 U.S.C. 309(j);

j. Increasing from a 20 percent to a 40 percent non-controlling interest the threshold for determining attributable cellular equity ownership to allow non-designated entities to make non-controlling investments in PCS licenses owned and controlled by minority- and women-owned businesses;

k. Permitting entities with attributable cellular interests covering 10 or more percent of the population in a PCS service area to acquire 10 MHz of PCS spectrum within the PCS service area and, after January 1, 2000, to acquire an additional 5 MHz for a total of 15 MHz of PCS spectrum in their cellular service areas;

l. Relaxing construction requirements to provide that (a) 30 MHz broadband PCS licensees must provide coverage to one-third of their service area population within five years of initial licensing and two-thirds within ten years and (b) 10 MHz licensees must provide coverage to twenty five percent of their service area population within five years of initial licensing or, submit a showing of equivalent or substantial service;

m. Increasing the maximum power level permitted for broadband PCS base stations to 1640 watts equivalent isotropically radiated power (e.i.r.p.), which is equivalent to 1000 watts effective radiated power (e.r.p.);

n. Retaining with minor amendment rules ensuring compliance with minimum standards for exposure to radio frequency (RF) energy emitted by PCS devices;

o. Committing to initiate a proceeding in the near future to allocate additional spectrum for mobile satellite services (MSS) and to work toward having additional spectrum allocated to MSS at the World Radio Conference to be held in 1995 (WRC–95); and

p. Pledging to examine management contracts and spectrum leases in the CMRS docket for the purpose of determining whether other interests in PCS licenses should be limited in order to foster vigorous competition.

18. The Commission began its investigation of broadband PCS in 1989.[3] Since then the Commission has addressed broadband PCS in this docket by issuing a *Notice of Inquiry*, holding an *En Banc* meeting, and adopting a *Policy Statement and Order*, a *Notice of Proposed Rule Making and Tentative Decision*, and a *Second Report and*

[2] The current rules provide 492 service areas based upon BTAs. In response to a request the Commission is dividing the Puerto Rico service area into two areas.

[3] Petitions for Rule Making requesting establishment of PCS were filed by Cellular 21, Inc., in September 1989, RM–7140; and PCN America, Inc. (PCN America), in November 1989, RM–7175. Subsequently, in February 1991, Apple, RM–7618, proposed that 40 MHz from the 1850–1990 MHz band be allocated for unlicensed high-speed local-area data communications services connecting personal computers.

Order;[4] and held a Public Forum on broadband PCS.[5] It has also allocated 220 MHz of spectrum between 1850 and 2200 MHz for emerging technologies that include PCS;[6] provided for band sharing or negotiated relocation of microwave facilities occupying 2 GHz PCS spectrum;[7] provided spectrum to accommodate the existing 2 GHz facilities that relocated;[8] and adopted technical, licensing and auction rules for narrowband PCS.[9] It also considered 50 pioneer's preference requests related to broadband PCS.[10] Finally, the Commission made recommendations and participated in an international allocation conference at which decisions were made that recognize and permit use of 2 GHz spectrum for PCS.[11] Numerous telecommunications companies and associations have actively participated in the PCS proceedings, and over 100 companies have applied for and received more than 220 experimental licenses to develop and test PCS services and technologies.

19. On August 10, 1993, the President signed the Omnibus Budget Reconciliation Act of 1993 (Reconciliation Act),[12] which amended Sections 3(n), 309(j) and 332 of the Communications Act of 1934, as amended (Communications Act). Section 309(j) for the first time authorized the Commission to select licensees by competitive bidding and establishes objectives for the bidding process, including rapid deployment of new technologies, promotion of economic opportunity, competition and public access, wide dissemination of licenses, and efficient use of the spectrum. The Reconciliation Act also amended Sections 3(n) and 332 to provide that PCS is a mobile service and to establish a new framework for regulatory treatment of mobile services.

20. On September 23, 1993, shortly after the Reconciliation Act was enacted, the Commission adopted the *Second Report and Order* establishing regulations and policies for broadband PCS that are under review here. In the *Second Report and Order*, the Commission enumerated goals of competitive delivery, diversity of services, speed of deployment, and wide-area service. The Commission took a number of actions to help meet these goals.

Specifically, the Commission:

a. Defined PCS as "radio communications that encompass mobile and ancillary fixed communication that provide services to individuals and businesses and can be integrated with a variety of competing networks";

b. Allocated spectrum at 2 GHz for PCS, including 120 MHz of spectrum for licensed broadband PCS and 40 MHz for unlicensed PCS devices;

c. Provided for two 30 MHz licenses and one 20 MHz license in the "lower" band of the emerging technologies spectrum, and four 10 MHz licenses in the "upper" band, in each geographic area;

d. Provided that the two 30 MHz licenses would be authorized within 51 service areas based on the Rand McNally Major Trading Areas (MTAs) and that the 20 MHz and 10 MHz licenses would be authorized within 492 service areas based on the Rand McNally Basic Trading Areas (BTAs);

e. Established eligibility requirements that limit entities with certain cellular interests to 10 MHz of PCS spectrum where there is significant overlap between a PCS service area and the cellular service area (*i.e.*, 10 percent or more of the PCS service area population);

f. Limited broadband PCS licensees to 40 MHz of spectrum, and established certain licensing and renewal mechanisms;

g. Established a maximum power level of 100 watts e.i.r.p. for PCS base stations, and adopted technical specifications to avoid harmful interference to other operations while leaving maximum technical flexibility to permit development of new technologies;

h. Adopted rules to minimize radio frequency (RF) exposure risk; and

i. Noted an intent to continue participating in international efforts to provide standards and consistent spectrum allocations for international deployment of worldwide terrestrial mobile and global satellite services.

21. In related proceedings, the Commission provided a transition plan to govern PCS licensees sharing their authorized spectrum with existing 2 GHz fixed microwave facilities or relocating those facilities to other spectrum;[13] determined that broadband PCS presumptively will be classified as a commercial mobile radio service (CMRS) under Section 332 of the Communications Act as amended by the Reconciliation Act;[14] and found that broadband PCS is within the Commission's competitive bidding authority, when it adopted generic competitive bidding rules and procedures.[15] With regard to competitive bidding for broadband PCS licenses, the Commission proposed to set aside two blocks of spectrum—the 20 MHz block (Block C) and a 10 MHz block (Block D)—that would be reserved for bidding purposes to "designated entities", (small businesses, rural telephone companies and businesses owned by members of minority groups and women), and proposed other measures to ensure economic opportunity for designated entities.[16]

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[4] *See* GEN Docket No. 90–314; *Notice of Inquiry*, 5 FCC Rcd 3995 (1990); *Policy Statement and Order*, 56 FR 56937 (November 7, 1991); *Notice of Proposed Rule Making and Tentative Decision*, 57 FR 11458 (April 3, 1992); and *Second Report and Order*, 58 FR 59174 (November 8, 1993).

[5] *See* FCC, Transcripts of PCS Public Forum, April 11–12, 1994 (Transcripts of the PCS Public Forum). The transcripts are available for public viewing at both the FCC Reference Center and the Library, 1919 M Street, NW., Washington, DC. The transcripts also may be purchased from the Commission's duplication contractor.

[6] *See First Report and Order and Third Notice of Proposed Rule Making*, ET Docket No. 92–9, 57 FR 49020 (October 29, 1992).

[7] *See* ET Docket No. 92–9; *First Report and Order and Third Notice of Proposed Rule Making*, 57 FR 49020 (October 29, 1992); *Second Report and Order*, 58 FR 49220 (September 22, 1993); *Third Report and Order and Memorandum Opinion and Order*, 58 FR 46547 (September 2, 1993); *Memorandum Opinion and Order*, 59 FR 19642 (April 25, 1994), petition for further recon. pending.

[8] *See Second Report and Order*, ET Docket No. 92–9, 58 FR 49220 (September 22, 1993).

[9] *See First Report and Order*, GEN Docket No. 90–314 and ET Docket No. 92–100, 58 FR 42681 (August 11, 1993) (initial narrowband rules); *Memorandum Opinion and Order*, GEN Docket No. 90–314 and ET Docket No. 92–100, 59 FR 14115 (March 25, 1994) (adopting certain narrowband PCS rule amendments on reconsideration); *Third Report and Order*, PP Docket No. 93–253, FCC 93–98, released May 10, 1994 (design of narrowband auctions).

[10] *See Third Report and Order*, GEN Docket No. 90–314, 59 FR 9419 (February 28, 1994), recon. pending, *appeal pending sub nom. Pacific Bell v. FCC*, No. 94–1148 (D.C. Cir., filed March 1, 1994). The Commission intends to address shortly the petitions for reconsideration of its pioneer's preference decisions.

[11] A worldwide allocation for PCS was discussed at the 1992 International Telecommunication Union (ITU) World Administrative Radio Conference (WARC–92) in Torremolinos, Spain. The conference decided to maintain primary fixed and mobile allocations at 2 GHz in Region II (which includes the United States), and to make additional primary mobile-satellite service allocations in the 1930–2010 and 2120–2200 MHz bands. It added a footnote stating that future public land mobile telecommunications systems, similar in concept to PCS, are expected to use the 1885–2025 MHz and 2110–2200 MHz bands on a worldwide basis. *See Report*, GEN Docket No. 89–554, 56 FR 31095 (July 9, 1991); ITU, *Final Acts of the World Administrative Radio Conference for Dealing with Frequency Allocations in Certain Parts of the Spectrum* (Malaga-Torremolinos, 1992).

[12] Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103–66, Title VI, §§ 6002(b)(2) (A), (B), 107 Stat. 312, 392 (1993).

[13] *See First Report and Order and Third Notice of Proposed Rule Making*, ET Docket No. 92–9, 57 FR 49020 (October 29, 1992).

[14] *See Second Report and Order*, GN Docket No. 93–252, 59 FR 18493 (April 19, 1994) *(CMRS Second Report and Order)*, recon. pending.

[15] *See Second Report and Order*, PP Docket No. 93–253, FCC 94–61, released April 20, 1994.

[16] *See* PP Docket No. 93–253; *Notice of Proposed Rule Making*, 58 FR 53489 (October 15, 1993);

Continued

These proposals remain pending. The proposed set-aside and other outstanding issues concerning broadband PCS auctions will be decided in a forthcoming Order (in PP Docket No. 93–253) addressing competitive bidding rules.

22. In response to the *Second Report and Order*, 67 parties filed petitions requesting reconsideration or clarification. Of the 67 petitions, 58 primarily addressed issues relating to licensed PCS services and 9 primarily addressed issues relating to unlicensed PCS operations. The petitioners collectively request reconsideration of the spectrum allocation and frequency block plan, eligibility and attribution matters, construction requirements, technical standards, microwave interference criteria, power limits, radio frequency (RF) hazard requirements, and matters related to unlicensed PCS devices. The Commission received comments addressing the petitions for reconsideration from 44 parties and replies from 54 parties.

23. On March 17, 1994, the Commission established an intra-agency task force to coordinate the reconsideration of PCS policies and rules. On April 11 and 12, 1994, the task force conducted a series of public panel discussions on PCS issues. The panelists included potential PCS service providers, technical experts, members of the financial community, economists and representatives of designated entities. The presentations of the panelists and transcripts of the panel discussions were placed in the record of this proceeding, and 30 interested parties filed statements in the record responding to the panel discussions.

Spectrum Issues and Service Areas

24. *Allocation, Block Plan, and Service Areas.* In the *Second Report and Order*, the Commission allocated 120 MHz for licensed PCS and 40 MHz for unlicensed PCS from the 220 MHz of emerging technologies spectrum. Specifically, (lower band) 1850–1890 MHz and 1930–1970 MHz, and the (upper band 2130–2150 MHz and 2180–2200 MHz, were allocated for licensed PCS; and the 1890–1930 MHz band was allocated for unlicensed PCS devices. In addition, 60 MHz remained in reserve for future allocations to emerging technologies such as MSS or other applications. The frequency plan for licensed PCS included two 30 MHz frequency blocks, one 20 MHz block, and four 10 MHz blocks. Service areas were defined based on Rand McNally's "Major Trading Areas" (MTAs) and "Basic Trading Areas" (BTAs). The two 30 MHz blocks were in the lower band and licensed on an MTA basis; the 20 MHz block also was in the lower band, but licensed on a BTA basis; and the four 10 MHz blocks were in the upper band and licensed on a BTA basis.

25. Twenty-eight parties argued for reconsideration of various aspects of the allocation and frequency block plan adopted in the *Second Report and Order*. In general, the petitioners address: (1) alternatives for the PCS frequency block plan, including the number of PCS providers, PCS service areas, and issues relating to the aggregation or subdivision of PCS spectrum; (2) whether spectrum should be designated for private PCS use; and (3) the impact of the PCS allocation on the international allocations for mobile satellite service (MSS).

26. In response to these filings, the Commission is revising the band plan to move the 10 MHz blocks from the upper band to the lower band, increase the size of 20 MHz block to 30 MHz, and reduce the number of 10 MHz blocks from four to three. The revised band plan is depicted in Appendix D, "Broadband PCS Band Plan," and detailed in the following table.

Frequency block	Amount of spectrum	Geographic scope	Frequency range
A	30 MHz	MTA	1850–1865/1930–1945 MHz
B	30 MHz	MTA	1870–1885/1950–1965 MHz
C	30 MHz	BTA	1895–1910/1975–1990 MHz
D	10 MHz	BTA	1865–1870/1945–1950 MHz
E	10 MHz	BTA	1885–1890/1965–1970 MHz
F	10 MHz	BTA	1890–1895/1970–1975 MHz
Unlicensed	20 MHz	Nationwide	1910–1930 MHz

27. This plan provides for three large blocks and three small ones. This will allow potential licensees to aggregate varying amounts of spectrum in different geographic areas depending on their individual business plans. The three large 30 MHz blocks ensure that these licensees have sufficient spectrum to begin service rapidly. The three small 10 MHz licenses will allow the provision of services that might not require a full 30 MHz, or for aggregation with a 30 MHz PCS license or an existing cellular license. As noted above, moving the 10 MHz blocks from the upper band to the lower band provides a number of important procompetitive benefits: consumer equipment costs will be significantly lower, costs of relocating incumbent fixed microwave links will be significantly reduced for new PCS entrants, the ability to aggregate spectrum will be increased, and valuable spectrum will be preserved that can be used to provide mobile satellite service on a worldwide basis. This revised plan reduces the amount of spectrum for unlicensed devices, but will increase the ability of new consumer equipment to work on both a licensed and unlicensed basis, increasing the utility of the devices for consumers. The improvement in this band plan will increase competition, lower equipment costs and provide other benefits. As a result, consumers will receive lower-cost and higher-quality service.

28. The Commission initially authorized 10 MHz blocks in the upper PCS band. Many parties, however, argue that the upper band blocks would be of little value in the near term because equipment would not be developed for this spectrum for a year or more. In addition, handsets that can bridge the upper and lower bands are predicted to cost about 25 percent more and to be bulkier than handsets operating only on the lower frequencies. In addition, dual mode handsets would be heavier and have shorter battery life. Several parties argued that dual band handsets were essential to the success of upper band service because PCS operators would be likely to aggregate upper and lower band spectrum and consumers would want to be able to receive service on both bands, both to permit roaming across geographic areas and to facilitate changing service providers. These parties contended that the higher costs,

Second Report and Order, FCC 94–61, released April 20, 1994.

delay, and other limitations associated with the upper band presented serious impediments to achieving the goals of fostering a competitive market, rapid deployment, opportunities for designated entities, and fostering a wide diversity of services. Upon reconsideration, the Commission concludes that MSS and PCS services can both be accommodated by using only lower band spectrum for licensed and unlicensed PCS services.

29. Moving licensed PCS from the upper band to the lower band provides a number of procompetitive benefits. First, the cost of interoperability between licensed and unlicensed PCS will be reduced. As noted above, equipment costs to consumers are predicted to be reduced by 25 percent. Moreover, under the revised plan, manufacturers will concentrate on a single band with uniform frequency spacing, which should result in greater economies of scale in manufacturing that reduce consumer equipment prices. This additional cost for interoperability between bands was not evident to the Commission when it made its earlier decision. Increased interoperability has the additional benefit of reducing lock-in costs for consumers, giving them greater ability to switch providers, and thereby resulting in a more competitive market. Because of the less expensive handsets and the ability to combine adjacent blocks, aggregation is much more desirable. This will benefit all new providers, including designated entities, because they will be able to reduce costs and compete more effectively. Furthermore, there appear to be a number of different potential uses for the 10 MHz blocks: innovative niche services that are unlikely to be provided initially on the 30 MHz blocks, aggregation with the 30 MHz blocks, aggregation with other 10 MHz blocks, service extensions for incumbent cellular providers, and opportunities for designated entities to provide service with lower capital cost. Moving the 10 MHz blocks from the upper band to the lower band will enhance the value of some, if not all, of these uses and allow licensees to decide the most valuable use for the spectrum.

30. Second, the cost and time required to relocate incumbent fixed microwave links should be significantly less in the lower band because the number of microwave links in the upper band is higher than the number in the lower band. While the bandwidth used by the upper band microwave incumbents is much less, making it easier to find some clear spectrum immediately, the ultimate requirement to clear the spectrum would result in significantly higher costs for PCS licensees.

31. Third, equipment should be available for the lower band at an earlier date. Manufacturers have spent significant time and resources developing lower band equipment but the record indicates that they have not done much work on developing equipment for the upper band. As a result, some parties assert that the availability of upper band equipment trails the availability of lower band equipment by about one year. Time to market is a critical factor in the rollout of PCS services that will compete against existing cellular and enhanced specialized mobile radio (ESMR) entities. Thus, earlier equipment availability is a significant factor in developing a competitive PCS service.

32. Fourth, many cellular companies have expressed a desire to operate PCS systems both outside and inside their current cellular service areas. By moving the PCS spectrum to the lower band, PCS and cellular providers will have the ability to provide service over a large geographic area even though they desire (or are required) to have different amounts of PCS spectrum in different areas. This capability could lower costs to the benefit of consumers because cellular companies will be able to compete using PCS spectrum inside and outside of their service areas.

33. Finally, moving all the PCS spectrum to the lower band will better meet the needs of the emerging MSS industry. The Commission believes that this action will increase the value of the unlicensed spectrum because interoperability with licensed PCS will increase.

34. Accordingly, the Commission finds that moving all of the PCS spectrum to the lower band will increase competition, reduce both consumer equipment and system costs, and increase equipment functionality. This new band plan has significant industry support, as evidenced by numerous recent filings submitted in the record by a variety of interests supporting the proposal to move all of the PCS spectrum to the lower band.

35. In developing the original plan, the Commission concluded that 10 MHz blocks could support viable and competitive PCS services through the use of advanced digital techniques, such as Code Division Multiple Access (CDMA) and Time Division Multiple Access (TDMA), and microcellular technology. It also stated that some types of PCS operations would require more than 10 MHz of spectrum. In addition, the Commission recognized that initially PCS is required to share spectrum with fixed microwave operations and therefore the full amount of spectrum will not be available initially in many locations. The Commission also stated that some types of PCS operations would require more than 10 MHz of spectrum. In addition, the Commission recognized that initially PCS is required to share spectrum with fixed microwave operations and therefore the full amount of spectrum will not be available initially in many locations. The Commission concluded that 20 and 30 MHz frequency blocks were needed to support the rapid development and implementation of the fullest range of PCS services and also permitted most licensees to aggregate up to 40 MHz of broadband PCS spectrum in each service area, except that cellular licensees were limited to 10 MHz where their cellular geographic service area (CGSA) overlapped with the PCS service area. For these reasons, the Commission concluded that the combination of 10, 20, and 30 MHz licenses would allow users to acquire the amount of spectrum appropriate for their applications.

36. In the *Second Report and Order*, the Commission allocated two 30 MHz blocks, one 20 MHz block and four 10 MHz blocks. Its intent was to encourage participation of as many viable new PCS entrants as possible while maintaining sufficient spectrum to ensure the viability of both MSS and unlicensed devices. Based on the reasoning presented below, and on information provided by the petitioners and other responding parties, including presentations made by industry experts as its panel discussions, the Commission finds that its goals will be better served by two modifications to the band plan: (a) An increase in the size of the 20 MHz block to 30 MHz; and (b) a reduction in the number of 10 MHz blocks from four to three. Overall, the total amount of spectrum allocated for licensed PCS remains unchanged.

37. One of the goals in this proceeding is to stimulate competition in the wireless and wireline industries, thus reducing costs and improving quality for consumers. In so doing, the Commission must balance two objectives. First, the Commission wants to maximize the number of opportunities for new viable competitors to emerge. It also wants to allow market forces to guide how many competitors survive. The Commission has endeavored to provide as many opportunities as possible to aggregate blocks into viable service offerings to ensure that several strong competitors emerge to provide service. Its desire to maximize competition must be

tempered, however, because (1) spectrum is limited and (2) for new entrants to be viable sufficient spectrum must be provided to begin service quickly with reasonable upfront capital costs. The Commission believes that the combination of microwave incumbents occupying part of this spectrum and economies of scale lead to the conclusion that the set of three 30 MHz blocks will support the rapid introduction of competitive PCS services whereas 20 MHz blocks could lead to PCS service start-up delays or a reduction in the number of viable competitors.

38. The Commission believes that its new band plan is superior to uniform 20 MHz blocks, as advocated by several petitioners. The combination of three 30 MHz blocks and three 10 MHz blocks allows the aggregation of a variety of license sizes that could not occur with uniform 20 MHz blocks.[17] As a result, the Commission finds that the allocation of six 20 MHz blocks would not provide as many benefits as either the allocation adopted in the *Second Report and Order* on the modified plan it adopts in this order and it might lead to fewer new service providers with sufficient spectrum to provide service quickly. It also rejects the plan of twelve 10 MHz blocks, because such an arrangement might seriously delay the implementation of PCS, since the process of aggregating so many spectrum blocks could be time consuming and costly. It also could dramatically increase complexity and transaction costs at and after the auction. Finally, the Commission believes that dividing the spectrum into 40 MHz blocks would be inefficient for many applications and would foreclose innovative niche services.

39. The record indicates significant concern that a 20 MHz block may not provide sufficient spectrum to enable a PCS provider to compete effectively with other PCS licensees operating on 30 MHz spectrum blocks or with other commercial mobile radio service providers. Some parties argue that 20 MHz will provide sufficient capacity in the long run, while others feel that with only 20 MHz, there could be a significantly larger portion of each service area where the licensee has no usable spectrum due to the presence of microwave incumbents. The presence of fixed microwave links requires that, on the average, a licensee with 20 MHz initially will have to relocate more microwave links than a 30 MHz license before PCS service can begin, which could significantly delay the commencement of service and increase the upfront cost of initiating service. In addition, certain parties state that the ability of a microwave incumbent to delay or extract a premium for relocating its link because its microwave path fully blocks service diminishes significantly with a 30 MHz spectrum block. While incumbent microwave links are 20 MHz wide, the Commission feels that the advantages of being able to work around specific links with a 30 MHz block outweigh the additional transaction costs which result from not matching the incumbent fixed microwave assignments identically.

40. Other parties support the notion that a 30 MHz block will help new PCS entrants compete more effectively with existing wireless and wireline providers. The Commission also believes that limiting one licensee to 20 MHz could be a disadvantage for future competition. The ability to provide a complete package of mobile voice and data services could become a significant competitive advantage in the future. Such a package of wireless services, however, may require more than 20 MHz of spectrum. Other services may require less spectrum and are better suited to the 10 MHz blocks.

41. Due in large part to these concerns, the investment community has stated that financing would be much more difficult to obtain for the licensees on the 20 MHz block than on the other blocks. These handicaps are of particular concern to us because the 20 MHz block was proposed to be reserved for designated entities.[18] The competitive handicaps of a 20 MHz block relative to 30 MHz blocks would not have served the goal of providing a viable competitive opportunity for designated entities.

42. Increasing the third license from a 20 MHz block to a 30 MHz block appears to eliminate any competitive disadvantages stemming from the band plan. The A, B and C blocks each will have a roughly equivalent portion of its service area completely blocked by incumbent microwave users in any geographic area. As a result, the costs and delay due to incumbent relocation should be similar on each of the blocks. This change should also reduce the difficulty faced by the C block licensee in obtaining financing. The Commission concludes, therefore, that three equal sized 30 MHz blocks will facilitate competition and the rapid development and implementation of the fullest range of PCS services and ensure that PCS is more fully competitive with other mobile radio services. Accordingly, the Commission is changing the single 20 MHz license to a 30 MHz license. Providing a combination of 30 MHz and 10 licenses MHz provides the benefits of 40 MHz licenses, without restricting the options of firms nor affecting competition.

43. Consistent with its decision to formulate a flexible definition of PCS, the Commission allocated four 10 MHz blocks in the *Second Report and Order* that could serve a variety of needs. The Commission continues to believe that 10 MHz blocks, both on their own and in combination with the 30 MHz blocks or with each other, are useful to support a variety of PCS services. Throughout this proceeding, several parties have indicated that 10 MHz blocks would be suitable for providing services ranging from specialized or "niche" applications to services comparable to those now provided by cellular systems. In addition, the 10 MHz blocks will be beneficial both for cellular licensees, who have limited eligibility for PCS participation in region, and possibly also for augmenting SMR. Finally, commenters discussed the desire to aggregate the 10 MHz blocks with the larger blocks in order to increase capacity for PCS services in heavy demand areas.

44. For these reasons, the Commission believes that public interest is best served by continuing the allocation of licenses on 10 MHz channel blocks in addition to the 30 MHz licenses. The number of 10 MHz blocks must be limited to three for any given area, however, because of the need to reserve spectrum for other uses such as MSS. Allowing the flexibility to aggregate spectrum blocks of different sizes will help ensure that efficient providers succeed. The Commission believes that 120 MHz will provide sufficient spectrum to promote competition rapidly and that flexibility in the provision of service will provide incentives for efficient use of the spectrum.

45. In sum, the Commission believes that a band plan that provides for three 30 MHz licenses and three 10 MHz licenses, all in the lower band, compared to the earlier plan, will better ensure that PCS services are available

[17] It also believes that fewer new viable PCS competitors might emerge under the six blocks of 20 MHz plan, given a spectrum aggregation limit of 40 MHz and the head start of cellular incumbents.

[18] In the *Notice of Proposed Rule Making* in the competitive bidding proceeding, PP Docket No. 93–253, the Commission indicated that it would consider setting aside Blocks C and D for small businesses, rural telephone companies, and businesses owned by minorities or women. Reconciliation Act § 6002(a), 107 Stat. at 389. *See* H.R. Rep. No. 103–213, 103d Cong., 1st Sess. at 482–484 (1993) (Conference Report); H.R. Rep. No. 103–111, 103d Cong., 1st Sess. at 255 (1993).

promptly and competitively to the American public.

46. A number of petitioners request clarification of, or changes to, the policies regarding the aggregation or subdivision of PCS spectrum and PCS service areas. In the *Second Report and Order*, the Commission limited any party's ability to aggregate PCs spectrum to an attributable interest in 40 MHz. Companies that were deemed to hold attributable interests in cellular license(s) covering 10 percent or more of the population in a PCS service area were limited to holding a single 10 MHz PCS license in that area. The Commission did not address the issue of whether it would allow disaggregation of spectrum.

47. The Commission believes that the 40 MHz limit for PCS spectrum is appropriate. No new information has been presented to indicate that each licensee in a market would require more than 40 MHz to provide broadband PCS service. Although at least one party argued that this limit should be amended to allow greater aggregation in rural areas, the Commission does not believe that greater aggregation is needed. In particular, the demand in rural areas is expected to be sufficiently low that there should be no need for more than 40 MHz by any one provider. If demand in rural areas is not sufficient to meet than 40 MHz of spectrum to one entity, it would be preferable to have additional competitors serve these customers rather than to license more than 40 MHz of spectrum to one entity.

48. One of the goals in this proceeding is to promote competitive delivery of wireless services. As a result, the Commission feels that not only is an overall cap on PCS spectrum important to prohibit excessive spectrum aggregation, but that a comparable separate limit should be placed on cellular providers since they already hold 25 MHz of clear spectrum and already have a large number of existing wireless customers. To ensure competitive parity, cellular carriers will be subject to an overall spectrum cap of 35 MHz for their combined PCS and cellular spectrum. The Commission is persuaded by the argument, raised by a number of parties, that because of cellular's "headstart" in the wireless telephone market, existing infrastructure and large base of customers, cellular carriers might be able to dominate the wireless market if they receive more than 10 MHz of PCS spectrum. It also recognizes that new entrants face a possibly lengthy process to relocate existing microwave users so they can use all of their spectrum. Cellular carriers already have 25 MHz of clear spectrum in operation whereas new entrants may have to relocate microwave users to gain access to that much spectrum, even if they acquire 40 MHz at the auction. In addition, the Commission is concerned that additional spectrum acquired by cellular entities may reduce the amount of spectrum available to new entrants and increase the costs to new entrants. To promote the ability of new entrants to acquire spectrum and rapidly begin service as strong competitors to in-region cellular carriers, the Commission has decided to continue to permit cellular carriers to acquire and hold only a single 10 MHz license in any PCS service area where they are considered in-region. However, because the market advantages enjoyed by cellular carriers should decrease as competitive PCS offerings are implemented, cellular carriers will be allowed to acquire an additional 5 MHz after January 1, 2000. This will allow cellular carriers to acquire the same total amount of spectrum (40 MHz) as other entities. Limiting in-region cellular carriers to 10 MHz of PCS spectrum for five years will not disadvantage them relative to the new entrants who must contend with microwave relocation over their entire spectrum block(s) and do not necessarily have an established customer base or comparable infrastructure advantages.[19]

49. The Commission rejects the contention that the aggregation limit be raised to 45 MHz to permit cellular entities to acquire an additional 20 MHz. If such aggregation to 45 MHz through the disaggregation of 30 MHz blocks were allowed, the number of full service competitors could be reduced to the detriment of realizing the goals defined for PCS. If the Commission were to allow aggregation to 45 MHz through the aggregation of 10 MHz blocks, there would not be enough blocks to assure both full cellular participation and the participation of other parties who desire 10 MHz licenses. The Commission concludes that 40 MHz remains an appropriate limit on PCS spectrum because it protects the competitive structure, provides sufficient spectrum for efficient provision of wireless services, and encourages a wide diversity of firms to participate in the industry. Furthermore, the Commission is seeking comment in another proceeding as to whether and how the aggregation limit may be applied uniformly to all mobile communications providers. Extending the PCS spectrum aggregation limit to include other mobile services, such as SMR and wide-area SMR services, is beyond the scope of this proceeding. The Commission therefore intends to address issues relating to spectrum aggregation across other commercial mobile radio services in a separate proceeding.[20]

50. Although, as stated above, the Commission believes that spectrum disaggregation should be permitted, there is concern that there may initially be anticompetitive incentives to disaggregate spectrum. Two or three entities might purchase a viable 30 MHz license and disaggregate it to reduce the number of new entrants. Thus, disaggregation of spectrum by any licensee will be permitted only after that licensee meets the five year construction requirement. The five year point will allow the PCS market to take shape. Entities desiring to use small amounts of spectrum before the prohibition on disaggregation ends can either purchase the 10 MHz blocks of spectrum if they wish to provide service using less than 30 MHz or enter into joint ventures or resale arrangements to facilitate their access to spectrum. The Commission expects to conduct a further proceeding to specify the rules for spectrum disaggregation, which will also explore the possibility of permitting disaggregation for other commercial mobile radio services.

51. The Commission agrees with the suggestions of the petitioners and responding parties that PCS entities should eventually be permitted to disaggregate spectrum. It feels that, in the future, disaggregation will complement the three 30 MHz and three 10 MHz channel plan by allowing subdivision of spectrum blocks where service providers find that economic or other conditions warrant it. Allowing spectrum disaggregation, even if it is prohibited until the first construction benchmark, will provide appropriate incentives for service providers to conserve their use of spectrum and to invest in spectrum conserving technologies. Because PCS licensees have paid for the use of the spectrum and have the ability to sell it in the future, they should be especially sensitive to the value of the resource they are using and will be motivated to ensure that it is used in the most valuable way.

52. In determining the appropriate placement of the 10 MHz blocks within the lower band, the Commission seeks

[19] Because the Commission is prohibiting spectrum disaggregation until the year 2000, cellular entities will have an opportunity to acquire 5 MHz of additional spectrum at that time.

[20] *See Further Notice of Proposed Rule Making*, GN Docket No. 93-252, FCC 94-100, released May 20, 1994.

to promote the development of an efficient market structure and to ensure that no subset of license has any inherent competitive disadvantage due to placement of licenses in the band plan. In particular, the benefits of aggregating the 30 MHz blocks with the 10 MHz blocks must be compared to the benefits of aggregating the 10 MHz blocks themselves. Interspersing the 10 MHz blocks between each 30 MHz block facilitates aggregation to 40 MHz by allowing combination of each contiguous 30 MHz and 10 MHz license pair. This also facilitates relocations of the existing fixed microwave operations by matching fixed microwave channels with PCS channels. This will keep to a minimum the number of parties responsible for each relocation which will reduce relocation negotiation, timing and costs. On the other hand, keeping all 10 MHz licenses contiguous would allow more efficient aggregation of these licenses as a substitute strategy for obtaining one of the three 30 MHz blocks. The Commission concludes that interspersing the 10 MHz licenses between the 30 MHz licenses to permit efficient aggregation up to 40 MHz should the market favor that outcome is the best approach. Recognizing that aggregation of the 10 MHz licenses may be attractive to some parties, however, the Commission is also making two of the 10 MHz licenses contiguous so as to permit this aggregation to 20 MHz, should some parties favor 20 MHz over 30 MHz.

53. In the *Second Report and Order*, the Commission specified that the two 30 MHz blocks would be licensed on an MTA basis and that the 20 MHz block and four 10 MHz blocks would be licensed on a BTA basis. It adopted this plan to promote the rapid deployment and ubiquitous coverage of PCS and felt that these areas would follow the natural flow of commerce.

54. The Commission has decided to retain the geographic license areas definitions for PCS licenses adopted in the *Second Report and Order*. It rejects the arguments that all licenses should have the same geographic scope and rejects any attempt at re-drawing the boundaries along cellular MSA/RSA lines.

55. The Commission rejects the use of cellular MSA/RSA boundaries for a number of reasons. The ten-year history of the cellular industry provides evidence generally that these service areas have been too small for the efficient provision of regional or nationwide mobile service. The large transaction costs to aggregate MSAs and RSAs that have been incurred over the past ten years in the cellular industry have frequently been directed towards geographic aggregation to provide wider service areas for consumers and to lower costs of providing service. Rather than forcing replication of this costly and time-consuming process, the Commission is beginning with larger service areas, which it expects to minimize the need for costly post-auction transactions. The Commission also hopes to spur market competition from new PCS providers by starting with larger initial geographic service areas to alleviate the cellular headstart advantage. It realizes that the MTA and BTA license boundaries do not coincide with existing cellular license boundaries, but feels that the costs imposed by these different license boundaries will be outweighed by the benefits of larger initial service areas. The Commission is cognizant of problems created by overlaps between the PCS and cellular service areas, and intends to provide some relief from these problems.

56. The Commission also rejects the suggestion that all licenses should have the same geographic scope whether MTAs, BTAs, or Department of Commerce Economic Areas. While identical geographic areas may impose more initial competitive parity, the Commission does not believe that this will maximize competitiveness and participation in the provision of PCS services. Licensing all blocks on an MTA basis might increase competitiveness with cellular, but it would limit the ability of cellular companies and designated entities to participate in the provision of PCS. Cellular companies could be restricted because of overlaps with MTAs that might not occur with BTAs. Designated entities are likely to be better able to finance the construction of PCS across a BTA than an MTA. Thus, by licensing some blocks on a BTA basis, the Commission complies with Congress' directive that it prescribe area designations that promote economic opportunity for a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women.

57. The Commission therefore continues to feel that a combination of MTA and BTA licenses will give licensees the opportunity to select and combine service areas and promote broad participation in the provision of PCS services by firms of various sizes. Licensing two of the 30 MHz blocks on an MTA basis will permit these licensees to operate in large service areas which will facilitate interoperability and roaming across wide geographic areas. Licensing the third 30 MHz block on a BTA basis will not preclude such efficiencies because of the ability to aggregate licenses geographically. In addition, in much the same way as the variety of spectrum block sizes allows various strategies, the variety of geographic sizes will allow firms to determine the optimal geographic strategy they wish to pursue. This will also help to meet the statutory objectives of disseminating licenses to a wide variety of licensees. In addition, allocating four of the six licenses on a BTA basis addresses the concern the rural buildout would not occur with MTA licenses.

58. Finally, with regard to the Puerto Rico service area, the Commission will provide two separate BTA service areas in Puerto Rico, one for Mayaguez/Aguadilla-Ponce and the other for San Juan. This action recognizes the difficulties created by the mountain range separating these two areas. No parties opposed this request, and the Commission finds this adjustment to be in the public interest.

59. The Commission agrees with the parties which oppose permitting geographic partitioning at this time, since there is a significant risk that partitioning can be used to circumvent construction requirements. While there may be efficiency enhancing geographic partitions, much of the benefit can be obtained through other arrangements that do not raise the same concerns about circumvention of the construction rules. On balance, the Commission concludes that it should not adopt a policy allowing general geographic partitioning, but should rather recognize that the balance may be different for particular groups of service providers, such as rural telephone companies or to create PCS ownership opportunities for companies owned by minorities or women. Therefore, the Commission will consider the issue of geographic partitioning for rural telephone companies and other designated entities in its forthcoming Order, to adopt specific competitive bidding rules for broadband PCS in PP Docket No. 93–253. There the Commission will address other designated entity preferences and will rely on the record in both proceedings in making final determinations on this matter. Also, the Commission will address whether it should recover the unserved PCS areas at the end of the ten-year construction period, in a later proceeding after it has had an opportunity to assess the scope of system build-outs.

60. In developing a band plan for PCS, the Commission has had to weigh the spectrum requirements of licensed PCS

with the amount of spectrum allocated for unlicensed PCS. For reasons described above, the new band plan moves all of licensed PCS to the lower band. As a result of this change, the amount of spectrum available for the operation of unlicensed PCS devices has been reduced from 40 to 20 MHz. This is the amount of spectrum originally proposed for unlicensed devices. Despite having less spectrum available for unlicensed PCS devices in the near term, the Commission believes that the new band plan will have an overall positive effect for consumers in terms of the diversity and utility of unlicensed devices available on the market, as well as the rapid deployment of competitive licensed PCS Services.

61. One reason the Commission reaches this conclusion is that even without this change it is unlikely that the 20 MHz reallocated to licensed from unlicensed would have been used in the near term for unlicensed. The spectrum at 1890 to 1910 MHz was regarded as less desirable than the 20 MHz retained for unlicensed PCS at 1910–1930 MHz because it contains significantly more microwave incumbents. The Commission's expectation was that unlicensed devices first would operate on the 1910–1930 MHz spectrum because the cost of clearing this spectrum is significantly less. Licensed PCS providers, by contrast, provide ample evidence in the record that they are ready to begin the relocation of microwave incumbents in the lower band and provide service in the near term and can use the spectrum from 1890–1910 MHz rapidly. Thus, consumers are more likely to obtain immediate benefits if the Commission allocates this spectrum to licensed PCS rather than for unlicensed PCS devices.

62. Another benefit of the new band plan is that the licensed and unlicensed PCS spectrum will be located in close proximity on the lower band. Consumers will have more choices for equipment that operates on both unlicensed and licensed PCS bands, and will not have to buy higher-priced equipment that operates on both the lower and upper PCS bands to have available the full array of service options with a single piece of equipment. Finally, the Commission intends that the initial 20 MHz allocation for unlicensed PCS devices meet the near term spectrum requirements for unlicensed devices. To consider the long-term spectrum requirements of unlicensed PCS devices, the Commission intends to issue a Notice of Proposed Rule Making in the near future to identify additional spectrum for unlicensed PCS devices.

63. For the reasons set forth above, therefore, the Commission concludes that consumers and manufacturers of equipment intended for use on the unlicensed band will benefit from the new band plan. This does not diminish the concern that there be sufficient spectrum allocated for unlicensed PCS devices to accommodate expected demand, and therefore as noted above, the Commission is committed to instituting a further rule making for this purpose to meet the long term requirements for unlicensed PCS devices, including those potential unlicensed uses that may not be accommodated readily in the initial 20 MHz allocation.

64. *Private Use.* The Commission agrees with the parties who argue that both commercial PCS service and unlicensed PCS devices will be able to meet many of the communications requirements of private entities. The PCS licensees will be permitted to tailor specific service applications to the particular needs of individual organizational customers. Any such service applications, of course, must be consistent with policies established for the regulation of commercial mobile radio services under Title II of the Communications Act.[21] Such applications could include the use of dedicated capacity. Where such arrangements might not be satisfactory, entities desiring spectrum solely for internal private use could, of course, bid for licensed PCS spectrum individually or as a group intending to share the licensed facilities. Companies that value private use of the spectrum highly could win a license at auction; otherwise they could contract with a licensee to provide the services they need, or procure such services from resellers. Moreover, as many commenters argue, the Commission believes that setting aside spectrum for private interests would not help to achieve the goals set forth for PCS, and at the same time, could detrimentally affect competitive service provision and the efficient allocation of scarce spectrum resources. Also, the extent to which additional spectrum is required for private and public safety use is being considered in a separate proceeding that addresses allocation of spectrum below 5 GHz transferred from Federal government use.[22] Accordingly, the Commission will not set aside a portion of the spectrum allocated to PCS exclusively for private PCS operations.

65. *Mobile Satellite Services (MSS) Issues.* The Commission recognizes the potential value of MSS as a service provider to rural areas that may not be economically served by PCS. It has thus given the petitions of MSS interests, including the various alternatives they suggest, careful consideration. Having been instrumental in obtaining the international MSS allocations at WARC–92, the Commission would not wish unnecessarily to reduce its flexibility to implement those allocations in the U.S. On the other hand, the large potential value of PCS, which is a matter of record in this proceeding, must be recognized. It should be noted that these MSS bands are also allocated internationally to fixed and mobile services. PCS, as it has been broadly defined, within the international definition of fixed and mobile services and is thus consistent with international agreements on the use of this spectrum. Because spectrum is a limited resource, the Commission finds that to satisfy the goal of allocating sufficient spectrum for a competitive PCS service, it must allocate to PCS a portion of the spectrum internationally designated for MSS. The Commission believes that the new plan it is adopting today strikes an appropriate balance between these two services and will provide maximum benefits to U.S. consumers.

66. The Commission disagrees with the assertion of several parties that they were provided insufficient notice and opportunity for comment on the possibility that the Commission might allocate a portion of the internationally designated MSS spectrum to PCS. The PCS *Notice* sought comment on a wide range of allocation options for licensed PCS ranging from three to five spectrum blocks of from 20 to 40 MHz each. Several of the possible combinations of block size and number of blocks would require the use of spectrum in the bands designated internationally for MSS, and

[21] *See CMRS Second Report and Order*, 9 FCC Rcd at 1439 n.130:

> The terms and conditions for different classes of customers may, of course, vary. Whether such differences are lawful would be a question of whether there is unreasonable discrimination under Section 202(a) of the [Communications] Act. In the case of individualized or customized service offerings made by CMRS providers to individual customers, the Commission intends to classify and regulate such offerings as CMRS, regardless of whether such offerings would be treated as common carriage under existing case law, if the service falls within the definition of CMRS.

[22] *See Notice of Inquiry*, ET Docket No. 94–32, 59 FR 25589 (May 17, 1994). This proceeding addresses, *inter alia*, a Petition for Rule Making filed by the Coalition of Private Users of Emerging Multimedia Technologies (COPE) for the development of an "Advanced Private Communications Service," using 75 of the 200 MHz to be transferred to the Commission's jurisdiction from Federal government spectrum in compliance with the terms of the Omnibus Budget Reconciliation Act of 1993.

at least one option (*i.e.*, five blocks of 40 MHz each) would require virtually all of that spectrum. The Commission specifically called attention to the fact that some of these options would necessarily require the use of spectrum in other emerging technologies bands, and it did not exclude emerging technologies bands that had been designated internationally for worldwide or Region II MSS. Thus, contrary to petitioners' contentions, the Commission believes that parties were given adequate notice of the possibility that the final PCS allocation could include some or even all of the internationally allocated MSS spectrum in these bands.

67. Under the new band plan, the entire allocation to broadband PCS is located in the 1850–1990 MHz band. The 2180–2200 MHz band, which was allocated to PCS in the *Second Report and Order* has been returned to reserve status for future allocation potentially to MSS, as requested by the MSS interests. The new band plan, however, removes an equal amount of spectrum from potential consideration for MSS in the band 1970–1990 MHz band, 10 MHz of which can be used for Region II MSS service. The Commission believes that its new band plan accommodates the future potential of MSS more fully than its original plan and therefore addresses the concerns of a majority of the MSS industry.

68. By shifting the PCS allocation out of the 2180–2200 MHz band the Commission has preserved the option of allocating some or all of that spectrum to MSS in the future. This preserves 50 MHZ of the 60 MHz allocated worldwide and thus fits more closely with the international agreements. Twenty MHz of this worldwide MSS spectrum is paired with spectrum inside the current broadcast auxiliary band. In the future, this spectrum could potentially be reallocated for MSS use on a shared basis, if feasible, or exclusively, if suitable replacement spectrum could be found for broadcast auxiliary service. The commission intends to initiate a proceeding to investigate these additional allocation possibilities in the near future, with the purpose of accommodating MSS operations within the remaining internationally designated bands, while at the same time maintaining sufficient spectrum for broadcast auxiliary use. It also intends to pursue additional international allocations for MSS at WRC–95.[23]

Ownership Rules and Cellular Eligibility

69. In the *Second Report and Order*, the Commission recognized that permitting cellular licenses to participate in PCS could foster rapid development of PCS by taking advantage of cellular providers' expertise, economies of scope between PCS and cellular service, and existing infrastructures. The Commission also recognized that new entrants would foster competition and expressed concern about potential anticompetitive conduct by parties with cellular and PCS interests in the same geographic area. To balance these competing interests, cellular licensees were permitted to obtain PCS licenses outside of their cellular service areas, but restricted them each to one 10 MHz PCS license within their respective cellular service areas.

70. For the purposes of its PCS rules, the Commission defined an attributable cellular interest as ownership of 20 or more percent of a cellular license. If an entity has attributable cellular interests in a license or licenses individually or jointly covering 10 or more percent of the population in a PCS service area, then that entity would be restricted to one 10 MHz PCS license in that area. If an entity holds interest of less than 20 percent in a cellular license, these interests are not considered attributable and the population covered by that cellular license area is not counted towards the 10 percent population threshold. If an entity holds attributable cellular interests, *i.e.*, interests of 20 percent or more, in licenses that individually or jointly cover less than 10 percent of the population in a PCS service area, that entity may hold licenses for up to 40 MHz of PCS spectrum in that PCS service area. Entities that have attributable interests that put them over the 10 percent population overlap threshold in a PCS service area are deemed "in market" cellular entities and as such may only hold 10 MHz of PCS spectrum in that PCS service area.

71. The 20 percent attribution rule applies on a cumulative basis to all parties with ownership interests in cellular operations. Thus, for example, if four participants in a PCS venture each have an ownership interest of 5 percent in the same cellular licensee serving more than 10 percent of the population of a BTA, the PCS venture in which they all have an interest is deemed to have a 20 percent cellular ownership interest and is restricted to one 10 MHz frequency block in that BTA. However, if the four parties to a PCS application each own 5 percent interests in four different cellular licensees, each of which serves 10 or more percent of the BTA, together they are not restricted to one MHz block because they do not exceed the 20 percent attribution threshold as to any single cellular license. Therefore, in the latter instance, the parties are permitted to purchase a full 40 MHz PCS spectrum block.

72. Twenty-four parties petitioned for reconsideration of various aspects of the cellular eligibility rules and general attribution standard used for invoking the PCS ownership limits. The petitioners addressed: (1) eligibility of cellular licensees; (2) the 20 percent attribution standard; (3) the 10 percent population standard; (4) post-auction compliance by cellular licensees with the ownership restrictions; (5) exemptions from the eligibility restrictions for certain cellular providers; and (6) the interests that should be deemed attributable for purposes of calculating ownership and control of a PCS or cellular license.

73. *Eligibility of Cellular Licensees for PCS Licenses.* Six parties advocate eliminating all eligibility restrictions on cellular providers. Fourteen parties agree with the concept that there should be some restrictions on cellular participation in PCS. These latter parties' positions range from agreeing with the standards of the *Second Report and Order* to arguing for different measures of both coverage and ownership to favoring different standards entirely, but these parties all accept the idea that there should be limitations on cellular entities holding PCS licenses.

74. The Commission has decided to retain restrictions on cellular participation in PCS. In making this decision, the Commission is aware of the benefits that the cellular industry has to offer PCS, including capital, economies of scope, and experience and expertise in the provision of mobile communications services. For this reason, the Commission will continue to allow cellular participation in PCS. In addition, the Commission will make some changes in the specific standards of the *Second Report and Order*, but it remains convinced that restrictions on in-market cellular providers are necessary to achieve its goal of maximizing the number of new viable and vigorous competitors. In reaching this conclusion the Commission does not assume that in-market cellular providers will engage in illegal anticompetitive behavior; the goal in crafting these rules should not be to

[23] *See Preparation for International Telecommunication Union World Radio Communication Conferences*, IC Docket No. 94–31, FCC 94–96, released May 5, 1994.

prevent anticompetitive behavior which may or may not materialize, but rather, to promote competition. The Commission concludes that the public interest would be best served by maximizing the number of viable new entrants in a given market.

75. Finally, while some petitioners point out that SMR and MSS providers are not subject to the same eligibility restrictions as cellular providers, only one affirmatively requests that the eligibility restrictions of the *Second Report and Order* be extended to wide-area SMR services. The Commission feels that imposing eligibility restrictions is beyond the scope of this proceeding. It is, therefore, addressing in another proceeding the eligibility of wide-area SMRs and other commercial radio services to participate in PCS.

76. *Attribution Rules.* In the *Notice of Proposed Rule Making* in this proceeding, the Commission noted its expectation that PCS and cellular licensees serving the same area will compete on price and quality of service. If therefore stated that competitive benefits might be reduced if cellular licensees are permitted to acquire PCS licenses within their service areas and proposed an outright prohibition on cross-ownership of PCS licenses by entities with cellular interests, except that ownership interests of less than one percent (or less than five percent for publicly traded companies) would not be considered. In the *Second Report and Order,* the Commission found this approach too restrictive. Although the Commission still sought to avoid the potential for undue market power by entities with significant existing market share, it balanced that goal against recognition of the expertise that cellular licensees would bring the PCS markets. It also noted that many entities possess non-controlling interests in cellular licensees exceeding 5 percent but, due to the non-controlling nature of their equity interests, create little potential four anti-competitive behavior.

77. The Commission therefore adopted a simple, bright-line 20 percent cross-ownership attribution standard, pursuant to which entities with 20 percent or greater ownership of a cellular operator were limited to one 10 MHz BTA license for broadband PCS in the same region as their attributable cellular interests. It did not distinguish between different types of ownership such as voting and non-voting stock and general and limited partnership interests. The Commission noted, however, that while a clear 20 percent ownership threshold may be more administratively efficient, a concern remained that some parties with cellular ownership interests will use the rules as an opportunity to control local cellular licensees while retaining less than 20 percent ownership. Since such occurrences would undermine the intent to limit cellular ownership in PCS, the Commission said that it would review carefully this decision, and it explicitly put parties on notice that it would reconsider this limit if its intent to ensure competition between cellular and PCS would be undermined under the ownership rules adopted in the *Second Report and Order.*

78. With respect to ownership interests in multiple PCS licensees in a single market, the Commission adopted a 5 percent attribution threshold for purposes of the 40 MHz PCS spectrum limit and for purposes of determining cellular ownership in a PCS licensee. It stated that PCS ownership interests of 5 percent or more will be attributed to the holder of the interest. In adopting this standard, the Commission cited similar market-based concerns, noting its desire to "ensure that [no entity] is able to exert undue market power through partial ownership in multiple PCS licensees in a single service area." The 5 percent threshold is consistent with the ownership thresholds applied to cellular and broadcast licensees. The Commission did not find any potential advantages possessed by any existing PCS licensees inasmuch as there are no such licensees. Similarly, it did not discuss the need to accommodate settlements among PCS licensees resulting in non-controlling interests of between 5 and 20 percent because there are no such settlements in the PCS context. The Commission therefore adopted this 5 percent limit for application to PCS multiple ownership, whereas it appeared too restrictive in the cellular-PCS cross-ownership context given the realities of existing historical cellular settlements.

79. Twelve parties petitioned for reconsideration of the cellular ownership attribution standard. The petitioners recommend the following alternatives: (1) raising the 20 percent level of permissible ownership in cellular licensees; (2) attribution based on control rather than ownership; (3) applying an affiliation standard like that in the Commission's telco-cable cross-ownership rules; (4) applying an attribution standard based on the rules used to enforce the alien ownership restrictions under Section 310 of the Communications Act; and (5) applying the same attribution rules to PCS as those applied to broadcast interests.

80. The Commission continues to believe that the PCS and cellular ownership attribution decisions adopted in the *Second Report and Order,* with certain modifications, are appropriate and strike a reasonable balance between promoting vigorous competition and the advantages of allowing experienced mobile communications operators such as cellular licensees to participate as PCS licensees. The Commission disagrees with those parties which suggest the same 20 percent attribution limits should apply to cellular/PCS cross-ownership and to PCS multiple ownership. Generally, the 5 percent standard for all cross-ownership situations would be preferable, to maximize competition. The Commission is adopting an attribution threshold of 5 percent for multiple PCS ownership purposes to prevent any party from exerting market power through substantial partial ownership in multiple PCS licensees in the same service area. There is no countervailing reason to risk reducing competition by raising this 5 percent limit for PCS multiple ownership limits. Moreover, the 5 percent threshold is consistent with ownership thresholds applied to cellular and broadcasting.

81. Such a strict rule for PCS/cellular cross-ownership, however, would not recognize the history of cellular licensing. The 20 percent ownership attribution standard for cellular operators was adopted, in part, because settlements during the initial phase of cellular licensing resulted in partial and often non-controlling interests in those licensees. In light of this history, it would be unfair and unduly restrictive to place the same 5 percent limit on cellular/PCS cross-ownership. For this reason, the Commission decided to allow a 20 percent cellular ownership interest. Further, the Commission believes that given the nature of these settlement agreements, permitting this level of ownership will not decrease the incentives for competition. Therefore, divestiture to a lower level of ownership will not be required. The 20 percent standard permits many entities with partial, non-controlling cellular interests to participate in PCS. In adopting the 20 percent standard, the Commission recognized that participation by cellular operators in PCS would offer benefits that include promoting early development of PCS by taking advantage of cellular providers' expertise and permitting attainment of economies of scope between PCS and cellular service and existing infrastructure. The Commission is therefore making an exception to its usual treatment of cross-ownership for purposes of cellular-PCS cross-ownership.

82. The Commission disagrees with those entities that argue for a higher cellular ownership attribution threshold such as 35 percent and believes that 20 percent is the proper standard. A higher attribution threshold (*i.e.*, above 20 percent) for all incumbent cellular entities would tend to suppress competition, because the licensee would have economic incentives not to compete vigorously against competitors in which it holds a substantial equity interest. These standards, with exceptions discussed below related to certain designated entities, remain appropriate, and accordingly the Commission affirms them.

83. The Commission's goals here include ensuring that the holder of the PCS license has strong incentives to compete against the cellular licensees in the same geographic market. A PCS licensee that has a large equity stake (*i.e.*, more than 20 percent) in a cellular license in the same area has less incentive to compete vigorously against its own equity interest in a cellular provider, even though it may not exercise legal control over the cellular licensee. The attribution rules provide the right balance between maximizing competition and allowing cellular entities to bring their expertise to PCS. The Commission therefore will not adopt a rule that would require finding that a party had a "controlling interest" in a cellular licensee before it would be prohibited from investing in a PCS licensee in the same area. Such a rule could substantially delay the licensing of PCS and would not serve the goal of promoting vigorous competition between PCS and cellular licensees in the same area. The Commission believes that the bright-line rules being adopted will result in a faster, less burdensome licensing process.

84. The Commission also rejects the suggestion that it prohibit all "affiliations" between cellular and PCS licensees in the same market, along the lines of its telco-cable cross-ownership rules. These rules, which are even more restrictive than the broadcast attribution rules, would not provide the flexibility to recognize the history of settlement agreements in cellular licensing and would not allow us to draw on the experience and expertise provided by cellular providers who have low equity stakes. They also might have the effect of restricting contracts between PCS licensees and companies financing their equipment and the build-out of their PCS systems, which could seriously impair rapid investment in and deployment of PCS systems.

85. The Commission also disagrees that the alien ownership rules provide a clearer guide than the present attribution standards. Because the alien ownership restrictions set forth in section 310(b) of the Communications Act were created specifically to avoid an undue concentration of foreign influence in the direction of entities involved in communications, the attribution thresholds defined in that section are more complicated than the 5 percent/20 percent bright-line thresholds adopted here. Further, unlike the rules in the broadcast context, the Commission will not allow use of a "multiplier" in the case of multi-tiered entities; the interest of the subsidiary is attributed in full to the parent. The Commission agrees, however, that both voting and non-voting stock should be included in determining percentage of ownership of PCS and cellular entities.

86. In determining attributable interests for the purposes of both the 20 percent cellular/PCS cross-ownership rule and the 5 percent PCS/PCS multiple ownership rule, the Commission agrees with some of the commenting parties that some clarifications and modifications to the attribution rules are warranted. The attribution rules must be simple for applicants to understand because they are essential to enforcement of the PCS spectrum cap and the PCS/cellular cross-ownership rules. In the *Second Report and Order*, the Commission stated that it would consider all equity ownership, including voting and non-voting stock and limited partnership interests, in calculating the percentages of attributable ownership interest in a PCS or cellular licensee. It explained that it would count these interests even if they did not confer on the holder meaningful participation, because the public interest would best be served by a "bright-line" test. The Commission continues to believe that the ownership rules should be clear and easy to administer, and, to that end, it will provide further clarification about which of the ownership rules from the broadcast regime will be applied to PCS. The Commission declines to adopt the full panoply of attribution rules that it applies in the broadcast and in the telco/cable contexts because it believes that the restrictions being adopted will be sufficient to prevent undue influence and preserve competition.

87. The Commission clarifies that, for purposes of these ownership rules, controlling interests *per se* are attributable. As in other contexts, "control" means not only majority equity ownership, but includes any general partnership interest, or any means of actual working control over the operation of the licensee, in whatever manner exercised. The Commission will rely on existing case law for making control determinations where such issues arise.

88. The Commission also clarifies that PCS equity investments of 5 percent or more, and cellular equity investments of 20 percent or more, also are attributable. These equity interests are attributable because they support the goals of developing a competitive PCS service and reducing the incentive for any entity to retard the capability of the new PCS licensee to compete with the cellular or any other PCS licensee in which the entity has an attributable interest. Specifically, the following equity investments will be counted: voting stock, non-voting stock, and limited partnership interests.[24] The percentage of ownership interest in a limited partnership will be based on the partner's economic interest in the partnership. Therefore, the Commission will assess the percentage of the partner's capital contribution as well as the percentage of profits and losses allocated to the partner. As noted above, general partnership interests are deemed attributable regardless of equity percentage because of the control conferred on general partners by the nature of their interest. The following investments are *not* attributable for multiple or cross-ownership purposes: debt interests, including loans secured by the equipment used in the licensed system, and equity interests below the 20 percent and 5 percent thresholds. These interests are of less consequence to or independent of the entity's performance and therefore provide little incentive to delay or dilute the participation of the new PCS license in the market. In addition, consistent with other multiple- and cross-ownership attribution standard, convertible debt instruments or options with rights of conversion to equity interests shall not be attributed unless and until conversion is effected.

89. The Commission also clarifies that the interests of a cellular or PCS licensee, or entity in control of a licensee, are attributed to the officers and directors of that entity. The Commission remains concerned about the ability of such individuals to exert influence over companies in which they have significant managerial responsibility. Therefore, if an officer of a company wishes to invest in a PCS market, he or she may only do so if this

[24] Thus, in a stock company, PCS and cellular interests of 5 or 20 percent, respectively, of the total outstanding stock as well as interests of 5 or 20 percent, respectively, of the outstanding voting stock will be attributable.

company itself could make the same investment in compliance with its rules.

90. The Commission also will not allow an exemption for minority investors in companies controlled by a single majority shareholder. Although these rules are used in the broadcast area to exempt from attribution entities not believed to be able to exercise control over a licensee, in the context of PCS not allowing use of a "multiplier" serves the goal of maximizing competition. These rules will help ensure against undue influence, short of control, by minority stockholders and distant stockholders in parent or intermediate corporations.

91. Through an ongoing proceeding concerning multiple ownership of CMRS licensees, the Commission will address whether it should change its rules to restrict or attributable resale, management agreements or other ownership arrangements that could confer possible anticompetitive incentives on parties with multiple CMRS interests. This proceeding will examine whether and to what extent such arrangements could be used to exert control over more spectrum than is permitted under the PCS spectrum cap (40 MHz) or the proposed CMRS spectrum cap.

92. *Attribution Rules for Certain Designated Entities.* The Commission agrees that relaxing the cellular eligibility restrictions is appropriate for designated entities. It recognizes that many designated entities are merely passive investors in cellular operators and, because of their size, are unlikely to influence pricing decisions. In addition, the Commission seeks to address Congress' goal of encouraging the participation of designated entities in the auction process and in the provision of spectrum-based services. The Commission believes that designated entities which have some interests in cellular operations may be especially effective PCS competitors because of their cellular experience. This will help ensure that service is brought quickly to underserved areas and that designated entities become viable competitors. In particular, it believes that rural telephone companies and some small cellular companies, due to their existing infrastructure, are uniquely positioned rapidly to introduce PCS services into their service areas or adjacent areas. However, designated entities are not entirely exempted from the cellular eligibility rules, because such an exemption could foreclose competition from a new PCS entrant. To the extent that designated entities are involved in the control of cellular services, there is potential for some of these parties to compete less vigorously in the nascent PCS industry. In balancing these interests, the Commission concludes that increasing the cellular attribution threshold for designated entities from 20 percent to 40 percent, if non-controlling, would be appropriate and would further the Congressional mandate noted above. Accordingly, the Commission will permit a designated entity to hold a non-controlling equity interest of up to 40 percent in a cellular licensee without being subject to the cellular PCS eligibility restrictions.

93. The Commission has decided to increase the cellular attribution threshold from 20 percent to 40 percent for any entity proposing to invest in businesses controlled by members of minority groups and/or women. An entity may hold up to a 40 percent interest in cellular licensees before its cellular interest will be deemed attributable, but must limit its participation in a PCS licensee controlled by women or minority group members to a non-controlling interest. This action will encourage entities with attributable cellular interests to make non-controlling investments in businesses owned by minorities and/or women, furthering Congress' objective of ensuring the participation of these entities in the competitive bidding process by encouraging an alternative source of financing. The record indicates that the main challenge that minorities and women face when seeking to participate in telecommunications licensing is ready access to capital. Investments by cellular providers in these designated entities should increase the entities changes for success in the actions and later in service competition by providing access to capital and valuable industry experience.

94. The Commission is not granting a blanket exemption to in-region cellular parties with 40 percent or greater equity or control to participate in consortia that include designated entities. Such an exemption would allow a cellular entity to control a cellular license and create the potential for the entity to influence the PCS licensee to compete less vigorously. The potential for a cellular entity to exercise undue influence over the PCS licensee, especially absent limits on the control exercised by the cellular carrier over the designated entity and its own cellular license, is too great, given the superior knowledge and experience of cellular providers. Therefore, the Commission has relaxed the cellular attribution standard to permit entities that hold up to 40 percent non-controlling equity in cellular licensees in the same service area to make non-controlling investments in PCS licensees controlled by woman- or minority-owned businesses. Because their investment will be non-controlling in both the PCS and cellular license, the threat to competition is diminished. This relaxed standard encourages availability of capital to PCS businesses owned by women and minorities, yet guards against the dominance of these designated entities by entities which also control a cellular license in the same service area.

95. The Commission will not exempt non-wireline cellular carriers from the PCS attribution rules, since this action, which was considered in the *Second Report and Order*, could impair successful achievement of the goal of creating the maximum number of new competitors.

96. These important modifications will increase the efficacy of our cellular eligibility rules by guarding against the improper exercise of market power by cellular providers through controlling interest in PCS systems overlapping their cellular coverage areas. These changes will better address concerns regarding reduced competition without unnecessarily restricting the ability of cellular providers to participate in PCS, and will provide further incentives for investment in and participation by designated entities in PCS.

97. *Population Standard.* When the Commission adopted regulations restricting the eligibility of certain cellular licensees to hold PCS licenses within their cellular service areas, it noted assertions that cellular operators might have unfair competitive advantages over PCS licensees. On the other hand, it also noted the valuable contributions that the expertise of cellular providers could provide to the PCS industry. Finally, the Commission noted that, because of different geographic licensing boundaries for cellular and PCS, there was a potential for excluding cellular providers from PCS markets even though the degree of overlap was minimal. The Commission decided that such an exclusion was neither fair nor desirable for maximizing competition. In resolving these conflicting interests, the Commission adopted the 20 percent ownership attribution rule to define cellular ownership for purposes of the PCS rules. For entities at or exceeding 20 percent ownership, it applied a 10 percent population coverage overlap test to determine whether the cellular licensee would be restricted to a single 10 MHz PCS license.

98. The Commission has decided to retain the 10 percent population overlap threshold adopted in the *Second Report and Order*. The goal is to provide for entry into the PCS market for the maximum number of viable competitors. The Commission remains concerned about the potential for cellular operators to exercise market power and to reduce the number of viable competitors in the PCS market. The Commission believes that the 10 percent population overlap figure is justified and should foster robust competition and prevent competitive abuse. Balancing the potential benefits of the participation in PCS of cellular providers and the potential harms of reduced competition, the Commission is convinced that the 10 percent coverage threshold is appropriate. This limit ensures the opportunity for the emergence of the maximum number of competitors that the market will support for 90 percent of the population. Increasing this limit beyond 10 percent would create greater risk that consumers would be denied the benefit of vigorously competing service providers. This threshold is also an important means of encouraging new entrants in each area, thereby enhancing competition. On balance, the Commission concludes that the 10 percent population coverage threshold promotes competition among licensees serving a significant percentage of the population, while providing some recognition of the overlaps that will result from the different licensing areas for PCS and cellular. In addition, as discussed below, divestiture will be allowed for those entities with CGSA/PCS service area population overlaps between 10 and 20 percent. In reaffirming the 10 percent threshold, the Commission rejects proposals to adopt a national population measure or to use a multiplier formula.

99. The Commission does not believe that a national population test would achieve the goal of providing the maximum number of new competitors in each market: PCS is being licensed on a local and regional, not national basis. A cellular entity which operates in one city but has no presence in another city would be a new competitor in the latter city. The Commission seeks to encourage that entity's PCS participation in the second city, because of the likelihood that the experience and economics it brings from its cellular business will stimulate PCS development in the market and promote vigorous competition to other PCS licensees.

100. The Commission does not believe that this "effective POP" attribution rule, based on a figure reached by multiplying the percentage overlap of the population in the PCS and cellular service areas by the percentage ownership in the cellular provider, would achieve the goal of maximizing the number of new competitors. Under this rule, an entity could have a majority equity interest in cellular licenses covering 40 percent of the population in that service area and remain eligible for 40 MHz of PCS spectrum. This would result in fewer competitive choices for 40 percent of the consumers in that market. This would not achieve the goal of maximizing competitive choices for as many consumers as possible.

101. *Post-Auction Divestiture.* The Commission concludes that it would be reasonable to permit incumbent cellular operators, in certain defined circumstances, to divest their cellular interests in order to become PCS licensees. These operators could become eligible for 40 MHz of PCS spectrum by either reducing population overlap or ownership levels to below the standards discussed above. Either could be accomplished before the auction, but that would involve selling the cellular interests on an assumption that the operator would be the successful bidder for a 30 MHz license.

102. Further, the Commission believes that allowing unlimited divestiture of the cellular interest after the auction raises concerns that abuses could occur during or after the bidding process. If afforded an unlimited opportunity to divest, cellular operators with significant areas of overlap could have incentives to use the bidding process to forestall licensing of new competitors in the market, because the cellular operator would be in control of both a cellular system and one of the three or four possible 30 MHz broadband PCS licenses. There are instances, however, in which such abuses are unlikely to occur. A cellular operator with less than 20 percent population coverage in the PCS service areas would have little incentive to risk incurring penalties for abusing the bidding process when PCS offers greater potential to serve the entire MTA or BTA. These cellular operators have more to gain by broadening their customer base by offering competitive PCS services in place of their overlapping cellular interests in excess of 10 percent than they do by abusing the bidding process to forestall competition. Operators with population overlaps in excess of 20 percent have increasingly greater incentives not to start competitive PCS businesses.

103. It is appropriate to allow cellular operators to divest themselves of attributable cellular interests that do not comply with the cellular/PCS cross ownership restriction after winning more than 10 MHz of PCS spectrum in the PCS auctions, provided that the divestiture occurs within the short time frame set forth below. However, because a cellular operator with significant overlaps may have incentives to delay the rapid introduction of PCS service, the Commission will permit cellular divestiture only for cellular operators that serve less than 20 percent of the PCS service area. If the overlap consists of several cellular licenses, the incumbent may sell some of the licenses and keep others if the result is in compliance with the attribution and population overlap thresholds. This will help achieve the goals of rapid introduction of PCS service and competitive delivery because those entities with cellular operations near a PCS service area may be able to combine the operation into a single efficient operation that would benefit consumers.

104. The Commission has decided to allow the post-auction partial sale of attributable cellular interests so that entities may come into compliance with the cellular eligibility rules. Procedurally, it will require that a PCS applicant that meets the criteria for post-auction divestiture submit with the PCS license application (short-form) a statement that, if successful in obtaining more than 10 MHz of spectrum, it will come into complete compliance with the cellular/PCS cross-ownership restriction within 90 days of the PCS license grant. If more than 10 MHz is obtained, the long-form application for PCS licensing must be accompanied by a signed statement from the applicant that the cellular property causing the applicant to be in excess of the 10 percent population overlap, or enough equity to bring the entity into compliance with the attribution threshold, will be divested within 90 days of the PCS license grant to bring ownership interest below the permitted attributable ownership limits. If the PCS applicant is otherwise qualified, the PCS application will be granted subject to a condition that the PCS licensee come into compliance with the PCS/cellular cross-ownership rule within 90 days of grant.

105. As a condition of its PCS license, within 90 days of PCS license grant the PCS licensee must certify to the Commission that the applicant and all parties to the application have come into compliance with the PCS-cellular cross-ownership rules. If the PCS licensee fails to submit this certification

within 90 days, the Commission will invoke the condition on the PCS license, cancelling it immediately and retaining all monies tendered. In addition, the Commission may investigate whether the certifications on divestiture are evidence of misrepresentations that call into question the party's qualification to hold its cellular license. The PCS licensee may divest the prohibited interest to an interim independent trustee if a buyer has not been secured in the required time frame as long as the applicant has no interest in or control of the trustee, and the trustee may dispose of the license as it sees fit.

Construction Requirements

106. In the *Second Report and Order*, the Commission stated its expectations that broadband PCS would be a highly competitive industry and that licensees would have the incentive to construct facilities to meet the demand for service in their licensed areas. The Commission concluded that specific channel loading requirements are unnecessary; however, it required licensees to meet specified construction benchmarks to ensure efficient spectrum utilization and service to the public. Specifically, it required licensees to offer service to one-third of the population in their service area within five years of licensing, two-thirds of the population in their service area within seven years, and 90 percent of the population within ten years. The Commission stated that failure to meet these requirements would result in forfeiture of the license and the licensee would be ineligible to regain it.

107. The Commission believes that PCS will be a highly competitive service and that licensees will have incentives to construct facilities to meet the service demands in their licensed service areas. Further, it believes that the use of competitive bidding for PCS licensing and the restrictions on the amount of spectrum that a licensee may control in a geographic area will limit the likelihood that spectrum will be warehoused. Nevertheless, the Commission continues to believe that minimum construction requirements are necessary to ensure that PCS service is made available to as many communities as possible and that the spectrum is used effectively. The Reconciliation Act amendments require the Commission to impose performance requirements, but the Commission believes that relaxation of the requirements is desirable to ensure an economical deployment of the service to promote opportunities for PCS "niche" services, and to facilitate a competitive market.

108. Accordingly, the construction requirements are amended as follows. All 30 MHz broadband PCS licensees will be required to construct facilities that provide coverage to one-third of the population of their service area within five years of initial license grant and to two-thirds of the population of their service area within ten years. The 10 MHz licensees will be required to meet a single construction requirement of providing coverage to one-fourth of the population of their service area within five years; or alternatively, they may submit an acceptable showing to the Commission demonstrating that they are providing substantial service. The Commission recognizes that these requirements are less than the requirement for narrowband PCS licensees, but it believes that this difference is appropriate given the higher expected construction costs involved for broadband PCS. Moreover, since licensees must purchase their licenses, they will have added economic incentives to construct their systems as rapidly as possible and introduce service to a significant percentage of the population. In this regard, the Commission also believes that these relaxed construction requirements may increase the viability and value of some broadband licenses, especially those in less densely populated service areas. Finally, since most areas are already served by cellular and SMR providers, it is unnecessary to require PCS licensees to provide identical or similar services to areas where it is uneconomic to do so. With regard to the 10 MHz licensees, the reduced construction requirement will make these licenses more attractive to applicants intending to provide residential, cutting-edge niche services or services to business and educational campuses where the population may be small except during business or school hours.

109. At the five-year benchmark the Commission will require all licensees, and again at the 10-year benchmark for 30 MHz licensees, to file a map and other supporting documentation showing compliance with the construction requirements. Licensees failing to meet the population coverage requirements described above will be subject to the license forfeiture penalties adopted in the *Second Report and Order*. Even with these requirements, factors such as incumbent microwave operation or sparse population density in some instances could make compliance difficult. In instances where the circumstances are unique and the public interest would be served, the Commission will consider waiving the requirements on a case-by-case basis. These revised construction requirements will ensure efficient spectrum utilization and promote significant nationwide coverage without imposing substantial cost penalties on licensees that serve less densely populated areas. In this regard, the Commission believes that these changes generally address the concerns of those parties that suggested lowering the construction requirements for designated entities or for BTA service areas.

110. The Commission also recognizes the desirability of encouraging more than one provider to serve a diverse geographic area, and notes that resale of a licensee's geographic area to other entities, subject to the licensee's control, is not prohibited by its rules. Accordingly, it recognizes that licensees may resell spectrum, and believes that this will facilitate the deployment of PCS. Whether or not the licensee enters into resale arrangements, it will be responsible for insuring that the coverage requirement and all the other requirements of the rules are met. The reseller will not be a separate licensee, but rather, will operate subject to the control of the licensee. Resale will encourage service provision, particularly to rural areas, and allow smaller, predominantly rural companies to participate in PCS. The Commission intends to examine in another proceeding whether resale arrangements confer attributable interests on the reseller.

111. In summary, these relaxed construction requirements will foster provision of PCS services and will promote diversity in their provision. Permitting licensees to resell service subareas, subject to the licensee's control, will permit smaller, rural companies to provide PCS without participating in the competitive bidding process. Finally, the development of PCS in rural and other under-served areas will be closely monitored, and, if necessary, these construction requirements will be readdressed to ensure that the Commission's goals for wide area service are met.

Technical Standards

112. *Roaming and Interoperability Standards.* In the *Second Report and Order*, the Commission provided maximum flexibility in technical standards to allow PCS to develop in the most rapid, economically feasible and diverse manner. Specific technical standards were prescribed only to the extent necessary to avoid harmful interference. The Commission recognized that several industry

technical and standards groups were addressing matters related to PCS technical standards. It encouraged those groups to consider ways of ensuring that PCS users, service providers, and equipment manufacturers could incorporate roaming, interoperability and other important features in the most efficient and least costly manner, noting that PCS will be more useful to the extent that users are not limited by geography or by their ability to use their equipment with different systems.

113. The Commission continues to believe that a flexible approach, applying only those standards necessary to prevent interference, is appropriate. As indicated in the *Second Report and Order*, this will allow PCS to develop in the most rapid, economically feasible and diverse manner. Interoperability for PCS is an important and beneficial goal; however, acceptable interoperability is likely to emerge between PCS licenses in a timely manner without the Commission's intervention. The Commission's decisions to provide for large regional MTA licenses, to move all PCS licenses to the lower band, and to permit further aggregation of spectrum blocks across geographic regions all foster wide-area roaming and interoperability. In addition, competitive bidding for PCS licenses will facilitate the development of regional or nationwide systems.

114. The Commission is also aware that the industry is now working aggressively to complete several voluntary interoperability standards for PCS in a timely manner. It strongly supports these efforts and continues to encourage the industry's work in this area. The availability of interoperability standards will deliver important benefits to consumers and help achieve the objectives of universality, competitive delivery of PCS, that includes the ability of consumers to switch between PCS systems at low cost, and competitive markets for PCS equipment.

115. Interoperability, not only nationwide on one block but also between PCS spectrum blocks, should be in the business interest of all PCS providers. Such broad interoperability will increase the economies of scale in manufacturing PCS equipment such as handsets, will made more likely to subscribe to PCS because they can easily move from carrier to carrier without having to purchase new handsets, and will make it easier for PCS licensees to aggregate blocks of PCS spectrum up to 40 MHz and to create wide-area or national PCS systems. For these reasons, the Commission believes that it is in the public interest for the industry eventually to achieve compatible interoperability standards for all PCS spectrum blocks. Nevertheless, it understands that the industry is not yet ready to arrive at any standard. In addition, the Commission does not want to discourage innovation in designing PCS services. Therefore, at this time the Commission is not mandating that the industry arrive at a single interoperability standard across all PCS spectrum blocks.

116. The Commission intends to monitor the industry's progress in developing and implementing PCS technical standards in the particular hope that some of the standards proposed for PCS will be adopted or near completion at the time of the broadband PCS auction. If the development of PCS technology is not proceeding in a manner that will accommodate roaming and interoperability, the Commission may revisit this issue and consider what actions the Commission may take to facilitate the more rapid development of appropriate standards. Finally, to facilitate international acceptance of U.S. PCS technology, the Commission will be receptive to requests seeking its endorsement of completed ANSI standards, provided that such endorsement does not limit the flexibility of PCS licensees to select standards and technologies best suited to their needs.

117. *PCS Power Limits.* In the *Second Report and Order*, the Commission established a maximum e.i.r.p. of 100 watts and a maximum antenna height above average terrain (HAAT) of 300 meters for PCS base stations. The Commission recognized that most PCS experimental systems operated at a maximum power of 10 watts e.i.r.p., but adopted a limit of 100 watts e.i.r.p. for base stations to permit additional flexibility in the design of PCS systems. It also specified a maximum power limit of 2 watts e.i.r.p. for mobile units.

118. The Commission believes that increasing the maximum base station power limit to 1640 watts e.i.r.p. will improve PCS licensees' ability to configure their systems to best serve the needs of their customers and to compete with other mobile services such as cellular and wide-area SMR. Higher power will allow individual PCS base stations to serve larger geographic areas more effectively. The ability to serve larger geographic areas will also promote the goal of service to less populated areas. The flexibility to use higher power will provide PCS system operators greater flexibility in determining system architecture, *i.e.*, the number of base stations deployed to serve a given area, based on service demands rather than adequate coverage considerations. This change will also facilitate the use of new technologies, such as high-gain, directional antennas, as well as potential improvements to the design of subscriber products. Further, there is no reason to restrict licensed PCS operations to afford additional protection to unlicensed devices. Such a limit would be detrimental to licensed PCS services and unfairly disadvantage blocks A and C that are adjacent to the unlicensed spectrum. In addition, unlicensed operations will be relatively short range and therefore can be designed to resist adjacent channel interference. Accordingly, the Commission is amending the rules to allow PCS base stations to operate with up to 1640 watts e.i.r.p. It is also amending PCS power/HAAT coordination distance requirements to reflect this increased maximum power level.

119. While the Commission believes that the power limit for base stations should be increased to 1640 watts e.i.r.p., this increase in power should not be used in such a manner that the resulting PCS system becomes unbalanced so that mobile units are unable to communicate with the base station. To ensure balanced base-to-mobile and mobile-to-base communications, the Commission is also limiting the transmitter output power of the base station to 100 watts. By limiting the transmitter output power as well as e.i.r.p., it intends to promote the use of the high gain, directional antennas to achieve the larger coverage areas sought by the petitioners.

120. The Commission disagrees with those parties requesting higher power for certain mobile and portable units. A lower power output limit minimizes exposure to radio frequency energy, *see infra* Section VIII. Further, increasing the power output limit for subscriber units would necessitate unreasonably stringent and unenforceable coordination requirements. Unless the location of such higher power mobile units could be strictly controlled, interference could result to fixed microwave operations and/or to other PCS systems in adjacent service areas. For these reasons, the maximum power limit for mobile and portable PCS transmitters will not be increased.

121. *Protection of Fixed Microwave Operations.* In the *Second Report and Order*, the Commission stated that a principal concern in the authorization of PCS in the 2 GHz band is that existing fixed microwave operations be protected. It adopted the following

approach for providing such protection: 1) required PCS licensees to provide the same level of protection to microwave operations that they currently provide under Part 94 of the Commission's Rules and through the use of EIA/TIA Bulletin TSB10–E criteria and methodology; 2) specified antenna height and power limits for PCS; 3) adopted requirements for PCS licensees to coordinate with fixed microwave operators; and, 4) provided methods for calculating interference from PCS to incumbent microwave operations.

122. Specifically, in the *Second Report and Order,* the Commission adopted carrier-to-interference criteria for protection of short and medium length microwave links of 25 km (about 15 miles) or less. For path lengths longer than 25 km, where reliability is more dependent on the relative noise threshold and faded signal level, it limited the level of an interfering signal to that which would cause a 1 decibel (dB) degradation in the signal-to-noise ratio for analog systems or which would cause an increase in bit-error-rate (BER) from 10^{-6} to 10^{-5} for digital systems. Finally, the Commission endorsed procedures for calculating interference to microwave operations.

123. In the *Second Report and Order,* the Commission stated that with certain modifications, the level of protection provided under Part 94 of its rules and through application of TSB10–E criteria and methodology is appropriate and will provide adequate protection to microwave users from PCS operations. It also stated that it would accept the new TSB10–F procedures, when adopted by EIA/TIA, for use in demonstrating compliance with the technical standards for PCS to fixed microwave interference. Although many parties request that operators be required to use TSB10–F exclusively instead of that set out at Appendix D of the *Second Report and Order,* the Commission cannot adopt this standard as the only acceptable method for determining interference to microwave operations from PCS operations until it has had a chance to evaluate its merits and provide it to the public for comment. Therefore, the Commission will maintain the procedures adopted in the *Second Report and Order* with some modifications.

124. A prior coordination procedure is necessary to ensure that potential issues of interference are resolved before deployment of PCS systems. The Part 21 coordination requirements are appropriate for coordination of PCS and microwave facilities. These coordination procedures are generally familiar to the parties involved and are sufficient to address potential interference problems. Accordingly, the Commission will amend the PCS rules to include coordination procedures similar to those contained in Part 21. Coordination under Part 21 does not require written notification, and there is no reason to require that the PCS-to-microwave coordination be treated differently.

125. Further, the Commission believes that permitting PCS entities to pay for and upgrade incumbent microwave operation, such as providing better antennas or filters that would prevent interference, would facilitate the implementation of PCS. Specifically it would provide more choices and opportunity for sharing between the two services. However, mandating such upgrades of the incumbents' facilities would be difficult to regulate. Therefore, the Commission will allow for such upgrades when all parties agree but will not mandate them.

126. The Commission is concerned that excess fade margins in incumbent systems will inhibit the ability of PCS entities and microwave operations to share spectrum. However, it also recognizes that microwave systems vary in size, complexity and degree of reliability needed. Therefore, there is no way of adopting general rules mandating an acceptable fade margin that would apply fairly in all cases. Accordingly the Commission will not set limits on the amount of allowable fade margin in a microwave system, but it suggests, that incumbent licensees limit the fade margin in their systems to only that necessary for reliable service so as to help facilitate the implementation of PCS.

127. Further, the Commission notes that its Rules contain out-of-band radiation limits that must be met by PCS entities and that under the revised allocation PCS is only allocated spectrum in the 1850–1990 MHz band, so there is 120 MHz of separation between PCS and PPMRS operations. In addition, the current PCS rules provide for strict out-of-band emission limits, which are sufficient to protect microwave operations in adjacent bands, and, therefore, the Commission will not adopt any additional coordination or protection requirements for PCS operations.

128. The Commission does not believe that PCS licensees should be required to submit separate applications and obtain separate authorizations for each transmitter in their system. The information that would be submitted on their applications is unnecessary to the Commission, and its filing would be overly burdensome for PCS licensees.

129. Finally, the Commission believes automatic penalties on PCS operations that interfere with fixed microwave users are unnecessary and inappropriate. As the Commission stated in the *Second Report and Order,* a principal concern in the authorization of PCS in the 2 GHz band is that existing fixed microwave operations be protected. If interference were to occur, the PCS licensee would be expected to take appropriate action to resolve that interference. In cases where the PCS licensee did not take appropriate action, the Commission's current remedies, either forfeitures or revocation of licenses, are sufficient.

130. *PCS-to PCS Interference Standards.* In the *Second Report and Order,* the Commission established a limit for spurious emissions appearing outside of the spectrum allocated to PCS. No limit was specified for spurious emissions appearing within the PCS spectrum. The Commission also adopted minimal standards for PCS transmitter frequency stability, stating only that the stability must be sufficient to ensure that the fundamental emission remains within the authorized frequency block.

131. The Commission believes that limits on spurious emissions outside of the frequency block employed by a PCS licensee are needed to reduce the potential for harmful interference to other PCS operations as well as other radio services operating on spectrum outside of the PCS bands. Accordingly, it is amending the rules to indicate that the spurous emissions limits apply to emissions appearing on all frequencies outside of the frequency block employed by a licensee. It also clarifies that, when testing to show compliance with the spurious emission limits, the fundamental emission from the transmitter must be located as close the edge of the adjacent band as the transmitter is designed to operate. This will ensure that the emission limits are met under all normal operating conditions.

132. The Commission does not agree that the limits for spurious emissions should be further restricted when those emissions fall within the frequency bands allocated for unlicensed PCS devices but does feel that the standards for measuring spurious emissions need to be clarified. The measured levels of spurious emissions are dependent, to an extent, on the bandwidth of the measuring instrument. Specifying a minimum resolution bandwidth will eliminate confusion within the rules and provide repeatable measurement results. However, the Commission does not accept the proposed bandwidth of

1.0 percent of the emission bandwidth. Limits are placed on spurious emissions in order to reduce the potential for causing harmful interference. Ideally, the resolution bandwidth of the measuring instrument should be adjusted as close as possible to the bandwidth of the receiver for which interference protection is being provided. Near the frequency bands employed for PCS, typical receiver bandwidths can range from tens of kilohertz to several megahertz. Since the resolution bandwidth on most measuring instruments does not go above 1 MHz, this is typically the bandwidth employed by the Commission when measuring spurious emissions above 1000 MHz. The Commission believes that the use of a resolution bandwidth of 1 MHz is also appropriate for PCS equipment and is amending the rules to add this specification.

133. The Commission also clarifies that these limits apply to both the transmitter, as tested during type acceptance, and the operating system, as installed by the licensee. The level of the spurious emissions can be affected by the type of antenna employed by a licensee. It is for this reason, among others, that the Commission also may require a licensee to provide additional attenuation to spurious emissions, even beyond those limits stated in the regulations, when these emissions cause harmful interference to other users of the RF spectrum. The Commission is further clarifying the rules to note that additional attenuation can be required under such circumstances.

134. The measurement procedures for testing frequency stability are already specified in the regulations. As the frequency stability standard requires only that the fundamental emission stay within the authorized frequency block, the transmitter must be tested with the fundamental emission located as close to the edge of the authorized frequency block as the transmitter is designed to operate in order to demonstrate compliance under all normal operating conditions.

135. *Enhanced 911 Standards.* In the *Second Report and Order*, the Commission indicated that it would address matters relating to enhanced 911 (E–911) capability in PCS, cellular, and other mobile services in a future rule making proceeding. The development of an E–911 standard will necessitate consideration of issues affecting matters beyond PCS and therefore is more appropriately addressed in a separate proceeding. The Commission expects to begin this proceeding shortly and will address the issue of a single E–911 standard at that time.

Unlicensed PCS

136. *Spectrum Allocation.* In the *Second Report and Order*, the Commission allocated 40 MHz of spectrum for unlicensed PCS devices. The 1900–1920 MHz band was designated for asynchronous (primarily data) devices, and the 1890–1910 MHz and 1920–1930 MHz band was designated for isochronous (primarily voice) devices. The Commission concluded that this 40 MHz of spectrum would be sufficient to meet the demands of both nomadic and non-nomadic data and voice applications. Further, it noted that this band plan provides both asynchronous and isochronous operations an equal share of the 1910–1930 MHz band, which has fewer incumbent fixed microwave facilities that must be relocated before full use of the band can be made for unlicensed PCS.

137. As noted above, the Commission has amended the allocation and frequency plan for licensed PCS. Under this reallocation the amount of spectrum provided for unlicensed PCS devices is reduced from 40 to 20 MHz. Specifically, the 20 MHz of unlicensed PCS spectrum at 1890–1910 MHz is being reallocated to licensed PCS operations. The decision to reallocate this spectrum preserves the 1910–1930 MHz band for unlicensed devices. The Commission notes that this band is the most lightly loaded portion of the PCS spectrum and is the spectrum where most unlicensed equipment was expected to operate initially. Further, since unlicensed operations are restricted to very low power, they should be able to share or "reuse" the available spectrum very efficiently. Accordingly, the Commission believes that this reduction will not have a major effect in the near term on devices that will be able to operate on the unlicensed PCS bands. As noted above, in the near future the Commission will initiate a proceeding to consider allocation of additional spectrum to meet long term spectrum requirements for unlicensed PCS devices.

138. Taking into account this reduction in the total amount of spectrum available for unlicensed operations, the Commission finds that the interests of all concerned parties would be best served by retaining the plan to provide 10 MHz at 1910–1920 MHz for asynchronous or data devices, and 10 MHz at 1920–1930 MHz for isochronous or voice devices. This approach is balanced and treats both voice and data proponents fairly and equitably. Further, this approach will encourage the clearing of all existing microwave users from the entire 1910–1930 MHz band, thereby permitting the rapid introduction of nomadic voice and data devices. Accordingly, the Commission is amending its spectrum plan for unlicensed devices, as indicated above.

139. *Coordination.* In the *Second Report and Order*, the Commission designated UTAM as the coordinating body to manage the transition of spectrum from fixed microwave to unlicensed PCS. The Commission conditioned this designation on UTAM's submission and the Commission's acceptance of: (1) a funding plan that is equitable to all prospective manufacturers of unlicensed devices, and (2) a plan for band clearing that will permit the implementation of nomadic devices, in particular, nomadic data PCS devices, as promptly as possible. It stated that UTAM would be responsible for administering the transition, including negotiating costs of relocation, ensuring that comparable facilities are provided, and resolving disputes of interference to fixed microwave from unlicensed PCS operations. Further, it required that any unlicensed PCS device or system be coordinated through UTAM before being initially deployed or subsequently relocated. The Commission also required that all applicants for FCC equipment authorization of unlicensed PCS devices be participants in UTAM.

140. The Commission continues to believe that its basic approach for regulation of unlicensed PCS devices is appropriate. Based on the record, UTAM is the most suitable entity to act as the coordinator for unlicensed PCS devices. The Commission believes that UTAM is making good faith efforts to be open and to include the participation of all interested parties, including representatives of the data community. Neither additional guidance nor requirements are needed for UTAM at this time; there is no merit in eliminating UTAM's designation in the rules at this time. There will be ample opportunity to review UTAM's designation as the coordinator for unlicensed devices during the Commission's review of its funding and band-clearing plans. If UTAM is found unacceptable as a result of the review process, the Commission can amend its rules at that time to designate another entity.

141. The Commission intends to consider conditional equipment approvals for nomadic devices at the appropriate future time. When spectrum is available, or soon will be available,

for the operation of nomadic devices, it will issue a Public Notice announcing that it will begin accepting and processing applications for certification of nomadic devices. If the Commission accepts such applications before the spectrum is fully cleared for use by nomadic devices, the applications will be processed, but the actual grants withheld until an announcement is made that coordination is no longer required. At that time, the grants, if justified, will be immediately issued. This approach addresses any concerns that manufacturers will be able quickly to introduce new nomadic equipment.

142. The Commission believes that the labels for coordinatable unlicensed PCS equipment should also indicate that any relocation of the device must also be coordinated through, and approved by, UTAM and should include a toll-free number to assist users in contacting UTAM. This additional information will not impose additional burden on equipment manufacturers and will improve compliance with the coordination requirements for unlicensed PCS devices. It does not believe, however, that a more rigorous definition of a "coordinatable PCS device" is needed. The current definition is adequate to protect existing microwave operations from interference and also provides equipment manufacturers flexibility in designing their equipment to avoid such interference.

143. The Commission understands that the determination of whether and to what degree an unlicensed PCS device is coordinatable may place UTAM in a position of potential conflict of interest with its own members. Nevertheless, UTAM, as the coordinator for unlicensed device use, is responsible for ensuring that such devices do not cause interference to existing microwave operations. Accordingly, the Commission believes that it is entirely reasonable and prudent to require that UTAM make a finding with regard to the degree to which an unlicensed device can be coordinated and deployed. It intends that UTAM make such determinations in concert with the requirements of Section 15.307(b) of the rules. In this regard, the Commission also feels that a broad interpretation of the rules for preventing interference by unlicensed devices, such as the requirement for verification that an unlicensed device is being used at an authorized location, is appropriate. This will afford UTAM latitude to develop its own policies and interpretations for the wide range of unlicensed devices that are expected to be developed. UTAM will therefore be allowed broad flexibility in establishing the means it uses to fulfill its responsibility for ensuring that unlicensed devices do not interfere with existing microwave operations. Such means could include, where appropriate, the use of authorized installers to ensure that unlicensed devices do not cause interference.

144. Further, as part of its equipment authorization process, the Commission will review closely the technical aspects of each unlicensed device. This review will include all technical matters related to the device's ability to be coordinated, as well as other measures that may be imposed by UTAM on the operation of the device. This review will provide oversight to ensure that such measures developed by UTAM are sufficient to protect existing microwave from harmful interference.

145. The Commission believes that some modification of the rules is appropriate to clarify the showings necessary to demonstrate compliance with the activation and disabling requirements of Section 15.307. Accordingly, it is amending the rules to indicate that each application for certification must contain an explanation of all measures for ensuring that the device cannot be activated until installation at its authorized location as verified by UTAM and for automatically disabling the device in the event that it is relocated outside the coordinated geographic area. Such showings shall include all procedural safeguards, such as the mandatory use of licensed technicians to install and relocate the equipment, and a complete description of all technical features controlling activation and disabling of the device. These showings, in addition with the findings required by UTAM, will be adequate to demonstrate that a device is coordinatable and can be used in a manner that will not cause interference.

146. The Commission concludes that the current test and measurement procedures are adequate and will allow authorization of equipment to commence without delay. The ANSI C63 Committee has already begun work, in cooperation with WINForum, to develop specific procedures for unlicensed PCS equipment. The Commission will address specific test and measurement procedures developed by recognized national standards bodies, such as ANSI C63, when they are completed.

147. *Spectrum Etiquette.* In the *Second Report and Order*, the Commission adopted technical operating requirements for unlicensed PCS devices. These requirements were based largely on a spectrum "etiquette" developed on a consensus basis by an association of manufacturers and other interested parties known as the WINForum. The Commission made some minor modifications to the WINForum etiquette to take into account the allocation of additional spectrum for unlicensed PCS, to improve spectrum efficiency and to address specific comments and concerns. In particular, it divided the 40 MHz of spectrum for unlicensed devices into two equal 20 MHz allocations; one for isochronous transmissions at 1890–1900 MHz and 1920–1930 MHz and one for asychronous transmissions at 1900–1920 MHz. The Commission adopted WINForum's 1.25 MHz channelization for the 1920–1930 MHz band, but provided for up to 5 MHz channels in the 1890–1900 MHz band. The asynchronous spectrum at 1900–1920 MHz was divided into two 10 MHz channels. Separate technical requirements were specified for each transmission method.

148. The Commission's initial decision provided spectrum for both wideband and narrowband isochronous applications, but it is now reducing the spectrum available for isochronous devices from 20 MHz to 10 MHz. With this reduction, it is important that the remaining spectrum be used as efficiently as possible. In this regard, the Commission believes that a 1.25 MHz channelization plan will foster more efficient spectrum utilization. As indicated by those parties, such a plan will more readily prevent a single user or system from monopolizing the spectrum at a given location. A plan that provides wider channels or no channelization at all could result in inefficient use of the spectrum and preclude other parties from using the spectrum. Further, a spectrum occupancy limit, as suggested by some parties, would be practical or enforceable. A 1.25 MHz channel plan will simplify equipment design and permit better management of spectrum use. Accordingly, the Commission is adopting such a channelization plan for the 10 MHz of isochronous spectrum. If in the future information is presented that shows that wider channels can be accommodated without compromising spectrum efficiency or monopolizing the spectrum (*i.e.*, through use of reduced power levels for wideband systems, or establishing a spectrum efficiency standard, *etc.*), this matter may be revisited.

149. With regard to the asynchronous band, channelization is not as critical for such transmissions, since asynchronous transmissions will be of very short duration and not occupy the spectrum continuously. Accordingly,

the Commission is eliminating the channelization requirements for the asynchronous spectrum.

150. The Commission does not believe that the power specification should be based on mean rather than peak power. Given that a wide variety of modulation methods will be permitted, measurement of mean power could become complex and subject to differing interpretations. This could lead to equipment design uncertainties and potential delays and complications in equipment authorization. Measurement of peak power is straightforward and will not unduly penalize any technology. The Commission is therefore not altering the method specified in the rules for measuring the output power of unlicensed PCS devices. Further, it believes that a longer frame period could potentially reduce spectrum efficiency and remains unconvinced that an increase in the frame period would improve the likelihood of compatibility with future technical standards for licensed PCS equipment. Therefore the rules in this regard are not being modified.

151. With regard to the channel search requirements, the Commission is amending the rules to permit a device to begin its search for an unused channel at any point within a range of frequencies from a band edge, as requested by the several petitioners. This will permit manufacturers greater flexibility to use guard bands, if needed, while retaining most of the spectrum efficiency advantages gained by orderly selection of channels. The channel search rule does not significantly increase the potential for two devices attempting to seize the same channel at the same instant in time, nor does this requirement impede the use of coordinated multi-cell systems. The existing requirement for accuracy in monitoring signal levels should be deleted, since the existing monitoring threshold requirements are sufficient to ensure that unlicensed devices do not interfere with another.

152. The Commission believes that a requirement of periodic acknowledgement of transmissions is necessary to ensure that a device does not monopolize the spectrum. Therefore, it is modifying the etiquette to require a transmitter to receive an acknowledgement of transmissions from a system participant every 30 seconds and to cease transmission if such acknowledgement is not received. It will also permit control and signaling information to be transmitted for 30 seconds without acknowledgement, as requested by several parties.

153. With regard to duplex operation, some changes are appropriate. While it recognizes that performing the listen-before-talk operation at only one transmitter location may increase the potential for interference, the Commission believes that this increase is low and is outweighed by the benefits of simpler, most cost effective equipment design. Therefore, provisions for paired duplex channel operation are being incorporated into the rules. Further, the Commission feels that an exception to the listen-before-talk provisions is appropriate for systems that employ multicarrier shared antennas. Monitoring the receive channel rather than the transmit channel should not significantly increase the risk of causing interference to other unlicensed PCS spectrum users and the rules are amended to allow this approach.

154. The frequency stability requirements for unlicensed PCS devices should be relaxed. The Commission believes that unlicensed PCS devices will generally operate under the same range of temperature and voltage conditions specified for other Part 15 devices. Accordingly, the Commission is requiring that the operating frequency of unlicensed PCS devices be maintained within ±10 ppm over a temperature range of −20° C to +50° C at normal supply voltage and for variation in the primary voltage of ±15 percent at 20° C. While the stability requirement ±10 ppm is more strict than for other Part 15 devices, this is necessary to ensure the proper function of the etiquette. It is also relaxing from 40 dB to 30 dB the limit for suppression of spurious emissions in the first adjacent channels as requested by Ericsson and WINForum. This will reduce equipment costs while still providing adequate interference protection between unlicensed PCS systems.

Radio Frequency Exposure Limits

155. In the *Second Report and Order*, the Commission required PCS licensees and equipment to comply with the standards set forth in ANSI/IEEE C95.1–1992, "Safety Levels with Respect to Human Exposure to Radio Frequency Electromagnetic Fields, 3 kHz to 300 GHz" (ANSI/IEEE guidelines).[25] The Commission stated that for purposes of determining compliance with these standards, all handheld PCS equipment will be considered to operate in an "uncontrolled" environment. It also noted that the exclusions for low power devices contained in the ANSI/IEEE guidelines only apply to transmitters operating at 1500 MHz and below. Therefore, the Commission indicated that, pending an interpretation from the IEEE, PCS equipment must demonstrate compliance with the ANSI/IEEE guidelines for maximum specific absorption rates (SAR).[26]

156. The Commission feels that the guidelines for RF exposure from PCS base stations should apply according to the type of environment in which the exposure takes place. Further, there is no need to employ the uncontrolled exposure limits in those areas in the vicinity of a PCS base station where there is restricted access by the general public and exposure to the RF field is unlikely. Accordingly, the Commission is amending the rules to include both the uncontrolled and controlled limits for PCS base stations. The definitions of "controlled" and "uncontrolled" environments specified in ANSI/IEEE C95.1–1992 will govern which limits will apply.

157. As noted above, the Commission requested a formal interpretation from the IEEE as to whether the formula for determining the threshold level for the exclusion from the RF exposure standards can be extrapolated to the 2 GHz range. The IEEE radiated power exclusion applies when a 2.5 cm separation distance is maintained between the body and the radiating structure. In its response to this request, IEEE stated that, while it cannot predict whether such an extension of the standard would be incorporated into the next revision of C95.1, extrapolation of the current formula to frequencies up to 2.2 GHz would be conservative.[27] The Commission is therefore amending the rules to apply the ANSI/IEEE radiated power exclusions for low power devices to PCS devices. In implementing this

[25] The Commission stated that these standards will apply to PCS operations pending completion of its complete review of standards for RF exposure. *See Notice of Proposed Rule Making*, ET Docket No. 93–62, 58 FR 19393 (April 14, 1993). The Commission further indicated that any RF exposure standards adopted in the instant proceeding that do not conform with the final rules adopted later in ET Docket No. 93–62 will be modified as appropriate.

[26] The Commission also indicated that it had requested a formal interpretation from the IEEE as to whether the formula for determining the power threshold for the exclusion from the standards can be extrapolated up to 2200 MHz. *See* Letter from Thomas P. Stanley to Andrew G. Salem, IEEE Standards Board (June 2, 1993).This provision exempts a device from the SAR testing requirements, if the device operates with power output below a certain threshold level. Extrapolating the formula for this threshold up to 2200 MHz would allow PCS transmitters to operate with about 330 milliwatts of power.

[27] *See* Letter to Thomas P. Stanley from Eleanor R. Adair, Co-Chairman, SC–4, Standards Coordinating Committee 28, IEEE (October 11. 1993).

change, however, it is appropriate to provide an additional margin to ensure that devices approved for operation under the exclusion will comply with any changes to the RF exposure guidelines that may be adopted in the future. Accordingly, PCS devices that operate with output power of 100 milliwatts or less will be excluded from the SAR testing requirements. PCS devices operating at higher powers must be subjected to SAR testing to determine compliance with the RF exposure guidelines.

Conclusion

158. The Commission is amending its rules as described above to ensure that the American public benefits from new mobile digital voice and data services. It believes that the rules, as amended, will foster rapid development of a competitive market that will provide consumers with access to a diverse array of high-quality, low-cost PCS services and products on a wide-area basis. With adoption of these amendments, the rules are finalized, and the Commission now intends to proceed expeditiously to license broadband PCS services through the competitive bidding process.

Procedural Information

159. The analysis required by the Regulatory Flexibility Act of 1980, 5 U.S.C. Section 608, is contained in an Appendix to this Memorandum Opinion and Order.

160. Accordingly, it is ordered, That parts 2, 15, and 24 of the Commission's Rules are amended as specified below, effective 30 days after publication in the **Federal Register**; except that amendments to §§ 15.311 and 24.204(f)(1), (2), (3)(i), (3)(ii) are effective 90 days after publication in the **Federal Register**. This action is taken pursuant to Sections 4(i), 7(a), 302, 303(c), 303(f), 303(g), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 157(a), 302, 303(c), 303(f), 303(g), and 303(r). Furthermore, it is ordered, That the petitions for reconsideration are granted, to the extent described above and denied in all other respects.

List of Subjects

47 CFR Part 2

Radio.

47 CFR Part 15

Radio frequency devices, Radio.

47 CFR Part 94

Personal communications services, Radio.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Final Rules

Parts 2, 15 and 24 of chapter I of title 47 of the Code of Federal Regulations are amended as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

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

Authority: Sec. 4, 302, 303, and 307 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154, 302, 303 and 307, unless otherwise noted.

2. Section 2.106, the Table of Frequency Allocations, is amended as follows:

a. In the 1850–1990 MHz band and the 2110–2200 MHz band, revise columns 4 through 7 to read as follows:

§ 2.106 Table of frequency allocations.

* * * * *

International table			United States table		FCC use designators	
Region 1-allocation MHz	Region 2-allocation MHz	Region 3-allocation MHz	Government allocation MHz	Non-Government allocation MHz	Rule part(s)	Special-use frequencies
(1)	(2)	(3)	(4)	(5)	(6)	(7)
*	*	*	*	*	*	*
			1850–1990	1850–1990 ..	Personal communications services (24).	Emerging technologies.
				Fixed		
				Mobile	Private operational-fixed microwave (94).	
				US331	Radio frequency devices (15)	
*	*	*	*	*	*	*
			2110–2200	2110–2150 ..	Domestic public fixed (21)	Emerging technologies.
				Fixed	Private operational-fixed microwave (94).	
				Mobile	Public mobile (22)	
				US111 US252.		
				NG23 NG153		
				2150–2160 ..		
				Fixed	Multipoint distribution (21)	
				NG23	Private operational-fixed microwave (94)	
				2160–2200 ..	.....	Emerging technologies.
				Fixed	Domestic public fixed (21).	
				Mobile	Private operational-fixed microwave (94).	
					Public mobile (22)	
			US111 US252 US331	NG23 NG153.		
*	*	*	*	*	*	*

b. The text of footnote US331 in the United States footnotes and footnote NG153 in the Non-Government footnotes is revised to read as follows:

United States (US) Footnotes

* * * * *

US331 In the frequency band 1850–1990 MHz, the only fixed PCS services permitted are ancillary services used in support of mobile personal communications services.

* * * * *

Non-Government (NG) Footnotes

* * * * *

NG153 The 2110–2150 MHz and 2160–2200 MHz bands are reserved for future emerging technologies on a co-primary basis with the fixed and mobile services. Allocations to specific services will be made in future proceedings.

* * * * *

PART 15—RADIO FREQUENCY DEVICES

1. The authority citation for part 15 continues to read as follows:

Authority: Sec. 4, 302, 303, 304, and 307 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154, 302, 303, 304, and 307.

2. Section 15.301 is revised to read as follows:

§ 15.301 Scope.

This subpart sets out the regulations for unlicensed personal communications services (PCS) devices operating in the 1910–1930 MHz frequency band.

3. Sections 15.303 (g) and (j) are revised to read as follows:

§ 15.303 Definitions.

* * * * *

(g) Personal Communications Services (PCS) Devices [Unlicensed]. Intentional radiators operating in the frequency band 1910–1930 MHz that provide a wide array of mobile and ancillary fixed communication services to individuals and businesses.

* * * * *

(j) Thermal noise power. The noise power in watts defined by the formula N=kTB where N is the noise power in watts, K is Boltzmann's constant, T is the absolute temperature in degrees Kelvin (e.g., 295° K) and B is the emission bandwidth of the device in hertz.

* * * * *

4. Section 15.307 is amended by revising the introductory portion of paragraph (a), paragraph (d), and paragraph(e) as follows:

§ 15.307 Coordination with fixed microwave service.

(a) UTAM, Inc., is designated to coordinate and manage the transition of the 1910–1930 MHz band from Private Operational-Fixed Microwave Service (OFS) operating under Part 94 of this Chapter to unlicensed PCS operations, conditioned upon submittal to and acceptance by the Commission of:

* * * * *

(d) A coordinatable PCS device is required to incorporate means that ensure that it cannot be activated until its location has been coordinated by UTAM, Inc. The application for certification shall contain an explanation of all measures taken to prevent unauthorized operation. This explanation shall include all procedural safeguards, such as the mandatory use of licensed technicians to install the equipment, and a complete description of all technical features controlling activation of the device.

(e) A coordinatable PCS device shall incorporate an automatic mechanism for disabling operation in the event it is moved outside the geographic area where its operation has been coordinated by UTAM, Inc. The application for certification shall contain a full description of the safeguards against unauthorized relocation and must satisfy the Commission that the safeguards cannot be easily defeated.

* * * * *

5. Section 15.311 is revised to read as follows:

§ 15.311 Labelling requirements.

In addition to the labelling requirements of § 15.19(a)(3), all devices authorized under this subpart must bear a prominently located label with the following statement:

Installation of this equipment is subject to notification and coordination with UTAM, Inc. Any relocation of this equipment must be coordinated through, and approved by UTAM. UTAM may be contacted at [insert UTAM's toll-free number].

6. Paragraphs (a) and (i) of § 15.319 are revised to read as follows:

§ 15.319 General technical requirements.

(a) The 1910–1920 MHz sub-band is limited to use by asynchronous devices under the requirements of Section 15.323. The 1920–1930 MHz sub-band is limited to use by isochronous devices under the requirements of § 15.321.

* * * * *

(i) The device must comply with IEEE C95.1–1991 (ANSI/IEEE C95.1–1992), "Safety Levels with Respect to Human Exposure to Radio Frequency Eletromagnetic Fields, 3 kHz to 300 GHz." Measurement methods are specified in IEEE C95.3–1991, "Recommended Practice for the Measurement of Potentially Hazardous Electromagnetic Fields—RF and Microwave." Copies of these standards are available from the IEEE Standards Board, 445 Hoes Lane, P.O. Box 1331, Piscataway, NJ 08855–1331, telephone 1–800–678–4333. All equipment shall be considered to operate in an "uncontrolled" environment. The application for certification must contain a statement confirming compliance with IEEE C95.1–1991. Technical information showing the basis for this statement must be submitted to the Commission upon request. PCS hand-held devices whose radiated power is 100 milliwatts or less are excluded from SAR testing requirements as long as a 2.5 cm separation is maintained between the radiating structure and the body of the user. The ANSI/IEEE standard uses the term "radiated power" as meaning the input power to the antenna.

§§ 15.321 and 15.323 [Redesignated as §§ 15.323 and 15.321]

7. Sections 15.321 and 15.323 are redesignated as §§ 15.321 and 15.323, respectively.

8. In new redesignated § 15.321, paragraph (g) is removed, and the section heading and paragraphs (a), (b), (c)(1), (c)(4), (c)(6), (d), and (e) are revised to read as follows:

§ 15.321 Specific requirements for asynchronous devices operating in the 1910–1920 MHz sub-band.

(a) Operation shall be contained within the 1910–1920 MHz sub-band. The emission bandwidth of any intentional radiator operating in this sub-band shall be no less than 500 kHz.

(b) All systems of less than 2.5 MHz emission bandwidth shall start searching for an available spectrum window within 3 MHz of the sub-band edge at either 1910 or 1920 MHz, while systems of more than 2.5 MHz emission bandwidth will first occupy the center half of the sub-band. Devices with an emission bandwidth of less than 1.0 MHz may not occupy the center half of the sub-band if other spectrum is available.

(c) * * *

(1) Immediately prior to initiating a transmission, devices must monitor the spectrum window they intend to use for at least 50 microseconds.

* * * * *

(4) After completion of a transmission, an individual device or cooperating group of devices must cease transmission and wait a deference time randomly chosen from a uniform random distribution ranging from 50 to 750 microseconds, after which time an attempt to access the band again may be initiated. For each occasion that an access attempt fails after the initial inter-burst interval, the range of the deference time chosen shall double until an upper limit of 12 milliseconds is reached. The deference time remains at the upper limit of 12 milliseconds until an access attempt is successful. The deference time is re-initialized after each successful access attempt.

* * * * *

(6) The monitoring system shall use the same antenna used for transmission, or an antenna that yields equivalent reception at that location.

* * * * *

(d) Emissions shall be attenuated below a reference power of 112 milliwatts as follows: 30 dB between the channel edges and 1.25 MHz above or below the channel; 50 dB between 1.25 and 2.5 MHz above or below the channel; and 60 dB at 2.5 MHz or greater above or below the channel. Compliance with the emissions limits is based on the use of measurement instrumentation employing a peak detector function with an instrument resolution bandwidth approximately equal to 1.0 percent of the emission bandwidth of the device under measurement.

(e) The frequency stability of the carrier frequency of intentional radiators operating in this sub-band shall be ±10 ppm over 10 milliseconds or the interval between channel access monitoring, whichever is shorter. The frequency stability shall be maintained over a temperature variation of −20° to +50° Celsius at normal supply voltage, and over a variation in the primary supply voltage of 85 percent to 115 percent of the rated supply voltage at a temperature of 20 degrees Celsius. For equipment that is capable of operating only from a battery, the frequency stability tests shall be performed using a new battery without any further requirement to vary supply voltage.

* * * * *

9. In the new redesignated § 15.323, the section heading and paragraphs (a), (b), (c)(1), (c)(4), (c)(6), (c)(8), (d), and (f) are revised and new paragraphs (c)(10), (c)(11), and (c)(12) are added to read as follows:

§ 15.323 Specific requirements for isochronous devices operating in the 1920–1930 MHz sub-band.

(a) Operation shall be contained within one of eight 1.25 MHz channels starting with 1920–1921.25 MHz and ending with 1928.75–1930 MHz. Further sub-division of a 1.25 MHz channel is permitted with a reduced power level, as specified in Section 15.319(c), but in no event shall the emission bandwidth be less than 50 kHz.

(b) Intentional radiators with an intended emission bandwidth less than 625 kHz shall start searching for an available time and spectrum window within 3 MHz of the sub-band edge at 1920 MHz and search upward from that point. Devices with an intended emission bandwidth greater than 625 kHz shall start searching for an available time and spectrum window within 3 MHz of the sub-band edge at 1930 MHz and search downward from that point.

(c) * * *

(1) Immediately prior to initiating transmission, devices must monitor the combined time and spectrum windows in which they intend to transmit to determine if the access criteria are met.

* * * * *

(4) Once access to specific combined time and spectrum windows is obtained an acknowledgment from a system participant must be received by the initiating transmitter within one second or transmission must cease. Periodic acknowledgments must be received at least every 30 seconds or transmission must cease. Channels used exclusively for control and signaling information may transmit continuously for 30 seconds without receiving an acknowledgment, at which time the access criteria must be repeated.

* * * * *

(6) If the selected combined time and spectrum windows are unavailable, the device may either monitor and select different windows or seek to use the same windows after waiting an amount of time, randomly chosen from a uniform random distribution between 10 and 150 milliseconds, commencing when the channel becomes available.

* * * * *

(8) The monitoring system shall use the same antenna used for transmission, or an antenna that yields equivalent reception at that location.

* * * * *

(10) An initiating device may attempt to establish a duplex connection by monitoring both its intended transmit and receive time and spectrum windows. If both the intended transmit and receive time and spectrum windows meet the access criteria, then the initiating device can initiate a transmission in the intended transmit time and spectrum window. If the power detected by the responding device can be decoded as a duplex connection signal from the initiating device, then the responding device may immediately begin transmitting on the receive time and spectrum window monitored by the initiating device.

(11) An initiating device that is prevented from monitoring during its intended transmit window due to monitoring system blocking from the transmissions of a co-located (within one meter) transmitter of the same system, may monitor the portions of the time and spectrum windows in which they intend to receive over a period of at least 10 milliseconds. The monitored time and spectrum window must total at least 50 percent of the 10 millisecond frame interval and the monitored spectrum must be within the 1.25 MHz frequency channel(s) already occupied by that device or co-located co-operating devices. If the access criteria is met for the intended receive time and spectrum window under the above conditions, then transmission in the intended transmit window by the initiating device may commence.

(12) The provisions of (c)(10) or (c)(11) of this section shall not be used to extend the range of spectrum occupied over space or time for the purpose of denying fair access to spectrum to other devices.

(d) Emissions shall be attenuated below a reference power of 112 milliwatts as follows: 30 dB between the channel edges and 1.25 MHz above or below the channel; 50 dB between 1.25

and 2.5 MHz above or below the channel; and 60 dB at 2.5 MHz or greater above or below the channel. Systems that further sub-divide a 1.25 MHz channel into X sub-channels must comply with the following mission mask: In the bands between 1B and 2B measured from the center of the emission bandwidth the total power emitted by the device shall be at least 40 dB below the transmit power permitted for that device; in the bands between B and 3B measured from the center of the emission bandwidth the total power emitted by an intentional radiator shall be at least 50 dB below the transmit power permitted for that radiator; in the bands between 3B and the 1.25 MHz channel edge the total power emitted by an intentional radiator in the measurement bandwidth shall be at least 60 dB below the transmit power permitted for that radiator. "B" is defined as the emission bandwidth of the device in hertz. Compliance with the emission limits is based on the use of measurement instrumentation employing a peak detector function with an instrument resolution bandwidth approximately equal to 1.0 percent of the emission bandwidth of the device under measurement.

* * * * *

(f) The frequency stability of the carrier frequency of the intentional radiator shall be maintained within ±10 ppm over 1 hour or the interval between channel access monitoring, whichever is shorter. The frequency stability shall be maintained over a temperature variation of −20° to +50° C at normal supply voltage, and over a variation in the primary supply voltage of 85 percent to 115 percent of the rated supply voltage at a temperature of 20° C. For equipment that is capable only of operating from a battery, the frequency stability tests shall be performed using a new battery without any further requirement to vary supply voltage.

PART 24—PERSONAL COMMUNICATIONS SERVICES

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

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

2. In Section 24.1, paragraph (b) is revised to read as follows:

§ 24.1 Basis and purpose.

* * * * *

(b) Purpose. This part states the conditions under which portions of the radio spectrum are made available and licensed for PCS.

* * * * *

3. Section 24.3 is revised to read as follows:

§ 24.3 Permissible communications.

PCS licensees may provide any mobile communications service on their assigned spectrum. Fixed services may be provided only if ancillary to mobile operations. Broadcasting as defined in the Communications Act is prohibited.

4. Section 24.10 is revised to read as follows:

§ 24.10 Scope.

This subpart contains some of the procedures and requirements for filing applications for licenses in the personal communications services. One also should consult Subparts F and G of this part. Other Commission rule parts of importance that may be referred to with respect to licensing and operation of radio services governed under this part include 47 CFR parts 0, 1, 2, 5, 15, 17 and 20.

5. Section 24.11 is revised to read as follows:

§ 24.11 Initial authorization.

(a) An applicant must file an application for an initial authorization in each market and frequency block desired.

(b) Blanket licenses are granted for each market and frequency block. Applications for individual sites are not required and will not be accepted.

6. Section 24.52 is revised to read as follows:

§ 24.52 RF hazards.

(a) Licensees and manufacturers are required to ensure that their facilities and equipment comply with IEEE C95.1–1991 (ANSI/IEEE C95.1–1992), "Safety Levels With Respect to Human Exposure to Radio Frequency Electromagnetic Fields, 3 kHz to 300 GHz." Measurement methods are specified in IEEE C95.3–1991, "Recommended Practice for the Measurement of Potentially Hazardous Electromagnetic Fields—RF and Microwave." Copies of these standards are available from IEEE Standards Board, 445 Hoes Lane, P.O. Box 1331, Piscataway, NJ 08855–1331. Telephone: 1–800–678–4333. The limits for both "controlled" and "uncontrolled" environments, as defined by IEEE C95.1–1991, will apply to all PCS base and mobile stations, as appropriate. The application for equipment authorization must contain a statement confirming compliance with IEEE C95.1–1991. Technical information showing the basis for this statement must be submitted to the Commission upon request.

(b) PCS hand-held devices whose maximum radiated power is 100 milliwatts or less are not required to be evaluated for compliance with ANSI/IEEE SAR (specific absorption rate) requirements, as long as a 2.5 cm separation distance is maintained between the radiating structure and the body of the user. (The ANSI/IEEE standard uses the term "radiated power," meaning input power to the antenna.)

(c) For further information on the Commission's environmental rules see §§ 1.1301 through 1.1319 of this chapter.

7. Subpart E is revised to read as follows:

Subpart E—Broadband PCS

Sec.

24.200 Scope.
24.202 Service areas.
24.203 Construction requirements.
24.204 Cellular eligibility.
24.229 Frequencies.
24.232 Power and antenna height limits.
24.235 Frequency stability.
24.236 Field strength limits.
24.237 Interference protection.
24.238 Emission limits.

Appendix I to Subpart E—A Procedure for Calculating PCS Signal Levels at Microwave Receivers (Appendix E of the Memorandum Opinion and Order)

Subpart E—Broadband PCS

§ 24.200 Scope.

This subpart sets out the regulations governing the licensing and operations of personal communications services authorized in the 1850–1910 and 1930–1990 MHz bands.

§ 24.202 Service areas.

Broadband PCS service areas are Major Trading Areas (MTAs) and Basic Trading Areas (BTAs) as defined below. MTAs and BTAs are based on the Rand McNally *1992 Commercial Atlas & Marketing Guide*, 123rd Edition, at pages 38–39 ("BTA/MTA Map"). Rand McNally organizes the 50 states and the District of Columbia into 47 MTAs and 487 BTAs. The BTA/MTA Map is available for public inspection as the Office of Engineering and Technology's Technical Information Center, room 7317, 2025 M Street, NW., Washington, DC.

(a) The MTA service areas are based on the Rand McNally *1992 Commercial Atlas & Marketing Guide*, 123rd Edition, at pages 38–39, with the following exceptions and additions:

(1) Alaska is separated from the Seattle MTA and is licensed separately.

(2) Guam and the Northern Mariana Islands are licensed as a single MTA-like area.

(3) Puerto Rico and the United States Virgin Islands are licensed as a single MTA-like area.

(4) American Samoa is licensed as a single MTA-like area.

(b) The BTA service areas are based on the Rand McNally *1992 Commercial Atlas & Marketing Guide*, 123rd Edition, at pages 38–39, with the following additions licensed separately as BTA-like areas: American Samoa; Guam; Northern Mariana Islands; Mayaguez/Aguadilla-Ponce, Puerto Rico; San Juan, Puerto Rico; and the United States Virgin Islands. The Mayaguez/Aguadilla-Ponce BTA consists of the following municipalities: Adjuntas, Aguada, Aguadilla, Anasco, Arroyo, Cabo Rojo, Coamo, Guanica, Guayama, Guayanilla, Hormigueros, Isabela, Jayuya, Juana Diaz, Lajas, Las Marias, Mayaguez, Maricao, Maunabo, Moca, Patillas, Penuelas, Ponce, Quebradillas, Rincon, Sabana Grande, Salinas, San Germain, Santa Isabel, Villalba, and Yauco. The San Juan BTA consists of all other municipalities in Puerto Rico.

§ 24.203 Construction requirements.

(a) Licensees of 30 MHz blocks must serve with a signal level sufficient to provide adequate service to at least one-third of the population in their licensed area within five years of being licensed and two-thirds of the population in their licensed area within 10 years of being licensed. Licensees may choose to define population using the 1990 census or the 2000 census. Failure by any licensee to meet these requirements will result in forfeiture or non-renewal of the license and the licensee will be ineligible to regain it.

(b) Licensees of 10 MHz blocks must serve with a signal level sufficient to provide adequate service to at least one-quarter of the population in their licensed area within five years of being licensed, or make a showing of substantial service in their licensed area within five years of being licensed. Population is defined as the 1990 population census. Licensees may elect to use the 2000 population census to determine the five-year construction requirement. Failure by any licensee to meet these requirements will result in forfeiture of the license and the licensee will be ineligible to regain it.

(c) Licensees must file maps and other supporting documents showing compliance with the respective construction requirements within the appropriate five- and ten-year benchmarks of the date of their initial licenses.

§ 24.204 Cellular eligibility.

(a) *10 MHz Limitation.* Until January 1, 2000, no license(s) for broadband PCS in excess of 10 MHz shall be granted to any party (including all parties under common control) if the grant of such license(s) will result in significant overlap of the PCS licensed service area(s) (MTAs or BTAs) and the cellular geographic service area(s) (CGSA) of licensee(s) in the Domestic Public Cellular Radio Telecommunications Service directly or indirectly owned, operated, or controlled by the same party.

(b) *15 MHz Limitation.* After January 1, 2000, no license(s) for broadband PCS in excess of 15 MHz shall be granted to any party (including all parties under common control) if the grant of such license(s) will result in significant overlap of the PCS licensed service area(s) (MTAs or BTAs) and the cellular geographic service area(s) (CGSA) of licensee(s) in the Domestic Public Cellular Radio Telecommunications Service directly or indirectly owned, operated, or controlled by the same party.

(c) *Significant Overlap.* For purposes of paragraphs (a) and (b) of this section, significant overlap of a PCS licensed service area and CGSA(s) occurs when ten or more percent of the population of the PCS service area, as determined by the 1990 census figures for the counties contained therein, is within the CGSA(s).

(d) *Ownership Attribution.*

(1) For purposes of paragraphs (a) and (b) of this section, "control" means majority voting equity ownership, any general partnership interest, or any means of actual working control (including negative control) over the operation of the licensee, in whatever manner exercised.

(2) For purposes of applying paragraphs (a) and (b) of this section, and for purposes of § 24.229(c) (40 MHz limit in same geographic area), ownership and other interests in broadband PCS licensees or applicants and cellular licensees will be attributed to their holders pursuant to the following criteria:

(i) Partnership and other ownership interests and any stock interest amounting to 5 percent or more of the equity, or outstanding stock, or outstanding voting stock of a broadband PCS licensee or applicant will be attributable.

(ii) Partnership and other ownership interests and any stock interest amounting to 20 percent or more of the equity, or outstanding stock, or outstanding voting stock of a cellular licensee will be attributable, except that ownership will not be attributed unless the partnership and other ownership interests and any stock interest amount to 40 percent or more of the equity, or outstanding stock, or outstanding voting stock of a cellular licensee if the ownership interest is held by a small business, a rural telephone company, or a business owned by minorities and/or women, as these terms are defined in § 1.2110 of this chapter, or if the ownership interest is held by an entity with a non-controlling equity interest in a broadband PCS licensee or applicant that is a business owned by minorities and/or women.

(iii) Stock interests held in trust shall be attributed to any person who holds or shares the power to vote such stock, to any person who has the sole power to sell such stock, and, in the case of stock held in trust, to any person who has the right to revoke the trust at will or to replace the trustee at will. If the trustee has a familial, personal or extra-trust business relationship to the grantor or the beneficiary, the grantor or beneficiary, as appropriate, will be attributed with the stock interests held in trust.

(iv) Non-voting stock shall be attributed as an interest in the issuing entity if in excess of the amounts set forth above.

(v) Debt and instruments such as warrants, convertible debentures, options or other interests (except non-voting stock) with rights of conversion to voting interests shall not be attributed unless and until conversion is effected, except that this provision does not apply in determining whether an entity is a small business, a rural telephone company, or a business owned by minorities and/or women, as these terms are defined in § 1.2110 of this chapter or other provisions of the Commission's Rules.

(vi) Limited partnership interests shall be attributed to limited partners and shall be calculated according to both the percentage of equity paid in and the percentage of distribution of profits and losses.

(vii) Officers and directors of a broadband PCS licensee or applicant or a cellular licensee shall be considered to have an attributable interest in the entity with which they are so associated. The officers and directors of an entity that controls a PCS licensee or applicant or a cellular licensee shall be considered to have an attributable interest in the broadband PCS licensee or applicant or a cellular licensee.

(e) [Reserved]

(f) *Cellular Divestiture.* Parties holding controlling or attributable ownership interests in cellular licensees

may be a party to a broadband PCS application (*i.e.*, have a controlling or attributable interest in a broadband PCS applicant), and such PCS applicant will be eligible for more than one 10 MHz broadband PCS license and/or 30 MHz broadband PCS license(s) pursuant to the divestiture procedures set forth in paragraph (f) (1) through (3) of this section; Provided, however, that these divestiture procedures shall be available only for parties with controlling or attributable ownership interests in cellular licensees where the CGSA(s) covers 20 percent or less of the PCS service area population.

(1) The broadband PCS applicant shall certify on its short-form auction application, filed in accordance with § 24.305, that it and all parties to the application will come into compliance with the limitations on common ownership of cellular and broadband PCS interests set forth in this section.

(2) If such an applicant is a successful bidder, it must submit with its long-form application (*see* § 24.307) a signed statement describing its efforts to date and future plans to come into compliance with the limitations on common ownership of cellular and broadband PCS interests set forth in this section.

(3) If such an applicant is otherwise qualified, its application will be granted subject to a condition that the licensee shall come into compliance with the limitations on common ownership of cellular and broadband PCS interests set forth in this section within ninety (90) days of final grant.

(i) Parties holding controlling interests in cellular licensees that conflict with the attribution threshold or service overlap limitations set forth above will be considered to have come into compliance if they have submitted to the Commission an application for assignment of license or transfer of control of the cellular licensee (*see* § 22.39 of this chapter) by which, if grant, such parties no longer would have an attributable interest in the cellular license. If no such assignment or transfer application is tendered to the Commission within ninety (90) days of final grant, the Commission may consider the short-form certification and the long-form divestiture statement to be material, bad faith misrepresentations and will invoke the condition on the PCS license, cancelling it automatically, retain all monies paid to the Commission, and, based on the facts presented, take any other action it may deem appropriate. Divestiture may be to an interim trustee if a buyer has not been secured in the required time frame, as long as the applicant has no interest in or control of the trustee, and the trustee may dispose of the license as it sees fit.

(ii) Where parties to broadband PCS applications hold less-than-controlling (but still attributable) interests in cellular licensee(s), they shall submit, within ninety days of final grant, a certification that the applicant and all parties to the application have come into compliance with the limitations on common ownership of cellular and broadband PCS interests set forth in this section.

Note 1: For purposes of the cellular ownership attribution limit, all ownership interests in cellular operations that serve 10 or more percent of the population of the PCS service area should be included in determining the extent of a PCS applicant's cellular ownership.

Note 2: When a party owns an attributable interest in more than one cellular system that overlaps a PCS service area, the total population in the overlap area will apply on a cumulative basis.

Example 1: Company A holds a 15 percent non-controlling ownership interest in Cellular Licensee X and a 15 percent non-controlling ownership interest in Cellular Licensee Y. Cellular Licensee X covers 30 percent of the population of the PCS service area and Cellular Licensee Y covers 10 percent of the population of the PCS service area. A broadband PCS applicant in which Company A holds an attributable ownership interest will be eligible for a broadband PCS license or licenses for more than 10 MHz because Company A does not hold attributable ownership interests in cellular operations which together include ten or more percent of the population of the PCS service area.

Example 2: (1) Cellular Company A owns a 45 percent non-controlling interest in cellular license 1, and a 22 percent non-controlling interest in both cellular licenses 2 and 3. Cellular license 1 includes 15 percent of the pops in BTA 1. Cellular license 2 covers 7 percent of the pops in BTA 2 and 5 percent of the pops in BTA 3. Cellular license 3 covers 7 percent of the pops in BTA 3. Together Cellular licenses 1, 2 and 3 cover 9 percent of the pops in MTA 1.

(2) If Cellular Company A is not a designated entity, it can purchase 40 MHz of spectrum in BTA 2 or in MTA 1. It can acquire only 10 MHz in BTA 1 or BTA 3 because it is considered to have ownership interests in 15 percent of the pops in BTA 1 and 12 percent of the pops in BTA 3.

(3) If Cellular Company A wants to acquire 40 MHz of spectrum in BTA 3 it can either agree to divest either cellular license 2 or 3, or it can invest as a non-controlling investor in a PCS license that is held and controlled by a business owned by minorities and/or women.

(4) If Cellular Company A wants to acquire 40 MHz of spectrum in BTA 1 it can agree to divest its interests in cellular license 1. It cannot invest as a non-controlling investor in a business owned by minorities and/or women because its 45 percent ownership of license 1 will be attributed, since it is greater than the 40 percent threshold.

(5) If Cellular Company A is a designated entity, it can acquire 40 MHz of PCS spectrum in every area except BTA 1, where it is considered to have an ownership interest in 25 MHz of spectrum already because it is over 40 percent threshold.

Example 3: (1) Cellular Company A owns a 45 percent non-controlling interest in cellular license 1 that covers 5 percent of the pops in BTA 1. Cellular Company A also owns a 21 percent non-controlling interest in cellular license 2 that covers 9 percent of the pops in BTA 1. If Cellular Company A is not a designated entity, then it can buy only 10 MHz of spectrum, because it is considered to have an ownership interest of 14 percent of the pops in BTA 1. If it wants to buy 30 MHz it would have to certify before the auction that it will divest either cellular license 1 or 2.

(2) If Cellular Company A is a designated entity, then it would be considered to have an ownership interest in only 5 percent of the pops in BTA 1 and would thus be eligible to buy up to 40 MHz in BTA 1.

Example 4: Company A holds a 10 percent interest in Cellular Licensee 1. Company B holds a 10 percent interest in Cellular Licensee 1. Cellular Licensee 1 covers more than 10 percent of the population of the PCS service area. Neither Company A nor Company B is a designated entity. A PCS entity with interests held by Company A and Company B is ineligible for a 30 MHz PCS license because the attributable ownership in cellular license 1 is 20 percent.

Example 5: Same as Example 4 except that Company A and Company B are designated entities. The PCS entity is eligible for a 30 MHz PCS license because the attributable cellular ownership is less than 40 percent.

§ 24.229 Frequencies.

The frequencies available in the Broadband PCS service are listed in this section in accordance with the frequency allocations table of Section 2.106 of this chapter.

(a) The following frequency blocks are available for assignment on an MTA basis:

Block A: 1850–1865 MHz paired with 1930–1945 MHz; and

Block B: 1870–1885 MHz paired with 1950–1965 MHz.

(b) The following frequency blocks are available for assignment on a BTA basis:

Block C: 1895–1910 MHz paired with 1975–1990 MHz;

Block D: 1865–1870 MHz paired with 1945–1950 MHz;

Block E: 1885–1890 MHz paired with 1965–1970 MHz; and

Block F: 1890–1895 MHz paired with 1970–1975 MHz.

(c) PCS licensees shall not have an ownership interest in frequency blocks that total more than 40 MHz and serve the same geographic area. For the purpose of this section, PCS licensees

are entities having an ownership interest of 5 or more percent or other attributable ownership interest, as defined in Section 24.204(d), in a PCS license.

Example 1: Company A, which is a rural telephone company with no cellular interests, buys a 7 percent stake in a 30 MHz BTA that constitutes 8 percent of the population in MTA 1, which encompasses BTA 1. It is then offered an opportunity to buy 8 percent of the equity in a 30 MHz license in MTA 1. It cannot accept this offer because it would be over the 5 percent threshold on two overlapping PCS licenses. Its status as a rural telephone company has no impact on the 5 percent threshold for PCS licensees.

Example 2: (1) Company A has two investors, Company B and Company C. Company B owns 15 percent of Company A. Company C, a rural telephone company, owns 25 percent of Company A. Company B and Company C do not have any interests in each other.

(2) Company B has 100 percent ownership of cellular license 1 that covers 20 percent of the pops in BTA 1 and 6 percent of the pops in MTA 1. Company C owns 25 percent of cellular license 2 that covers 20 percent of the pops in BTA 2 and 6 percent of the pops in MTA 1. Company A has no separate cellular interests. MTA 1 encompasses both BTA 1 and BTA 2.

(3) Company A cannot purchase 30 MHz of spectrum in BTA 1. Such a purchase would put Company B over the aggregation limit of 40 MHz in BTA 1 because it would have over 5 percent ownership of the PCS license in addition to its cellular license.

(4) Company A can, however, purchase 30 MHz in BTA 2 or MTA 1 because Company C is a rural telephone company, and thus Company C's interest in cellular license 2 falls below the 40 percent threshold and is not counted against the spectrum cap. If Company C were not a rural telephone company, then Company A could not acquire 30 MHz in BTA 2 or MTA 1 because its partners in those licenses would be over the spectrum cap.

(5) Company B can also buy 30 MHz in BTA 2 or MTA 1 as long as Company A does not also buy 30 MHz in BTA 2 or MTA 1 because Company B and Company C have no joint ownership.

(6) Company C can also buy 30 MHz in BTA 1 or 2 or MTA 1 as long as Company A does not also buy in the region where Company C buys. If Company A were to buy a 30 MHz MTA 1 license, then Company B and C would be prohibited from acquiring either of the BTAs because they would be over the 5 percent threshold for PCS spectrum in the same region.

(d) After January 1, 2000, licensees that have met the 5-year construction requirement may assign portions of licensed PCS spectrum. In no case may an assignee aggregate more than 40 MHz of PCS/cellular spectrum.

§ 24.232 Power and antenna height limits.

(a) Base stations are limited to 1640 watts peak equivalent isotropically radiated power (e.i.r.p.) with an antenna height up to 300 meters HAAT. See § 24.53 for HAAT calculation method. Base station antenna heights may exceed 300 meters with a corresponding reduction in power; see Table 1 of this section. In no case may the peak output power of a base station transmitter exceed 100 watts. The service area boundary limit and microwave protection criteria specified in Section 24.236 and Section 24.237 apply.

TABLE 1.—REDUCED POWER FOR BASE STATION ANTENNA HEIGHTS OVER 300 METERS

HAAT in meters	Maximum e.i.r.p. (watts)
≤300	1,640
≤500	1,070
≤1,000	490
≤1,500	270
≤2,000	160

(b) Mobile/portable stations are limited to 2 watts e.i.r.p. peak power and the equipment must employ means to limit the power to the minimum necessary for successful communications.

(c) Peak transmit power must be measured over any interval of continuous transmission using instrumentation calibrated in terms of an rms-equivalent voltage. The measurement results shall be properly adjusted for any instrument limitations, such as detector response times, limited resolution bandwidth capability when compared to the emission bandwidth, sensitivity, *etc.*, so as to obtain a true peak measurement for the emission in question over the full bandwidth of the channel.

§ 24.235 Frequency stability.

The frequency stability shall be sufficient to ensure that the fundamental emission stays within the authorized frequency block.

§ 24.236 Field strength limits.

The predicted or measured median field strength at any location on the border of the PCS service area shall not exceed 47 dBuV/m unless the parties agree to a higher field strength.

§ 24.237 Interference protection.

(a) All licensees are required to coordinate their frequency usage with the co-channel or adjacent channel incumbent fixed microwave licensees in the 1850–1990 MHz band. Coordination must occur before initiating operations from any base station. Problems that arise during the coordination process are to be resolved by the parties to the coordination. Licensees are required to coordinate with all users possibly affected, as determined by Appendix I to this subpart E (Appendix E of the Memorandum Opinion and Order, GEN Docket No. 90–314, FCC 94–144; TIA Telecommunications Systems Bulletin 10–F, "Interference Criteria for Microwave Systems," May 1994, (TSB10–F)); or an alternative method agreed to by the parties.

(b) The results of the coordination process need to be reported to the Commission only if the parties fail to agree. Because broadband PCS licensees are required to protect fixed microwave licensees in the 1850–1990 MHz band, the Commission will be involved in the coordination process only upon complaint of interference from a fixed microwave licensee. In such a case, the Commission will resolve the issues.

(c) In all other respects, coordination procedures are to follow the requirements of § 21.100(d) of this chapter to the extent that these requirements are not inconsistent with those specified in this part.

(d) The licensee must perform an engineering analysis to assure that the proposed facilities will not cause interference to existing OFS stations within the coordination distance specified in Table 2 of a magnitude greater than that specified in the criteria set forth in paragraph (e) and (f) of this section, unless there is prior agreement with the affected OFS licensee. Interference calculations shall be based on the sum of the power received at the terminals of each microwave receiver from all of the applicant's current and proposed PCS operations.

TABLE 2.—COORDINATION DISTANCES IN KILOMETERS

[PCS Base Station Antenna HAAT in Meters]

e.i.r.p. (W)	5	10	20	50	100	150	200	250	300	500	1000	1500	2000
0.1	90	93	99	110	122	131	139	146	152	173	210	239	263
0.5	96	100	105	116	128	137	145	152	158	179	216	245	269

TABLE 2.—COORDINATION DISTANCES IN KILOMETERS—Continued

[PCS Base Station Antenna HAAT in Meters]

e.i.r.p. (W)	5	10	20	50	100	150	200	250	300	500	1000	1500	2000
1	99	103	108	119	131	140	148	155	161	182	219	248	272
2	120	122	126	133	142	148	154	159	164	184	222	250	274
5	154	157	161	168	177	183	189	194	198	213	241	263	282
10	180	183	187	194	203	210	215	220	225	240	268	291	310
20	206	209	213	221	229	236	242	247	251	267	296	318	337
50	241	244	248	255	264	271	277	282	287	302	331	354	374
100	267	270	274	282	291	297	303	308	313	329	358	382	401
200	293	296	300	308	317	324	330	335	340	356	386	409	.....
500	328	331	335	343	352	359	365	370	375	391	421	.....	.....
1000	354	357	361	369	378	385	391	397	402	418	.....	.....	.....
1200	361	364	368	376	385	392	398	404	409	.....	.....	.....	.....
1640	372	375	379	338	397	404	410	416	421	.....	.....	.....	.....

Note: If actual value does not match table values, round to the closest higher value on this table. See Section 24.53 for HAAT calculation method.

(e) For microwave paths of 25 kilometers or less, interference determinations shall be based on the C/I criteria set forth in TIA Telecommunications Systems Bulletin 10–F, "Interference Criteria for Microwave Systems," May 1994 (TSB10–F).

(f) For microwave paths longer than 25 kilometers, the interference protection criterion shall be such that the interfering signal will not produce more than 1.0 dB degradation of the practical threshold of the microwave receiver for analog system, or such that the interfering signal will not cause an increase in the bit error rate (BER) from 10E–6 to 10E–5 for digital systems.

(g) The development of the C/I ratios and interference criteria specified in paragraphs (e) and (f) of this section and the methods employed to compute the interfering power at the microwave receivers shall follow generally acceptable good engineering practices. The procedures described for computing interfering signal levels in (Appendix I to this subpart E Appendix E of the Memorandum Opinion and Order, GEN Docket No. 90–314, FCC 94–144) shall be applied. Alternatively, procedures for determining interfering signal levels and other criteria as may be developed by the Electronics Industries Association (EIA), the Institute of Electrical and Electronics Engineers, Inc. (IEEE), the American National Standards Institute (ANSI) or any other recognized authority will be acceptable to the Commission.

§ 24.238 Emission limits.

(a) On any frequency outside a licensee's frequency block, the power of any emission shall be attenuated below the transmitter power (P) by at least 43 plus 10 $\log_{10}$ (P) decibels or 80 decibels, whichever is the lesserattenuation.

Note: The measurements of emission power can be expressed in peak or average values, provided they are expressed in the same parameters as the transmitter power.

(b) When an emission outside of the authorized bandwidth causes harmful interference, the Commission may, at its discretion, require greater attenuation than specified in this section.

Appendix I to Subpart E—A Procedure for Calculating PCS Signal Levels at Microwave Receivers (Appendix E of the Memorandum Opinion and Order)

The new Rules adopted in Part 24 stipulate that estimates of interference to fixed microwave operations from a PCS operation will be based on the sum of signals received at a microwave receiver from the PCS operation. This appendix describes a procedure for computing this PCS level.

In general, the procedure involves four steps:

1. Determine the geographical coordinates of all microwave receivers operating on co-channel and adjacent frequencies within the coordination distance of each base station and the characteristics of each receiver, *i.e.*, adjacent channel susceptibility, antenna gain, pattern and height, and line and other losses.

2. Determine an equivalent isotropically radiated power (e.i.r.p.) for each base station and equivalent e.i.r.p. values for the mobiles and portables associated with each base station. Determine the values of pertinent correction and weighting factors based on building heights and density and distribution of portables. Close-in situations, prominent hills, and extra tall buildings require special treatment.

3. Based on PCS e.i.r.p. values, correction and weighting factors, and microwave receiving system characteristics determined above, calculate the total interference power at the input of each microwave receiver, using the Longley-Rice propagation model.

4. Based on the interference power level computed in step 3, determine interference to each microwave receiver using criteria described in Part 24 and EIA/TIA Bulletin 10–F.

The interference from each base station and the mobiles and portables associated with it is calculated as follows:

$P_{rbi}=10\text{Log}\,(p_{tbi})-L_{bi}-UC_i+G_{mwi}-C_i-BP_i$

$P_{rmi}=10\text{Log}\,(n_{mi}\times p_{tmi})-L_{mi}-UC_i+G_{mwi}-C_i$

$P_{rpsi}=10\text{Log}\,(n_{psi}\times p_{tpsi})-L_{psi}-UC_i+G_{mwi}-C_i$

$P_{rpbi}=10\text{Log}\,(n_{pbi}\times p_{tpbi})-L_{pbi}-UC_i-(BP_i-BH_i)+G_{mwi}-C_i$

$P_{rpri}=10\text{Log}\,(n_{pri}\times p_{tpri})-L_{pri}-(UC_i-BH_i)+G_{mwi}-C_i$

where:

P refers to Power in dBm

p refers to power in milliwatts

P_{rbi}=Power at MW receiver from ith base station in dBm

p_{tbi}=e.i.r.p. transmitted from ith base station in milliwatts, which equals average power per channel x number of channels x antenna gain with respect to an isotropic antenna—line loss

L_{bi}=Path loss between MW and base station site in dB

UC_i=Urban correction factor in dB

G_{mwi}=Gain of MW antenna in pertinent direction (dBi)

C_i=Channel discrimination of MW system in dB

P_{rmi}=Power at MW receiver from mobiles associated with ith base station

p_{tmi}=e.i.r.p. transmitted from mobiles associated with ith base station

n_{mi}=Number of mobiles associated with ith base station

L_{mi}=Path loss between MW and mobile transmitters in dB

P_{rpsi}=Power at MW receiver from outdoor portables (s for sidewalk)

p_{tpsi}=e.i.r.p. transmitted from outdoor portables associated with ith base station

n_{psi}=Number of outdoor portables associated with ith base station

L_{psi}=Path loss between MW and outdoor portables in dB

P_{rpbi}=Power at MW receiver from indoor portables (b for building)

p_{tpbi}=e.i.r.p. transmitted from indoor portables associated with ith base station

n_{pbi}=number of indoor portables associated with ith base station

L_{pbi}=Path loss in dB between MW and base station site (using average building height divided by 2 as effective antenna height)

P_{rpri}=Power at MW receiver from rooftop portables (r for rooftop)

p_{tpri}=e.i.r.p. transmitted from rooftop portables associated with ith base station

n_{pri}=Number of rooftop portables associated with ith base station

L_{pri}=Path loss in dB between MW and base station site (using average building height as effective antenna height)

BP_i=Building penetration loss at street level in dB

BH_i=Height gain for portables in buildings dB=2.5×(nf–1), where nf is number of floors

Note: where C_i varies from channel-to-channel, which often is the case, the summation process is more complex, requiring summation at a channel level first.

Finally, the total PCS interference power at a given microwave receiver from all the base stations in a given frequency band is found by summing the contributions from the individual stations. Likewise, the total interference power at a given microwave receiver from all mobiles and portables operating in a given frequency band is found by summing the contributions from the mobiles and portables associated with each cell.

$$P_{rb} = \sum_i p_{rbi} \text{ milliwatts}$$

$$P_{rm} = \sum_i \left(p_{rmi} + p_{rpsi} + p_{rpbi} + p_{rpri} \right) \text{ milliwatts}$$

$$P = 10 \text{ Log}(p) \text{ dBm}$$

Base Stations. Interference from each base station to each microwave should normally be considered independently. A group of base stations having more or less (within ± 50 percent) the same height above average terrain, the same e.i.r.p., basically the same path to a microwave receiving site, and subtending an angle to that receiving site of less than 5 degrees, may be treated as a group, using the total power of the group and the average antenna height of the group to calculate path loss, L.

Mobile Stations. The e.i.r.p. from mobile transmitters is weighted according to the number of base station channels expected to be devoted to mobile operation at any given time. The antenna height of mobiles used in calculating path loss, L, is assumed to be 2 meters.

Portable Stations. The e.i.r.p. from the portable units associated with each base station is weighted according to the estimated portion of portables associated with that cell expected to be operated inside buildings at any given time and the portion which could be expected to be operating from elevated locations, such as balconies or building rooftops. For example, in the case of service intended for business use in an urban area, one might expect that perhaps 85 percent of the portables in use at any given time would be operating from within buildings and perhaps 5 percent might be operating from rooftops or balconies. The remaining 10 percent would be outside at street level.

Calculation of an equivalent e.i.r.p. for cells in suburban areas will involve different weighting criteria.

Urban Correction Factor. The urban correction factor (UC) depends on the height and density of buildings surrounding a base station. For the core area of large cities, it is assumed to be 35 dB. For medium size cities and fringe areas of large cities (4- to 6-story buildings with scattered taller buildings and lower buildings and open spaces) it is assumed to be 25 dB; for small cities and towns, 15 dB, and for suburban residential areas (one- and two-story, single family houses with scattered multiple-story apartment buildings, shopping centers and open areas), 10 dB.

The unadjusted urban correction factor, UC, should not be applied to base station antenna heights that are greater than 50 percent of the average building height for a cell.

Building Height and Building Penetration Factors. The building height correction, BH, is a function of the average building height within the nominal coverage area of the base station. It is used in conjunction with the building penetration loss, BP, to adjust the expected interference contribution from that portion of the portables transmitting from within buildings. The adjustment is given by:

BP=20 dB in urban areas
BP=10 dB in suburban areas
BH=2.5×(nf–1) dB

where nf is the average height (number of floors) of the buildings in the area.

(Note that this formula implies a net gain when the average building height is greater than 8 floors). All buildings more than twice the average height should be considered individually. The contribution to BH from that portion of portables in the building above the average building height should be increased by a factor of 20Log(h) dB, where h is the height of the portables above the average building height in meters.

Channel Discrimination Factor. A factor based on the interference selectivity of the microwave receiver.

Propagation Model. The PCS to microwave path loss, L, is calculated using the Longley-Rice propagation model, Version 1.2.2., in the point-to-point mode. The Longley-Rice [1] model was derived from NBS Technical Note 101 [2], and updated in 1982 by Hufford [3]. Version 1.2.2 incorporated modifications described in a letter by Hufford [4] in 1985. Terrain elevations used as input to the model should be from the U.S. Geological Survey 3-second digitized terrain database.

Special Situations. If a cell size is large compared to the distance between the cell and a microwave receiving site so that it subtends an angle greater than 5 degrees, the cell should be subdivided and calculations should be based on the expected distribution of mobiles and portables within each subdivision.

If terrain elevations within a cell differ by more than a factor of two-to-one, the cell should be subdivided and microwave interference calculations should be based on the average terrain elevation for each subdivision.

If a co-channel PCS base station lies within the main beam of a microwave antenna (±5 degrees), there is no intervening terrain obstructions, and the power at the microwave receiver from that base station, assuming free space propagation, would be 3 dB or less below the interference threshold, interference will be assumed to exist unless the PCS licensee can demonstrate otherwise by specific path loss calculations based on terrain and building losses.

If any part of a cell or cell subdivision lies within the main beam of a co-channel microwave antenna, there is no intervening terrain obstructions, and the accumulative power of 5 percent or less of the mobiles, assuming free space propagation would be 3 dB or less below the interference threshold, interference will be assumed to exist unless the PCS licensee can demonstrate otherwise by specific path loss calculations based on terrain and building losses.

If a building within a cell or cell subdivision lies within the main beam of a co-channel microwave antenna, there is no intervening terrain obstructions, and the cumulative power of 5 percent or fewer of the portables, assuming free space propagation, would be 3 dB or less below the interference threshold, interference will be assumed to exist unless the PCS licensee can demonstrate otherwise by specific path loss calculations based on terrain and building losses.

References:

1. Longley, A.G. and Rice, P.L., "Prediction of Tropospheric Radio Transmission Loss Over Irregular Terrain, A Computer Method-1968", ESSA Technical Report ERL 79–ITS 67, Institute for Telecommunications Sciences, July 1968.

2. Rice, P.L. Longley, A.G., Norton, K.A., Barsis, A.P., "Transmission Loss Predictions

for Tropospheric Communications Circuits," NBS Technical Note 101 (Revised), Volumes I and II, U.S. Department of Commerce, 1967.

3. Hufford, G.A., Longley, A.G. and Kissick, W.A., "A Guide to the use of the ITS Irregular Terrain Model in the Area Prediction Mode", NTIA Report 82–100, U.S. Department of Commerce, April 1982. Also, Circular letter, dated January 30, 1985, from G.A. Hufford, identifying modifications to the computer program.

4. Hufford, G.A., Memorandum to Users of the ITS Irregular Terrain Model, Institute for Telecommunications Sciences, U.S. Department of Commerce, January 30, 1985.

Appendix: Final Regulatory Flexibility Analysis

Note: This appendix will not appear in the Code of Federal Regulations.

Pursuant to 5 U.S.C. Section 603, an initial Regulatory Flexibility Analysis was incorporated in the *Notice of Proposed Rule Making and Tentative Decision* in combined ET Docket No. 92–100 and GEN Docket No. 90–314. Written comments on the proposals in the *Notice of Proposed Rule Making*, including the Regulatory Flexibility Analysis, were requested. A Final Regulatory Flexibility Analysis was incorporated in the *Second Report and Order* in GEN Docket No. 90–314.

A. *Need for and Objective of Rules:* Our objective is to provide spectrum allocations, licensing and authorization rules, and technical standards for broadband PCS at 2 GHz. Authorizing this new service will make available a broad range of new services and technologies to both business users and consumers. The revised PCS rules will provide licensees and developers of unlicensed equipment the flexibility to introduce a wide variety of new and innovative telecommunications services and equipment.

B. *Issues Raised by the Public in Response to the Initial and Final Analyses:* A number of parties supported regulations that would facilitate participation in PCS by small businesses. Specifically, these parties argue that small frequency blocks, small service areas, and special consideration for small businesses in the licensing of PCS would facilitate small businesses participation in providing PCS services. The FCC empaneled a Small Business Advisory Committee (SBAC) that also assessed the policy implications of this proceeding for small businesses and filed a report with the Commission on September 15, 1993. The SBAC concluded that small frequency blocks with multiple licensees in each service area and a frequency block designated for qualified small, female, and minority businesses would assist entrepreneurial entry in PCS. The SBAC also suggested that the Commission consider other mechanisms to foster entry opportunities and capital formation for such groups. These issues and associated filings have been considered and addressed in the *Second Report and Order* and this *Memorandum Opinion and Order*, except issues related to licensee selection procedures. Licensing issues are the subject of a separate proceeding (PP Docket No. 93–253) that will establish rules to implement competitive bidding in broadband PCS. A Report and Order in that proceeding will be issued in the near future.

C. *Any Significant Alternative Minimizing Impact on Small Entities and Consistent with Stated Objectives:* We have reduced burdens wherever possible. The regulatory burdens we have retained are necessary to ensure that the public receives the benefits of broadband PCS in a prompt and efficient manner. We will continue to examine alternatives in the future with the objectives of eliminating unnecessary regulations and minimizing any significant impact on small entities.

[FR Doc. 94–15263 Filed 6–23–94; 8:45 am]

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Federal Register

Friday
June 24, 1994

Part VII

Department of Education

34 CFR Part 682
Federal Family Education Loan Program; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 682

RIN 1840–AB81

Federal Family Education Loan Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the Federal Family Education Loan (FFEL) Program. The FFEL Program consists of the Federal Stafford, Federal Supplemental Loans for Students (SLS), Federal PLUS, and Federal Consolidation Loan programs. These amendments are needed to implement changes to the Higher Education Act (HEA), made by the Higher Education Amendments of 1992, to define the performance standards and application procedures under which a lender, servicer, or guaranty agency will be designated as an exceptional performer. These regulations authorize the Secretary to recognize lenders, servicers, and guaranty agencies for an exceptional level of performance in collecting delinquent and defaulted FFEL Program loans. These regulations will also encourage lenders, servicers, and guaranty agencies to provide a higher level of expertise in servicing student loan portfolios and to provide strict monitoring of collection activities required on delinquent and defaulted FFEL Program loans.

EFFECTIVE DATE: Pursuant to section 482(c) of the Higher Education Act of 1965, as amended (20 U.S.C. 1089(c)), these regulations take effect July 1, 1995, with the exception of the information collection requirements in § 682.415. The information collection requirements in § 682.415 will become effective on July 1, 1995, or after these requirements have been submitted by the Department of Education and approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980, whichever is later. A document announcing the effective date will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ron Streets, Federal Family Education Loan Program Section, Loans Branch, Division of Policy Development, Policy, Training, and Analysis Service, U.S. Department of Education, 400 Maryland Avenue SW., (Room 4310, ROB–3), Washington, D.C. 20202–5449. Telephone (202) 708–8242. 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 Higher Education Amendments of 1992 (Pub. L. 102–325) (the 1992 Amendments) enacted July 23, 1992 added a new section 428I to the HEA to require the Secretary to promulgate regulations to identify lenders, servicers, and guaranty agencies that perform at an exceptional level in collecting delinquent and defaulted FFEL Program loans. These regulations seek to reduce the cost of defaults in the FFEL Program by encouraging lenders, servicers, and guaranty agencies to properly collect student loans while easing the burden on program participants who demonstrate an exceptionally high level of compliance with program requirements.

On April 20, 1994, the Secretary published a notice of proposed rulemaking (NPRM) for the FFEL Program in the **Federal Register** (59 FR 18928). The NPRM included a discussion of the major issues surrounding the proposed changes which will not be repeated here. The following list summarizes those issues and identifies the pages of the preamble to the NPRM on which a discussion may be found:

- Separating loan portfolios to calculate the 97 percent compliance rate (page 18930);
- Qualifying separate servicing centers for exceptional performance designation (page 18930); and
- Applicability of the Federal False Claims Act to exceptional performers (pages 18931–18932).

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, 20 parties submitted comments on the proposed regulations. An analysis of the comments and the changes in the regulations since publication of the NPRM follows.

Technical and other minor changes, and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority, generally are not addressed.

Comments: Several commenters suggested that lenders, servicers, and guaranty agencies with regional servicing centers should be able to qualify each center separately, or as a corporate entity, for exceptional performance designation.

Discussion: Section 428I of the HEA refers to the designation of a lender, servicer, or guaranty agency as a single entity and does not indicate that separate servicing centers should be evaluated separately. Consistent with the statutory language, the Secretary believes it is important to view the applicant as a single entity to accurately determine its overall compliance rating, regardless of the number of sites at which it services loans.

Changes: None.

Comments: Several commenters recommended that applicants be permitted to exclude parts of their portfolio from the exceptional performance designation. The commenters argued that this would allow applicants to separate their portfolio into segments which had previously not been serviced with the same quality to qualify as an exceptional performer. Other commenters stated that not allowing an exclusion of portions of portfolios may create problems for certain lenders and holders in terms of access to servicers and secondary markets.

Discussion: The Secretary does not believe that lenders, servicers, or guaranty agencies should be able to exclude portions of their loan portfolio for purposes of determining satisfaction of the requirement of a 97 percent compliance rating. Section 428I(a)(2) of the HEA requires that due diligence on *each* loan serviced during the audit period shall be reviewed in determining the applicable compliance rate. Therefore, the Secretary does not believe the statute provides any basis for excluding portions of a lender's, servicer's, or guaranty agency's loan portfolio. The Secretary believes the entire loan portfolio should be available for review to accurately determine the applicable compliance rate for possible designation as an exceptional performer.

Changes: None.

Comments: Some commenters suggested that the effective date of revocation of the designation should be the date the Secretary notifies the lender, servicer, or guaranty agency that its designation as an exceptional performer is terminated.

Discussion: The Secretary believes a lender, servicer, or guaranty agency that loses exceptional performance status is not entitled to receive the benefits of this status beyond the date that the event or condition causing the revocation occurred because that entity would no longer satisfy the requirements for exceptional performance.

Changes: None.

Comments: Some commenters suggested that lenders and servicers should be made aware of the progress of their application for exceptional performance designation and the

endorsement or lack of endorsement of key participants. Other commenters suggested that a 30-day notice and an opportunity for a hearing before the Secretary that is provided to guaranty agencies should be extended to lenders and lender servicers.

Discussion: The Secretary does not believe it is necessary to provide applicants with periodic status reports of pending applications. Paragraph (b)(4) provides that the Secretary notify the applicant and the appropriate guaranty agency of his decision to approve or deny an applicant's request for designation within 60 days of receipt of the information requested under paragraph (a)(2). Furthermore, the statute does not require the Secretary to allow a lender an opportunity to challenge a decision denying designation for exceptional performance. However, if the Secretary believes it is appropriate, the Secretary may give the lender or servicer an opportunity to submit additional information to support its application.

Changes: None.

Comments: Several commenters objected to the proposed use of internal auditors to conduct required quarterly audits, stating that this may compromise the proper safeguarding of public funds. The commenters recommended that the Secretary require that all audits be performed by independent auditors.

Discussion: A lender servicer or guaranty agency may only request permission to have its internal auditors perform the required audits after the entity has been designated for exceptional performance for at least 15 months. The Secretary will only approve the request if the Federal fiscal interest is protected. If the Secretary allows an entity to use internal auditors for the quarterly audits, the Secretary believes that the required annual independent financial and compliance audit is sufficient to assess the reliability of the internal auditor's accounting procedures and information provided in the quarterly audits.

Changes: None.

Comments: Several commenters argued that it is not clear whether all claims submitted beginning on or after October 1, 1993, by lenders and lender servicers designated for exceptional performance will be reimbursed at the 100 percent rate or will be reimbursed at 98 percent reinsurance.

Discussion: The Secretary has determined that the reduction in the reinsurance rate mandated by the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66) does not apply to lenders or lender servicers designated as exceptional performers. Section 428I of the statute specifies that lenders and lender servicers designated as exceptional performers will receive 100 percent reimbursement on all default claims submitted to guaranty agencies during the period of designation as stated on page 2 of the Department's Dear Colleague Letter 93–G–246 (November 1993).

Changes: None.

Comments: A few commenters stated that the regulations limit the 100 percent insurance to "default claims." The commenters stated that since death, disability, and bankruptcy claims are eligible for 100 percent insurance under the HEA, those claims should be eligible for coverage under the exceptional performer designation.

Discussion: The Secretary agrees with the commenters and has made a change to the regulations.

Changes: The Secretary has revised § 682.415(a)(1) to clarify that *all* claims submitted by a lender or lender servicer designated for exceptional performance shall receive 100 percent insurance.

Comments: Some commenters stated that the regulations only allow a lender to be designated for exceptional performance for loans that it services itself. The commenters argued that a lender should be able to apply for exceptional performance designation even if it contracts with a servicer for all or a portion of the servicing of its loan portfolio.

Discussion: The commenters are correct that the regulations allow an applicant to apply for designation only based on the loans that it actually services. The regulation is consistent with section 428I(a)(2)(A) of the Act. However, there appears to be a misunderstanding within the industry. A lender, servicer, or guaranty agency does not have to service its entire loan portfolio to be eligible for exceptional performance designation. It may receive designation based on loans it actually services itself. However, a lender may not receive designation for a portion of its loan portfolio serviced by a lender servicer unless the lender servicer has separately received designation on its entire loan portfolio.

Changes: None.

Comments: Many commenters suggested that paragraph (b)(1)(ii) be deleted from the final regulations and argued that the Secretary should rely only on "documentation" rather than "any information" received from a guaranty agency indicating that a lender's or servicer's application for exceptional performance should be denied.

Discussion: The language in paragraph (b)(1)(ii) of the regulations reflects the statutory language in section 428I(c)(2). Therefore, no change has been made.

Changes: None.

Comments: A few commenters stated that paragraphs (a)(1) and (b)(4) specify that lenders and lender servicers are designated for exceptional performance for a 12-month period following the receipt by the guarantor of notice of designation. The commenters noted that the provision makes no reference to notifications to lenders and lender servicers.

Discussion: The Secretary agrees with the commenters and has revised the regulations.

Changes: The Secretary has revised paragraphs (a)(1) and (b)(4) to also require notification to lenders and lender servicers.

Comments: Several commenters opposed inclusion of the statutory provision that a lender or lender servicer designated for exceptional performance who fails to service loans or otherwise comply with applicable program regulations is considered in violation of the Federal False Claims Act. Some commenters suggested that the Secretary clarify the circumstances under which a violation of program regulations would be considered a violation of the Federal False Claims Act. The commenters argued that claims with servicing errors and omissions may be submitted inadvertently by lenders and lender servicers in the ordinary course of business, and as such should not be considered violations of the Federal False Claims Act. Other commenters suggested limiting the application of the Federal False Claims Act to those loans submitted by an exceptional performer that were not covered by the exceptional performance designation.

Discussion: The regulations properly reflect the statutory language in 31 U.S.C. 3729. The Secretary does not believe it is necessary to interpret this language further. The Secretary has changed the regulation, however, to refer to 31 U.S.C. 3129 rather than the Federal False Claims Act. This change conforms the regulations to section 428I of the HEA, as modified by the Higher Education Technical Amendments of 1993, Pub. L. 103–208.

Changes: Section 682.415(b)(7)(ii) has been changed to refer to 31 U.S.C. 3729 rather than the Federal False Claims Act.

Comments: Some commenters recommended clarifying in the regulations that insurance payment on a claim by a lender or lender servicer designated for exceptional performance may not be denied or repayment

required based solely on a violation of repayment conversion, due diligence requirements, and timely filing requirements.

Discussion: The Secretary believes that the regulatory language clearly states that insurance payments will not be denied based solely on a violation of repayment conversion, due diligence requirements, and timely filing requirements. However, a guaranty agency or the Secretary may require the lender or lender servicer to repurchase a loan if the agency determines the loan should not have been submitted as a claim. For example, repurchase of a claim could be required if the loan was not delinquent for 180 days for installments due monthly at the time the claim was submitted.

Changes: None.

Comments: One commenter suggested that a lender, servicer, or guaranty agency should be able to receive the exceptional performance designation even if the annual audit was conducted more than 90 days prior to the initial request for designation.

Discussion: The Secretary believes that the audit period should end no more than 90 days prior to requesting exceptional performance designation to ensure that the information received from applicants is relatively current. Therefore, a change is not warranted.

Changes: None.

Comments: Many commenters objected to guaranty agencies performing a detailed review of every default claim submitted by an exceptional performer.

Discussion: The regulations do not require a review of default claims submitted by lenders and lender servicers designated for exceptional performance. However, as stated in the NPRM and in these final regulations, nothing prohibits the guaranty agency or the Secretary from reviewing the lender's or lender servicer's activities related to claims paid under the exceptional performance designation as part of program oversight responsibilities.

Changes: None.

Comments: One commenter suggested that the scope of the compliance audit be clarified. The commenter indicated that paragraph (a)(3)(iii)(A) states "the audit must yield a compliance rating of at least 97 percent of all due diligence requirements applicable to each loan, on average, with respect to the collection of delinquent loans ending no more than. . . ." The commenter stated that there are other activities included in the exceptional performance designation that go beyond due diligence on delinquent loans. The commenter suggested that the compliance rating reflect the full scope of activities and measure the accuracy of performance as a whole.

Discussion: The Secretary agrees with the commenter. During negotiated rulemaking consensus was reached that the audit would review compliance with converting FFEL Program loans to repayment under § 682.209(a), and compliance with the timely-filing requirements under §§ 682.402(e)(2) and 682.406(a)(5), in accordance with the audit guide published by the U.S Department of Education, Office of Inspector General. Consensus was also reached that a guaranty agency's compliance audit would review compliance with timely claim payments and timely reinsurance filing required for defaulted FFEL Program loans in §§ 682.410(b)(6) (iii)–(xii), 682.406 (a)(8) and (a)(9), or §§ 682.410(b)(7) and 682.406 (a)(8) and (a)(9).

Changes: The Secretary has revised paragraph (a)(2)(iii)(A) to incorporate a reference to paragraph (b)(1)(iv) for lenders and lender servicers and paragraph (c)(2)(i) for guaranty agencies and guaranty agency servicers. This cross reference serves the goal identified by the commenters.

Comments: A few commenters pointed out that paragraph (b)(3) defines how the 97 percent compliance rating is to be calculated. However, the provision should, but does not, include conversion to repayment and timely filing activities in that definition.

Discussion: The Secretary agrees with the commenters.

Changes: The Secretary has revised paragraph (b)(3) by incorporating references to §§ 682.209(a), 682.402(e)(2), and 682.406(a)(5).

Comments: Some commenters stated that paragraph (b)(6) should be clarified by specifically incorporating compliance with conversion of FFEL Program loans to repayment and timely filing requirements as components in the quarterly audit.

Discussion: The Secretary agrees with the commenters.

Changes: The Secretary has revised paragraph (b)(6) to clarify that quarterly audits must also reflect the lender's and lender servicer's compliance with loan conversion to repayment and the timely filing requirements.

Comments: Some commenters recommended that the regulations provide that the Secretary will either approve or disapprove an applicant's reapplication for exceptional performance designation within 60-days of receiving all of the required information from the applicant.

Discussion: The Secretary agrees with the commenters. The commenters' suggestion would provide consistency throughout the regulation by providing notification to a lender, servicer, or guaranty agency within 60-days of the date the Secretary receives the required reapplication information. The regulations already provide a 60-day time period for decision on an initial application.

Changes: The Secretary has revised paragraph (a)(6)(iii) to include a 60-day notification to the applicant after receiving the required information for reapplication.

Comments: Several commenters agreed with the Secretary's interpretation that section 428(b)(1)(G) of the Higher Education Act, as amended by Pub. L. 103–66, does not reduce the insurance rate paid by guaranty agencies to exceptional performers.

Discussion: No comments were received that opposed the Secretary's determination of the applicable insurance rate of 100 percent that guaranty agencies are required to pay to lenders and lender servicers designated for exceptional performance.

Changes: None.

Comments: Two commenters suggested that the Secretary clarify in the preamble that the 180 days referred to in § 682.415(b)(5)(i) means calendar days.

Discussion: The Secretary agrees with the commenters. Section 682.415(b)(5(i) restricts the lender's or lender servicer's exceptional performance designation to loans that have been serviced by that lender or lender servicer for the last 180 calendar days prior to a borrower's default.

Changes: A change has been made. Section 682.415(b)(5)(i) has been revised to clarify that the 180 days referred to in that paragraph means calendar days.

Comments: A few commenters noted that the regulations, as written, do not clarify that the audit will only cover collection activities performed during the audit period for loans serviced during the audit period.

Discussion: The Secretary agrees with the commenters and has made a change to the regulations.

Changes: The Secretary has revised paragraphs (b)(3) and (c)(4) of the regulations to clarify that the audits must cover collection activities performed only during the audit period for loans serviced during the audit period.

Comments: One commenter stated that the definition of "servicer" is not consistent with the definition of "third party servicer" as listed in § 682.200.

Another commenter suggested deleting paragraph (d)(3)(i) and renumbering to provide for consistency with the definition for third party servicers in § 682.416.

Discussion: The Secretary has no alternative but to retain this definition in the regulations because the statute under section 428I defines the term "servicer" for purposes of qualifying for exceptional performance designation.

Changes: None.

Comments: Several commenters argued that the insurance rate paid to lenders, servicers, and guaranty agencies in paragraph (a)(1) is determined by statute and is not optional. The commenters suggested that the Secretary delete the term "may" and insert "shall" instead.

Discussion: The Secretary agrees with the commenters that the insurance and reinsurance rates are determined by statute.

Changes: The Secretary has revised paragraph (a)(1) by replacing the term "may" with the term "shall".

Comments: One commenter noted that paragraphs (b)(6) and (b)(8)(i)(A) would allow a lender who met the 90-percent benchmark for a single month, but failed to meet that threshold for each of the other two months during the audit period, to be designated as an exceptional performer.

Discussion: The Secretary agrees with the commenter that the proposed rule did not clearly reflect the statutory requirement. Section 428I of the HEA requires lenders, servicers, and guaranty agencies to reach a minimum of 90 percent compliance in due diligence in collecting delinquent and defaulted FFEL Program loans for each month of a quarter.

Changes: The Secretary has revised paragraphs (b)(6)(i) and (b)(8)(i)(A) to clarify that a minimum of 90 percent compliance for each month of the quarter must be met by a lender, servicer, or guaranty agency in order to maintain its exceptional performance status.

Comments: A few commenters stated that the Secretary clarify in the regulations that complete claim packages are not required on claims submitted by lenders and lender servicers designated for exceptional performance.

Discussion: The Secretary believes it is important for purposes of program oversight to require all lenders and lender servicers to file complete claim packages that include documents and information that is normally required to be submitted by guaranty agencies.

Changes: None.

Comments: One commenter suggested that the Secretary clarify that unreinsured loans and loans that have not been serviced by the servicer for at least 180 days should be excluded from the compliance rate calculation.

Discussion: Loans that are unreinsured because due diligence violations of due diligence requirements in § 682.411 cannot be excluded from the compliance rate calculation. It would not be in the Federal interest to allow a lender or lender servicer to exclude, from calculation of its compliance rate, loans that lost reinsurance due to the lender's or servicer's failure to perform required due diligence activities.

Changes: None.

Comments: Some commenters stated that if the audit period ended more than 90 days prior to enactment of the regulations, the agency should be permitted to submit a request for designation immediately. The commenters further stated that applicants should not be required to wait until the following year, after another annual audit has been performed, to apply for an exceptional performance designation.

Discussion: The 90-day audit restriction provides the Secretary with the necessary assurance that the most recent information has been reported to determine an applicant's eligibility for exceptional performance designation. The earliest a lender, servicer, or guaranty agency may apply for designation is July 1, 1995.

Changes: None.

Comments: One commenter stated that the 180-day servicing requirements referenced in paragraph (b)(5) should not apply to non-default claims, *e.g.*, bankruptcy, death, disability, etc.

Discussion: The Secretary believes that the 180-day servicing requirement should apply to all loans for which a claim will be filed to ensure that due diligence is being properly performed. However, if the borrower dies, becomes disabled, or files for bankruptcy prior to completion of the 180-day servicing period, the lender, servicer, or guaranty agency may submit its claim immediately.

Changes: None.

The Secretary incorporated a general guide to the structural layout of the regulatory provisions pertaining to lenders and guaranty agencies on page 18392 of the NPRM.

The NPRM solicited comments as to whether the standards to designate a guaranty agency as an exceptional performer should be revised in light of other changes impacting guaranty agencies that were made by Pub. L. 103–66. The Secretary received the following comments in response to this request.

Comments: One commenter recommended that a guaranty agency that is exceptional which merges or assumes the guarantees of another guarantor should maintain its designation as an exceptional performer.

Discussion: The Secretary believes that a lender, servicer, or guaranty agency that is designated for exceptional performance and subsequently merges with another lender, servicer, or guaranty agency should lose its designation for exceptional performance unless both parties hold exceptional performance designations at the time of the merger.

Changes: None.

Comments: One commenter argued that guaranty agencies that are exceptional performers should not be subject to the termination provision of section 428(c)(9) of the HEA.

Discussion: Exceptional performance designation relates to loan collection activities but does not reflect a judgment on an agency's overall economic conditions or program performance. Therefore, termination of an agency's agreements with the Secretary may still be appropriate even if the agency has been designated for exceptional performance.

Changes: None.

Comments: One commenter argued that guarantors that are exceptional performers should be subject to mandatory assignment of defaulted loans to the Secretary as by definition it is in the Federal Government's best interest for loans to be serviced by the guarantor.

Discussion: The Secretary does not agree that there is any connection between designation of exceptional performance and the criteria for mandatory assignment of defaulted loans.

Changes: None.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by, or is available from, any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Executive Order 12866

These final 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 final regulations are those resulting from statutory requirements and those determined by the Secretary to be necessary for administering this program effectively and efficiently.

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. In assessing the potential costs and benefits—both quantitative and qualitative—of these final regulations, the Secretary has determined that the benefits of the final regulations justify the costs.

List of Subjects in 34 CFR Part 682

Administrative practice or procedure, Colleges and universities, Education, Loan programs—education, Student aid, Vocational education.

Dated: June 15, 1994.

Richard W. Riley,

Secretary of Education.

(Catalog of Federal Domestic Assistance Numbers: 84.032 Federal Family Education Loan Program)

The Secretary amends Part 682 of Title 34 of the Code of Federal Regulations as follows:

PART 682—FEDERAL FAMILY EDUCATION LOAN PROGRAM

1. The authority citation for Part 682 continues to read as follows:

Authority: 20 U.S.C. 1071 to 1087–2, unless otherwise noted.

2. A new § 682.415 is added to read as follows

§ 682.415 Special insurance and reinsurance rules.

(a) (1) A lender or lender servicer (as an agent for an eligible lender) designated for exceptional performance under paragraph (b) of this section shall receive 100 percent reimbursement on all claims submitted for insurance during the 12-month period following the date the lender or lender servicer and appropriate guaranty agencies receive notification of the designation of the eligible lender or lender servicer under paragraph (b) of this section. A guaranty agency or a guaranty agency servicer (as an agent for a guaranty agency) designated for exceptional performance under paragraph (c) of this section shall receive the applicable reinsurance rate under section 428(c)(1) of the Act on all claims submitted for payments by the guaranty agency or guaranty agency servicer during the 12-month period following the date the guaranty agency receives notification of its designation, or its servicer's designation, under paragraph (c) of this section. A notice of designation for exceptional performance under this section is deemed to have been received by the lender, servicer, or guaranty agency no later than 3 days after the date the notice is mailed, unless the lender, servicer, or guaranty agency is able to prove otherwise.

(2) To receive a designation for exceptional performance under paragraph (a)(1) of this section, a lender, servicer, and guaranty agency must submit to the Secretary—

(i) A written request for designation for exceptional performance that includes—

(A) The applicant's name and address;

(B) A contact person;

(C) Its ED identification number, if applicable;

(D) The name and address of applicable guarantors; and

(E) A copy of an annual financial audit performed in accordance with the Audit Guide developed by the U.S. Department of Education, Office of Inspector General, or one of the following as appropriate:

(*1*) A lender may submit a copy of an annual audit required under § 682.305(c), if the audit period ends no more than 90 days prior to the date the lender submits its request for designation.

(*2*) A servicer may submit a copy of the annual financial audit, as defined, completed and submitted under 34 CFR 682.416(e), if the audit period ends no more than 90 days prior to the date the servicer submits its request for designation.

(*3*) A guaranty agency may submit a copy of the annual audit required under section 428(b)(2)(D) of the Higher Education Act of 1965, as amended, if the audit period ends no more than 90 days prior to the date the guaranty agency submits its request for designation;

(ii) If the applicant is a servicer, a statement signed by the owner or chief executive officer of the applicant certifying that the applicant meets the definition of a servicer contained in paragraph (d)(3) of this section; and

(iii) (A) A compliance audit of its loan portfolio, conducted by a qualified independent organization meeting the criteria in paragraph (b)(9) of this section, that yields a compliance performance rating of 97 percent or higher of all due diligence requirements applicable to each loan, on average, with respect to the collection of delinquent or defaulted loans and satisfying the requirements in paragraph (b)(1)(iv) of this section or, if applicable, paragraph (c)(2)(i) of this section. The audit period may end no more than 90 days prior to the date the lender, servicer or guaranty agency submits its request for designation.

(B) To satisfy the requirement of paragraph (a)(2)(iii)(A) of this section, a servicer may submit its annual compliance audit under 34 CFR 682.416(e), if the servicer includes in its report a measure of its compliance performance rating required under paragraph (a)(2)(iii)(A) of this section, if this audit is performed in accordance with an audit guide developed by the U.S. Department of Education, Office of Inspector General.

(3) The cost of audits for determining eligibility and continued compliance under this section is the responsibility of the lender, servicer, or guaranty agency.

(4) A lender or servicer shall also submit the information in paragraph (a)(2) (i), (ii), or (iii) of this section to each appropriate guaranty agency.

(5) A lender may be designated for exceptional performance for loans that it services itself. A lender servicer may be designated for exceptional performance only for all loans it services.

(6) (i) To prevent a lapse of a lender's, servicer's, or guaranty agency's exceptional performance status after the end of the 12-month period, the lender, servicer, or guaranty agency shall submit updated information required under paragraph (a)(2) of this section to the Secretary no later than 90 days after the end of the annual audit period.

(ii) Upon the Secretary's determination that the lender, servicer, or guaranty agency maintained at least a 97 percent compliance performance rate and satisfies the other requirements for designation, the Secretary notifies the lender, servicer, or guaranty agency that its redesignation for exceptional performance begins on the date following the last day of the previous 12-month period for which it received designation for exceptional performance. However, a lender's, servicer's, or guaranty agency's designation for exceptional performance continues until it receives notification from the Secretary that its request for redesignation is approved, or that its designation is revoked, under the provisions of paragraph (b)(8)(iii) of this section.

(iii) The Secretary notifies the lender or lender servicer and the appropriate guaranty agency within 60 days after the date the Secretary receives the information, listed in paragraph (a)(2) of this section, from the eligible lender or lender servicer, that the lender's or lender servicer's reapplication for designation for exceptional performance has been approved or denied. A notice under paragraph (a)(6) of this section is determined to have been received by the lender, servicer, or guaranty agency no later than 3 days after the notice is mailed, unless the lender, servicer, or guaranty agency is able to prove otherwise.

(b) *Determination of eligibility.* (1) The Secretary determines whether to designate a lender or lender servicer for exceptional performance based upon—

(i) The annual compliance audit of collection activities required for FFEL Program loans under § 682.411(c) through (h), and (m), if applicable, serviced during the audit period;

(ii) Information from any guaranty agency regarding an eligible lender or lender servicer desiring designation, including, but not limited to, any information suggesting that the lender's or lender servicer's request for designation should not be approved;

(iii) Any other information in the possession of the Secretary, or submitted to the Secretary by any other agency or office of the Federal Government; and

(iv) Evidence indicating that the lender or lender servicer has complied with the requirements for converting FFEL Program loans to repayment under § 682.209(a), and the timely filing requirements under §§ 682.402(e)(2) and 682.406(a)(5), in accordance with the audit guide as published by the U.S. Department of Education, Office of Inspector General. The audit submitted under paragraph (b)(1)(i) of this section may satisfy this requirement, if a separate sample of loans is used.

(2) The Secretary informs the eligible lender or lender servicer, and the appropriate guaranty agency, that the lender's or lender servicer's request for designation as an exceptional lender or lender servicer has been approved, unless the results of the audit are persuasively rebutted by information under paragraphs (b) (1)(ii) or (iii) of this section. If the request for designation is not approved, the Secretary informs the lender or lender servicer and the appropriate guaranty agency or agencies of the reason the application is not approved.

(3) In calculating a lender's or lender servicer's compliance rating, as referenced in paragraph (a)(2)(ii) of this section, the universe for the audit must include all loans in the lender's or lender servicer's FFEL Program portfolio that are serviced during the audit period performed under the Department's regulations in §§ 682.411, 682.209(a), 682.402(e)(2), and 682.406(a)(5). The calculation may consider only due diligence activities applicable to the audit period. The numerator must include the total number of collection activities successfully completed, in accordance with program regulations, that are serviced during the audit period. The denominator must include the total number of collection activities required to be performed, in compliance with program regulations, that are serviced during the audit period. Using statistical sampling and evaluation techniques identified in an audit guide prepared by the Department's Office of Inspector General, a random sample of loans must be selected and evaluated.

(4) The Secretary notifies the lender or lender servicer and the appropriate guaranty agency within 60 days after the date the Secretary receives the information, listed in paragraph (a)(2) of this section, from the eligible lender or lender servicer, that the lender's or lender servicer's application for designation for exceptional performance has been approved or denied. (5) (i) Except as provided under paragraph (b)(8) of this section, a guaranty agency may not refuse, solely on the basis of a violation of repayment conversion, due diligence requirements, or timely filing requirements, to pay an eligible lender or lender servicer, designated for exceptional performance, 100 percent of the unpaid principal and interest of all loans for which eligible claims are submitted for insurance payment by that eligible lender or lender servicer. The designation of a lender or lender servicer for exceptional performance applies to loans that have been serviced by the lender or lender servicer for the last 180 days prior to a borrower's default or earlier in the case of death, disability, or bankruptcy.

(ii) A guaranty agency or the Secretary may require the lender or lender servicer to repurchase a loan if the agency determines the loan should not have been submitted as a claim. A guaranty agency may not require repurchase of a loan based solely on the lender's violation of the requirement relating to repayment conversion, due diligence, or timely filing. The guaranty agency must pay claims to a lender or lender servicer designated for exceptional performance in accordance with this paragraph for the one-year period following the date the guaranty agency receives notification of the lender's or lender servicer's designation under paragraph (b)(2) of this section, unless the Secretary notifies the guaranty agency that the lender's or lender servicer's designation for exceptional performance has been revoked.

(6) (i) To maintain its designation for exceptional performance, the lender or lender servicer must have a quarterly compliance audit of the due diligence in collection activities required for FFEL Program loans under § 682.411(c)–(h), and (m), if applicable, and for converting FFEL Program loans to repayment under § 682.209(a) and timely filing requirements under §§ 682.402(e)(2) and 682.406(a)(5) conducted by a qualified independent organization meeting the criteria in paragraph (b)(9) of this section that results in a compliance rating for the quarter of not less than 97 percent. The audit must indicate a compliance performance rating of not less than 97 percent for two consecutive months or 90 percent for any month. The quarterly audit may not include any period covered by the annual financial and compliance audit under paragraph (a)(2) of this section. The results of the quarterly compliance audit must be submitted to the Secretary and to the appropriate guaranty agencies within 90 days following the end of each quarter.

(ii) If a lender or lender servicer has been designated for exceptional performance for at least 15 months, a lender or lender servicer may petition the Secretary for permission to have its internal auditors perform the subsequent quarterly compliance audits required by paragraph (b)(6)(i) of this section. If the Secretary approves the request, the lender's or lender servicer's annual audit must assess the reliability of the procedures used by the lender's or lender servicer's internal auditor in performing the quarterly audits.

(iii) The lender or lender servicer shall perform three quarterly audits and one annual audit that includes a representative sample of fourth quarter collection activities to satisfy the requirements of this paragraph.

(7) (i) Insurance payments made on eligible claims submitted by a lender or lender servicer designated for exceptional performance are not subject to additional review of repayment conversion, due diligence, and timely filing requirements, or to required repurchase by the lender or lender servicer, unless the Secretary determines that the eligible lender or lender servicer engaged in fraud or other purposeful misconduct in obtaining designation for exceptional performance. Notwithstanding the

payment requirements in this paragraph, nothing prohibits the guaranty agency or the Secretary from reviewing the lender's or lender servicer's activities in regard to the loans paid under this paragraph as part of program oversight responsibilities, or for requiring the lender to repurchase a loan if the agency determines the loan should not have been submitted as a claim. The lender shall file, and the guaranty agency shall maintain, the documentation the guaranty agency normally requires its lenders to file with respect to the collection history of each loan.

(ii) A lender or lender servicer designated under this section that fails to service loans or otherwise comply with applicable program regulations is considered in violation of 31 U.S.C. 3729.

(8) (i) The Secretary revokes the designation of a lender or lender servicer for exceptional performance if—

(A) The quarterly compliance audit required under paragraph (b)(6) of this section is submitted to the Secretary and indicates that the lender or lender servicer failed to maintain not less than 97 percent compliance with due diligence standards for the quarter, or not less than 97 percent compliance for 2 consecutive months, or 90 percent for any month; or

(B) Any quarterly audit required in paragraph (b)(6) of this section is not received by the Secretary within 90 days following the end of each quarter.

(ii) The Secretary may revoke the designation of an exceptional lender or lender servicer if—

(A) The Secretary determines the eligible lender or lender servicer failed to maintain an overall level of regulatory compliance consistent with the audit submitted by the lender or lender servicer;

(B) The Secretary has reason to believe the lender or lender servicer may have engaged in fraud in securing its designation for exceptional performance; or

(C) The lender or lender servicer fails to service loans in accordance with program regulations. For purposes of this paragraph, a lender or lender servicer fails to service loans in accordance with program regulations if the Secretary determines that the lender or lender servicer has committed serious and material violations of the regulations.

(iii) The date on which the event or condition occurred is the effective date of the revocation, except for revocation under paragraph (a)(6) of this section, which is effective at the close of the 12-month period for which the lender or lender servicer received designation for exceptional performance.

(9) Public accountants, public accounting firms, and external government audit organizations that meet the qualification and independence standards contained in Government Auditing Standards published by the Comptroller General of the United States are acceptable entities to perform the audits required under paragraphs (a)(3)(iii)(A) and (b)(6) of this section.

(c)(1)(i) Except as provided under paragraph (c)(8) of this section, the Secretary pays the applicable reinsurance rate under section 428(b)(1)(G) of the Act on all claims submitted by a guaranty agency or guaranty agency servicer that has been designated for exceptional performance.

(ii) A guaranty agency may be designated for exceptional performance for loans that it services itself.

(iii) A guaranty agency servicer may be designated for exceptional performance for loans it services.

(iv) A guaranty agency or guaranty agency servicer is designated for exceptional performance for a 12-month period following the receipt, by the guaranty agency or guaranty agency servicer, of the Secretary's notification of designation.

(v) A notice under this paragraph is determined to have been received no later than 3 days after the date the notice is mailed, unless the guaranty agency or guaranty agency servicer is able to prove otherwise.

(2) The Secretary determines whether to designate a guaranty agency or guaranty agency servicer for exceptional performance based upon—

(i) The annual financial audit and a compliance audit of collection activities, including timely claim payment and timely reinsurance filing required for FFEL Program loans under §§ 682.410(b)(6) (iii) through (xii), and 682.406 (a)(8) and (a)(9), or §§ 682.410(b)(7) and 682.406 (a)(8) and (a)(9); and

(ii) Any other information in the possession of the Secretary.

(3) The Secretary informs the guaranty agency or guaranty agency servicer that its request for designation for exceptional performance has been approved, unless the results of the audit are persuasively rebutted by other information received by the Secretary. If the Secretary does not approve the guaranty agency's or guaranty agency servicer's request for designation, the Secretary informs the guaranty agency or guaranty agency servicer of the reason the application was not approved.

(4) In calculating a guaranty agency's or guaranty agency servicer's compliance rating, as referenced in paragraph (a)(2)(ii) of this section, the Secretary requires that the universe of loans in the audit sample must consist of all loans in the guaranty agency's or guaranty agency servicer's FFEL Program portfolio that are serviced during the audit period performed under the Department's regulations in §§ 682.410(b)(6) (iii) through (xii) and 682.406 (a)(8) and (a)(9) or §§ 682.410(b)(7) and 682.406 (a)(8) and (a)(9). The calculation may consider only the due diligence activities that were or should have been conducted during the audit period. The numerator must include the total number of collection activities successfully completed in accordance with program regulations on loans that were serviced during the audit period. The denominator must include the total number of collection activities required to be performed in compliance with program regulations on loans that were serviced during the audit period. Using statistical sampling and evaluation techniques identified in an audit guide prepared by the Department's Office of Inspector General, a random sample of loans must be selected and evaluated.

(5) The Secretary notifies a guaranty agency or guaranty agency servicer, within 60 days after the date the Secretary receives the information listed in paragraph (a)(2) of this section whether the guaranty agency's or guaranty agency servicer's application for designation for exceptional performance has been approved or denied.

(6) (i) To maintain its status as an exceptional guaranty agency or guaranty agency servicer, the guaranty agency or guaranty agency servicer must have a quarterly compliance audit of the due diligence in collection activities of defaulted FFEL Program loans under §§ 682.410(b)(6) (iii) through (xii) and 682.406 (a)(8) and (a)(9) or 682.410(b)(7) and 682.406(a)(8) and (a)(9) conducted by a qualified independent organization meeting the criteria in paragraph (c)(9) of this section. The audit must yield a compliance performance rating of not less than 97 percent. The quarterly audit may not include any period covered by the annual financial and compliance audit required under paragraph (a)(2) of this section. The results of the quarterly compliance audit must be submitted to the Secretary within 90 days following the end of each quarter.

(ii) If the guaranty agency or guaranty agency servicer has been designated for

exceptional performance for at least 15 months, the guaranty agency or a guaranty agency servicer may petition the Secretary for permission to have its internal auditors perform subsequent quarterly compliance audits required by paragraph (c)(6)(i) of this section. If the Secretary approves the request, the guaranty agency's or guaranty agency servicer's annual audit must assess the reliability of the procedures used by the guaranty agency's or the guaranty agency servicer's internal auditor in performing the quarterly audits.

(7) (i) Payments of reinsurance made on claims, under the FFEL Program, submitted by a guaranty agency or guaranty agency servicer designated for exceptional performance are not subject to repayment based on additional review of due diligence activities, including timely claim payment, or timely filing for reinsurance covering a period during which the guaranty agency or guaranty agency servicer was designated for any reason other than a determination by the Secretary that the eligible guaranty agency or guaranty agency servicer engaged in fraud or other purposeful misconduct in obtaining designation for exceptional performance.

(ii) A guaranty agency designated under this section that fails to servicer loans or otherwise comply with applicable program regulations is considered in violation of 31 U.S.C. 3729.

(8) (i) The Secretary may revoke the designation of a guaranty agency or guaranty agency servicer for exceptional performance if the Secretary has reason to believe the guaranty agency or guaranty agency servicer fraudulently obtained its designation for exceptional performance.

(ii) The Secretary may revoke the designation for exceptional performance upon 30 days' notice, and an opportunity for a hearing before the Secretary, if the Secretary finds that the guaranty agency or guaranty agency servicer failed to maintain an acceptable overall level of regulatory compliance.

(9) A qualified independent organization is an organization that meets the criteria in paragraph (b)(9) of this section.

(d) *Definitions.* For purposes of this section—

(1) *Due diligence requirements* means the activities required to be performed by lenders or guaranty agencies on delinquent or defaulted loans pursuant to § 682.411 (c) through (h), and (m), if applicable and §§ 682.410(b)(6) (iii) through (xii) and 682.406 (a)(8) and (a)(9) or §§ 682.410(b)(7) and 682.406(a)(8) and (a)(9);

(2) *Eligible loan* means a loan made, insured, or guaranteed under part B of title IV of the Act; and

(3) *Servicer* means an entity that services and collects student loans and that—

(i) Has substantial experience in servicing and collecting consumer loans or student loans;

(ii) Has an annual independent financial audit that is furnished to the Secretary and any other parties designated by the Secretary;

(iii) Has business systems capable of meeting the requirements of part B of title IV of the Act and applicable regulations;

(iv) Has adequate personnel knowledgeable about the student loan programs authorized by part B of title IV of the Act; and

(v) Does not knowingly have any owner, majority shareholder, director, or officer of the entity who has been convicted of a felony.

(Authority: 20 U.S.C. 1078–9)

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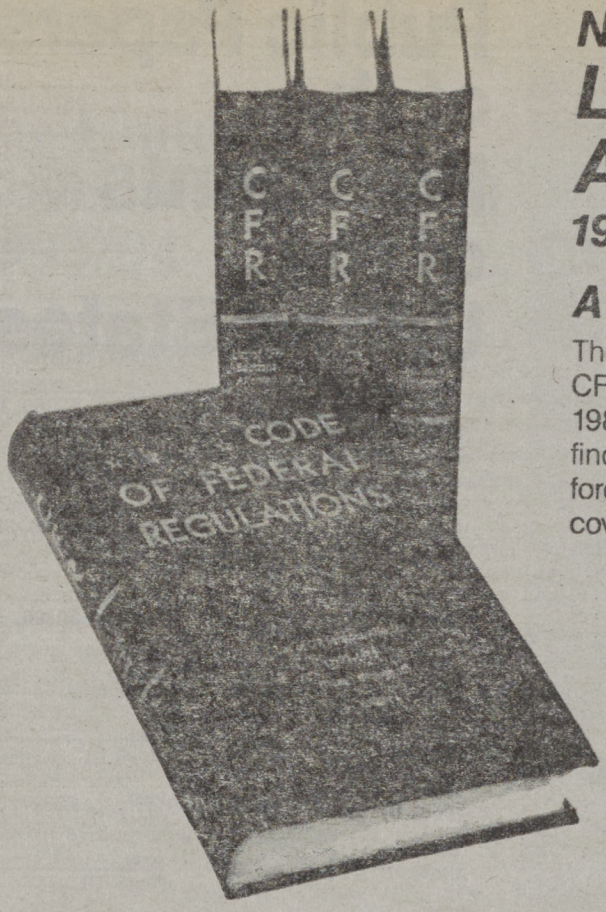
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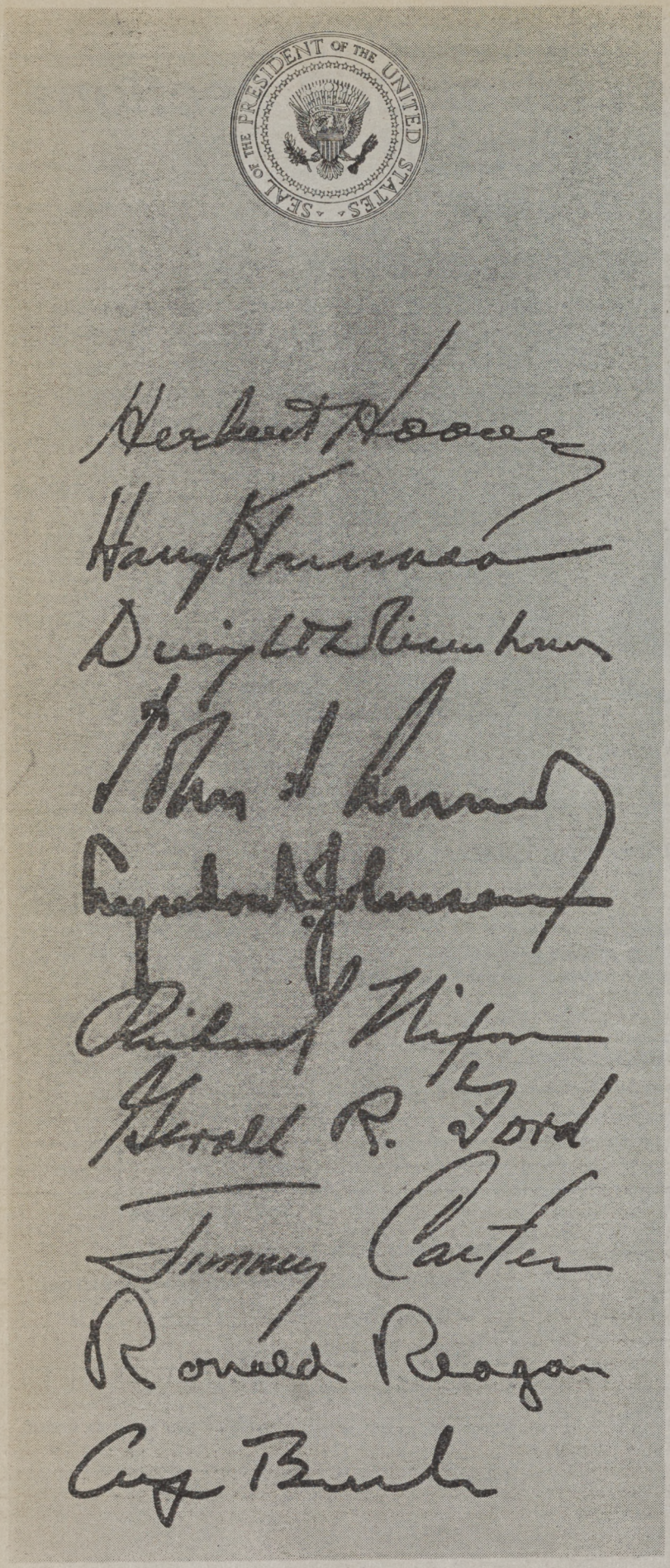
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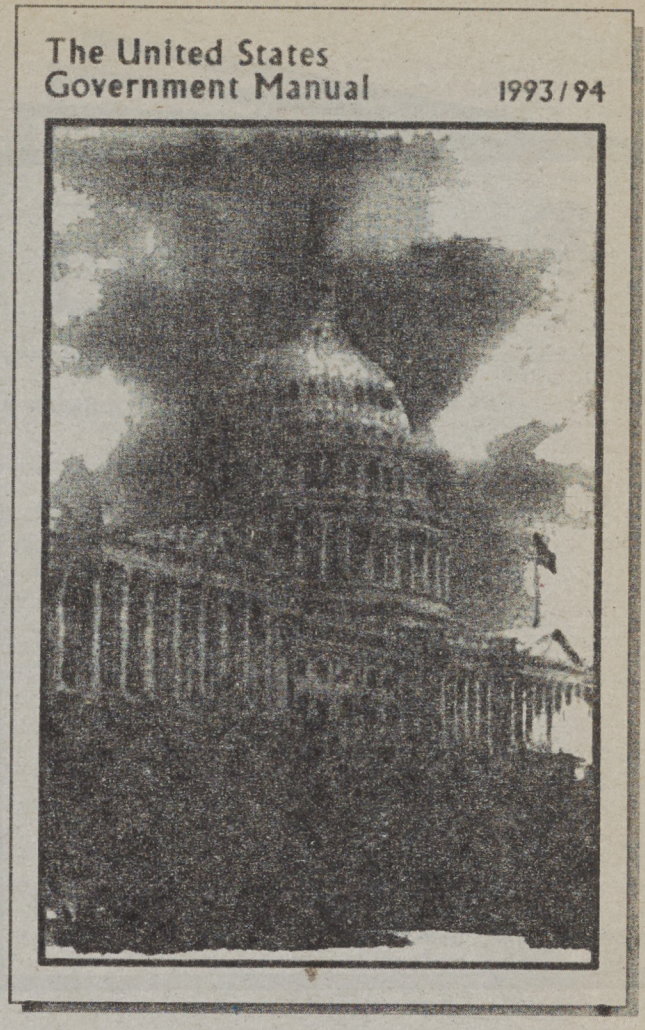
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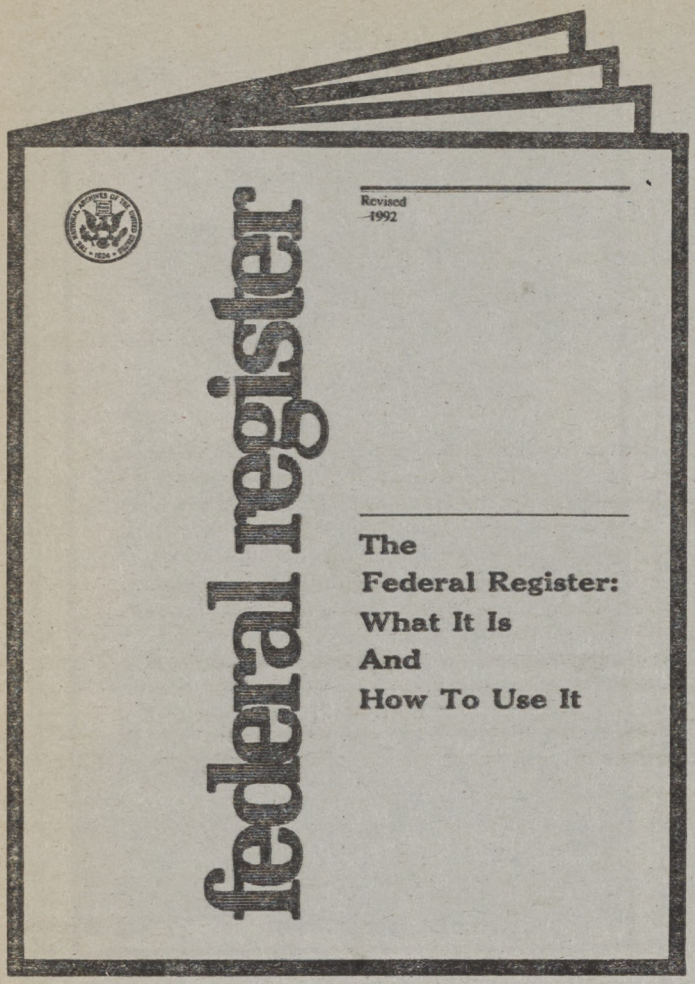
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