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

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

7 CFR Part 800

RIN 0580–AA25

Prohibition on Adding Water to Grain

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Federal Grain Inspection Service (FGIS) is revising the regulations under the United States Grain Standards Act (USGSA) to prohibit the application of water to grain, except for milling, malting, or similar processing operations. This prohibition is applicable to all persons handling grain, not just those receiving official inspection and weighing services under the USGSA. FGIS has determined that water, which is sometimes applied as a dust suppressant, can be too easily misused to increase the weight of grain. Additionally, externally-applied water has a significant potential for degrading the quality of grain. FGIS believes that this action will foster the marketing of grain of high quality to both domestic and foreign buyers and promote fair and honest weighing practices.

EFFECTIVE DATE: February 11, 1995.

FOR FURTHER INFORMATION CONTACT: George Wollam, FGIS, USDA, Room 0623 South Building, PO Box 96454, Washington, DC 20090–6454; (202) 720–0292.

SUPPLEMENTARY INFORMATION:

Executive Order 12866 and the Regulatory Flexibility Act

This final rule has been determined to be significant for purposes of Executive Order 12866 and has been reviewed by the Office of Management and Budget. The practice of adding water to grain has undermined the reputation of U.S. grain and jeopardized the U.S. grain industry's commitment to quality. Prohibiting this practice will foster the marketing of high quality grain and promote fair and honest weighing practices.

Applying water to grain may, under certain circumstances, reduce fugitive dust emissions—an important safety, health, and environmental objective. But, prohibiting its use will not prevent an elevator operator from maintaining a safe and healthy work environment, or complying with applicable air quality standards. There are many other equally or more effective and efficient dust control strategies available. Most U.S. grain elevators, including those that currently use water, already have pneumatic dust collection systems and/or oil-based dust suppression systems installed.

Presently, FGIS knows of only a few grain elevators spraying water on grain for dust control purposes. This is neither a common nor generally-accepted practice. Adding even a small amount of water can be detrimental to grain quality. Consequently, of the 63 active export grain elevators operating in the U.S., all have pneumatic dust collection capabilities and most do not have water dust suppressant systems. Only three (or five percent) of these 63 export elevators (all three operated by one company) apply water directly to grain as a dust control method. While no precise statistics exist on how many of the approximately 10,000 domestic grain elevators use water as a dust suppressant, it is estimated to be no greater than the level found in the export market.

In the short run, grain elevators that use water could experience a minor adverse economic impact if their facilities require retrofitting of dust control equipment. But, since most—if not all—of those elevators are already using other dust control methods/systems in addition to water, the cost of converting to a water-free system should be virtually nil. Of those few facilities that use water and rely on the added weight gain and subsequent added value to enhance their profit margins, then this rule could have a greater impact. This action would stop such gains derived through adulteration.

If the practice of adding water to grain were allowed to continue, there is a significant risk that market pressures would cause today's isolated cases of water use to become widespread. Using water as a dust suppressant increases the weight of grain. This invites tampering and misuse of water systems to increase profit. Adding as little as 0.3 percent water, by weight, can significantly enhance the small margin that the grain industry operates under. For example: by applying water at a 0.3 percent rate to a 50,000 metric ton (mt) shiplot of wheat, an exporter could (excluding subsequent evaporation) add 150 mt of water to the shipment. If the wheat was sold for $128 per mt (5.8 cents per pound), the water could generate over $19,000 in additional profit for the shipper.

The following chart compares the financial impact that adding soy and mineral oil (common dust suppressants) and water has upon the value of various soybean shipments.

FINANCIAL IMPACT OF WATER AND OIL DUST SUPPRESSANTS ON SOYBEANS

Carrier	Bushels	Pounds (60 lbs./bu)	Value $6/bu ($.10/lb.)	Additive	Application rate (% by weight	Weight gain (lbs.)	Additive cost		Total additive cost	Equivalent soybean value gain	Net effect (+ or −)
							Per gal.	Per lb.			
Railcar	3,000	180,000	$18,000	Water	0.3	540	$0.003	$0.00036	$0.19	$54	+$53.81
				Soy oil	0.02	36	1.80	.2337	8.41	3	−4.81
				Mineral oil	0.02	36	2.70	.3506	12.62	3	−9.02
Barge	60,000	3,600,000	360,000	Water	0.3	10,800	0.003	.00036	3.80	1,800	+1,076.20
				Soy oil	0.02	720	1.80	.2337	168.20	72	−96.20
				Mineral oil	0.02	720	2.70	.3506	252.40	72	−180.40
Ship	1,200,000	72,000,000	7,200,000	Water	0.3	216,000	0.003	.00036	76.00	21,600	+21,524.00
				Soy oil	0.02	14,400	1.80	.2337	3,364.00	1,440	−1,924.00
				Mineral oil	0.02	14,400	2.70	.3506	5,048.00	1,440	−3,608.00

Furthermore, FGIS estimates that the cost of regulating the practice of adding water to grain could quickly escalate as more and more elevators respond to the profitable practice of applying water to grain for dust suppression. There are approximately 10,000 grain handling facilities in the U.S. Monitoring the use of water would require a significant staff commitment and FGIS has no method of assuring that additional water would not be added when an inspector was not present.

The effectiveness of any regulatory system is compromised because regulators cannot rely on after-the-fact product testing to verify the proper application of water. It is technologically impossible to test grain and distinguish naturally occurring moisture from applied or added moisture. Consequently, a regulated system must rely on an elaborate set of specifications involving water sources, application rates, metering devices, and inventory controls. And, while regulators could evaluate a new system and approve its installation, opportunities to override computer monitoring would exist with increased incentives to exploit any loopholes. Followup-audits of systems would be time-consuming, expensive, and minimally effective.

Allowing the continued addition of water to grain could also have a negative impact on U.S. grain exports. One of the major advantages that U.S. grain enjoys compared to competing exporting countries, is the relative low moisture content of many U.S. grains, such as wheat. Adding water to these grains erodes this advantage. Additionally, many foreign buyers have already expressed deep concern about potential quality degradation caused by water and "paying grain prices for water."

While prohibiting the addition of water to grain could, in the short term, decrease the profit margin of a few grain elevators that are using water to suppress dust, FGIS has determined that this action will not have a significant economic impact on the overall U.S. grain industry or on a substantial number of small entities. On the contrary, the U.S. grain industry is expected to benefit from this action by promoting the marketing of high quality grain and the fair and honest weighing of grain.

David R. Shipman, Acting Administrator, FGIS, has determined that this final rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have a retroactive effect. The United States Grain Standards Act provides in section 87g that no State or subdivision may require or impose any requirements or restrictions concerning the inspection, weighing, or description of grain under the Act. Otherwise, this final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Information Collection Requirements

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the information collection requirements contained in this rule have been previously approved by OMB under control number 0580–0013.

Effective Date

It is desirable that these revisions to the regulations become effective 120 days after promulgation. This period is deemed necessary for all interested parties to prepare for implementation of the revised regulations and would provide adequate time for the industry to make necessary equipment modifications.

Background

In the March 4, 1987, **Federal Register** (52 FR 6493), FGIS amended the regulations under the United States Grain Standards Act (USGSA) to establish provisions for officially inspecting and weighing additive-treated grain. These provisions were established to offer the grain industry the opportunity to utilize available dust suppression technology, apply insect and fungi controls, and mark grain for identification purposes with Food and Drug Administration (FDA) approved additives. The final rule specified that if additives are applied during loading to outbound grain after sampling or weighing, or during unloading to inbound grain before sampling or weighing for the purpose of insect or fungi control, dust suppression, or identification, the inspection and/or weight certificate must show a statement that describes the type and purpose of the additive application. A statement was not required to be shown when additives were applied prior to sampling and weighing outbound grain or after sampling and weighing inbound grain. However, all incidents or suspected incidents of unapproved additive usage or improper additive application were required to be reported to the appropriate Federal, State, or local authorities for action.

In 1992, several foreign and domestic grain merchants expressed concern about the application of water to grain for dust suppression purposes. They contended that the primary purpose of applying water is to increase the weight of the grain, and, thereby, gain a market advantage. Furthermore, U.S. suppliers expressed deep concern about possible negative market reaction by both domestic and foreign buyers; i.e., buyer confidence in U.S. grain will decline if concerns develop over potential quality degradation caused by water and "paying grain prices for water." As a result of these concerns, in the January 8, 1993, **Federal Register** (58 FR 3211), FGIS amended §§ 800.88 and 800.96 of the regulations under the USGSA to require a statement on official export inspection and weight certificates whenever water is applied to export grain at export port locations. The purpose of this action was to ensure that foreign buyers of U.S. grain are informed when additives have been applied to grain exported from export port locations. This action did not address non-export grain.

During and since revising the regulations requiring a statement on export grain certificates, numerous grain industry groups, including exporters, importers, millers, processors, and producers, have voiced their growing concern about the effect that the application of water has upon all U.S. grain, whether or not such grain is exported from the U.S. or even offered for official inspection and weighing services. They have stated—and available information appears to confirm—that applying water to grain poses a risk to grain quality and can provide a strong incentive to improperly increase weight. Furthermore, this practice not only adds weight but creates favorable conditions for microbial-contamination of grain. Section 13(e)(1) of the USGSA (7 U.S.C. 87b) authorizes the FGIS Administrator to prohibit the contamination of sound and pure grain as a result of the introduction of nongrain substances. Even though kernels of grain contain moisture, externally-applied water is a "nongrain substance." Therefore, in the August 4, 1993, **Federal Register** (58 FR 1439), FGIS proposed to prohibit the application of water to grain.

During the 120-day comment period ending December 2, 1993, FGIS received 341 comments from the various segments of the grain industry, including producers, end-users, grain

handlers, foreign buyers, promotional associations, and researchers. Of the total comments received, 215 supported or generally supported the proposal and 126 opposed it. Of those that opposed the proposal, 77 recommended regulating the use of water, 11 suggested that grain be marketed on a dry matter or fixed moisture basis, and 38 offered no other alternatives. On the basis of these comments and other available information, FGIS has decided to revise the regulations to prohibit the addition of water to grain. The following paragraphs address key issues and pertinent comments that were considered in making this decision.

Elevator Safety

Over 100 commentors indicated that they opposed a complete prohibition on the use of water, in whole or in part, because of safety concerns. Mr. Wayne R. Bellinger, Director of Safety and Sanitation, ConAgra Grain Processing Companies, commented that: "I have seen with my own eyes the dramatic difference in dust levels both within operating equipment and in the workplace atmospheres in elevators where dust suppression fluids are used."

Grain dust is created by the impact or abrasion of grain and includes bran flakes, fine broken brush hairs, particles of endosperm, weed seeds, pieces of chaff and straw, and soil. This dust is so fine that it easily becomes suspended in air and, as a result, can become fuel for potentially disastrous grain elevator explosions. Such explosions can shatter concrete bin walls and even lift bins of grain weighing hundreds of tons off of the ground. Fortunately, since the late 1970's, the number and magnitude of dust explosions has significantly declined.

According to many commentors, the key reasons for this significant turnaround are better engineering and greater awareness, not the use of water. Today, grain companies educate their managers and employees about the risk of dust explosions. Practices that were commonplace 15 years ago, such as smoking in elevators, are now prohibited by company policy and the Occupational Safety and Health Administration (OSHA). Elevators also have a wider variety of fire and explosion prevention "tools" at their disposal. These include better smoke and heat detectors, improved bearings and buckets, blow-out panels and vents, fire/explosion suppression systems, improved cleaning techniques, and better dust control methods. Consequently, the vast majority of grain elevators in the U.S. have not found it necessary to use water to control dust. This is underscored by a joint comment submitted by Archer Daniels Midland, Bunge Corporation, Cargill Incorporated, Continental Grain Company, and Louis Dreyfus Corporation: "While a spray of water may be an effective grain dust suppressant, it is not the only means available to control dust. There are other—better—management practices for minimizing the risks of potential grain dust explosions, and they have become the standard throughout the U.S. grain handling system. Systems that add water are the exception."

FGIS, whose employees work in and around grain elevators, is very concerned about grain dust and has worked closely with the industry to foster improvements in elevator safety. Based on currently available information, FGIS does not believe that adding water to grain is a necessary or irreplaceable dust control strategy. Most U.S. elevators, including those that currently add water, rely on pneumatic dust control systems, thorough housekeeping, and preventive maintenance to control dust. Such measures are cost effective, efficient, and widely available. Consequently, FGIS finds that there is no indication that banning the use of water will prevent an elevator operator from taking the necessary actions to reduce the possibility of property loss or personal injury due to fugitive grain dust.

Grain Quality and Fair Weights

Moisture is the major factor in grain storability, chiefly because of its influence on the growth of storage fungi. The number of days that grain can be safely stored decreases as the moisture level of the grain increases. Many commentors indicated that adding water to grain creates favorable conditions for microbial-contamination. Mr. H.N. Eicher, Vice President, Ralston Purina International, stated in his comments: "During the past few years the detection of various mycotoxins have significantly increased on grain and grain by-products originating in the USA. For this reason, we have paid premiums to our suppliers for reduced moisture content and the addition of mold inhibitors at loading. Temperature and humidity are our enemies, we must be sensitive to our customers' environment. * * * The USA will not be a quality supplier if moisture is added to grain. This is absolutely negative and we must reduce moisture to assure that mycotoxin growth is controlled."

It is difficult to accurately predict the level at which the addition of water will cause quality degradation. Many variables influence the impact that added water has on grain quality; including, the condition of the grain, the method of storage, and the storage temperature. Adding 0.3 percent of water, by weight, to grain may not significantly affect high quality/low moisture wheat when the ambient temperature and humidity are low. If, however, the grain is of poorer quality, or it has a higher internal moisture, or the temperature and humidity are high, then even a very small increase in moisture may cause the grain to spoil. Furthermore, when water is added to grain, it is generally not distributed equally throughout the entire grain mass. Some kernels are soaked, while some are left dry, resulting in nonuniform quality and "hot spots" throughout the mass.

The practice of adding water to grain appears to be especially troublesome to overseas buyers. In 1992, FGIS received a number of complaints from overseas buyers expressing concern over quality degradation due to water application. These buyers emphasized that alternative dust control techniques are available that are practical and effective. For example, in a 1992 letter, Dr. C.J.M. Meerhoek, Executive Director of the European Community Seed Crushers and Oil Processors Federation (FEDIOL), stated that: "Spraying water for dust suppression is considered to be an undesired practice * * * for quality reasons (and) for 'fair trade' reasons." In a 1992 letter from Mr. Mitsuo Kurashige, Director of the Japan Oilseed Processors Association (JOPA), he stated that adding water to grain "does influence the accuracy of foreign material analysis and accordingly affects the differences of foreign material content between loading and unloading analysis." And, in a 1992 letter from the Mielieraad Maize Board (South African corn importer), it notified FGIS that, because of possible water-related quality problems, it will no longer purchase corn from U.S. export ports where water is added.

Adding water to grain also increases the weight of grain without adding to its value. This invites tampering and misuse of water systems to increase profit. Adding as little as 0.3 percent water, by weight, can significantly enhance the small margins the grain industry operates under. For example, by applying water at a 0.3 percent rate to a 50,000 metric ton (mt) shiplot of wheat, an exporter could (excluding subsequent evaporation) add 150 mt of water to the shipment. If the wheat was sold for $128 per mt, the water could

generate over $19,000 in additional profit for the shipper.

According to a comment filed in response to the proposed rule, Mr. Charles R. Gillum, Acting Inspector General for the U.S. Department of Agriculture (USDA) stated that: "As a result of our investigation of the grain handling practices issue, we have found that the majority of elevators applying water to grain have been doing so more to increase grain weight than for legitimate dust suppression."

The practice of adding water to grain is also viewed by many commentors as "giving our good grain a bad name" and being detrimental to future exports. Mr. James F. Frahm, Vice President, U.S. Wheat Associates, stated in his comments that: "One of the major advantages that U.S. wheat enjoys compared to competing exporting countries, particularly Canada and France, is the relatively low moisture content of U.S. wheat. For the flour miller this translates into more flour produced (and more money earned) per ton of wheat purchased. Adding water to wheat to increase its weight erodes this advantage." Most commentors, including those opposed to the proposed rule, considered adding water for the purpose of increasing grain weight to be an unethical, if not illegal practice. But, many commentors expressed concern that competitive pressures may force more elevators to begin applying water to grain because of narrow profit margins. That is, firms adding water have such a significant economic advantage that competing firms will be forced to follow suit unless the practice is prohibited. Mr. Granville M. Tilghman, President of General Grain Company, commented that: "Sanctioning the use of water would send a message to all farmers that it is all right to add water to grain under one guise while the real reason would be for the purpose of weight gain."

Current Restrictions

Several commentors, who support the use of water, suggested that misuse can be effectively controlled by enforcing current Food and Drug Administration (FDA) and FGIS rules and restrictions. Dr. Ronald T. Noyes, Professor, Extension Agricultural Engineer, Oklahoma State University, commented that: "FDA has a ruling in force that makes it illegal for grain producers or commercial grain handlers to add water to grain for the purpose of increasing market weight. It appears that FGIS is proposing to duplicate the FDA ban of water added to grain for purposes of weight increase, and further restrict other useful and economical benefits of water as a safety product on grain. If the FDA regulation is not enforced now, why do FGIS administrators think that another more restrictive regulation will be observed."

Unfortunately, recent experience has shown that the current rules regarding this practice are very difficult to enforce or are not applicable to all situations. Mr. Dane S. Hanekamp, Commodities Manager, American Maize-Products Company, a major corn processor, commented that: "Under present (FDA) guidelines, re-watering grain to dishonestly increase the weight of grain shipments is common practice, to which several large grain companies openly admit. Though purchase contracts explicitly guarantee that water has not been reintroduced to the grain shipped to our processing plants at any time, for any reason, but verification is all but impossible."

The FDA, the agency primarily responsible for preventing adulteration, continues to adhere to a policy articulated by former Associate Commissioner for Regulatory Affairs Joseph P. Hile, in August 1980: "* * * the intentional addition of water to grain would appear to violate the Federal Food, Drug, and Cosmetic Act, which prohibits the unnecessary addition of water to food. Under section 402(b)(4) of the Act, a food is deemed to be adulterated 'if any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength or make it appear better or of greater value'. * * * If we encounter (grain) adulterated with water, we will consider appropriate regulatory action. We recognize that it may be necessary for an elevator to add small amounts of moisture to grain for safety reasons. * * * The addition of moisture to grain for safety reasons is quite a different matter. * * *"

According to the comments filed by USDA's Office of the Inspector General (OIG), efforts to apply FDA's policy have been largely unsuccessful because of the difficulty in proving intent, defining "small amounts" of water, and distinguishing the process of applying water for safety purposes from adulteration. The comment also states that recent investigations by OIG have disclosed that elevators with water dust suppression systems often fail to use the water systems as designed and that often water was added to grain at points in the grain stream within the elevator that were inappropriate if the objective of the addition of water was for dust suppression.

Water-Use Permit System

Seventy-seven commentors recommended that FGIS develop a program for regulating—rather than prohibiting—the addition of water to grain for dust control purposes. A comment filed by Mr. Jon A. Jacobson, Vice President of Marketing, Peavey Company, recommended the "implementation of a strict user fee funded permit system, in tandem with the use of tamper-proof computerized controls on water-based techniques, to assure proper and controlled use." According to a comment filed by Mr. James F. Frahm, Vice President, U.S. Wheat Associates: "Cost of issuing permits and monitoring water usage could be covered through fees. Abuses could be controlled by using meters to record the amount of water used and comparing that with the volume of grain handled. Elevators are currently audited * * * and water usage could become a part of the audit process."

Many other commentors have concluded that a permit system would not effectively prevent misuse, but would create an economic incentive for all grain handlers to apply water whether or not it is needed for dust suppression. A comment filed by Mr. David James Krejci, Executive Vice President, Grain Elevator and Processing Society (GEAPS), an international professional society, stated that: "With respect to the issues of operational economic impact, GEAPS suggests that sanctioning the application of water through regulatory control would create the greater problem. If water application is allowed through regulation, all grain handling operations from farm to export will likely be forced to adopt the practice to remain economically competitive. We cannot envision an efficient, practical, and effective regulatory compliance monitoring and enforcement plan. We believe that the scope and complexity of such a compliance program would require substantial human and financial resources." Archer Daniels Midland, Bunge Corporation, Cargill Incorporated, Continental Grain Company, and Louis Dreyfus Corporation, in a joint comment, stated: "It is neither physically possible nor economically sensible for the FGIS to attempt to regulate this practice at roughly 10,000 U.S. grain handling facilities. This is even more true for on-farm use of water based systems."

Of additional concern to many commentors is that the effectiveness of a permit system is compromised because regulators cannot rely on after-the-fact product testing to verify proper

application. It is technologically impossible to test grain and distinguish naturally occurring moisture from applied or added moisture. Consequently, a permit system must rely on an elaborate set of specifications involving water sources, application rates, metering devices, inventories, and the like. While FGIS could evaluate a water system and approve its initial installation, opportunities to override computer monitoring would exist with increased incentives to exploit any loopholes. Follow-up audits of systems would be time consuming, expensive, and minimally effective. According to the comment filed by Mr. Charles R. Gillum, Acting Inspector General, USDA/OIG: "Our investigations have disclosed that normal and routine monitoring of water-based systems, as would be done by FGIS, ASCS, and others, is not sufficient to protect the Government or grain purchasers from those elevators determined to use water to artificially increase moisture and grain weight. * * * As for the sophisticated, computer-controlled water systems, they are also vulnerable to deliberate misuse. Indeed, the intentional misuse of water by way of the computer controlled system is even more difficult to deter. * * * As a result of our investigation of the grain handling practices issue, we have found that the majority of elevators applying water to grain have been doing so more to increase grain weight than for legitimate dust suppression."

According to a comment filed by Mr. Keith R. Mestrich, Director of Special Services Food & Allied Service Trades Department, AFL–CIO, a group representing sixteen national and international unions: "Once a company is given the go-ahead to use water, FGIS would be hard pressed to prove water use intent after-the-fact. Monitoring use any more closely would require extensive manpower and money. * * * We believe that a permit system would make water use prevalent throughout the grain transfer system. * * * The adulteration of grain would increase in frequency. * * *" Concerns about a permit program causing more water abuses were also shared by many other commentors, including Mr. Dave Lyons, Vice President for Government Relations, Louis Dreyfus Corporation, who stated: "Any attempt to regulate this practice * * * will likely result in the proliferation of the practice throughout the total U.S. grain marketing system. Competitive pressures will force many grain handling firms to add water at various steps in the U.S. grain marketing system. Potentially, water might be added a half dozen times or more from the farm to final end user. Is this the type of grain marketing system the U.S. wants to have?"

Many commentors also voiced concerns about the potential cost of a permit system. FGIS has estimated that its cost to develop and maintain such a system could quickly exceed $1.5 million annually, as more and more elevators are economically forced to apply water under the pretext of dust suppression. Mr. David Harlow, Chairman, Washington Wheat Commission, stated in his comment that: "* * * we've come to recognize that the expense in implementing such a system, and especially to maintain it, would be astronomical. Fees would have to be set so high no one could afford to pay them. The U.S. government is constantly cutting cost and FGIS has suffered significantly more losses than most agencies, therefore it is highly unlikely that enough funds could be secured to cover the expenses that would be incurred."

Dry Matter Marketing

The concept of revising or reforming marketing practices to eliminate the economic incentives for adding water to grain was also put forth by many commentors. Several discussed the benefits of marketing grain on a "dry matter" or "standardized bushel" basis (also known as a "fixed moisture" or "equivalent bushel" basis).

According to a comment filed by Dr. Lowell D. Hill, L.J. Norton Professor for Agricultural Marketing, University of Illinois, a leading proponent for pricing wet and dry grain on the basis of its dry matter content: "Buying grain on the basis of a standardized bushel has several advantages. Perhaps the foremost is that it removes the economic incentives for adding water to grain. The Food and Drug Administration would no longer need to concern itself with enforcement of the unenforceable regulation relating to the addition of water to increase value. Most of the impetus for State regulations relating to moisture content of grain would also be eliminated. Price premiums would not be needed for overdry grain since moisture content would be used to determine quantity, not price. The elevator would no longer have to monitor grain deliveries to identify grain with water added. Charges and discounts would be explicit, rather than incorporated into a combined weight-price adjust factor."

FGIS supports the elimination of economic incentives for adding water to grain and believes that a practical, market-oriented solution, such as dry matter marketing, could alleviate many industry concerns about using water to control dust. However, whether or not grain should be marketed on its dry matter content is a marketing issue, which FGIS does not have authority to mandate. In any event, FGIS believes that it is outside the scope of this rulemaking to impose any requirements designed to promote dry matter marketing.

Environmental Concerns

Air pollution from dust associated with the loading and unloading of grain is a concern to many communities. Not surprisingly, several commentors indicated that they are facing increasingly stringent regulatory requirements pertaining to the control of fugitive dust emissions in and around their facilities. Mr. Jon A. Jacobson, Vice President of Marketing, Peavey Company, commented that: "The Clean Air Act Amendments of 1990 will commence initial phase-in soon. The impact of this federal legislation will serve to tighten restrictions on elevator dust emissions in all states. As a result, elevators will be required to either increase internal containment or to increase suppression techniques. Further containment is both cost and maintenance intensive and not without potential safety hazards. Increased suppression will be the only viable choice."

While there is much concern within the grain industry about pollution control regulations, the majority of the grain handlers believe that dust controls (other than water) adequately control dust emissions. Mr. David C. Lyons, Vice President for Government Relations, Louis Dreyfus Corporation, commented that: "* * * control of dust emissions to the outside air is the responsibility of all of us in the grain handling industry. It is our duty to preserve and protect the environment for all citizens of the localities where grain handling and processing facilities are located. * * * Each LDC facility has a dust control strategy using various technologies. Filtering systems, enclosed drag conveyors, pit aspiration and food grade mineral oil applications are just a few of the systems we use either singly or in combination, based on the layout and usage of each facility. At no LDC facility is the usage of water used as a method of dust control. The experience and safety record of Louis Dreyfus and the rest of the industry shows that the addition of water is not necessary for dust controls. * * * Elevator employees will not have to work in an unclean work environment

nor will the environment have to suffer if water addition is prohibited."

Misting

Several commentors indicated that water can be an effective and virtually risk-free dust suppressant when applied as a mist or fog. According to a comment filed by Dr. Ronald T. Noyes, Professor, Extension Agricultural Engineer, Oklahoma State University: "Spraying 200–1,000 ppm of potable tap water from city, rural or deep ground well drinking water systems for dust control is the application of a food grade quality material. Adding 200 ppm (the maximum allowable limit for food grade oil), or 200 lbs. of potable water added to 1,000,000 pounds of grain is equal to one gallon of water sprayed on 693.3 bushels of 60 lbs. Test Wt. wheat. That's one gallon of water added to 41,600 lbs. of grain, or 1 lb. of water added to 5,000 lbs. of grain—a 0.02% wt. change. That level of moisture is not detectable by standard FGIS moisture testers. An application of 500 ppm of potable water, a justifiable level for dust control, is 1 lb. of water (approximately [one] pint of water) per 2,000 lbs. of grain. If it all were absorbed, it would add 0.05% to the weight of the grain. However, a significant part of the moisture will evaporate during the spraying operation or from the grain dust after grain movement stops."

Dr. Marvin R. Paulsen, Professor of Agricultural Engineering, University of Illinois at Urbana-Champaign, commented that: "My exception to an outright ban on using water is that there is a researchable issue involving new technology with very high pressure and very fine spray particles. * * * Thus, the air at grain transfer points could be humidified to drop the minimum explosive concentration. The humidification could also reduce static electricity. Some of the fine spray particles would adhere to passing grain but the level of actual water addition would be far below 0.5% by weight and probably closer to 0.05%. The difference between this method and others that have been proposed is that the nozzles create such small particle sizes using such high pressures that it would be impossible to apply higher levels of water with that particular system."

FGIS shares Dr. Paulsen's view that research involving new technologies such as spray "misting" should continue. However, research to date has been limited. Consequently, there is insufficient data for FGIS to: (1) Determine whether misting can, in fact, control dust without harming grain; (2) define misting and establish workable equipment/system specifications; and (3) develop appropriate controls.

FGIS will continue to work with the USDA Agricultural Research Service and the U.S. grain industry to foster the development of potentially viable methods of controlling grain dust, such as misting.

Oil Additives Used To Control Grain Dust

In recent years, many grain handlers have begun to use oil additives, such as food grade soybean oil and U.S.P. white mineral oil, to control grain dust. Unfortunately, for some end-uses, wheat and barley treated with oil may be less functional and acceptable. According to a comment filed by Mr. James F. Frahm, Vice President, U.S. Wheat Associates: "Oil has adverse effects on flour yield and color, both important factors in determining the profitability of the milling operation. Oil can also cause bacteria and other undesirable materials to adhere to the wheat kernel, particularly in the crease of the kernel, and therefore reportedly can raise bacteria counts in flour. Because some of the oil is detectable in the resulting flour, it may have adverse effects on the quality of the end product. * * * As a result, some of the largest U.S. baking companies refuse flour from wheat treated with oil * * * elimination of water as an option for dust suppression will result in more wide-spread use of oil."

Many commentors also believe that if the use of water is banned, oil usage will become more widespread. Mr. James A. Bair, Director of Government Relations, Millers' National Federation (MNF), commented that: "At its recent meeting, the MNF Executive Committee voted overwhelmingly to support the proposed prohibition. Additionally, the MNF encourages FGIS to enact the ban on all other dust control additives as well including mineral oil and vegetable oil. * * * To understand [the negative impact of additives on end-use quality] it is important to note the mechanism by which water and oil control dust—by making the dust stick to the kernel. It is in this dust where unsanitary filth resides. This filth is normally removed in cleaning prior to milling, however water and oil make removing this material, especially from the crease of the kernel, a virtually impossible task. * * *"

FGIS understands the concerns expressed by the wheat and barley industry, flour millers, and maltsters. However, FGIS has no information that would indicate that prohibiting the use of water would cause any increase in the usage of soybean and mineral oil. To the contrary, FGIS believes that the relative high cost of these oils and the concerns expressed by certain parts of the market will continue to severely limit the opportunities for using food grade oils for dust suppressant purposes.

Insecticides and Grain Protectants

Two commentors requested that the proposed rule be modified to accommodate the continued use of water-based material for insecticides, grain protectants, and related purposes. Mr. Craig P. Jacob, Insecticide Product Manager, Gustafson, commented that Gustafson is strongly against revising § 800.88 of the regulations under the USGSA to require a statement to be shown on inspection certificates whenever water-based insecticides are applied to export grain. Mr. Bob Reeves, Technical Services Manager, Loveland Industries, commented that: "The basis of our opposition is that prohibition of the addition of water in any amount to grain would eliminate the opportunity to utilize water as a carrier for other materials (mold inhibitors)." This final rule does not prohibit or limit the application of water-based insecticides or protectants.

Washing Smut From Wheat

Several commentors recommended that FGIS allow water to be used to wash smut from wheat. Mr. Mark Palmquist, Senior Vice President, Harvest States, commented that: "Language should be added that would state that washing wheat (to remove smut) is a processing operation or washing of wheat is an approved process." Smut or bunt (e.g., *Tilletia caries* and *Tilletia controversa* Kuhn) is a field born disease that occurs in certain wheat growing areas. Generally, smutty wheat is not acceptable to millers and exporters. Although smut "balls" may sometimes be removed by screening or aspiration, smut adhering to the surface of kernels can only be removed by physically washing the wheat.

FGIS believes that washing smut from wheat is an essential and necessary "processing operation." This final rule does not prohibit adding water to grain for purposes of milling, malting, or similar processing operations. Therefore, using water to wash smut from wheat would not be prohibited under this rule.

Final Action

On the basis of the comments received and other available information, FGIS has determined that applying water to grain must be

prohibited. While water may—under certain circumstances—suppress dust, it can also adulterate grain by artificially increasing its weight. Additionally, adding water to grain increases the opportunity for mold growth and mycotoxin contamination. If allowed to continue, the practice of adding water to grain could do irreparable harm to the reputation of U.S. grain in the domestic and world market.

Accordingly, FGIS is revising:

1. Section 800.61(b) to prohibit the addition of water to grain, except for milling, malting, or similar processing operations.

2. Section 800.61(d)(4) to exclude water as a dust suppressant.

3. Section 800.88(d) to eliminate the provision for adding water to export grain.

4. Section 800.96(c)(2) to eliminate the provision for adding water to export grain.

List of Subjects in 7 CFR Part 800

Administrative practice and procedure, Grain, Export.

For reasons set out in the preamble, 7 CFR part 800 is amended as follows:

PART 800—GENERAL REGULATIONS

1. The authority citation for part 800 continues to read as follows:

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended, (7 U.S.C. 71 *et seq.*)

2. Section 800.61 is revised to include a new paragraph (b)(3) as follows:

§ 800.61 Prohibited grain handling practices.

* * * * *

(b) * * *

(3) Add water to grain for purposes other than milling, malting, or similar processing operations.

* * * * *

3. Section 800.61(d)(4) is revised to read as follows:

§ 800.61 Prohibited grain handling practices.

* * * * *

(d) * * *

(4) *Dust suppressants.* Grain may be treated with an additive, other than water, to suppress dust during handling. Elevators, other grain handlers, and their agents are responsible for the proper use and application of dust suppressants. Sections 800.88 and 800.96 include additional requirements for grain that is officially inspected and weighed.

* * * * *

§ 800.88 [Amended]

4. Section 800.88(d) is amended by removing paragraph (d)(ii) and by redesignating paragraph (d)(i) *General,* as paragraph (d) *Additives.*

§ 800.96 [Amended]

5. Section 800.96(c) is amended by removing paragraph (c)(2)(ii) and by redesignating paragraph (c)(2)(i) *General,* as paragraph (c)(2) *Additives.*

Dated: October 6, 1994.

Patricia A. Jensen,

Acting Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 94–25371 Filed 10–13–94; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 452

[Docket No. 94N–0296]

Antibiotic Drugs; Azithromycin for Oral Suspension

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the antibiotic drug regulations to provide for the inclusion of accepted standards for a new drug dosage form of azithromycin, azithromycin for oral suspension. The manufacturer has supplied sufficient data and information to establish its safety and efficacy.

DATES: Effective on November 14, 1994; written comments, notice of participation, and request for a hearing by November 14, 1994; data, information, and analyses to justify a hearing by December 13, 1994.

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

FOR FURTHER INFORMATION CONTACT: James Timper, Center for Drug Evaluation and Research (HFD–520), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–6714.

SUPPLEMENTARY INFORMATION: FDA has evaluated data submitted in accordance with regulations promulgated under section 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357), as amended, with respect to a request for approval of a new dosage form of azithromycin, azithromycin for oral suspension. The agency has concluded that the data supplied by the manufacturer concerning the new antibiotic drug dosage form are adequate to establish its safety and efficacy when used as directed in the labeling and that the regulations should be amended in 21 CFR part 452 to provide for the inclusion of accepted standards for this product.

Environmental Impact

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Submitting Comments and Filing Objections

This final rule announces standards that FDA has accepted in a request for approval of a new antibiotic drug dosage form. Because this final rule is not controversial and because when effective it provides notice of accepted standards, FDA finds that notice and comment procedure is unnecessary and not in the public interest. This final rule, therefore, becomes effective on November 14, 1994. However, interested persons may, on or before November 14, 1994, submit written comments to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this final rule may file objections to it and request a hearing. Reasonable grounds for the hearing must be shown. Any person who decides to seek a hearing must file (1) on or before November 14, 1994, a written notice of participation and request for hearing, and (2) on or before December 13, 1994, the data, information, and analyses on which the person relies to justify a hearing, as specified in 21 CFR 314.300. A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for a hearing that no genuine and substantial issue of fact precludes the action taken by this order, or if a request for a hearing is not made in the required format or with the required analyses, the Commissioner of Food and

Drugs will enter summary judgment against the person(s) who request(s) the hearing, making findings and conclusions and denying a hearing. All submissions must be filed in three copies, identified with the docket number appearing in the heading of this document and filed with the Dockets Management Branch.

The procedures and requirements governing this order, a notice of participation and request for a hearing, a submission of data, information, and analyses to justify a hearing, other comments, and grant or denial of a hearing are contained in 21 CFR 314.300.

All submissions under this order, except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 452

Antibiotics.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 452 is amended as follows:

PART 452—MACROLIDE ANTIBIOTIC DRUGS

1. The authority citation for 21 CFR part 452 continues to read as follows:

Authority: Sec. 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357).

§ 452.160a [Redesignated from § 452.160]

2. Section 452.160 is redesignated as § 452.160a and new §§ 452.160 and 452.160b are added to subpart B to read as follows:

§ 452.160 Azithromycin oral dosage forms.

§ 452.160b Azithromycin for oral suspension.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Azithromycin for oral suspension is a dry mixture of azithromycin with a suitable and harmless buffer substance, sweetener, diluent, anticaking agent, and flavorings. The dry mixture is packaged in single dose packets each containing 1,000 milligrams of azithromycin. The azithromycin content is satisfactory if it is not less than 90 percent and not more than 110 percent of the number of milligrams of azithromycin that it is represented to contain. Its moisture content is not more than 1.5 percent. When constituted as directed in the labeling, the pH of the suspension is not less than 9 and not more than 11. It gives a positive identity test for azithromycin. The azithromycin used conforms to the standards prescribed by § 452.60(a)(1).

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 432.5 of this chapter.

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain;

(i) Results of tests and assays on:

(A) The azithromycin used in making the batch for potency, moisture, pH, residue on ignition, heavy metals, specific rotation, crystallinity, and identity.

(B) The batch for content, moisture, pH, and identity.

(ii) Samples, if required by the Director, Center for Drug Evaluation and Research:

(A) The azithromycin used in making the batch: 10 packages, each containing approximately 1,000 milligrams.

(B) The batch: A minimum of 30 packages.

(b) *Tests and methods of assay*—(1) *Azithromycin content.* Proceed as directed in § 452.60(b)(1), preparing the dissolving solvent and sample solution and calculating the azithromycin content as follows:

(i) *Dissolving solvent.* Dissolve 2.2 grams of potassium phosphate monobasic in 1,590 milliliters of ultrapure deionized or high-performance liquid chromatographic-grade water. Add 600 milliliters of 2-propanol, 480 milliliters of ethanol, and 330 milliliters of acetonitrile, adjust to pH 8.4 with 10*M* potassium hydroxide and shake on a reciprocating shaker for 30 minutes. The dissolving solvent is 0.01*M* monobasic potassium phosphate:2-propanol:ethanol:acetonitrile (53:20:16:11, by volume).

(ii) *Preparation of sample solution.* Quantitatively transfer the contents of one package into a 500-milliliter volumetric flask. Add about 350 milliliters of dissolving solvent and shake on a reciprocating shaker for 30 minutes. Dilute to volume with dissolving solvent, stopper the flask, and mix well. Place 40 milliliters of the resulting suspension into a suitably sized centrifuge tube. Stopper the tube and centrifuge the suspension (about 20 minutes at 1,000 revolutions per minute). Pipet 10.0 milliliters of the diluted solution into a 50-milliliter volumetric flask and dilute to volume with mobile phase (described in § 452.60(b)(1)(i)). Pipet 2.0 milliliters of the diluted solution into a 50-milliliter volumetric flask and dilute to volume with mobile phase. The final dilution of the sample and standard must be identical. The final concentration of azithromycin in the sample solution is 0.003 milligram per milliliter (estimated).

(iii) *Calculations.* Calculate the azithromycin content as follows:

$$\text{Milligrams of azithromycin per package} = \frac{A_U \times P_S \times d}{A_S \times 1{,}000}$$

where:

A_U = Area of the azithromycin peak in the chromatogram of the sample (at a retention time equal to that observed for the azithromycin standard);

A_S = Area of the azithromycin peak in the chromatogram of the azithromycin working standard;

P_S = Azithromycin activity in the azithromycin working standard solution in micrograms per milliliter; and

d = Dilution factor of the sample = 500 X 50/10 X 50/10 X 50/2.

(2) *Moisture.* Proceed as directed in § 436.201 of this chapter.

(3) *pH.* Proceed as directed in § 436.202 of this chapter, using the drug constituted as directed in the labeling. Allow the constituted suspension to sit for 10 minutes undisturbed before making the measurement.

(4) *Identity.* Using the high-performance liquid chromatographic procedure described in paragraph (b)(1) of this section, the retention time for the peak of the active ingredient must be within 2 percent of the retention time for the peak of the corresponding reference standard.

Dated: September 28, 1994.

David B. Barr,

Deputy Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 94–25398 Filed 10–13–94; 8:45 am]

BILLING CODE 4160–01–F

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21 CFR Part 812

[Docket No. 85N–0331]

Cardiovascular Devices; Notice of Agency Decision Not To Enforce Requirement of Premarket Approval; Replacement Heart Valve Allografts

AGENCY: Food and Drug Administration, HHS.

ACTION: Recision of notice of applicability of a final rule.

SUMMARY: The Food and Drug Administration (FDA) is announcing that it will no longer enforce the premarket approval requirement for replacement heart valve allografts. Upon publication of this document, these

devices may be commercially distributed without an approved premarket approval application (PMA) and without an approved investigational device exemption (IDE). The agency intends to initiate procedures for the purpose of placing these devices into class II. FDA is taking this action because it believes that special controls may be more appropriate than premarket approval to ensure the safety and effectiveness of heart valve allografts. This document also confirms that heart valve allografts, and the processors and distributors of these devices, are still subject to the general controls applicable to all medical devices.

EFFECTIVE DATE: October 14, 1994.

FOR FURTHER INFORMATION CONTACT: Kenneth A. Palmer, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–594–1346.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 26, 1991 (56 FR 29177), FDA issued a notice of applicability of a final rule to clarify that replacement heart valve allografts were covered by the regulations classifying replacement heart valves into class III (45 FR 7904, February 5, 1980) and imposing on them the requirement of premarket approval (52 FR 18162, May 13, 1987).

Recently, FDA has focused on its overall program for regulating articles derived from human tissue. In the **Federal Register** of December 14, 1993 (58 FR 65514), the agency issued an interim rule to impose industry-wide standards for donor screening and recordkeeping that are applicable to human tissue intended for transplantation. In an effort to reexamine the regulatory treatment of heart valve allografts in light of the requirements in the interim rule and current information on heart valve allografts, the agency is modifying its approach to heart valve allografts. Therefore, the agency is rescinding the June 26, 1991, **Federal Register** document.

Effective on October 14, 1994, neither an approved application for premarket approval nor an investigational device exemption is required for commercial distribution of replacement heart valve allografts. Processors and distributors who had not marketed heart valve allografts before June 26, 1991, may commercially distribute these devices only upon issuance of an order by the agency under 21 U.S.C. 360c(i).

The agency will continue to regulate heart valve allografts as medical devices. However, rather than continuing to require individualized premarket approval applications (or IDE's) for these devices, the agency intends to initiate procedures for the purpose of classifying these devices into class II, within the meaning of 21 U.S.C. 360c(a)(1)(B), with the simultaneous development of appropriate special controls. Based on its increased experience with the use of special controls and with relevant industry-wide standards, the agency now believes that special controls may be adequately address the critical public health concerns raised by these life-sustaining devices.

Although no longer subject to the class III requirement of premarket approval, heart valve allografts remain subject to all other requirements applicable to medical devices under the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321 *et seq.*) and the regulations thereunder. Thus, the devices, and processors and distributors of the devices, are subject to the general controls identified in section 513(a)(1)(A) of the act (21 U.S.C. 360c(a)(1)(A)), including the requirements of premarket notification and good manufacturing practices. In addition, the agency may inspect any facility in which these devices are manufactured, processed, packed, or held, in accordance with its authority under section 704 of the act (21 U.S.C. 374).

As announced in the notice of applicability of a final rule, FDA has determined that allografts marketed as of the date of that notice, June 26, 1991, are substantially equivalent to preamendment replacement heart valves as defined in 21 CFR 870.3925.

Therefore, in complying with general controls, tissue banks and other processors who had marketed heart valve allografts before June 26, 1991, are not required to submit premarket notification submissions to the agency in accordance with 21 U.S.C. 360(k).

In a future issue of the **Federal Register**, the agency will announce a meeting of the Circulatory Systems Device Panel to review the existing information on heart valve allografts and make a recommendation to the agency as to whether it believes that special controls are sufficient to provide reasonable assurance of the safety and effectiveness of these devices.

This document is issued under the authority of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321 *et seq*).

Dated: October 7, 1994.

William K. Hubbard,

Interim Deputy Commissioner for Policy.

[FR Doc. 94–25442 Filed 10–13–94; 8:45 am]

BILLING CODE 4160–01–F

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 2610 and 2622

Late Premium Payments and Employer Liability Underpayments and Overpayments; Interest Rate for Determining Variable Rate Premium; Amendments to Interest Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This document notifies the public of the interest rate applicable to late premium payments and employer liability underpayments and overpayments for the calendar quarter beginning October 1, 1994. This interest rate is established quarterly by the Internal Revenue Service. This document also sets forth the interest rates for valuing unfunded vested benefits for premium purposes for plan years beginning in August 1994 through October 1994. These interest rates are established pursuant to section 4006 of the Employee Retirement Income Security Act of 1974, as amended. The effect of these amendments is to advise plan sponsors and pension practitioners of these new interest rates.

EFFECTIVE DATE: October 1, 1994.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026; telephone 202–326–4024 (202–326–4179 for TTY and TTD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: As part of title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), the Pension Benefit Guaranty Corporation ("PBGC") collects premiums from ongoing plans to support the single-employer and multiemployer insurance programs. Under the single-employer program, the PBGC also collects employer liability from those persons described in ERISA section 4062(a). Under ERISA section 4007 and 29 CFR 2610.7, the interest rate to be charged on unpaid premiums is the rate established under section 6601 of the Internal Revenue Code ("Code"). Similarly, under 29 CFR 2622.7, the interest rate to be credited or charged with respect to overpayments or

underpayments of employer liability is the section 6601 rate. These interest rates are published by the PBGC in appendix A to the premium regulation and appendix A to the employer liability regulation.

The Internal Revenue Service has announced that for the quarter beginning October 1, 1994, the interest charged on the underpayment of taxes will be at a rate of 9 percent. Accordingly, the PBGC is amending appendix A to 29 CFR part 2610 and appendix A to 29 CFR part 2622 to set forth this rate for the October 1, 1994, through December 31, 1994, quarter.

Under ERISA section 4006(a)(3)(E)(iii)(II), in determining a single-employer plan's unfunded vested benefits for premium computation purposes, plans must use an interest rate equal to 80% of the annual yield on 30-year Treasury securities for the month preceding the beginning of the plan year for which premiums are being paid. Under § 2610.23(b)(1) of the premium regulation, this value is determined by reference to 30-year Treasury constant maturities as reported in Federal Reserve Statistical Releases G.13 and H.15. The PBGC publishes these rates in appendix B to the regulation.

The PBGC publishes these monthly interest rates in appendix B on a quarterly basis to coincide with the publication of the late payment interest rate set forth in appendix A. (The PBGC publishes the appendix A rates every quarter, regardless of whether the rate has changed.) Unlike the appendix A rate, which is determined prospectively, the appendix B rate is not known until a short time after the first of the month for which it applies. Accordingly, the PBGC is hereby amending appendix B to part 2610 to add the vested benefits valuation rates for plan years beginning in August of 1994 through October of 1994.

The appendices to 29 CFR parts 2610 and 2622 do not prescribe the interest rates under these regulations. Under both regulations, the appendix A rates are the rates determined under section 6601(a) of the Code. The interest rates in appendix B to part 2610 are prescribed by ERISA section 4006(a)(3)(E)(iii)(II) and § 2610.23(b)(1) of the regulation. These appendices merely collect and republish the interest rates in a convenient place. Thus, the interest rates in the appendices are informational only. Accordingly, the PBGC finds that notice of and public comment on these amendments would be unnecessary and contrary to the public interest. For the above reasons, the PBGC also believes that good cause exists for making these amendments effective immediately.

The PBGC has determined that none of these actions is a "significant regulatory action" under the criteria set forth in Executive Order 12866, because they will not have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for these amendments, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects

29 CFR Part 2610

Employee benefit plans, Penalties, Pension insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 2622

Business and industry, Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements, Small businesses.

In consideration of the foregoing, part 2610 and part 2622 of chapter XXVI of title 29, Code of Federal Regulations, are hereby amended as follows:

PART 2610—PAYMENT OF PREMIUMS

1. The authority citation for part 2610 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1306, 1307.

2. Appendix A to part 2610 is amended by adding a new entry for the quarter beginning October 1, 1994, to read as follows. The introductory text is republished for the convenience of the reader and remains unchanged.

Appendix A to Part 2610—Late Payment Interest Rates

The following table lists the late payment interest rates under § 2610.7(a) for the specified time periods:

From	Through	Interest rate (percent)
*	*	*
Oct. 1, 1994	Dec. 31, 1994	9

3. Appendix B to part 2610 is amended by adding to the table of interest rates new entries for premium payment years beginning in August of 1994 through October of 1994, to read as follows. The introductory text is republished for the convenience of the reader and remains unchanged.

Appendix B to Part 2610—Interest Rates for Valuing Vested Benefits

The following table lists the required interest rates to be used in valuing a plan's vested benefits under § 2610.23(b) and in calculating a plan's adjusted vested benefits under § 2610.23(c)(1):

For premium payment years beginning in—	Required interest rate [1]
*	*
Aug. 1994	6.06
Sept. 1994	5.99
Oct. 1994	6.17

[1] The required interest rate listed above is equal to 80% of the annual yield for 30-year Treasury constant maturities, as reported in Federal Reserve Statistical Release G.13 and H.15 for the calendar month preceding the calendar month in which the premium payment year begins.

PART 2622—EMPLOYER LIABILITY FOR WITHDRAWALS FROM AND TERMINATIONS OF SINGLE-EMPLOYER PLANS

4. The authority citation for part 2622 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1362–1364, 1367–68.

5. Appendix A to part 2622 is amended by adding a new entry for the quarter beginning July 1, 1994, to read as follows. The introductory text is republished for the convenience of the reader and remains unchanged.

Appendix A to Part 2622—Late Payment and Overpayment Interest Rates

The following table lists the late payment and overpayment interest rates under § 2622.7 for the specified time periods:

From	Through	Interest rate (percent)
* * * * *		
Oct. 1, 1994	Dec. 31, 1994 .	9

Issued in Washington, DC, this 11th day of October 1994.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 94–25513 Filed 10–13–94; 8:45 am]

BILLING CODE 7708–01–M

29 CFR Parts 2619 and 2676

Valuation of Plan Benefits in Single-Employer Plans; Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal; Amendments Adopting Additional PBGC Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This final rule amends the Pension Benefit Guaranty Corporation's ("PBGC's") regulations on Valuation of Plan Benefits in Single-Employer Plans and Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal. The former regulation contains the interest assumptions that the PBGC uses to value benefits under terminating single-employer plans. The latter regulation contains the interest assumptions for valuations of multiemployer plans that have undergone mass withdrawal. The amendments set out in this final rule adopt the interest assumptions applicable to single-employer plans with termination dates in November 1994, and to multiemployer plans with valuation dates in November 1994. The effect of these amendments is to advise the public of the adoption of these assumptions.

EFFECTIVE DATE: November 1, 1994.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024 (202–326–4179 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: This rule adopts the November 1994 interest assumptions to be used under the Pension Benefit Guaranty Corporation's ("PBGC's") regulations on Valuation of Plan Benefits in Single-Employer Plans (29 CFR part 2619, the "single-employer regulation") and Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal (29 CFR part 2676, the "multiemployer regulation").

Part 2619 sets forth the methods for valuing plan benefits of terminating single-employer plans covered under title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). Under ERISA section 4041(c) all single-employer plans wishing to terminate in a distress termination must value guaranteed benefits and "benefit liabilities," *i.e.*, all benefits provided under the plan as of the plan termination date, using the formulas set forth in part 2619, subpart C. (Plans terminating in a standard termination may, for purposes of the Standard Termination Notice filed with PBGC, use these formulas to value benefit liabilities, although this is not required.) In addition, when the PBGC terminates an underfunded plan involuntarily pursuant to ERISA section 4042(a), it uses the subpart C formulas to determine the amount of the plan's underfunding. Part 2676 prescribes rules for valuing benefits and certain assets of multiemployer plans under sections 4219(c)(1)(D) and 4281(b) of ERISA.

Appendix B to part 2619 sets forth the interest rates and factors under the single-employee regulation. Appendix B to part 2676 sets forth the interest rates and factors under the multiemployer regulation. Because the rates and factors are intended to reflect current conditions in the financial and annuity markets, it is necessary to update the rates and factors periodically.

The PBGC issues two sets of interest rates and factors, one set to be used for the valuation of benefits to be paid as annuities and one set for the valuation of benefits to be paid as lump sums. The same assumptions apply to terminating single-employer plans and to multiemployer plans that have undergone a mass withdrawal. This amendment adds to appendix B to parts 2619 and 2676 sets of interest rates and factors for valuing benefits in single-employer plans that have termination dates during November 1994 and multiemployer plans that have undergone mass withdrawal and have valuation dates during November 1994.

For annuity benefits, the interest rates will be 7.30% for the first 25 years following the valuation date and 5.25% thereafter. For benefits to be paid as lump sums, the interest assumptions to be used by the PBGC will be 6.00% for the period during which benefits are in pay status, 5.25% during the seven years directly preceding the benefit's placement in pay status, and 4.0% during any other years preceding the benefit's placement in pay status. (ERISA section 205(g) and Internal Revenue Code section 417(e) provide that private sector plans valuing lump sums not in excess of $25,000 must use interest assumptions at least as generous as those used by the PBGC for valuing lump sums (and for lump sums exceeding $25,000 must use interest assumptions at least as generous as 120% of the PBGC interest assumptions).) The above annuity interest assumptions represent an increase (from those in effect for October 1994) of .30 percent for the first 25 years following the valuation date and are otherwise unchanged. The lump sum interest assumptions represent an increase (from those in effect for October 1994) of .50 percent for the period during which benefits are in pay status and the seven years directly preceding that period; they are otherwise unchanged.

Generally, the interest rates and factors under these regulations are in effect for at least one month. However, the PBGC publishes its interest assumptions each month regardless of whether they represent a change from the previous month's assumptions. The assumptions normally will be published in the **Federal Register** by the 15th of the preceding month or as close to that date as circumstances permit.

The PBGC has determined that notice and public comment on these amendments are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest rates and factors promptly so that the rates and factors can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation of benefits in single-employer plans whose termination dates fall during November 1994, and in multiemployer plans that have undergone mass withdrawal and have valuation dates during November 1994, the PBGC finds that good cause exists for making the rates and factors set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866, because it will not have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; materially alter the

budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects

29 CFR Part 2619

Employee benefit plans, Pension insurance, Pensions.

29 CFR Part 2676

Employee benefit plans and Pensions.

In consideration of the foregoing, parts 2619 and 2676 of chapter XXVI, title 29, Code of Federal Regulations, are hereby amended as follows:

PART 2619—[AMENDED]

1. The authority citation for part 2619 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

2. In appendix B, Rate Set 13 is added to Table I, and a new entry is added to Table II, as set forth below. The introductory text of both tables is republished for the convenience of the reader and remains unchanged.

Appendix B to Part 2619—Interest Rates Used To Value Lump Sum and Annuities

Lump Sum Valuations

In determining the value of interest factors of the form $v^{0:n}$ (as defined in § 2619.49(b)(1)) for purposes of applying the formulas set forth in § 2619.49 (b) through (i) and in determining the value of any interest factor used in valuing benefits under this subpart to be paid as lump sums (including the return of accumulated employee contributions upon death), the PBGC shall employ the values of i_t set out in Table I hereof as follows:

(1) For benefits for which the participant or beneficiary is entitled to be in pay status on the valuation date, the immediate annuity rate shall apply.

(2) For benefits for which the deferral period is y years (y is an integer and $0<y\leq n_1$), interest rate i_1 shall apply from the valuation date for a period of y years; thereafter the immediate annuity rate shall apply.

(3) For benefits for which the deferral period is y years (y is an integer and $n_1<y\leq n_1+n_2$), interest rate i_2 shall apply from the valuation date for a period of $y-n_1$ years, interest rate i_1 shall apply for the following n_1 years; thereafter the immediate annuity rate shall apply.

(4) For benefits for which the deferral period is y years (y is an integer and $y>n_1+n_2$), interest rate i_3 shall apply from the valuation date for a period of $y-n_1-n_2$ years, interest rate i_2 shall apply for the following n_2 years, interest rate i_1 shall apply for the following n_1 years; thereafter the immediate annuity rate shall apply.

TABLE I

[Lump Sum Valuations]

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
* * *	*	*	*	*	*	*	*	
13	11–1–94	12–1–94	6.00	5.25	4.00	4.00	7	8

Annuity Valuations

In determining the value of interest factors of the form $v^{0:n}$ (as defined in § 2619.49(b)(1)) for purposes of applying the formulas set forth in § 2619.49 (b) through (i) and in determining the value of any interest factor used in valuing annuity benefits under this subpart, the plan administrator shall use the value of i_t prescribed in Table II hereof.

The following table tabulates, for each calendar month of valuation ending after the effective date of this part, the interest rates (denoted by i_1, i_2, * * *, and referred to generally as i_t) assumed to be in effect between specified anniversaries of a valuation date that occurs within that calendar month; those anniversaries are specified in the columns adjacent to the rates. The last listed rate is assumed to be in effect after the last listed anniversary date.

TABLE II

[Annuity Valuations]

For valuation dates occurring in the month—	The values of i_t are:					
	i_t	for t =	i_t	for t =	i_t	for t =
* * *	*	*	*	*	*	*
Nov. 1994	.0730	1–25	.0525	>25	N/A	N/A

PART 2676—[AMENDED]

3. The authority citation for part 2676 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1399(c)(1)(D), 1441(b)(1).

4. In appendix B, Rate Set 13 is added to Table I, and a new entry is added to Table II, as set forth below. The introductory text of both tables is republished for the convenience of the reader and remains unchanged.

Appendix B to Part 2676—Interest Rates Used to Value Lump Sums and Annuities

Lump Sum Valuations

In determining the value of interest factors of the form $v^{0:n}$ (as defined in § 2676.13(b)(1)) for purposes of applying the formulas set forth in § 2676.13 (b) through (i) and in determining the value of any interest factor used in valuing benefits under this subpart to be paid as lump sums, the PBGC shall use the values of i_t prescribed in Table I hereof. The interest rates set forth in Table I shall be used by the PBGC to calculate benefits payable as lump sum benefits as follows:

(1) For benefits for which the participant or beneficiary is entitled to be in pay status on the valuation date, the immediate annuity rate shall apply.

(2) For benefits for which the deferral period is y years (y is an integer and $0<y\leq n_1$), interest rate i_1 shall apply from the valuation date for a period of y years; thereafter the immediate annuity rate shall apply.

(3) For benefits for which the deferral period is y years (y is an integer and

$n_1<y\leq n_1+n_2$), interest rate i_2 shall apply from the valuation date for a period of $y-n_1$ years, interest rate i_1 shall apply for the following n_1 years; thereafter the immediate annuity rate shall apply.

(4) For benefits for which the deferral period is y years (y is an integer and $y>n_1+n_2$), interest rate i_3 shall apply from the valuation date for a period of $y-n_1-n_2$ years, interest rate i_2 shall apply for the following n_2 years, interest rate i_1 shall apply for the following n_1 years; thereafter the immediate annuity rate shall apply.

TABLE I

[Lump Sum Valuations]

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
* * *	*	*	*	*	*	*	*	
13	11–1–94	12–1–94	6.00	5.25	4.00	4.00	7	8

Annuity Valuations

In determining the value of interest factors of the form $v^{0:n}$ (as defined in § 2676.13(b)(1)) for purposes of applying the formulas set forth in § 2676.13 (b) through (i) and in determining the value of any interest factor used in valuing annuity benefits under this subpart, the plan administrator shall use the values of i_t prescribed in the table below.

The following table tabulates, for each calendar month of valuation ending after the effective date of this part, the interest rates (denoted by i_1, i_2, * * *, and referred to generally as i_t) assumed to be in effect between specified anniversaries of a valuation date that occurs within that calendar month; those anniversaries are specified in the columns adjacent to the rates. The last listed rate is assumed to be in effect after the last listed anniversary date.

TABLE II

[Annuity Valuations]

For valuation dates occurring in the month—	The values of i_t are:					
	i_t	for t=	i_t	for t=	i_t	for t=
* * *	*		*	*	*	
Nov. 1994	.0730	1–25	.0525	>25	N/A	N/A

Issued in Washington, DC, on this 11th day of October 1994.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 94–25512 Filed 10–13–94; 8:45 am]

BILLING CODE 7708–01–M

29 CFR Part 2644

Notice and Collection of Withdrawal Liability; Adoption of New Interest Rate

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This is an amendment to the Pension Benefit Guaranty Corporation's regulation on Notice and Collection of Withdrawal Liability. That regulation incorporates certain interest rates published by another Federal agency. This amendment adds to the appendix of that regulation a new interest rate to be effective from October 1, 1994, to December 31, 1994. The effect of the amendment is to advise the public of the new rate.

EFFECTIVE DATE: October 1, 1994.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026; telephone 202–326–4024 (202–326–4179 for TTY and TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: Under section 4219(c) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), the Pension Benefit Guaranty Corporation ("the PBGC") promulgated a final regulation on Notice and Collection of Withdrawal Liability. That regulation, codified at 29 CFR part 2644, deals with the rate of interest to be charged by multiemployer pension plans on withdrawal liability payments that are overdue or in default, or to be credited by plans on overpayments of withdrawal liability. The regulation allows plans to set rates, subject to certain restrictions. Where a plan does not set the interest rate, § 2644.3(b) of the regulation provides that the rate to be charged or credited for any calendar quarter is the average quoted prime rate on short-term commercial loans for the fifteenth day (or the next business day if the fifteenth day is not a business day) of the month preceding the beginning of the quarter, as reported by the Board of Governors of the Federal Reserve System in Statistical Release H.15 ("Selected Interest Rates").

Because the regulation incorporates interest rates published in Statistical Release H.15, that release is the authoritative source for the rates that are to be applied under the regulation. As a convenience to persons using the regulation, however, the PBGC collects the applicable rates and republishes them in an appendix to part 2644. This amendment adds to this appendix the interest rate of 7.75 percent, which will be effective from October 1, 1994, through December 31, 1994. This rate represents an increase of .50 percent from the rate in effect for the third quarter of 1994. This rate is based on the prime rate in effect on September 15, 1994.

The appendix to 29 CFR part 2644 does not prescribe interest rates under the regulation; the rates prescribed in the regulation are those published in Statistical Release H.15. The appendix merely collects and republishes the rates in a convenient place. Thus, the interest rates in the appendix are informational only. Accordingly, the PBGC finds that notice of and public comment on this amendment would be

unnecessary and contrary to the public interest. For the above reasons, the PBGC also believes that good cause exists for making this amendment effective immediately.

The PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866, because it will not have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects in 29 CFR Part 2644

Employee benefit plans, Pensions.

In consideration of the foregoing, part 2644 of subchapter F of chapter XXVI of title 29, Code of Federal Regulations, is amended as follows:

PART 2644—NOTICE AND COLLECTION OF WITHDRAWAL LIABILITY

1. The authority citation for part 2644 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1399(c)(6).

2. Appendix A to part 2644 is amended by adding to the end of the table a new entry to read as follows:

Appendix A to Part 2644—Table of Interest Rates

* * * * *

From	To	Date of quotation	Rate (percent)
* * * * *	*		*
10/01/94	12/31/94	9/15/94	7.75

Issued in Washington, DC, on this 11th day of October 1994.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 94–25511 Filed 10–13–94; 8:45 am]

BILLING CODE 7708–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 272

[FRL–5090–3]

Utah; Final Authorization of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: The State of Utah has applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed Utah's application and has made a decision, subject to public review and comment, that Utah's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Thus, EPA intends to approve Utah's hazardous waste program revisions. Utah's application for program revision is available for public review and comment.

DATES: Final authorization for Utah shall be effective December 13, 1994, unless EPA publishes a prior **Federal Register** action withdrawing this immediate final rule. All comments on Utah's program revision application must be received by the close of business November 13, 1994.

ADDRESSES: Copies of Utah's program revision application are available during regular business hours at the following addresses for inspection and copying: Division of Solid and Hazardous Waste, Utah Department of Environmental Quality, 288 North 1460 West, Cannon Health Building, 4th Floor, Salt Lake City, Utah, 84116–0690; U.S. EPA Region VIII Library, 999 18th Street, Suite 144, Denver, CO 80204–2466. Written comments should be sent to: Ms. Marcella DeVargas (HWM–WM), U.S. Environmental Protection Agency, 999 18th Street, Suite 500, Denver, Colorado 80202–2466, Phone 303/293–1670.

FOR FURTHER INFORMATION CONTACT: Ms. Marcella DeVargas, Waste Management Branch, U.S.EPA, 999 18th Street, Suite 500, Denver, CO 80202–2466, Phone: 303/293–1670.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under Section 3006(b) of the Resource Conservation and Recovery Act ("RCRA" or the "the Act"), 42 U.S.C. 6929 (b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program.

Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR parts 260–268 and 124 and 270. Modification to the Federal program, due to statutory and regulatory changes, requires subsequent modifications to the State authorized program. Until the State is authorized for such modifications, EPA is responsible for implementing and enforcing the modification in the State. Further, if the State law which forms the basis of the federally authorized State program is amended, the State must promptly seek revision authorization for those provisions. Until the amendments to State law are authorized by EPA, the regulated community must ensure compliance with both the federally authorized State program and the non-authorized Federal program. The regulated community may also need to comply with current State laws in the situation where State law has been amended after Federal authorization has been granted.

B. Utah

Utah initially received final authorization in October 1984. Utah received authorization for revisions to its program on March 7, 1989, July 22, 1991, July 14, 1992, and April 13, 1993. On December 30, 1993, Utah submitted a final program revision application for additional program approvals. In 1989, EPA published in the **Federal Register**

approval of the Availability of Information, 3006(f), provision. Since that time the State statute was repealed. Therefore, a review of the Availability of Information, 3006(f) provision was necessary. At this time, EPA is approving authorization for availability of information, 3006(f). Today, Utah is seeking approval of its program revision in accordance with 40 CFR 271.21(b)(3).

EPA has reviewed Utah's application, and has made an immediate final decision that Utah's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization for the additional program modifications to Utah. The public may submit written comments on EPA's immediate final decision up until (insert date at least 30 calendar days after date of publication in **Federal Register**). Copies of Utah's application for program revision are available for inspection and copying at the locations indicated in the **ADDRESSES** section of this notice.

Approval of Utah's program revision shall become effective in 60 days unless an adverse comment pertaining to the State's revision discussed in this notice is received by the end of the comment period. If an adverse comment is received EPA will publish either (1) a withdrawal of the immediate final decision or (2) a notice containing a response to comments which either affirms that the immediate final decision takes effect or reverses the decision.

In September 1992, Utah submitted a draft application for EPA review. EPA's comments on the draft application required additional rulemaking. Utah addressed all of EPA's comment in the final application. Thus, the Utah program is granted final authorization for those provisions specifically listed in Table 1.

Utah has not requested hazardous waste program authority on Indian Country. Therefore, EPA's approval applies to all activities in Utah outside of Indian Country, as defined in 18 U.S.C. 1151. The Environmental Protection Agency retains all hazardous waste authority under RCRA which applies to Indian Country in Utah.

Today, Utah is seeking approval of its program revision in accordance with 40 CFR 271.21(b)(3). Specific provisions which are included in the Utah program authorization revision sought today are listed in Table 1 below.

HSWA or FR reference	State equivalent[1]
1. Land Disposal Restrictions for First Third Scheduled Wastes, 53 FR 31138, 8/17/88, and 54 FR 8264, 2/27/89.	R315–8–2.4, R315–8–5.3, R315–7–9.4, R315–7–12.4, R315–14–2, R315–13.
2. Amendment to Requirements for Hazardous Waste Incinerator Permits, 54 FR 4286, 1/30/89.	R315–3–20.
3. Land Disposal Restrictions amendments to First Third Schedules Wastes, 54 FR 18836, 5/2/89.	R315–13.
4. Land Disposal Restrictions for Second Third Scheduled Wastes, 54 FR 26594, 6/23/89.	R315–13.
5. Delay of Closure Period for Hazardous Waste Management Facilities, 54 FR 33376, 8/14/89.	R315–8–2.4, R315–8–7, R315–8.8, R315–7–9.4, R315–7–14, R315–7–15, R315–50–16.
6. Mining Waste Exclusion I, 54 FR 36592, 9/1/89	R315–2–3. R315–2–4.
7. Land Disposal Restrictions; Correction to the First Third Scheduled Wastes, 54 FR 36967, 9/6/89 and 55 FR 23935, 6/13/90.	R315–14–2, R315–13.
8. Testing and Monitoring, 54 FR 40260, 9/29/89	R315–1–2, R315–50–8.
9. Reportable Quantity Adjustment Methyl Bromide Production Wastes, 54 FR 41402, 10/6/89.	R315–2–10, R315–50–8, R315–50–9.
10. Reportable Quantity Adjustment, 54 FR 50968, 12/11/89	R315–2–10, R315–50–9, R315–50–10.
11. Changes to Part 124 Not Accounted for by Present Checklists, 48 FR 14146, 4/1/83, 48 FR 30112, 6/30/83, 53 FR 28118, 7/26/88, 53 FR 37396, 9/26/88, 54 FR 246, 1/4/89.	R315–3–17, R315–3–24, R315–3–26, R315–3–28.
12. Mining Waste Exclusion II, 55 FR 2322, 1/23/90	R315–1–1, R315–2–4.
13. Modification of FO19 Listing, 55 FR 5340, 2/14/90	R315–2–10.
14. Test and Monitoring Activities; Technical Corrections, 55 FR 8948, 3/9/90.	R315–1–2, R–315–50–8.
15. Toxicity Characteristic Revision, 55 FR 11798, 3/29/90 and 55 FR 26986, 6/29/90.	R315–2–4, R315–2–8, R315–2–9, R315–2–10, R315–50–7, R315–8–14, R315–7–18.
16. Listing of 1,1-Dimethylhydrazine Production Wastes, 55 FR 18496, 5/2/90.	R315–2–10, R315–50–8, R315–50–9.
17. Criteria for Listing Toxic Wastes; Technical Amendment, 55 FR 18726, 5/4/90.	R315–2–9.
18. HSWA Codification Rule, Double Liners; Correction, 55 FR 19262, 5/9/90.	R315–8–11, R315–8–14.
19. Land Disposal Restrictions for Third Third Scheduled Wastes, 55 FR 22520, 6/1/90.	R315–2–9, R315–2–10, R315–2–11, R315–50–9, R315–5–2, R315–5–10, R315–2–4, R315–8–11, R315–8–12, R315–8–13, R315–8–14, R315–7–8, R315–7–9, R315–7–18, R315–7–19, R315–7–20, R315–7–21, R315–13, R315–50–16.
20. Organic Air Emission Standards for Process Vents and Equipment Leaks, 55 FR 25454, 6/21/90.	R315–1–2, R315–2–6, R315–8–2, R315–8–5, R315–8–17, R315–8–18, R315–7–9, R315–7–12, R315–7–26, R315–7–27, R315–3–5, R315–3–6.
21. Land Disposal Restrictions for Third Third Scheduled Wastes; Technical Amendments, 56 FR 3864, 1/31/91.	R315–2–3, R315–2–9, R315–2–10, R315–5–1, R315–5–2, R315–5–10, R315–13.
22. Organic Air Emission Standards for Process Vents and Equipment Leaks; Technical Amendment, 56 FR 19290, 4/26/91.	R315–8–17, R315–8–18, R315–7–9, R315–7–12, R315–7–26, R315–7–27, R315–3–6.

[1] References are to the Utah Administrative Code revised 11/12/93.

C. Decision

I conclude that Utah's application for program revision meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Utah is granted final authorization to operate its hazardous waste program as revised.

Utah now has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out other aspects of the RCRA program, subject to the limitation of its revised program application and previously approved authorities. Utah also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under Section 3007 of RCRA and to take enforcement actions under Section 3008, 3013, and 7003 of RCRA. On March 21, 1994, the State of Utah submitted an application for Non-HSWA cluster 6 and HSWA cluster 2.

Compliance With Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act

Pursuant to the Provisions of 4 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Utah's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 272

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of Sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: October 4, 1994.

William P. Yellowtail,

Regional Administrator.

[FR Doc. 94–25386 Filed 10–13–94; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 94–1088]

Broadcast Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission updates the sections of Part 73 of the CFR containing information on Agency statements of policy. The action is intended to ensure that this information is as accurate and current as possible.

EFFECTIVE DATE: October 14, 1994.

FOR FURTHER INFORMATION CONTACT: Rita McDonald, Mass Media Bureau (202) 632–7792.

SUPPLEMENTARY INFORMATION:

Order

In the Matter of: Review of Part 73 of the Commission's Rules.

Adopted: September 30, 1994.

By the Acting Chief, Mass Media Bureau:

1. The Commission has reviewed 47 CFR Sections 73.4000 through the end of Part 73 which contains instructions on where to find information regarding Commission statements of policy. In order to make this information as accurate and current as possible, the Commission revises and updates these rule sections. This Order makes no substantive changes that impose additional burdens or remove provisions relied upon by licensees or the public as the CFR sections affected merely contain information on where Commission statements of policy on various topics can be found. Additionally, we believe that these revisions will serve the public interest by ensuring that the information contained in these CFR sections is current and accurate. This information is amended as part of the Agency's oversight function.

2. These amendments are implemented by authority delegated by the Commission to the Chief, Mass Media Bureau. Because these amendments only update and clarify the existing language of Part 73, prior notice of rule making is not required. 47 CFR 1.412(c). For this same reason, these amendments may become effective upon publication in the **Federal Register**. 47 CFR 1.427(b). Because a general notice of proposed rule making is not required, the Regulatory Flexibility Act does not apply.

3. Therefore, it is ordered, That pursuant to Sections 4, 5, and 303, of the Communications Act of 1934, as amended, and §§ 0.61 and 0.283 of the Commission's Rules, Part 73 of the FCC Rules and Regulations *is amended* as set forth below, effective upon publication in the **Federal Register.**

4. For further information on this Order, call Rita S. McDonald, Policy and Rules Division at (202) 632–5414.

List of Subjects in 47 CFR Part 73

Radio broadcasting, Television broadcasting.

Federal Communications Commission.

Roderick K. Porter,

Acting Chief, Mass Media Bureau.

Rule Changes

47 CFR Part 73 is amended as follows:

PART 73—RADIO BROADCAST SERVICES

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

Authority: 47 U.S.C. 154, 303, 334.

2. Section 73.4017 is revised to read as follows:

§ 73.4017 Application processing: Commercial FM stations.

See Report and Order, MM Docket 84–750, FCC 85–125, adopted March 4, 1985. 50 FR 19936, May 13, 1985.

3. Section 73.4050 is amended by revising the last sentence in paragraph (b) and by adding new paragraph (c) to read as follows:

§ 73.4050 Children's TV programs.

* * * * *

(b) * * * 96 FCC 2d 634; 49 FR 1704, January 13, 1984.

(c) See Report and Order, MM Dockets 90–570 and 83–670, FCC 91–113, adopted April 9, 1991. 6 FCC Rcd 2111; 56 FR 19611, April 19, 1991; Memorandum Opinion and Order, MM Dockets 90–570 and 83–670, FCC 91–248, adopted August 1, 1991. 6 FCC Rcd 5093; 56 FR 42707, August 29, 1991.

4. Section 73.4107 is amended by revising the last sentence of paragraph (a) and the last sentence of paragraph (b) to read as follows:

§ 73.4107 FM broadcast assignments, increasing availability of.

(a) * * * 100 FCC 2d 1332; 50 FR 3514, January 25, 1994.

(b) * * * 101 FCC 2d 630; 50 FR 15558, April 19, 1985.

* * * * *

5. Section 73.4163 is amended by adding a sentence to the end of paragraph (d) and by adding paragraph (e) to read as follows:

§ 73.4163 Noncommercial nature of educational broadcast stations.

* * * * *

(d) * * * Excerpt reprinted at 7 FCC Rcd 827.

(e) See Memorandum Opinion and Order, FCC 90–111, adopted March 28, 1990. 5 FCC Rcd 4920.

6. Section 73.4165 is revised to read as follows:

§ 73.4165 Indecent broadcasts.

(a) See *FCC* v. *Pacifica Foundation*, 438 U.S. 726, 57 L.Ed 2d 1073, 46 U.S.L.W. 5018 (1978). See also *Action for Children's Television* v. *FCC*, 852 F.2d 1332 (D.C. Cir. 1988).

(b) See *Action for Children's Television* v. FCC, [ACT III] 11 F.3d 170 (D.C. Cir. 1993). See also, *Action for Children's Television v. FCC*, [ACT IV] 15 F.3d 186 (D.C. Cir. 1994), rehearing granted, en banc.

(c) See Report and Order, GC Docket 92–223, FCC 93–42, adopted January 19, 1993. 8 FCC Rcd 704; 58 FR 5937, January 25, 1993.

(d) See Memorandum Opinion and Order, FCC 93–246, adopted May 11, 1993, 8 FCC Rcd 3600.

(e) See Letter to Rusk Corporation, dated May 6, 1993, FCC 93–229, 8 FCC Rcd 3228.

(f) See Memorandum Opinion and Order, FCC 93–4, adopted January 5, 1993. 8 FCC Rcd 498

(g) See *Branton* v. *FCC*, 993 F.2d 906 (D.C. Cir. 1993).

(h) See Memorandum Opinion and Order, DA 91–557, adopted April 30, 1991. 6 FCC Rcd 2560.

7. Section 73.4170 is revised to read as follows:

§ 73.4170 Obscene broadcasts.

(a) See *Miller* v. *California*, 413 U.S.C. 15 (1973). See also *Pope* v. *Illinois*, 107 S.Ct. 1918 (1987). 18 U.S.C. 1464.

(b) See Memorandum Opinion and Order, MM Docket 83–575, FCC 88–4, adopted January 12, 1988. 3 FCC Rcd 757. See also Memorandum Opinion and Order, MM Docket 83–575, FCC 93–180, adopted April 2, 1993. 8 FCC Rcd 2753.

(c) See Memorandum Opinion and Order, FCC 87–365, adopted November 24, 1987. 3 FCC Rcd 930.

(d) See "Memorandum of Understanding between the Federal Communications Commission and the Department of Justice concerning Complaints and Cases Involving Obscenity and Indecency," released April 9, 1991. See also News Release dated April 19, 1991.

8. Section 73.4180 is amended by adding paragraph (c) to read as follows:

§ 73.4180 Payment disclosure: Payola, plugola, kickbacks.

* * * * *

(c) See Public Notice, FCC 88–175, dated May 18, 1988.

9. Section 73.4185 is revised to read as follows:

§ 73.4185 Political broadcasting and telecasting, the law of.

(a) See "The Law of Political Broadcasting and Cablecasting: Political Primer 1984," 100 FCC 2d 1476 (1984).

(b) See Report and Order, MM Docket 91–168, FCC 91–403, adopted December 12, 1991. 7 FCC Rcd 678; 57 FR 189, January 3, 1992; Memorandum Opinion and Order, MM Docket 91–168, FCC 92–210, adopted May 14, 1992. 7 FCC Rcd 4611; 57 FR 27705, June 22, 1992.

10. Section 73.4190 is amended by designating the existing paragraph as paragraph (a) and by adding paragraph (b) to read as follows:

§ 73.4190 Political candidate authorization notice and sponsorship identification.

* * * * *

(b) See Memorandum Opinion and Order, FCC 92–55, adopted February 12, 1992. 7 FCC Rcd 1616.

11. Section 73.4255 is amended by adding a sentence to the end of paragraph (b) to read as follows:

§ 73.4255 Tax certificates: Issuance of.

* * * * *

(b) * * * 6 FCC Rcd 6273; 56 FR 64842, December 12, 1991.

12. Section 73.4267 is amended by designating the existing paragraph as paragraph (a), and by adding paragraphs (b) and (c) to read as follows:

§ 73.4267 Time brokerage.

* * * * *

(b) See Report and Order, MM Docket 91–140, FCC 92–97, adopted March 12, 1992. 7 FCC Rcd 2755; 57 FR 18089, April 29, 1992.

(c) See Memorandum Opinion and Order and Further Notice of Proposed Rule Making, MM Docket 91–140, FCC 92–361, adopted August 5, 1992. 7 FCC Rcd 6387; 57 FR 42701, September 16, 1992.

13. Section 73.4280 is revised to read as follows:

§ 73.4280 Character evaluation of broadcast applicants.

(a) See Report and Order and Policy Statement, Gen. Docket 81–500, BC Docket 78–108, FCC 85–648, adopted December 10, 1985. 102 FCC 2d 1179; 51 FR 3049, January 23, 1986.

(b) See Policy Statement and Order, FCC 90–195, adopted May 10, 1990. 5 FCC Rcd 3252, 55 FR 23082, June 6, 1990.

(c) See Memorandum Opinion and Order, FCC 91–146, adopted May 1, 1991. 6 FCC Rcd 3448, 56 FR 25633, June 5, 1991.

(d) See Memorandum Opinion and Order, FCC 92–448, adopted September 18, 1992. 7 FCC Rcd 6564, 57 FR 47410, October 16, 1992.

[FR Doc. 94–25396 Filed 10–13–94; 8:45 am]
BILLING CODE 6712–01–M

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47 CFR Part 76

[MM Docket No. 92–215; FCC 94–226]

Cable Television Act of 1992

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has adopted a Memorandum Opinion and Order declining to adopt a productivity offset concerning regulated rates for cable television service. The Commission stated that the record failed to adequately support the proper design and adoption of a productivity offset. This action reconsiders the Commission's earlier proposal to adopt a productivity offset.

EFFECTIVE DATE: October 14, 1994.

FOR FURTHER INFORMATION CONTACT: Lawrence A. Walke, (202) 416–0847.

SUPPLEMENTARY INFORMATION: The text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street NW., Washington, DC 20554, and may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Washington, DC 20037.

Memorandum Opinion and Order

In the Matter of: Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992—Rate Regulation.

Adopted: September 2, 1994.
Released: September 29, 1994.

By the Commission:

I. Background

1. In the initial *Rate Order*, released in May 1993, we adopted a price cap mechanism to govern rates for regulated cable service after initial rates have been established. *In the Matter of Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation Report and Order*, MM Docket No. 92–266, 58 FR 29736 (5/21/93), 8 FCC Rcd 5631, 5776 (1993) (*"Rate Order"*). Under the price cap, cable

operators are permitted to adjust their capped rates to reflect costs attributable to inflation as measured by the Gross National Product—Price Index (GNP–PI), as well as for changes in external costs. We declined, however, to adopt a productivity offset to the GNP–PI because the record did not provide a basis for determining productivity gains in the cable industry.

2. In the initial *Cost-of-Service Notice*, released in July 1993, we sought comment on whether the cable television industry has been or will be experiencing efficiency gains and on several alternatives for establishing a productivity offset. We specifically sought comment on four possible options: (1) No productivity offset; (2) a consumer productivity dividend of 0.5%; (3) a telecommunications industry adjustment of between 3.0% and 3.3%; and (4) a different productivity offset for cable operators. *In the Matter of Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, Report and Order and Further Notice of Proposed Rulemaking*, MM Docket No. 93–215, *58 FR 40762 (7/30/93), 8 FCC Rcd 4545 ("Cost of Service Notice")*, at para. 85. In the *Further Notice* in this proceeding, released in March 1994, we tentatively concluded that cable operators should reasonably expect to achieve productivity gains that are comparable to those realized by other communications firms. We noted that cable television and telephone technologies are similar in many ways and have both benefited from technical advances. We stated, however, that while both industries are likely to continue improving their productivity, in the near term, the productivity gains that cable may reasonably expect to achieve may differ from those of telephone operations due to differences in their networks, operations, services and histories. Accordingly, we tentatively concluded that the record did not support the automatic adoption of the same productivity factor for cable systems as local telephone companies. *In the Matter of Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, Report and Order and Further Notice of Proposed Rulemaking*, MM Docket No. 93–215 59 FR 17975 (4/15/94) (*"Further Notice"*) at para. 319. We proposed, and sought comment on, a two percent productivity offset. In the *Further Notice*, we also tentatively concluded that programming costs should not be subject to any productivity offset. We stated that we did not wish to indirectly restrict the ability of programmers to obtain fair value for their products.

II. Comments

3. In response to the *Further Notice*, cable operators contend that a productivity offset would be inappropriate for the cable industry. They argue that the record in this proceeding does not adequately support a productivity offset of two percent, or of any particular level for that matter. Time Warner, for example, notes that only one party offered a specific offset figure which, Time Warner asserts, apparently is based on its use in state regulation of local exchange carriers ("LECs") and not on any serious inquiry into the economics of the cable industry, and is not supported by any economic analysis. These commenters argue that differences between the telephone and cable industries dictate that a productivity offset for the cable industry should not be based on an offset incorporated in the interstate telephone price per scheme. These differences, according to commenters, are: (1) The relative easing of telephone rate regulation as compared to the re-regulation of cable systems currently underway; (2) differing fixed equipment costs; and (3) the differing units by which productivity growth is measured in the two industries. NCTA explains that the units of regulatory measurement for interstate telephone calls can be either the number of calls completed or the number of minutes of such calls. These units can expand within the system's capacity even if subscribership remains constant, and can grow rapidly in response to price decreases, it states. Thus, according to NCTA, it may be appropriate to have a productivity offset on the price of a call or a call minute as the incremental cost of each unit falls. NCTA states that, in contrast, the unit of regulatory measurement for regulated basic cable service is the number of basic cable subscribers; intensity of usage is irrelevant. NCTA argues that a price reduction for basic cable service will not induce households that already purchase service to purchase more service. NCTA contends that only in areas of low penetration will subscribership change in response to a price decrease, while in areas of high penetration, price decreases likely will not lead to substantial percentage increases in subscribership. NCTA thus asserts that these differences in the units of regulatory measurement further demonstrate the inappropriateness of deriving a productivity offset from the telephone regulatory regime into the cable service price cap scheme. NCTA also provides a study purporting to demonstrate that there has been no increase in productivity in the cable industry based on analyses of cable operators' costs. *Productivity Growth in the Cable Television Industry*, Christensen Associates. We note that Bell Atlantic has contended that NCTA's study would have shown productivity gains if the study also reflected the annual change in average number of active cable service channels.

4. Cable operators also note that, in adopting a productivity offset for common carriers, the Commission reviewed numerous productivity studies demonstrating the historical productivity growth of telephone companies, including two independent studies as well as its own short-term study and a long-term study of the telephone industry covering more than 60 years. These parties contend that, given the absence of any studies or data concerning the cable industry, the Commission has no basis on which to determine or implement a productivity offset for the cable industry. Cable operators further argue generally that a productivity offset will dampen the industry's incentives to invest in innovative video services and development of the National Information Infrastructure. Comments from the cable industry also object to the productivity offset proposal based on (1) the relative immaturity of the cable industry and its supporting technology; (2) the fact that fiber optics and other necessary technological improvements may actually increase cable operators' costs in the near future; and (3) their belief that the price cap, as measured by the GNP–PI, already captures purported efficiency gains.

5. Commenters from the telephone industry, on the other hand, assert that cable operators' rates should be subject to a productivity offset because the current and near-term introduction of fiber optics and other technologies will greatly increase the efficiency of the cable industry. These efficiencies, the telephone companies argue, should be shared with cable operators' subscribers. GTE and Bell Atlantic contend that the telephone and cable industries should have equivalent, or at least similar, productivity offsets given the industries' impending convergence in both technologies and services offered. These commenters note that an offset has been applied to the rates of telephone companies since they became subject to price cap regulation, and argue that industries rapidly converging to compete in the same video programming distribution marketplace

should be subject to similar regulatory rate constraints.

III. Discussion

6. A productivity offset should be based to the extent possible on observed efficiency gains experienced by the cable industry. An accurate productivity offset can assure that regulated cable service rates reflect a portion of the difference between demonstrated efficiency gains experienced by regulated cable operators, if any, and those gains produced in the economy as a whole, as measured by the Commission's chosen price cap index—the GNP–PI. As such, a correctly designed offset can significantly benefit consumers while permitting cable operators also to share in efficiency gains. In adopting a productivity offset in other contexts, the Commission has had the benefit of numerous Commission-sponsored and independent economic studies, each providing a record of the historical costs and productivity of the relevant industry.

7. We believe that the current record does not provide an adequate factual basis for the incorporation of a productivity offset into the price cap governing cable service rates. The studies that have been submitted are insufficient to demonstrate observed productivity gains. Bell Atlantic's report is the only study submitted in response to the *Further Notice* purporting to provide an economic analysis in support of a productivity offset factor for cable service. However, the report's conclusion is not based on an analysis of costs or productivity in the cable industry; rather, the report essentially argues that cable operators should be subject to an offset, as required of telephone companies, given the rapid convergence of the two industries. No other studies or data have been submitted in support of a productivity offset. Thus, there is no factual basis in the record that would adequately support a two percent productivity offset. Accordingly, we decline to adopt our proposal to incorporate a productivity offset into the price cap governing cable operators' regulated rates for cable service.

8. Accordingly, *it is ordered*, that the proposed productivity offset set forth in the *Further Notice* in this proceeding is not adopted.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–25446 Filed 10–13–94; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 572

[Docket No. 94–49, Notice 01]

RIN 2127–AE84

Anthropomorphic Test Dummy; Side Impact Protection

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

ACTION: Correcting amendment.

SUMMARY: This document corrects several of the accelerometer specifications (including mounting locations) in NHTSA's regulation for the side impact test dummy (SID) and in the drawings and user's manual for the SID. This action removes a potential source of concern and confusion for SID manufacturers and users. It is intended to ensure that there is no question among SID manufacturers and users as to whether a particular SID meets the specifications of NHTSA's SID regulation, and the drawing and specifications package.

DATES: The changes made in this rule are effective October 14, 1994. The incorporation by reference of the publications listed in this document is approved by the Director of the Federal Register as of October 14, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. Stan Backaitis, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, D.C. 20590. Telephone: (202) 366–4912.

SUPPLEMENTARY INFORMATION: On October 30, 1990, NHTSA published a rule that established dynamic side impact protection requirements for passenger cars. (See, final rule amending Federal Motor Vehicle Safety Standard No. 214, *Side Door Strength*, 49 CFR 571.214; 55 FR 45722.) The requirements, which became effective September 1, 1993, improve crash protection by limiting the amount of impact force that may be imposed on an occupant's thorax and pelvis in a crash.

The amount of force is determined from measurements of accelerometer sensors mounted in a side impact dummy, or "SID." The SID is specially designed for measuring forces that would be imposed on the thorax and pelvis regions of an adult male 50th percentile size occupant. At the time of the amendment to Standard 214, specifications for the SID were added to NHTSA's test dummy regulation (see, 49 CFR part 572, subpart F).

The specifications provide that the SID is instrumented with four accelerometers to assess imposed impact forces. Three accelerometer sensors are mounted in the dummy's thorax, and provide acceleration values used in determining the "Thoracic Trauma Index (TTI(d))." TTI(d) is an injury criterion that measures the risk of thoracic injury of a passenger car occupant in a side impact. The fourth accelerometer, mounted in the pelvic cavity, measures the potential risk for pelvic injury. To meet Standard 214's side impact protection requirements, the TTI(d) and pelvis measurements must be below specified maximum values.

Need for Correction

This document makes several corrections to the accelerometer specifications in part 572 and in the drawings and the user's manual for the SID.

NHTSA was very specific in describing in part 572, subpart F, the location of the four accelerometers in the SID. However, location descriptions for two sets of accelerometers do not allow sufficient space for their mounting. This has engendered confusion among SID manufacturers. The regulation specifies that one of the thoracic accelerometers (T12 spine) is positioned on an accelerometer mounting platform that is attached to the dummy (§ 572.44(b)(1)). The platform is attached such that the accelerometer's "seismic mass center" (which was approximately at the center of the device) is up to 0.4 inches from a specified reference point on a part of the dummy called the "thorax to lumbar adaptor." Two dummy manufacturers, FTSS and Vector Research, informed NHTSA that the accelerometer's seismic mass center cannot be located precisely at the specified position. Instead, the accelerometer has to be placed about 0.2 inches from that position.

The regulation also specifies a precise location for the pelvic accelerometer (§ 572.44(c)). The current regulation specifies that the seismic mass center of this accelerometer is mounted at a location 0.9 inches upward and 0.5 inches to the left of a reference point (the centerline of a mounting bolt) and 0.4 to 0.5 inches rearward of the rear wall of the instrument cavity. Vector Research and First Technology Safety Systems said that, due to lack of available space, the seismic mass center cannot be located as specified using the mount depicted in dummy drawing SID–087, because the mass center is 0.87 inches (instead of 0.9 inches)

upward and 0.67 inches (instead of 0.5 inches) to the left of the mounting bolt. Thus, the accelerometer will be slightly lower and slightly left of the currently specified position.

This document corrects the specifications for locating the T12 spinal and pelvic accelerometers. The corrections amount to a few fractions of an inch. The dimensional adjustments are needed to account for imprecision in the way the agency initially measured the exact location of accelerometers for the part 572 subpart F regulation. SID manufacturers are concerned that, unless the part 572 subpart F specifications are corrected, customers might complain that the problem with accelerometer placement is with their particular SID, instead of the specifications. NHTSA is adjusting the appropriate specifications in part 572 subpart F to avoid this potential source of complaint and confusion. NHTSA is also providing tolerances for placement of the seismic mass centers of the accelerometers, to avoid the implication that insignificant variation from the specified locations renders a particular SID unsuitable for the applicable crash test.

This corrections does not impose any additional responsibilities on any manufacturer and has virtually no effect on the performance of the accelerometers. Computer generated simulations to determine the effect of changing the location of the accelerometers showed that, in a 17.3 and a 25 mile per hour impact, a change of 0.5 inches from the current location results in only about a 0.6 percent difference in the T12 spine peak g, and only about a 0.2 percent difference in the pelvic peak g accelerations. A report of the mathematical simulations has been placed in the docket.

This document also makes other minor corrections to the specifications for the T12 spine and pelvic accelerometer. As mentioned above, § 572.44(b)(1) of part 572 subpart F specifies the position of the T12 spine accelerometer relative to the Thorax to Lumbar Adaptor on the SID. However, that section also specifies that the accelerometer is to be attached to a particular type of accelerometer mount. This specification implies that the mount is a required part of the SID. This is a erroneous and contrary to NHTSA's aims to free the dummy specifications from unnecessary design restrictions. Accordingly, NHTSA is making a correcting amendment to § 572.44(b)(1) to remove reference to a specific accelerometer mount in determining the location of the T12 spine accelerometer. Instead, that section is changed to specify that the accelerometer is positioned relative to a reference point on the dummy (the centerline of a mounting hole in the SID thorax lumbar adaptor assembly). The new method of locating the accelerometer to a reference point places the accelerometer in the same position as originally specified, but without reference to the Endevco product.

This document also adds a specification to § 572.44(c) that allows the locating and mounting of the pelvic accelerometer for right side impacts. Part 572 subpart F specified a location that was appropriate for left side impacts, but none for the right side. The new location specification for right side impact assures that the accelerometer is located the same distance to the right of the midsagittal plane as is the left side accelerometer to the left of the midsagittal plane for left side impacts. The symmetrical location of the right and left accelerometers relative to the midsagittal plane will assure that the dummy will respond the same regardless of whether the impact is produced from the left or the right sides.

Housekeeping Amendments

This document also makes minor corrections to the specifications for the SID in the SID drawings and specifications package (including the SID user's manual).

The agency is adding the word "reference," or the abbreviation "ref.," at various places in the SID drawing and specifications package to indicate that a specified item is depicted or listed for illustration purposes only, and is not a mandatory part of the dummy. For example, the package refers occasionally to a specific type and design of accelerometer (i.e., the Endevco 7265) and accelerometer mount. E.g., drawing SID M001A depicts a mount designed specifically for the Endevco 7264 accelerometer. Those items were originally specified simply to illustrate the use of a widely available accelerometer and its associated mount for the measurement of impact responses with the SID. The Endevco products were selected primarily because they were the only ones with which the agency had experience in the development of the SID dummy and in the evaluation of the side impact protection standard (FMVSS No. 214; 49 CFR 571.214). However, NHTSA is concerned that references in the drawings to the Endevco accelerometer and its mount might be misunderstood as if implying that this particular type and design of accelerometer product must be used. To the contrary, NHTSA did not intend to preclude SID users from employing other suitable accelerometers and mounts comparable and/or equivalent to the Endevco models. Accordingly, the agency is adding the word "reference" to several items in the drawings (e.g., SID M001A and the parts lists) to avoid this possible source of confusion and to indicate that those items are not mandatory parts of the dummy. The word "equivalent" is being used in some drawings to indicate that other makes than those shown may be used provided that they meet space, mass, mounting and performance requirements in the impact environment as the referenced part.

There are several other items that are depicted or listed in the SID drawing and specifications package as though they were mandatory parts of the dummy. For each of these, NHTSA is adding "reference" to indicate that they are not integral parts of the dummy, but may be used if the testing facility chooses to make those specific impact response measurements. For example, drawing SID–M001 shows the SID as having an accelerometer in the head, yet at no time is the head acceleration on the SID used for compliance purposes. The illustration was based on the SID that was used for research purposes, and which had an accelerometer installed in the dummy's head. To correct the possible impression that the SID must be instrumented with a head accelerometer, NHTSA is adding "reference" on the drawings that depict the accelerometer, to indicate that the device is not a mandatory part of the dummy.

This notice also corrects several inconsistencies primarily in drawing SID–M001A. For example, the drawing does not show an installed thoracic accelerometer that is required for the SID under part 572 subpart F, § 572.41(a). This and several other minor adjustments in the drawings and in the users manual are summarized below.

Drawing Revisions

Dummy assembly drawing SA–SID–M0001A is revised as follows (these revisions are reflected in drawing "SA–SID–M001A revision A," which replaces drawing SID–M001A):

1. Accelerometers shown in item 21 are identified as "Endevco 7264 (Reference) or Equivalent;"
2. Appropriate picture notation is added to indicate the attachment of accelerometers (ref. item 21) on the ribs and on the thorax-lumbar spine adaptor;
3. The word "reference" is added to call-out boxes of accelerometer

mounts SID–036, SID–037, SID–038, SID–039 and 78051–54;

4. A note on the weight table is added to read: "The weights of body segments shown reflect also the masses of accelerometers and accelerometer mounts, where appropriate:"

Drawing SID–087: Drawing SID–087 sheet 1 is revised to remove all references to the "Endevco 7264 or equivalent" accelerometer and its mounting. (Drawing "SID–087 sheet 1 revision H, dated May 18, 1994" replaces drawing SID–087 sheet 1.)

Drawing SID–090: Drawing SID–090 is removed from the drawing package.

Drawing SID–005: Geometric tolerances are added. (Drawing "SID–005 revision F," replaces drawing SID–005.)

Parts Lists: SA–SID–M001, SA–SID–M030, SA–SID–M050 and SA–SID–M060 are revised to reflect the changes described above. (SA–SID–M001 is replaced by "SA–SID–M001 revision B." The latter three drawings are replaced with revised drawings which are dated May 18, 1994 and denoted "revision A.")

Users Manual Revisions

The revised users manual is dated May 1994.

1. The paragraphs that reference accelerometer use are moved from sections 1.3.06, 1.3.08, 1.3.10 to Accelerometer section 1.4.9. All accelerometers in 1.4.9 will be specified as "Endevco 7264 or equivalent" without the word "reference."

2. The positioning and locations of all accelerometers are referred to the revised language used in § 572.44, including Figures 30 and 31.

3. The word "reference" is added to all accelerometer mounts.

4. The parts list is revised as noted in the "Drawing Revisions" section.

5. Appropriate Figures are replaced, in line with the changes described herein.

This document does not impose any additional responsibilities on any vehicle or SID manufacturer. Instead, this document corrects several minor omissions and inconsistencies in the October 1990 rule. This document simply removes a potential source of concern and confusion for SID manufacturers. It also ensures that there is no question among SID manufacturers and purchasers as to whether a particular SID meets the specifications of part 572 subpart F and associated the drawing and specifications package. Accordingly, NHTSA finds for good cause that notice and an opportunity for comment on this document are unnecessary, and that this rule should be effective upon publication.

List of Subjects in 49 CFR Part 572

Motor vehicle safety, Incorporation by reference.

In consideration of the foregoing, NHTSA amends 49 CFR Part 572 as follows:

PART 572—[AMENDED]

1. The authority citation for Part 572 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.50.

Subpart F—Side Impact Dummy 50th Percentile Male

2. In section 572.41, paragraphs (a) introductory text, (a)(3) through (a)(5), and (c) are revised to read as follows:

§ 572.41 General description.

(a) The dummy consists of component parts and component assemblies (SA–SID–M001 revision B and SA–SID–M001A revision A, dated May 18, 1994) which are described in approximately 250 drawings and specifications that are set forth in § 572.5(a) with the following changes and additions which are described in approximately 85 drawings and specifications (incorporated by reference; see § 572.40):

* * * * *

(3) The thorax assembly consists of the assembly shown as number SID–053 and conforms to each applicable drawing subtended by number SA–SID–M030 revision A, dated May 18, 1994.

(4) The lumbar spine consists of the assembly specified in subpart B of this part (§ 572.9(a)) and conforms to drawing SA 150 M050 and drawings subtended by SA–SID–M050 revision A, dated May 18, 1994.

(5) The abdomen and pelvis consist of the assembly specified in subpart B of this part (§ 572.9) and conform to the drawings subtended by SA 150 M060, the drawings subtended by SA–SID–M060 revision A, dated May 18, 1994, and the drawings subtended by SA–SID–087 sheet 1 revision H, dated May 18, 1994, and SA–SID–087 sheet 2 revision H.

* * * * *

(c) Disassembly, inspection, and assembly procedures; external dimensions and weight; and a dummy drawing list are set forth in the Side Impact Dummy (SID) User's Manual, dated May 1994 (incorporated by reference; see § 572.40).

3. In section 572.42, paragraph (a) introductory text is revised to read as follows:

§ 572.42 Thorax

(a) When the thorax of a completely assembled dummy (SA–SID–M001A revision A, dated May 18, 1994, incorporated by reference; see § 572.40), appropriately assembled for right or left side impact, is impacted by a test probe conforming to § 572.44(a) at 14 fps in accordance with paragraph (b) of this section; the peak accelerations at the location of the accelerometers mounted on the thorax in accordance with § 572.44(b) shall be:

* * * * *

4. In section 572.43, paragraph (a) is revised to read as follows:

§ 572.43 Lumbar spine and pelvis.

(a) When the pelvis of a fully assembled dummy (SA–SID–M001A revision A, dated May 18, 1994, incorporated by reference; see § 572.40) is impacted laterally by a test probe conforming to § 572.44(a) at 14 fps in accordance with paragraph (b) of this section, the peak acceleration at the location of the accelerometer mounted in the pelvis cavity in accordance with § 572.44(c) shall be not less than 40g and not more than 60g. The acceleration-time curve for the test shall be unimodal and shall lie at or above the +20g level for an interval not less than 3 milliseconds and not more than 7 milliseconds.

* * * * *

5. In section 572.44, paragraphs (b)(1) and (c) are revised to read as follows:

§ 572.44 Instrumentation and test conditions.

* * * * *

(b) * * *

(1) One accelerometer is mounted on the thorax to lumbar adaptor (SID–005 revision F, dated May 18, 1994, incorporated by reference; see § 572.40) with seismic mass center located 0.5 inches toward the impact side, 0.1 inches upward and 1.86 inches rearward from the reference point shown in Figure 30 in appendix A to subpart F of part 572. Maximum permissible variation of the seismic location must not exceed 0.2 inches spherical radius.

* * * * *

(c) One accelerometer is mounted in the pelvis for measurement of the lateral acceleration with its sensitive axis perpendicular to the pelvic midsagittal plane. The accelerometer is mounted on the rear wall of the instrumentation cavity of the pelvis (SID–087 revision H, dated May 18, 1994, incorporated by reference; see § 572.40). The accelerometer's seismic mass with respect to the mounting bolt center line

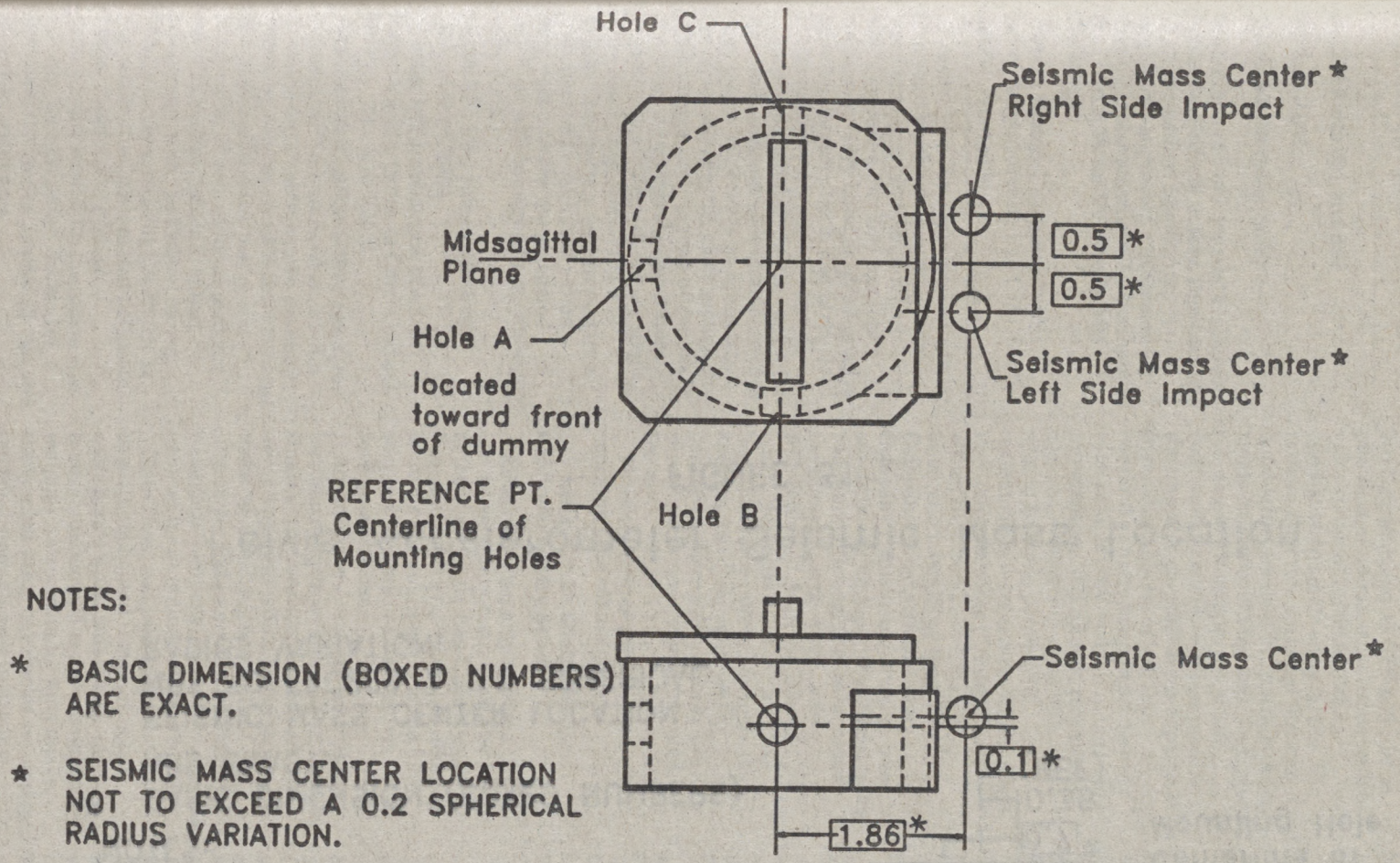
is 0.9 inches up, 0.7 inches to the left for left side impact and 0.03 inches to the left for right side impact, and 0.5 inches rearward from the rear wall mounting surface as shown in Figure 31 in appendix A to subpart F of part 572. Maximum permissible variation of the seismic location must not exceed 0.2 inches spherical radius.

* * * * *

6. An appendix A is added to subpart F to read as follows:

Appendix A to Subpart F of Part 572—Figures

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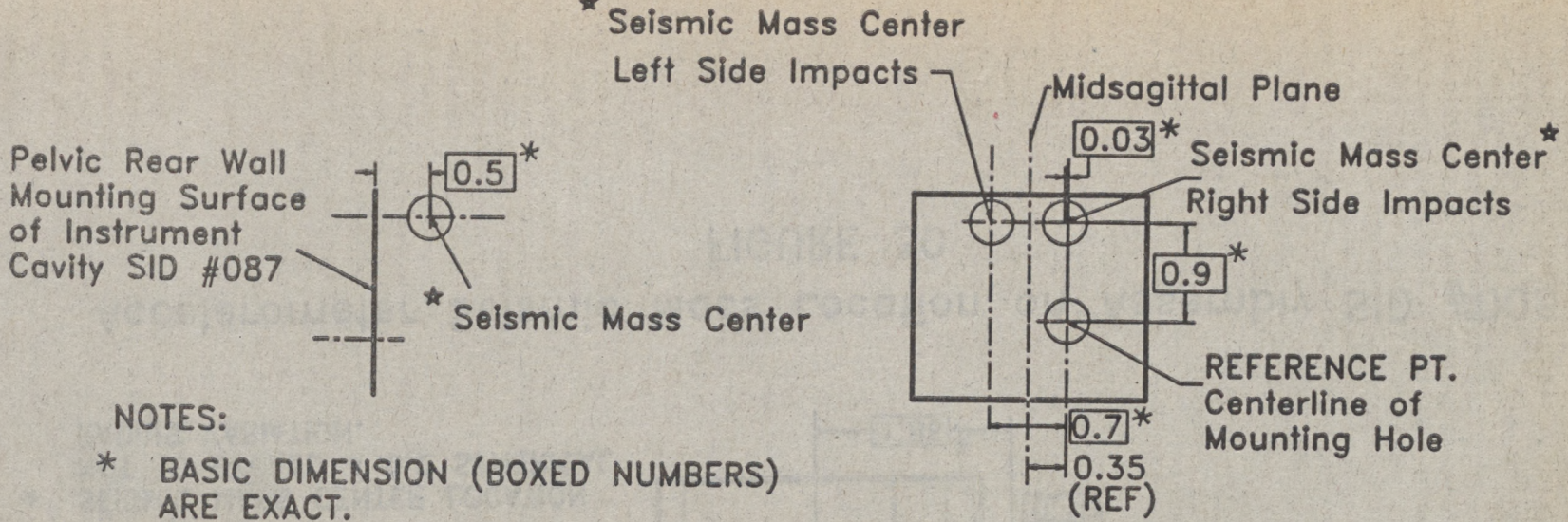
NOTES:

* BASIC DIMENSION (BOXED NUMBERS) ARE EXACT.

* SEISMIC MASS CENTER LOCATION NOT TO EXCEED A 0.2 SPHERICAL RADIUS VARIATION.

Accelerometer Seismic Mass Location on Assembly SID #005

FIGURE 30



NOTES:

* BASIC DIMENSION (BOXED NUMBERS) ARE EXACT.

* SEISMIC MASS CENTER LOCATION NOT TO EXCEED A 0.2 SPHERICAL RADIUS VARIATION.

Pelvis Accelerometer Seismic Mass Location

FIGURE 31

Issued on September 23, 1994.

Christopher A. Hart,

Deputy Administrator.

[FR Doc. 94–24054 Filed 10–13–94; 8:45 am]

BILLING CODE 4910–59–C

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49 CFR Parts 591 and 592

RIN 2127–AD00

[Docket No. 89–5; Notice 15]

Importation of Vehicles and Equipment Subject to Federal Safety, Bumper, and Theft Prevention Standards; Registered Importers of Vehicles Not Originally Manufactured To Conform to the Federal Motor Vehicle Safety Standards

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

ACTION: Final rule.

SUMMARY: This final rule responds to comments received on a request for comments on an interim final rule which amended Part 591 to adopt a continuous entry bond as an alternative to the single entry bond that is required to accompany each nonconforming vehicle imported into the United States for which a registered importer certifies compliance. NHTSA is retaining the option of allowing the continuous entry bond, though adopting modifications to it which commenters believed were necessary to distinguish it from single entry bonds, and restricting it to registered importers who import more than one motor vehicle at a time. Importers who are not registered importers will continue to use the single entry bond.

DATES: The final rule is effective November 14, 1994.

FOR FURTHER INFORMATION CONTACT: Taylor Vinson, Office of Chief Counsel, NHTSA (202–366–5263).

SUPPLEMENTARY INFORMATION: On June 20, 1994, NHTSA adopted an interim final rule on amendments to the entry bonds required by 49 CFR parts 591 and 592 to accompany the permanent importation of nonconforming motor vehicles to ensure their eventual compliance with the Federal motor vehicle safety standards (59 FR 31558). The reader is referred to that notice for further information (though denominated Notice 13, the notice was actually the 14th under Docket No. 89–5, and this notice, Notice 15, restores the proper sequence).

In summary, it had been represented to NHTSA that bonding companies were no longer issuing single entry bonds to registered importers (RIs) covering individual vehicles, and that there was an immediate need for relief. This relief would be the allowance of continuous entry bonds which cover multiple entries of vehicles. For this reason, NHTSA amended 49 CFR part 591 to permit continuous entry bonds with a value of up to $1,000,000 as an alternative to single entry bonds. The interim final rule specified that the bond form specified in appendix A for single entries could be used, with plural references where appropriate. A conforming amendment was made to the importation procedures of part 592 to require a photocopy of the continuous entry bond to accompany each vehicle covered by it at the time of importation. NHTSA also requested comments on whether the alternative should be made permanent.

Comments were received from Asset Protection Services ("Asset") which writes DOT bonds on behalf of International Fidelity Insurance Company, Intercargo Insurance Company ("Intercargo") which provides surety bonds for the international trade community through Trade Insurance Services, Inc., and The Surety Association of America ("Surety"), which describes itself as "a service organization supported by more than 650 member companies which collectively write the majority of all surety bonds written in the United States".

There were three primary issues that concerned the commenters.

1. Whether There Should Be a Continuous Entry Bond

Asset and Intercargo opposed the continuous entry bond as an alternative to the single entry bond. Surety was "not opposed to the idea" but doubted whether RIs would use it in the form adopted, and made ameliorative recommendations.

According to Asset, it is untrue that bonding companies are refusing to write single entry bonds, and it named two new companies which began writing these bonds during spring 1994, Intercargo, and International Fidelity Insurance Company. In its view, there is no need for a continuous entry bond.

Both Asset and Intercargo (in some detail) commented that continuous entry bonds were undesirable. In Intercargo's view, it is not possible to maintain an accurate running total of the bonded value of vehicles secured by the bond, and this will inevitably encourage RIs to abuse the bond by maintaining a running total in excess of the penalty amount. It sees six principal problems arising from this.

Two of these problems relate to the effect upon Customs that Intercargo presumes would occur from continuous bonds. It argues that Customs must confirm that the original of the copy presented at the time of entry is on file with NHTSA, that the bond was validly executed by both the principal and surety and that the bond is still effective. Further, monitoring outstanding liability against the continuous bond will cause Customs to expend more manpower.

NHTSA does not agree with this assessment of the effect of continuous bonds upon the U.S. Customs Service. Although Customs did not comment upon the interim final rule (nor did any RI for that matter), the role that Customs has performed with respect to NHTSA bonds has been limited, by Customs' choice, to verification that a bond is present and to forward to NHTSA the entry documents with bond attached. Customs has not sought to verify the accuracy of the bond, nor has NHTSA asked it to.

A third undesirable aspect of the interim final rule, according to Intercargo, is that the facsimile signatures on a photocopied bond that accompany a vehicle are not binding, and, hence, that the United States will be at risk since it cannot enforce an invalid bond.

The purpose of the photocopy is to assure NHTSA that the vehicle being imported is covered by a bond, not that the photocopy itself is a valid bond. Obviously, the signatures on the original bond will be genuine and, for NHTSA's purposes, it is irrelevant that the signatures on the copy it receives with the entry declaration are facsimiles.

A fourth reason that Intercargo finds continuous entry bonds objectionable is that "there is no adequate means to determine the value of all vehicles released under the continuous entry bond for which compliance has not yet been accepted by NHTSA". This also burdens Customs because "[w]hile one Customs Import Specialist may be able to manually keep track this accumulation under the bond * * * that person is not notified of acceptance of the certification by NHTSA."

Once again, Intercargo has attributed to Customs a role that it will not play when continuous entry bonds are used. It will be up to the principal and surety, who holds the original bond, to track the coverage of the bond and to ensure that it is not exceeded.

A fifth reason is that the inability to adequately control the accumulated bond value of vehicles secured by the continuous bond places the United States at risk, due to the lack of control

when claims exceed surety bond amounts.

NHTSA deems it unlikely that claims will be made covering all vehicles covered by a continuous entry bond. RIs have an incentive to make a good faith effort to conform the vehicles for which they are responsible, or to redeliver them for export, because they are required to renew their status on a yearly basis.

Finally, Intercargo raises the argument that "the uncertainty as to how many vehicles are secured by the bond could cause the Surety market to refuse to offer this bond, refuse to enter the market, or refuse to remain in the market."

NHTSA doubts that "the Surety market" is a monolith acting as one unit, and has faith that the attractiveness of continuous entry bonds to RIs will ensure that they will be offered by other companies if Intercargo does not provide this type of service. Surety, which represents 650 member companies, conditionally supported continuous entry bonds, and NHTSA believes that it has addressed that commenter's reservations (see discussion below). And even if all companies withdraw from offering continuous entry bonds, the single entry bond will remain available according to Asset.

NHTSA does not understand how the importer of a single motor vehicle could be the principal on a continuous entry bond that is intended to cover more than one vehicle. Given the fact that single entry bonds apparently remain available, contrary to NHTSA's understanding when it adopted the interim final rule, NHTSA believes that an individual who imports a nonconforming vehicle for personal use pursuant to a contract with a RI to conform them, should continue to use the single entry bond. This should address some of the concerns of the commenters as well. Consequently, the form of continuous entry bond that NHTSA is adopting (see discussion below) is intended for use by RIs who are the direct importers of the vehicle(s) covered by the continuous entry bond, whether they are the owners of the vehicles or whether they are importing them on behalf of another person whose intended disposition is commercial.

2. Whether $1,000,000 Is an Appropriate Amount

Surety questions whether small businesses such as RIs would be able to qualify for a bond in this amount and whether they would actually need to be bonded for an amount this high.

The interim final rule did not specify that, if a continuous entry bond was used, it must have a ceiling of $1,000,000. Rather, it provided for them to be allowed, with a ceiling of this amount. This does not prohibit continuous entry bonds with lesser ceilings based upon the individual RI's ability to qualify and its own individual needs (a ceiling of $1,000,000 would cover 60-some vehicles valued around $15,000 each).

Asset comments without further explanation that "[t]he bond limits of up to $1,000,000 without the effective controls now in place will probably prove intolerable." As noted above, the regulation permits sureties to set ceilings on continuous entry bonds related to their assessment of principals in amounts less than $1,000,000.

3. Whether the Bond Form Adopted is Appropriate

In the final rule, NHTSA specified that the language of the continuous entry bond could be that required for single entries (appendix A to part 591), with plural wording used where appropriate, i.e., "vehicles" for "vehicle". Though opposing continuous entry bonds, both Intercargo and Surety recommended changes which they felt were required were NHTSA to decide to continue to offer the option of continuous entry bonds.

Intercargo, and, in less detail, Security, pointed out that adopting the single entry bond form language per se could result in interpretations requiring an RI to make all vehicles subject to inspection that are covered by the continuous entry bond, as well as redelivery of all of them. Similarly, when there has been no redelivery of a single vehicle and the RI is obligated to "pay the amount of this obligation", the amount of the continuous entry bond will far exceed the value of the individual vehicle to be redelivered. NHTSA considers these comments well taken, and is adopting a specific form for a continuous entry bond, which will be designated as appendix B.

Intercargo believes that "the regulations must provide a means for the principal or the surety to terminate the bond", saying that it is impracticable to consider that any surety will commit itself to an obligation that does not have an expiration date or a means to terminate its guarantee commitment. Surety also recommended that the bond include a cancellation clause. To implement this recommendation, Intercargo submitted a suggested amendment to § 591.8 *Conformance bond and conditions* under which a principal would submit a written request to NHTSA to terminate a continuous entry bond, and a surety would be able to terminate its bond with or without the principal's consent.

NHTSA disagrees with Intercargo's view that provisions governing termination of continuous entry bonds must be part of the importation regulation. The provision for termination of a bond is a business matter to be resolved between the principal and the surety. If its continuous entry bond is terminated, the principal (RI) remains responsible for providing a bond, either continuous or single entry, for any vehicle for which it must furnish a certificate of conformity. However, in view of Intercargo's comment, the continuous entry bond form which has been set forth in Appendix B allows the insertion by the parties thereto of termination provisions at its end. Finally, for the reasons discussed above, NHTSA has not set forth terminology in the bond which recognizes a principal other than a RI.

4. Amendments Necessitated by Recodification

NHTSA is also revising §§ 591.4, 591.10(b) and (c), 592.1, 592.4, 592.6(g)(2)(i), 592.7(c), and 592.8(g), as well as the authority sections of these parts, to reflect the codification in Title 49 on July 5, 1994, of the provisions of the National Traffic and Motor Vehicle Safety Act and the Motor Vehicle Information and Cost Savings Act.

Effective Date

Because of the need to ensure an uninterrupted flow of commerce that the interim final rule has provided, it is hereby found that an effective date earlier than 180 days after issuance is in the public interest, and the final rule is effective 30 days after publication in the **Federal Register**.

Rulemaking Analyses

A. Executive Order 12866 (Federal Regulation) and DOT Regulatory Policies and Procedures

This notice, like the interim final rule that preceded it, was not reviewed under EO 12866. After considering the impacts of this rulemaking action, NHTSA has determined that the action is not significant within the meaning of the Department of Transportation regulatory policies and procedures. The only substantive change that this final rule makes in the interim final rule is to set forth the form of the continuous entry bond. The number of RIs affected by the final rule is less than 35. The cost impacts of this regulatory action are cost

savings to the RIs in procuring bonds (an estimated $20 per vehicle), and nonquantifiable cost savings in the paper work involved to obtain single-entry bonds. The impacts are so minimal as not to warrant the preparation of a full regulatory evaluation.

B. Regulatory Flexibility Act

The agency has also considered the effects of this action in relation to the Regulatory Flexibility Act. The RIs, which number less than 35, are small businesses within the meaning of the Regulatory Flexibility Act. However, for the reasons discussed above under E.O. 12866 and the DOT Policies and Procedures, I certify that this action would not have a significant economic impact upon "a substantial number of small entities." The interim final rule appeared necessary to allow them to continue in business; the final rule allows them the option of choosing a continuous entry bond even if single entry bonds are available to them. Governmental jurisdictions will not be affected at all since they are generally neither importers nor purchasers of nonconforming imported motor vehicles.

C. Executive Order 12612 (Federalism)

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

D. National Environmental Policy Act

NHTSA has analyzed this action for purposes of the National Environmental Policy Act. The action will not have a significant effect upon the environment because it is anticipated that the annual volume of motor vehicles imported will not vary significantly from that existing before promulgation of the rule.

E. Civil Justice Reform

This final rule will not have any retroactive effect. Under 49 U.S.C. 30103 (formerly section 103(d) of the National Traffic and Motor Vehicle Safety Act, 15 U.S.C. 1392(d)), whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. A procedure is set forth in 49 U.S.C. 30161 (formerly Section 105 of the Act, 15 U.S.C. 1394)) for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Parts 591 and 592

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, 49 CFR parts 591 and 592 are amended as follows:

PART 591—IMPORTATION OF VEHICLES AND EQUIPMENT SUBJECT TO FEDERAL SAFETY, BUMPER, AND THEFT PREVENTION STANDARDS

1. The authority citation for part 591 is revised to read as follows:

Authority: Pub. L. 100–562, 49 U.S.C. 322(a), 30117; delegation of authority at 49 CFR 1.50.

2. Section 591.4 is amended by revising the introductory text to read as follows:

§ 591.4 Definitions.

All terms used in this part that are defined in 49 U.S.C. 30102, 32101, 32301, 32502, and 33101 are used as defined in those sections except that the term "model year" is used as defined in part 593 of this chapter.

* * * * *

3. Section 591.6 is amended by revising paragraph (c) to read as set forth below:

§ 591.6 Documents accompanying declarations.

* * * * *

(c) A declaration made pursuant to § 591.5(f), and under a single entry bond, shall be accompanied by a bond in the form shown in Appendix A to this part, in an amount equal to 150% of the dutiable value of the vehicle, or, if under a continuous entry bond, shall be accompanied by a photocopy of a bond in the form shown in Appendix B to this part and by Customs Form CF 7501, for the conformance of the vehicle(s) with all applicable Federal motor vehicle safety and bumper standards, or, if conformance is not achieved, for the delivery of such vehicle to the Secretary of the Treasury for export at no cost to the United States, or for its abandonment.

* * * * *

4. Section 591.10 is amended by revising paragraphs (b) and (c) to read as follows:

§ 591.10 Offer of cash deposits or obligations of the United States in lieu of sureties on bonds.

* * * * *

(b) At the time the importer deposits any obligation of the United States, other than United States money, with the Administrator, (s)he shall deliver a duly executed power of attorney and agreement, in the form shown in Appendix C to this part, authorizing the Administrator or delegate of the Administrator, in case of any default in the performance of any of the conditions of the bond, to sell the obligation so deposited, and to apply the proceeds of sale, in whole or in part, to the satisfaction of any penalties for violations of 49 U.S.C. 30112 and 49 U.S.C. 32506 arising by reasons of default.

(c) If the importer deposits money of the United States with the Administrator, the Administrator, or delegate of the Administrator, may apply the cash, in whole or in part, to the satisfaction of any penalties for violations of 49 U.S.C. 30112 and 49 U.S.C. 32506 arising by reason of default.

* * * * *

5. The heading of appendix A is revised to read as follows:

Appendix A—Section 591.5(f) Single Entry Bond

* * * * *

6. Appendix B is added to read as follows:

Appendix B—Section 591.5(f) Continuous Entry Bond

Department of Transportation

National Highway Traffic Safety Administration

BOND TO ENSURE CONFORMANCE WITH MOTOR VEHICLE SAFETY AND BUMPER STANDARDS

(To redeliver vehicles, to produce documents, to perform conditions of release, such as to bring vehicles into conformance with all applicable Federal motor vehicle safety and bumper standards)

Know All People by These Presents That [principal's name, mailing address which includes city, state, ZIP code, and state of incorporation if a corporation], as principal, and [surety's name, mailing address which includes city, state, ZIP code and state of incorporation] are held and firmly bound unto the United States of America in the sum of [bond amount in words] dollars ($ [bond amount in numbers]) which represents 150% of the entered value of the following described motor vehicle(s) as determined by the U.S. Customs Service: [model year, make, series, engine and chassis number of each vehicle] for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns (jointly and severally), firmly by these presents

Witness our hands and seals this _____ day of _____, 199____

Whereas, motor vehicles may be entered under the provisions of 49 U.S.C. 30112 and 49 U.S.C. 32506; and

Whereas, pursuant to 49 CFR part 591, a regulation promulgated under the provisions of 49 U.S.C. 30112, the above-bounden principal desires to import permanently the motor vehicle(s) described above, which (is a)(are) motor vehicle(s) that (was)(were) not originally manufactured to conform with the Federal motor vehicle safety and bumper standards; and

Whereas, pursuant to 49 CFR part 592, a regulation promulgated under the provisions of 49 U.S.C. 30112, the above bounden principal has been granted the status of Registered Importer of motor vehicles not originally manufactured to conform with the Federal motor vehicle safety standards; and

Whereas, pursuant to 49 CFR part 593, a regulation promulgated under the provisions of 49 U.S.C. 30112, the Administrator of the National Highway Traffic Safety Administration has determined that the motor vehicle(s) described above (is)(are) eligible for importation into the United States; and

Whereas, the motor vehicle(s) described above (has)(have) been imported at the port of [name of port of entry], and entered at said port for consumption on entry No. _____ dated _____, 199____,

Now, therefore, the condition of this obligation is such that—

(1) The above-bounden principal ("the principal"), in consideration of the permanent admission into the United States of the motor vehicle(s) described above, voluntarily undertakes and agrees to have such vehicle(s) brought into conformity with all applicable Federal motor vehicle safety and bumper standards within a reasonable time after such importation, as specified by the Administrator of the National Highway Traffic Safety Administration (the "Administrator");

(2) For each vehicle described above ("such vehicle"), the principal shall then file, with the Administrator, a certificate that such vehicle complies with each Federal motor vehicle safety standard in the year that such vehicle was manufactured and which applies in such year to such vehicle, and that such vehicle complies with the Federal bumper standard (if applicable);

(3) The principal shall not release custody of any vehicle to any person for license or registration for use on public roads, streets, or highways, or license or register the vehicle from the date of entry until 30 calendar days after it has certified compliance of such vehicle to the Administrator, unless the Administrator notifies the principal before 30 days that (s)he has accepted such certification and such vehicle and all liability under this bond for such vehicle may be released, except that no such release shall be permitted, before or after the 30th calendar day, if the principal has received written notice from the Administrator that no inspection of such vehicle will be required, or that there is reason to believe that such certification is false or contains a misrepresentation.

(4) And if the principal has received written notice from the Administrator that an inspection of such vehicle is required, the principal shall cause such vehicle to be available for inspection, and such vehicle and all liability under this bond for such vehicle shall be promptly released after completion of an inspection showing no failure to comply. However, if the inspection shows a failure to comply, such vehicle and all liability under this bond for such vehicle shall not be released until such time as the failure to comply ceases to exist;

(5) And if the principal has received written notice from the Administrator that there is reason to believe that such certificate is false or contains a misrepresentation, such vehicle and all liability under this bond for such vehicle shall not be released until the Administrator is satisfied with such certification and any modification thereof;

(6) And if the principal has received written notice from the Administrator that such vehicle has been found not to comply with all applicable Federal motor vehicle safety and bumper standards, and written demand that such vehicle be abandoned to the Untied States, or delivered to the Secretary of the Treasury for export (at no cost to the United States), the principal shall abandon such vehicle to the United States, or shall deliver such vehicle, or cause such vehicle to be delivered to, the custody of the District Director of Customs of the port of entry listed above, or any other port of entry, and shall execute all documents necessary for exportation of such vehicle from the United States, at no cost to the United States; or in default of abandonment or redelivery after proper notice by the Administrator for the principal, the principal shall pay to the Administrator an amount equal to 150% of the entered value of such vehicle as determined by the U.S. Customs Service;

Then this obligation shall be void; otherwise it shall remain in full force and effect. [At this point the terms agreed upon between the principal and surety for termination of the obligation may be entered]

Signed, sealed and delivered in the presence of

Principal: (name and address)

_____

(signature)

_____

(printed name and title)
(Seal)

Surety: (name and address)

_____

(signature)

_____

(printed name and title)

PART 592—REGISTERED IMPORTERS OF VEHICLES NOT ORIGINALLY MANUFACTURED TO CONFORM TO THE FEDERAL MOTOR VEHICLE SAFETY STANDARDS

7. The authority citation for part 592 is revised to read as follows:

Authority: Pub. L. 100–562, 49 U.S.C. 322(a), 30117; delegation of authority at 49 CFR 1.50.

8. Section 592.1 is revised to read as follows:

§ 592.1 Scope.

This part establishes procedures under 49 U.S.C. 30141(c) for the registration of importers of motor vehicles that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards. This part also establishes the duties of Registered Importers.

9. The introductory text of § 592.4 is revised to read as follows:

§ 592.4 Definitions.

All terms in this part that are defined in 49 U.S.C. 30102 and 30125 are used as defined therein.

* * * * *

10. Section 592.6 is amended by revising paragraph (g)(2)(i) to read as follows:

§ 592.6 Duties of a registered importer.

* * * * *

(g) * * *

(2) * * *

(i) The requirement of 49 U.S.C. 30120 that remedy shall be provided without charge shall not apply if the noncompliance or safety related defect exists in a motor vehicle whose first sale after importation occurred more than 8 calendar years before notification respecting the failure to comply is furnished pursuant to part 577 of this chapter, except that if a safety related defect exists and is attributable to the original manufacturer and not the Registered Importer, the requirements of 49 U.S.C. 30120 shall not apply to a motor vehicle whose date of first purchase, if known, or if not known, whose date of manufacture as determined by the Administrator, is more than 8 years from the date on which notification is furnished pursuant to part 577 of this chapter.

* * * * *

11. Section 592.7 is amended by revising the first sentence of paragraph (c) to read as follows:

§ 592.7 Revocation, suspension, and reinstatement of registration.

* * * * *

(c) The Administrator may suspend a registration if a Registered Importer fails to comply with any requirement set forth in 49 U.S.C. 30141(c), § 592.5(c), or § 592.6, or if (s)he denies an application filed under § 592.5(d). * * *

12. Section 592.8 is amended by revising paragraph (g) to read as follows:

§ 592.8 Inspection; release of vehicle and bond.

* * * * *

(g) Release of the performance bond shall constitute acceptance of certification or completion of inspection

of the vehicle concerned, but shall not preclude a subsequent decision by the Administrator pursuant to 49 U.S.C. 30118 that the vehicle fails to conform to any applicable Federal motor vehicle safety standard.

Issued on: October 7, 1994.

Ricardo Martinez,

Administrator.

[FR Doc. 94–25495 Filed 10–13–94; 8:45 am]

BILLING CODE 4910–59–P

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1249

Quarterly Reports of Passenger Revenues, Expenses, and Statistics

CFR Correction

In Title 49 of the Code of Federal Regulations, part 1200 to end, revised as of October 1, 1993, § 1249.11 is corrected by removing the first paragraph.

BILLING CODE 1505–01–D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 931199–4042; I.D. 101194B]

Groundfish of the Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Atka mackerel in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the Atka mackerel total allowable catch (TAC) in this area.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), October 12, 1994, until 12 midnight, A.l.t., December 31, 1994.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, 907–586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

In accordance with § 672.20(c)(1)(ii)(B), the Atka mackerel TAC for the Central Regulatory Area was established by the final 1994 initial specifications (59 FR 7647, February 16, 1994) as 1,000 metric tons (mt). The Director, Alaska Region, NMFS (Regional Director), established, in accordance with § 672.20(c)(2)(ii), a directed fishing allowance for Atka mackerel of 900 mt, with consideration that 100 mt will be taken as incidental catch in directed fishing for other species in this area.

The Regional Director has determined that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Atka mackerel in the Central Regulatory Area effective from 12 noon, A.l.t., October 12, 1994, until 12 midnight, A.l.t., December 31, 1994.

Directed fishing standards for applicable gear types may be found in the regulations at § 672.20(g).

Classification

This action is taken under 50 CFR 672.20 and is exempt from review under E.O. 12866.

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

Dated: October 11, 1994.

Joe P. Clem,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–25545 Filed 10–11–94; 4:21 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 59, No. 198
Friday, October 14, 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 THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 3

[Docket No. 94–16]

RIN 1557–AB14

FEDERAL RESERVE SYSTEM

12 CFR Parts 208 and 225

[Regulations H and Y; Docket No. R–0849]

Capital; Capital Adequacy Guidelines

AGENCIES: The Office of the Comptroller of the Currency (OCC), Department of the Treasury and the Board of Governors of the Federal Reserve System (FRB).

ACTION: Notice of proposed rulemaking.

SUMMARY: The OCC and FRB (the agencies) are proposing to amend their respective risk-based capital guidelines to modify the definition of the OECD-based group of countries. Claims on the governments and banks of this group generally receive lower risk weights than corresponding claims on the governments and banks of non-OECD-based countries. The agencies are proposing this amendment on the basis of an announcement, made on July 15, 1994, by the Basle Committee on Banking Supervision (Basle Committee) that, subject to national consultation, the Basle Committee plans to introduce a change to the Basle Accord in 1995. The effect of the proposed modification would be to exclude from the OECD-based group of countries which are eligible for the lower risk weights any country that has rescheduled its external sovereign debt within the previous five years.

DATES: Comments must be received on or before December 13, 1994.

ADDRESSES: Interested parties are invited to submit written comments to any or all of the agencies. Each agency will share the comments that it receives with the other agencies.

OCC: Written comments should be submitted to Docket No. 94–16, Communications Division, Ninth Floor, Office of the Comptroller of the Currency, 250 E. Street, Washington, D.C., 20219, Attention: Karen Carter. Comments will be available for inspection and photocopying at that address.

FRB: Comments should refer to Docket No. R–0849 and may be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551. Comments may also be delivered to Room B–2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays, or to the guard station in the Eccles Building courtyard on 20th Street, N.W. (between Constitution Avenue and C Street) at any time. Comments may be inspected in Room MP–500 of the Martin Building between 9:00 a.m. and 5:00 p.m. weekdays, except as provided in 12 CFR 261.8 of the Board's Rules regarding availability of information.

FOR FURTHER INFORMATION CONTACT:

OCC: Geoffrey White, Senior International Economic Advisor, International Banking and Finance Division, (202) 874–4730; Ronald Shimabukuro, Senior Attorney, Bank Operations and Assets Division, (202) 874–4460; or Roger Tufts, Senior Economic Advisor, Office of the Chief National bank Examiner, (202) 874–5070.

FRB: Roger Cole, Deputy Associate Director (202/452–2618), Norah Barger, Manager (202/452–2402), Robert Motyka, Supervisory Financial Analyst (202/452–3621), Division of Banking Supervision and Regulation; or Greg Baer, Managing Senior Counsel (202/452–3236), Legal Division. For the hearing impaired only, Telecommunication Device for the Deaf, Dorothea Thompson (202)/452–3544).

SUPPLEMENTARY INFORMATION:

I. Background

In 1988 the central bank governors of the G–10 countries endorsed international capital standards (the Basle Accord) [1] establishing a risk-based framework for measuring the capital adequacy of internationally-active banks. Under the framework, risk-weighted assets are calculated by assigning assets and off-balance-sheet items to broad categories based primarily on their credit risk, that is, the risk that a banking organization will incur a loss due to an obligor or counterparty default on a transaction. Risk weights range from zero percent, for assets with minimal credit risk (such as U.S. Treasury securities), to 100 percent, which is the risk weight that applies to most private sector claims, including all commercial loans.

While the Basle Accord primarily focuses on credit risk, it also incorporates country transfer risk considerations.[2] In addressing transfer risk, the Basle Committee members examined several methods for assigning obligations of foreign countries to the various risk categories. Ultimately, the Basle Committee decided to use a defined group of countries considered to be of high credit standing as the basis for differentiating claims on foreign governments and banks. For this purpose, the Basle Committee determined this group as the full members of the Organization for Economic Cooperation and Development (OECD), as well as countries that have concluded special lending arrangements with the International Monetary Fund (IMF) associated with the IMF's General Arrangements to Borrow.[3] These

[1] The Basle Accord was proposed by the Basle Committee, which comprises representatives of the central banks and supervisory authorities from the G–10 countries (Belgium, Canada, France, Germany, Italy, Japan, the Netherlands, Sweden, Switzerland, the United Kingdom, and the United States) and Luxembourg.

In 1989 the Board adopted risk-based capital guidelines implementing the Basle Accord for state member banks and bank holding companies.

[2] Transfer risk generally refers to the possibility that an asset cannot be serviced in the currency of payment because of a lack of, or restraints on, the availability of needed foreign exchange in the country of the obligor.

[3] The OECD is an international organization of countries which are committed to market-oriented economic policies, including the promotion of private enterprise and free market prices; liberal trade policies; and the absence of exchange controls. Full members of the OECD at the time the Basle Accord was endorsed included Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, the United Kingdom, and the United States. In May 1994, Mexico was accepted as a full member of the OECD. In addition, Saudi Arabia has concluded special lending arrangements associated with the International Monetary Fund's General Arrangements to Borrow.

countries are referred to as the OECD-based group of countries [4] and encompass most of the major industrial countries, including all members of the G–10 and the European Union.

Under both the Basle Accord and the agencies' guidelines, claims on the governments and banks of the OECD-based group of countries generally receive lower risk weights than corresponding claims on the governments and banks of non-OECD countries. Specifically, the agencies' guidelines provide for the following treatment:

- Direct claims on, and the portions of claims that are directly and unconditionally guaranteed by, OECD-based central governments (including central banks) are assigned to the zero percent risk weight category. Claims on central governments outside the OECD-based group are assigned to the zero percent risk weight category only if such claims are denominated in the national currency and funded by liabilities in the same currency.
- Claims conditionally guaranteed by OECD-based central governments and claims collateralized by securities issued or guaranteed by OECD-based central governments generally are assigned to the 20 percent risk weight category. The same types of claims on non-OECD countries are assigned to the 100 percent risk category.
- Long-term claims on OECD banks are assigned to the 20 percent risk-weight category. Long-term claims on non-OECD banks are assigned to the 100 percent risk category. (Short-term claims on all banks, whether they are members of the OECD-based group of countries or not, are assigned a 20 percent risk weight.)
- General obligation bonds that are obligations of states or other political subdivisions of the OECD-based group of countries are assigned to the 20 percent risk category. Revenue bonds of such political subdivisions are assigned to the 50 percent risk category. Both general obligation and revenue bonds of political subdivisions of non-OECD countries are assigned to the 100 percent risk category.

Recently, the OECD has taken steps to expand its membership. In light of these steps, the Basle Committee was urged to clarify an ambiguity in the Basle Accord as to whether the OECD members eligible for the lower risk weights include only those members that were in the OECD when the Basle Accord was endorsed in 1988 or all members, regardless of entry date into the OECD. The Basle Committee also reviewed the overall appropriateness of the criteria the Basle Accord uses to determine whether claims on a foreign government or bank qualify for placement in a lower risk category. As part of this review, the Basle Committee reassessed whether membership in the OECD (or the conclusion of special lending arrangements with the IMF) would, by itself, be sufficient to ensure that only countries with relatively low transfer risk would continue to be eligible for lower risk weight treatment.

On July 15, 1994, the Basle Committee made an announcement that clarified that the reference in the Basle Accord to OECD members applies to all current members of the organization. The announcement also stated that it is the Basle Committee's intention, subject to national consultation, to record a change to the Basle Accord in 1995 that would modify the definition of the OECD-based group of countries for risk-based capital purposes. The change, if adopted, would exclude from lower risk weight treatment any country within the OECD-based group of countries that has rescheduled its external sovereign debt within the previous five years. The Basle Committee announcement was endorsed by the G–10 Governors.

II. The Agencies' Proposal

In view of the Basle Committee's announcement, the agencies are proposing to amend their respective risk-based capital guidelines to modify the definition of the OECD-based group of countries. Under the proposal, the OECD-based group of countries would continue to include countries that are currently full members of the OECD, regardless of entry date, as well as countries that have concluded special lending arrangements with the IMF associated with the Fund's General Arrangements to Borrow, but would exclude any country within this group that has rescheduled its external sovereign debt within the previous five years. The effect of the proposed modification would be to clarify that membership in the OECD-based group of countries must coincide with relatively low transfer risk in order for a country to be eligible for differentiated capital treatment.

For purposes of this proposal, an event of rescheduling of external sovereign debt generally would include renegotiations of terms arising from the country's inability or unwillingness to meet its external debt service obligations. Renegotiations of debt in the normal course of business generally does not indicate transfer risk of the kind that would preclude an OECD-based country from qualifying for lower risk weight treatment. One example of such a routine renegotiation would be a renegotiation to allow the borrower to take advantage of a change in market conditions, such as a decline in interest rates.

The agencies invite comment on all aspects of this proposal.

III. Regulatory Flexibility Act

The agencies hereby certify that adoption of this proposal would have a significant economic impact on a substantial number of small business entities (in this case, small banking organizations), in accord with the spirit and purposes of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). In addition, because the risk-based capital standards generally do not apply to bank holding companies with consolidated assets of less than $150 million, this proposal will not affect such companies. Accordingly, no regulatory flexibility analysis is required.

IV. Paperwork Reduction Act

The agencies have determined that adoption of the proposed amendments would not increase the regulatory paperwork burden of banking organizations pursuant to the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

Executive Order 12866

The OCC has determined that this proposed rule is not a significant regulatory action, as that term is defined by Executive Order 12866.

List of Subjects

12 CFR Part 3

Administrative practice and procedure, Capital, National banks, Reporting and recordkeeping requirements, Risk.

12 CFR Part 208

Accounting, Agriculture, Banks, banking, Capital adequacy, Confidential business information, Currency, Federal Reserve System, Reporting and recordkeeping requirements, Securities, State member banks.

12 CFR Part 225

Administrative practice and procedure, Banks, banking, Capital adequacy, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

[4] FRB regulations define this group as the "OECD-based group of countries." OCC regulations define a member of this group as an "OECD-based country." While the choice of words is slightly different, the definitions are effectively the same, and the use of either definition in this preamble should be taken to refer to both.

Authority and Issuance

Office of the Comptroller of the Currency

12 CFR Chapter I

For the reasons set out in the joint preamble, title 12, chapter I, part 3 of the Code of Federal Regulations is proposed to be amended as set forth below.

PART 3—MINIMUM CAPITAL RATIOS; ISSUANCE OF DIRECTIVES

1. The authority citation for Part 3 is revised to read as follows:

Authority: 12 U.S.C. 93a, 161, 1818, 1828(n), 1828 note, 1831n note, 3907 and 3909.

2. In section 1 of appendix A to part 3, paragraph (c)(16) is revised to read as follows:

Appendix A to Part 3—Risk-Based Capital Guidelines

Section 1. Purpose, Applicability of Guidelines, and Definitions.

* * * * *

(c) * * *

(16) *OECD-based country* means a member of the grouping of countries that are full members of the Organization of Economic Cooperation and Development, plus countries that have concluded special lending arrangements with the International Monetary Fund (IMF) associated with the IMF's General Arrangements to Borrow, but excludes any country that has rescheduled its external sovereign debt within the previous five years. These countries are hereinafter referred to as "OECD countries".

* * * * *

Dated: October 4, 1994

Eugene A. Ludwig,

Comptroller of the Currency.

Federal Reserve System

12 CFR Chapter II

For the reasons set forth in the joint preamble, the Board proposes to amend 12 CFR parts 208 and 225 as set forth below:

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)

1. The authority citation for part 208 is revised to read as follows:

Authority: 12 U.S.C. 36, 248 (a) and (c), 321–338a, 371d, 461, 481–486, 601, 611, 1814, 1823(j), 1828(o), 1831o, 1831p–1, 3105, 3310, 3331–3351, and 3906–3909; 15 U.S.C. 78b, 78l(b), 78l(g), 78l(i), 78o–4(c)(5), 78q, 78q–1 and 78w; 31 U.S.C. 5318.

2. Appendix A to part 208 is amended by revising footnote 22 in section III.B.1. to read as follows:

Appendix A to Part 208—Capital Adequacy Guidelines for State Member Banks: Risk-Based Measure

* * * * *

III. * * *

B. * * *

1. * * * [22] * * *

[22] The OECD-based group of countries comprises all full members of the Organization for Economic Cooperation and Development (OECD), as well as countries that have concluded special lending arrangements with the International Monetary Fund (IMF) associated with the IMF's General Arrangements to Borrow, but excludes any country that has rescheduled its external sovereign debt within the previous five years. The OECD includes the following countries: Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Japan, Luxembourg, Mexico, Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, the United Kingdom, and the United States. Saudi Arabia has concluded special lending arrangements with the IMF associated with the IMF's General Arrangements to Borrow.

* * * * *

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

1. The authority citation for part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818,1831i, 1843(c)(8), 1844(b), 1972(l), 3106, 3108, 3310, 3331–3351, 3907, and 3909.

2. Appendix A to part 225 is amended by revising footnote 25 in section III.B.1. to read as follows:

Appendix A To Part 225—Capital Adequacy Guidelines for Bank Holding Companies: Risk-Based Measure

* * * * *

III. * * *

B. * * *

1. * * * [25] * * *

[25] The OECD-based group of countries comprises all full members of the Organization for Economic Cooperation and Development (OECD), as well as countries that have concluded special lending arrangements with the International Monetary Fund (IMF) associated with the IMF's General Arrangements to Borrow, but excludes any country that has rescheduled its external sovereign debt within the previous five years. The OECD includes the following countries: Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Japan, Luxembourg, Mexico, Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, the United Kingdom, and the United States. Saudi Arabia has concluded special lending arrangements with the IMF associated with the IMF's General Arrangements to Borrow.

* * * * *

By the order of the Board of Governors of the Federal Reserve System, October 6, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94–25299 Filed 10–13–94; 8:45 am]

BILLING CODES: 4810–33–P; 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–CE–13–AD]

Airworthiness Directives; Jetstream Aircraft Limited (Formerly British Aerospace, Regional Airlines Limited) HP137 Mk1, Jetstream Series 200, and Jetstream Models 3101 and 3201 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to adopt a new airworthiness directive that would apply to Jetstream Aircraft Limited (JAL) HP137 Mk1, Jetstream series 200 and Jetstream Models 3101 and 3201 airplanes. The proposed action would require repetitively inspecting the left and right pilot windscreens for poly vinyl butyrate (PVB) interlayer cracks, and replacing any windscreen that has a crack that exceeds certain limits. Several reports of varying degrees of PVB interlayer cracking of pilot windscreens on the affected airplanes prompted the proposed action. The proposed actions are intended to prevent such windscreen cracking, which, if not detected and corrected, could result in decompression injuries.

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

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 94–CE–13–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday.

Service information that applies to the proposed AD may be obtained from Jetstream Aircraft Limited, Manager Product Support, Prestwick Airport, Ayrshire, KA9 2RW Scotland; telephone (44–292) 79888; facsimile (44–292) 79703; or Jetstream Aircraft Inc., Librarian, P.O. Box 16029, Dulles International Airport, Washington, DC, 20041–6029; telephone (703) 406–1161;

facsimile (703) 406–1469. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Raymond A. Stoer, Program Officer, Brussels Aircraft Certification Office, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B–1000 Brussels, Belgium; telephone (322) 513.3830; facsimile (322) 230.6899; or Mr. John P. Dow, Sr., Program Officer, Small Airplane Directorate, Airplane Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426–6932; facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 94–CE–13–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 94–CE–13–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on JAL HP137 Mk1, Jetstream series 200, and Jetstream Models 3101 and 3201 airplanes. The CAA reports several incidents of varying degrees of PVB interlayer cracking of pilot windscreens on the affected airplanes.

Jetstream Aircraft Limited has issued SB 56–JA 920843, Revision 1, dated December 16, 1993, which specifies procedures for inspecting the left and right windscreens for PVB interlayer cracks. This document also introduces Pilkington Aerospace (the windscreen manufacturer) SB No. 037–56–1001, Issue Date: October 21, 1992, Revision 1: March 31, 1993. The latter document includes a figure that shows a cross section of the windscreen from where cracking can originate and also sets in-service cracking limits for the affected windscreens. The CAA classified Jetstream SB 56–JA 92–843 as mandatory in order to assure the continued airworthiness of these airplanes in the United Kingdom. The CAA classifying a service bulletin as mandatory in the United Kingdom is equivalent to the FAA issuing an airworthiness directive in the United States.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop in other JAL HP137 Mk1, Jetstream series 200, and Jetstream Models 3101 and 3201 airplanes of the same type design, the proposed AD would require repetitively inspecting the left and right pilot windscreens for PVB interlayer cracks, and replacing any windscreen that has a crack that exceeds certain limits. The proposed actions would be accomplished in accordance with the service information described above.

The FAA estimates that 160 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 1 workhour per airplane to accomplish the proposed modification, and that the average labor rate is approximately $55 an hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $8,800. This figure does not take into account for any possible window replacements nor repetitive inspections. The FAA has no way of determining how many windscreens may have PVB interlayer cracks that exceed the limitations and would require replacement, or the number of repetitive inspections each owner/operator may incur.

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

For the reasons discussed above, I certify that this 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) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new AD to read as follows:

Jetstream Aircraft Limited: Docket No. 94–CE–13–AD.

Applicability: HP137 Mk1, Jetstream Series 200, and Jetstream Models 3101 and 3201 airplanes (all serial numbers), certificated in any category.

Compliance: Required within the next 300 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished, and thereafter as indicated.

To prevent pilot windscreen poly vinyl butyrate (PVB) interlayer cracking, which, if not detected and corrected, could result in decompression injuries, accomplish the following:

(a) Visually inspect the left and right windscreens for PVB interlayer cracks in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Jetstream Service Bulletin (SB) 56–JA 92–843, Revision No. 1, dated December 16, 1993.

(1) If any crack is found that is within the limits specified in Pilkington Aerospace SB No. 037–56- 1001, Issue Date: October 21, 1992, Revision 1: March 31, 1993, reinspect within the next 300 hours TIS, and replace or reinspect the windscreen thereafter as applicable.

(2) If any crack is found that exceeds the limits specified in Pilkington Aerospace SB No. 037–56–1001, Issue Date: October 21, 1992, Revision 1: March 31, 1993, prior to further flight, replace the windscreen with a new windscreen and reinspect within the next 2,400 hours TIS, and replace or reinspect the windscreen thereafter as applicable.

(3) If no cracks are found, reinspect the windscreen within the next 2,400 hours TIS, and replace or reinspect the windscreen thereafter as applicable.

(b) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Brussels Aircraft Certification Office, Europe, Africa, Middle East office, FAA, c/o American Embassy, 1000 Brussels, Belgium. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Brussels Aircraft Certification Office.

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

(d) All persons affected by this directive may obtain copies of the documents referred to herein upon request to Jetstream Aircraft Limited, Manager Product Support, Prestwick Airport, Ayrshire, KA9 2RW Scotland; telephone (44–292) 79888; or Jetstream Aircraft Inc., Librarian, P.O. Box 16029, Dulles International Airport, Washington, DC, 20041–6029; or may examine these documents at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on October 7, 1994.

John R. Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–25441 Filed 10–13–94; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

24 CFR Chapter I

[Docket No. R–94–1743; FR–3755–N–03]

Discrimination in Property Insurance Under the Fair Housing Act; Advance Notice of Proposed Rulemaking Notice of Extension of Public Comment Deadline

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Advance Notice of Proposed Rulemaking; Notice of extension of public comment deadline.

SUMMARY: On August 16, 1994, HUD published an advance notice of proposed rulemaking. The notice announced HUD's intention to publish regulations concerning nondiscrimination in property insurance practices under the Fair Housing Act, and to solicit public comment on this subject prior to publication of a proposed rule. The purpose of this document is to extend the public comment period to November 18, 1994, and to repeat the issues for which HUD specifically requests comment from the public.

DATES: Comment Due Date: November 18, 1994.

FOR FURTHER INFORMATION CONTACT: Peter Kaplan, Director, Office of Regulatory Initiatives and Federal Coordination, Office of Fair Housing and Equal Opportunity, HUD, Room 5240, 451 Seventh Street, SW., Washington, DC 20410–0500, telephone (202) 708–2904 (not a toll free number). The toll free TDD number is 1–800–877–8339.

ADDRESSES: Interested persons are invited to submit comments in response to this notice to the Rules Docket Clerk, Office of the General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. Comments should refer to the above docket number and title. A copy of each comment submitted will be available for public inspection during regular business hours at the above address. Facsimile (FAX) comments are not acceptable.

SUPPLEMENTARY INFORMATION:

I. August 16, 1994 Advance Notice of Proposed Rulemaking

On August 16, 1994 (59 FR 41995), HUD published an advance notice of proposed rulemaking. The notice announced HUD's intention (1) to publish regulations concerning nondiscrimination in property insurance practices under the Fair Housing Act, and (2) to solicit public comment on this subject prior to publication of a proposed rule.

The purpose of this notice, published in today's **Federal Register**, is to extend the public comment period to November 18, 1994. For the convenience of this public, this notice also republishes the background information related to the advance notice of proposed rulemaking, and the issues on which HUD specifically requests comment from the public.

II. Background

The Department of Housing and Urban Development (HUD) is committed to initiatives that will provide access to capital and economic empowerment for all Americans. HUD has launched several programs to stem disinvestment in cities and disadvantaged communities throughout the country, increase the flow of capital into these communities, and create communities of opportunity throughout the nation.

Among HUD's priorities are: (1) Empowerment of local communities by supporting local economic development efforts; (2) expansion of housing opportunities through partnerships with state and local government and private developers and financial institutions; and (3) opening housing markets through vigorous enforcement of the Fair Housing Act (42 U.S.C. 3601–3619). A critical component of these initiatives is assuring access to capital for homeownership and business development. Assuring fair access to property or hazard insurance is essential to achieve each of these objectives. Insurance is necessary for access to capital.

HUD is charged with the administration and enforcement of the Act, including the promulgation of regulations under the Act. HUD is also responsible for receiving and investigating complaints alleging discriminatory practices under the Act and bringing enforcement actions where

the Department determines that reasonable cause exists to believe that a violation has occurred or is about to occur. As part of these initiatives, and in furtherance of its responsibilities under the Act, HUD announces its intent to issue regulations concerning property insurance practices that are discriminatory under the Act.

As indicated in HUD's current regulations, discriminatory housing practices include "refusing to provide * * * property or hazard insurance * * * or providing such * * * insurance differently because of race, color, religion, sex, handicap, familial status, or national origin." 24 C.F.R. 100.70(d)(4). Case precedents such as *Dunn* v. *Midwestern Indemnity Mid-American Fire & Casualty Co.*, 472 F. Supp. 1106 (S.D. Ohio 1979) and *McDiarmid* v. *Economy Fire & Casualty Co.*, 604 F. Supp. 105 (S.D. Ohio 1984) established the applicability of the Act to discriminatory insurance practices. But see *Mackey* v. *Nationwide Insurance Co.*, 724 F. 2d 419 (4th Cir. 1984). More recent precedents, *N.A.A.C.P.* v. *American Family Mutual Insurance Co.*, 978 F.2d 287 (7th Cir. 1992), *cert. denied*, 113 S. Ct. 2335 (1993) and *Nationwide Mutual Insurance Co.* v. *Cisneros*, No. C3–92–52 (S.D. Ohio Feb. 24, 1994), reaffirmed this principle, according deference, under standards established in *Chevron U.S.A., Inc.* v. *Natural Resources Defense Council*, 467 U.S. 837 (1984), to HUD's substantive regulation promulgated in 1989.

III. Solicitation of Public Comments

HUD is requesting public comment in several areas to be addressed by the regulation. There are several complex issues to be addressed by this regulation. In developing this regulation, HUD will work closely with insurance companies, trade associations, State regulators, civil rights groups and community organizations to ensure that HUD has heard as many viewpoints as possible on the subject of property insurance practices. HUD already has begun informal discussions with representatives of these entities, organizations and individuals to learn more about their views on current property insurance practices and about issues that HUD should address in the regulation. These contacts will continue in the form of group meetings and informal discussions with insurance companies, advocacy groups and trade associations.

In addition, HUD will hold several public meetings around the country for industry groups, advocacy groups and private citizens to submit comments and discuss what the regulation should address.

Based on the comments that HUD receives in response to this notice and comments presented at the public meetings, as well as any written guidance received from additional communications with industry groups and others, HUD will publish a proposed rule. Following careful consideration of the comments received on the proposed rule, HUD will issue a final regulation.

HUD is considering the issues and areas that the regulation should address in order for the regulation: (1) To be effective as guidance to HUD investigators, state and local civil rights agencies and private fair housing groups; (2) to serve as a guidepost for preventive acts by the industry; and (3) to be a clear description of the rights afforded protected classes. To do so, the regulation will address specific practices that are prohibited under the Act, describe the standards to be utilized in determining whether violations of the Act have occurred, and discuss investigative techniques that will be utilized, remedies that will be sought where violations are found, and voluntary affirmative efforts that are appropriate to eliminate discrimination.

The standards for determining discrimination in this area are those utilized in all other areas covered by the Act. Specific practices that violate the Act will be identified and the factual circumstances for identifying violations will be defined. The rule will describe the investigative techniques HUD will utilize, including those HUD employs in current fair housing complaint investigations. The rule will identify remedies to be considered that are appropriate to insurance cases.

The areas for which HUD specifically requests comment from the public are the following:

1. Underwriting practices that may discriminate due to either disparate treatment or disparate impact.

2. Sales and marketing practices that may discriminate due to either disparate treatment or disparate impact.

3. Explanations or justifications for those industry practices that could be challenged as violations of the Act because of disparate treatment or disparate impact. In cases of disparate impact, explanations should address the business necessity for the practice and why no less discriminatory alternative exists.

4. Barriers to the availability of insurance, or barriers to equal terms and conditions of insurance, for particular protected classes.

5. Entities and individuals who should be covered by the prohibition against discriminatory insurance practices, such as mutual and stock companies, independent agents, direct writers, exclusive agents, and rating services.

6. Techniques HUD should use in complaint investigations.

7. Remedies HUD should consider to discourage discriminatory practices, including equitable, injunctive, and affirmative relief, monetary damages, and civil penalties.

8. Voluntary actions insurers can take to assure nondiscrimination and to increase availability of insurance to allow access to capital.

9. Other issues that are relevant to the issue of insurance discrimination.

In addition to comments, HUD is also requesting any reports, documents, or other evidence that will assist the Department in evaluating issues to be addressed in the regulation.

HUD requests that, in submitting comments on any of the foregoing issues, the commenter please cite the item number of the issue addressed by the comment. HUD also welcomes comments on issues related to insurance practices that are not specifically included in the items listed.

Dated: October 7, 1994.

Roberta Achtenberg,

Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 94–25428 Filed 10–13–94; 8:45 am]

BILLING CODE 4210–28–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[PS–72–92]

RIN 1545–AR23

Definition of Qualified Electric Vehicle, and Recapture Rules for Qualified Electric Vehicles, Qualified Clean-Fuel Vehicle Property, and Qualified Clean-Fuel Vehicle Refueling Property

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations on the definition of a qualified electric vehicle, the recapture of any credit allowable for a qualified electric vehicle, and the recapture of any deduction allowable for qualified clean-fuel vehicle property or qualified clean-fuel vehicle refueling

property. The proposed regulations reflect changes to the law made by the Energy Policy Act of 1992 and affect taxpayers who are owners of qualified electric vehicles, clean-fuel vehicles, and clean-fuel vehicle refueling property. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written comments and outlines of oral comments to be presented at the public hearing scheduled for January 19, 1995, at 10 a.m., must be received by December 16, 1994.

ADDRESSES: Send submissions to: CC:DOM:CORP:T:R (PS–72–92), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:T:R (PS–72–92), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC.

The public hearing will be held in the auditorium at 1111 Constitution Ave. NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Joanne E. Johnson at (202) 622–3110; concerning submissions and the hearing, Carol Savage, (202) 622–8452 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed regulations under sections 30 and 179A. These provisions were added to the Internal Revenue Code by section 1913 of the Energy Policy Act of 1992 (1992 Act) and apply to property placed in service after June 30, 1993.

The proposed regulations provide the definition of a qualified electric vehicle under section 30(c) and also provide rules for the recapture of the section 30 credit and section 179A deduction under sections 30(d)(2) and 179A(e)(4), respectively. The regulations follow the legislative history to the 1992 Act, which provides guidance on when recapture occurs, how to determine the recapture amount, and how to adjust the basis of the property upon recapture.

On June 9, 1993, the IRS published Notice 93–34 in the **Federal Register** inviting comments from the public on any issues under sections 30 and 179A that should be addressed in proposed regulations. The IRS is reviewing these comments and will issue additional proposed regulations addressing certain issues raised in the comments.

Explanation of Provisions

Definition of Qualified Electric Vehicle

A qualified electric vehicle is a motor vehicle that meets the requirements of section 30(c). Section 30(c) provides that the original use of the motor vehicle qualifying for the section 30 credit must commence with the taxpayer. Thus, under the proposed regulations, a qualified electric vehicle does not include any motor vehicle that has ever been used (for either personal or business use) as a non-electric vehicle.

Recapture of Section 30 Credit

The proposed regulations incorporate rules under section 30(d) and the legislative history to provide that recapture occurs if, at any time within 3 years after the date the property is placed in service, the motor vehicle is modified so that it may no longer be primarily powered by electricity or is used in a manner described under section 50(b) (for example, used predominantly outside the United States). Generally, no recapture occurs upon a sale or other disposition (including a disposition by reason of an accident or other casualty) of a qualified electric vehicle.

The proposed regulations provide that recapture occurs if, within 3 years from the date the vehicle is placed in service, the taxpayer sells or disposes of the vehicle and the taxpayer knows or has reason to know that the vehicle will be modified so that it may no longer be primarily powered by electricity or will be used in a manner described under section 50(b). This is necessary to prevent avoidance of recapture by taxpayers who transfer property to be used in a manner that would have triggered recapture if the taxpayers had so used the property themselves.

The proposed regulations provide that the recapture amount equals the benefit of the section 30 credit that reduced tax liability in years prior to the taxable year of recapture multiplied by the recapture percentage. For this purpose, the benefit of the section 30 credit includes the amount of any other credits, such as under sections 53 (minimum tax credit) and 469 (passive activity credit), attributable to section 30 and allowed in years prior to the taxable year of recapture. Also, any credit carryover amounts attributable to section 30 must be reduced by an amount equal to that credit carryover amount multiplied by the recapture percentage for the taxable year of recapture.

Consistent with the legislative history, the proposed regulations provide that the recapture percentage is 100 percent if the recapture date is within the first full year from the date the qualified electric vehicle is placed in service, 66⅔ percent if the recapture date is in the second full year, or 33⅓ percent if the recapture date is in the third full year.

The recapture amount is added to the amount of tax due for the taxable year in which a recapture event occurs. For this purpose, the recapture amount is not treated as an income tax imposed on the taxpayer by chapter 1 for purposes of computing alternative minimum tax or determining the amount of any other allowable credits for the taxable year of recapture.

The basis of the qualified electric vehicle must be increased by the recapture amount and any amount that reduced other carryover credits attributable to section 30 as of the first day of the taxable year in which the recapture event occurs. For a vehicle that is eligible for depreciation, any additional basis resulting from recapture is recoverable over its remaining recovery period beginning as of the first day of the taxable year of recapture.

Moreover, the rules of section 1245 are to apply upon a sale or other disposition of a depreciable qualified electric vehicle. Thus, the proposed regulations provide that section 1245 will apply to any gain recognized upon a sale or other disposition of a depreciable vehicle to the extent the basis of the vehicle was reduced, net of any basis increase resulting from any recapture previously taken into account.

Recapture of Section 179A Deduction

The proposed regulations provide that recapture for qualified clean-fuel vehicle property occurs if, at any time within 3 years from the date the property is placed in service, the vehicle containing the qualified clean-fuel vehicle property (1) is modified so that it may no longer be propelled by a clean-burning fuel, (2) is used in a manner described in section 50(b) (for example, used predominantly outside the United States), or (3) otherwise ceases to qualify as property defined in section 179A(c). These rules are consistent with section 179A(e) and the specific recapture rules set forth in the legislative history to the 1992 Act.

Similarly, the proposed regulations provide that recapture for the qualified clean-fuel vehicle refueling property occurs if, at any time before the end of the recovery period, the property (1) is no longer used predominantly in a trade or business, (2) ceases to qualify as property described in section 179A(d), or (3) is used in a manner described in section 50(b) (for example, used

predominantly outside the United States).

Generally, no recapture occurs upon a sale or other disposition (including a disposition by reason of an accident or other casualty) of a vehicle containing qualified clean-fuel vehicle property or of qualified clean-fuel vehicle refueling property.

The proposed regulations provide that recapture occurs if the taxpayer sells or disposes of the clean-fuel vehicle within 3 years from the date the property is placed in service and the taxpayer knows or has reason to know that the vehicle will be converted to non-clean-fuel use, will be used in a manner described in section 50(b), or will otherwise cease to qualify as property defined in section 179A(c). This is necessary to prevent avoidance of recapture by taxpayers who transfer property to be used in a manner that would have triggered recapture if the taxpayers had so used the property themselves.

Similarly, the proposed regulations require recapture if the taxpayer sells or disposes of its qualified clean-fuel vehicle refueling property before the end of its recovery period, and the taxpayer knows or has reason to know that the property will cease to qualify as property described in section 179A(d), will not be used predominantly in a trade or business, or will be used in a manner described in section 50(b).

Consistent with the legislative history, the proposed regulations provide that the recapture amount for qualified clean-fuel vehicle property equals 100 percent of the benefit of the section 179A deduction allowable if the recapture date is within the first full year from the date the property is placed in service, 66⅔ percent if the recapture date is in the second full year, or 33⅓ percent if the recapture date is in the third full year.

However, for qualified clean-fuel vehicle refueling property, the legislative history states that the amount of the deduction for the property is to vest ratably over the recovery period for the property. Thus, the proposed regulations provide that the recapture amount is equal to the portion of the section 179A deduction attributable to the remaining recovery period including the taxable year of recapture.

The legislative history indicates that the section 179A deduction is allowed as an adjustment to gross income. Consequently, the proposed regulations provide that the recapture amount for qualified clean-fuel vehicle property and refueling property is includable in the gross income for the taxable year in which the recapture event occurs.

The basis of the vehicle containing qualified clean-fuel vehicle property or the basis of qualified clean-fuel vehicle refueling property is increased by the recapture amount as of the first day of the taxable year in which the recapture event occurs. For a depreciable vehicle or refueling property, any additional basis resulting from recapture is recoverable over the remaining recovery period for the vehicle or refueling property, beginning as of the first day of the taxable year of recapture.

Moreover, under section 179A(e)(6)(B), the rules of section 1245 are to apply upon a sale or other disposition of depreciable section 179A property. Thus, the proposed regulations provide that section 1245 will apply to any gain recognized upon a sale or other disposition to the extent the basis was reduced, net of any basis increase resulting from any recapture previously taken into account.

Proposed Effective Dates

The regulations are proposed to be effective on the date of publication in the **Federal Register**. If the recapture date is before the effective date of these regulations, a taxpayer may use any reasonable method to recapture the benefit of any section 30 credit allowable or section 179A deduction allowable consistent with sections 30 and 179A and their legislative history.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for Thursday, January 19, 1995, at 10 a.m. in the auditorium. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue Building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons that wish to present oral comments at the hearing must submit written comments and outlines of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by December 16, 1994.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Joanne E. Johnson, Office of Assistant Chief Counsel (Passthroughs and Special Industries), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * * Section 1.30–1 also issued under 26 U.S.C. 30(d)(2) * * * Section 1.179A–1 also issued under 26 U.S.C. 179A(e)(4) * * *

Par. 2. Section 1.30–1 is added under the heading "Credits allowable" to read as follows:

§ 1.30–1 Definition of qualified electric vehicle and recapture of credit for qualified electric vehicle.

(a) *Definition of qualified electric vehicle.* A qualified electric vehicle is a motor vehicle that meets the requirements of section 30(c). Accordingly, a qualified electric vehicle does not include any motor vehicle that has ever been used (for either personal or business use) as a non-electric vehicle.

(b) *Recapture of credit for qualified electric vehicle*—(1) *In general*—(i) *Addition to tax.* If a recapture event occurs with respect to a taxpayer's qualified electric vehicle, the taxpayer

must add the recapture amount to the amount of tax due in the taxable year in which the recapture event occurs. The recapture amount is not treated as income tax imposed on the taxpayer by chapter 1 for purposes of computing the alternative minimum tax or determining the amount of any other allowable credits for the taxable year in which the recapture event occurs.

(ii) *Reduction of carryover.* If a recapture event occurs with respect to a taxpayer's qualified electric vehicle, and if a portion of the section 30 credit for the cost of that vehicle was disallowed under section 30(b)(3)(B) and consequently added to the taxpayer's minimum tax credit pursuant to section 53(d)(1)(B)(iii), the taxpayer must reduce its minimum tax credit carryover by an amount equal to the portion of any minimum tax credit carryover attributable to the disallowed section 30 credit, multiplied by the recapture percentage for the taxable year of recapture. Similarly, the taxpayer must reduce any other credit carryover amounts (such as under section 469) by the portion of the carryover attributable to section 30, multiplied by the recapture percentage.

(2) *Recapture event*—(i) *In general.* A recapture event occurs if, within 3 full years from the date a qualified electric vehicle is placed in service, the vehicle ceases to be a qualified electric vehicle. A vehicle ceases to be a qualified electric vehicle if—

(A) The vehicle is modified so that it is no longer primarily powered by electricity;

(B) The vehicle is used in a manner described in section 50(b); or

(C) The taxpayer receiving the credit under section 30 sells or disposes of the vehicle and knows or has reason to know that the vehicle will be used in a manner described in paragraph (b)(2)(i)(A) or (B) of this section.

(ii) *Exception for disposition.* Except as provided in paragraph (b)(2)(i)(C) of this section, a sale or other disposition (including a disposition by reason of an accident or other casualty) of a qualified electric vehicle is not a recapture event.

(3) *Recapture amount.* The recapture amount is equal to the recapture percentage times the decrease in the credits allowed under section 30 for all prior taxable years that would have resulted solely from reducing to zero the cost taken into account under section 30 with respect to such vehicle, including any credits allowed attributable to section 30 (such as under sections 53 and 469).

(4) *Recapture date.* The recapture date is the actual date of the recapture event unless a recapture event described in paragraph (b)(2)(i)(B) of this section occurs, in which case the recapture date is the first day of the recapture year.

(5) *Recapture percentage.* For purposes of this section, the recapture percentage is:

(i) 100, if the recapture date is within the first full year after the date the vehicle is placed in service;

(ii) 66⅔, if the recapture date is within the second full year after the date the vehicle is placed in service; or

(iii) 33⅓, if the recapture date is within the third full year after the date the vehicle is placed in service.

(6) *Basis adjustment.* As of the first day of the taxable year in which the recapture event occurs, the basis of the qualified electric vehicle is increased by the recapture amount and the carryover reductions taken into account under paragraphs (b)(1) (i) and (ii) of this section, respectively. For a vehicle that is of a character that is subject to an allowance for depreciation, this increase in basis is recoverable over the remaining recovery period for the vehicle beginning as of the first day of the taxable year of recapture.

(7) *Application of section 1245 for sales and other dispositions.* For purposes of section 1245, the amount of the credit allowable under section 30(a) with respect to any qualified electric vehicle that is (or has been) of a character subject to an allowance for depreciation is treated as a deduction allowed for depreciation under section 167. Therefore, upon a sale or other disposition of a depreciable qualified electric vehicle, section 1245 will apply to any gain recognized to the extent the basis of the depreciable vehicle was reduced under section 30(d)(1) net of any basis increase described in paragraph (b)(6) of this section.

(8) *Examples.* The following examples illustrate the provisions of this section:

Example 1. A, a calendar-year taxpayer, purchases and places in service for personal use on January 1, 1995, a qualified electric vehicle costing $25,000. On A's 1995 federal income tax return, A claims a credit of $2,500. On January 2, 1996, A sells the vehicle to an unrelated third party who subsequently converts the vehicle into a non-electric vehicle on October 15, 1996. There is no recapture upon the sale of the vehicle by A provided A did not know or have reason to know that the purchaser intended to convert the vehicle to non-electric use.

Example 2. B, a calendar-year taxpayer, purchases and places in service for personal use on October 11, 1994, a qualified electric vehicle costing $20,000. On B's 1994 federal income tax return, B claims a credit of $2,000, which reduces B's tax by $2,000. The basis of the vehicle is reduced to $18,000 ($20,000 − $2,000). On March 8, 1996, B sells the vehicle to a tax-exempt entity. Because B knowingly sold the vehicle to a tax-exempt entity described in section 50(b) in the second full year from the date the vehicle was placed in service, B must recapture $1,333 ($2,000×66⅔ percent). This recapture amount increases B's tax by $1,333 on B's 1996 federal income tax return and is added to the basis of the vehicle as of January 1, 1996, the beginning of the taxable year in which the recapture event occurred.

Example 3. X, a calendar-year taxpayer, purchases and places in service for business use on January 1, 1994, a qualified electric vehicle costing $30,000. On X's 1994 federal income tax return, X claims a credit of $3,000, which reduces X's tax by $3,000. The basis of the vehicle is reduced to $27,000 ($30,000 − $3,000) prior to any adjustments for depreciation. On March 8, 1995, X converts the qualified electric vehicle into a gasoline-propelled vehicle. Because X modified the vehicle so that it is no longer primarily powered by electricity in the second full year from the date the vehicle was placed in service, X must recapture $2,000 ($3,000×66⅔ percent). This recapture amount increases X's tax by $2,000 on X's 1995 federal income tax return. The recapture amount of $2,000 is added to the basis of the vehicle as of January 1, 1995, the beginning of the taxable year of recapture, and to the extent the property remains depreciable, the adjusted basis is recoverable over the remaining recovery period.

Example 4. The facts are the same as in Example 3. In 1996, X sells the vehicle for $31,000, recognizing a gain from this sale. Under paragraph (b)(7) of this section, section 1245 of the Internal Revenue Code will apply to any gain recognized on the sale of a depreciable vehicle to the extent the basis of the vehicle was reduced by the section 30 credit net of any basis increase from recapture of the section 30 credit. Accordingly, the gain from the sale of the vehicle is subject to section 1245 to the extent of the depreciation allowance for the vehicle plus the credit allowed under section 30 ($3,000), less the previous recapture amount ($2,000). Any remaining amount of gain may be subject to other applicable provisions of the Internal Revenue Code.

(c) *Effective date.* This section is effective on October 14, 1994. If the recapture date is before the effective date of this section, a taxpayer may use any reasonable method to recapture the benefit of any credit allowable under section 30(a) consistent with section 30 and its legislative history. For this purpose, the recapture date is defined in paragraph (b)(4) of this section.

Par. 3. Section 1.179A–1 is added to read as follows:

§ 1.179A–1 Recapture of deduction for qualified clean-fuel vehicle property and qualified clean-fuel vehicle refueling property.

(a) *In general.* If a recapture event occurs with respect to a taxpayer's qualified clean-fuel vehicle property or qualified clean-fuel vehicle refueling property, the taxpayer must include the

recapture amount in taxable income for the taxable year in which the recapture event occurs.

(b) *Recapture event*—(1) *Qualified clean-fuel vehicle property*—(i) *In general.* A recapture event occurs if, within 3 full years from the date a vehicle of which qualified clean-fuel vehicle property is a part is placed in service, the property ceases to be qualified clean-fuel vehicle property. Property ceases to be qualified clean-fuel vehicle property if—

(A) The vehicle is modified by the taxpayer so that it may no longer be propelled by a clean-burning fuel;

(B) The vehicle is used by the taxpayer in a manner described in section 50(b);

(C) The vehicle otherwise ceases to qualify as property defined in section 179A(c); or

(D) The taxpayer receiving the deduction under section 179A sells or disposes of the vehicle and knows or has reason to know that the vehicle will be used in a manner described in paragraph (b)(1)(i)(A), (B), or (C) of this section.

(ii) *Exception for disposition.* Except as provided in paragraph (b)(1)(i)(D) of this section, a sale or other disposition (including a disposition by reason of an accident or other casualty) of qualified clean-fuel vehicle property is not a recapture event.

(2) *Qualified clean-fuel vehicle refueling property*—(i) *In general.* A recapture event occurs if, at any time before the end of its recovery period, the property ceases to be qualified clean-fuel vehicle refueling property. Property ceases to be qualified clean-fuel vehicle refueling property if—

(A) The property no longer qualifies as property described in section 179A(d);

(B) The property is no longer used predominantly in a trade or business (property will be treated as no longer used predominantly in a trade or business if 50 percent or more of the use of the property in a taxable year is for use other than in a trade or business);

(C) The property is used by the taxpayer in a manner described in section 50(b); or

(D) The taxpayer receiving the deduction under section 179A sells or disposes of the property and knows or has reason to know that the property will be used in a manner described in paragraph (b)(2)(i)(A), (B), or (C) of this section.

(ii) *Exception for disposition.* Except as provided in paragraph (b)(2)(i)(D) of this section, a sale or other disposition (including a disposition by reason of an accident or other casualty) of qualified clean-fuel vehicle refueling property is not a recapture event.

(c) *Recapture date*—(1) *Qualified clean-fuel vehicle property.* The recapture date is the actual date of the recapture event unless an event described in paragraph (b)(1)(i)(B) of this section occurs, in which case the recapture date is the first day of the recapture year.

(2) *Qualified clean-fuel vehicle refueling property.* The recapture date is the actual date of the recapture event unless the recapture occurs as a result of an event described in paragraph (b)(2)(i)(B) or (C) of this section, in which case the recapture date is the first day of the recapture year.

(d) *Recapture amount*—(1) *Qualified clean-fuel vehicle property.* The recapture amount is equal to the benefit of the section 179A deduction allowable multiplied by the recapture percentage. The recapture percentage is—

(i) 100, if the recapture date is within the first full year after the date the vehicle is placed in service;

(ii) 66⅔, if the recapture date is within the second full year after the date the vehicle is placed in service; or

(iii) 33⅓, if the recapture date is within the third full year after the date the vehicle is placed in service.

(2) *Qualified clean-fuel vehicle refueling property.* The recapture amount is equal to the benefit of the section 179A deduction allowable multiplied by the following fraction. The numerator of the fraction equals the total recovery period for the property minus the number of recovery years prior to, but not including, the recapture year. The denominator of the fraction equals the total recovery period.

(e) *Basis adjustment.* As of the first day of the taxable year in which the recapture event occurs, the basis of the vehicle of which qualified clean-fuel vehicle property is a part or the basis of qualified clean-fuel vehicle refueling property is increased by the recapture amount. For a vehicle or refueling property that is of a character that is subject to an allowance for depreciation, this increase in basis is recoverable over its remaining recovery period beginning as of the first day of the taxable year in which the recapture event occurs.

(f) *Application of section 1245 for sales and other dispositions.* For purposes of section 1245, the amount of the deduction allowable under section 179A(a) with respect to any property that is (or has been) of a character subject to an allowance for depreciation is treated as a deduction allowed for depreciation under section 167. Therefore, upon a sale or other disposition of depreciable qualified clean-fuel vehicle refueling property or a depreciable vehicle of which qualified clean-fuel vehicle property is a part, section 1245 will apply to any gain recognized to the extent the basis of the depreciable property or vehicle was reduced under section 179A(e)(6) net of any basis increase described in paragraph (e) of this section.

(g) *Examples.* The following examples illustrate the provisions of this section:

Example 1. A, a calendar-year taxpayer, purchases and places in service for personal use on January 1, 1995, a clean-fuel vehicle, a portion of which is qualified clean-fuel vehicle property, costing $25,000. The qualified clean-fuel vehicle property costs $11,000. On A's 1995 federal income tax return, A claims a section 179A deduction of $2,000. On January 2, 1996, A sells the vehicle to an unrelated third party who subsequently converts the vehicle into a gasoline-propelled vehicle on October 15, 1996. There is no recapture upon the sale of the vehicle by A provided A did not know or have reason to know that the purchaser intended to convert the vehicle to a gasoline-propelled vehicle.

Example 2. B, a calendar-year taxpayer, purchases and places in service for personal use on October 11, 1994, a clean-fuel vehicle costing $20,000, a portion of which is qualified clean-fuel vehicle property. The qualified clean-fuel vehicle property costs $10,000. On B's 1994 federal income tax return, B claims a deduction of $2,000, which reduces B's gross income by $2,000. The basis of the vehicle is reduced to $18,000 ($20,000–$2,000). On January 31, 1996, B sells the vehicle to a tax-exempt entity. Because B knowingly sold the vehicle to a tax-exempt entity described in section 50(b) in the second full year from the date the vehicle was placed in service, B must recapture $1,333 ($2,000x66⅔ percent). This recapture amount increases B's gross income by $1,333 on B's 1996 federal income tax return and is added to the basis of the motor vehicle as of January 1, 1996, the beginning of the taxable year of recapture.

Example 3. X, a calendar-year taxpayer, purchases and places in service for its business use on January 1, 1994, qualified clean-fuel vehicle refueling property costing $400,000. Assume this property has a 5 year recovery period. On X's 1994 federal income tax return, X claims a deduction of $100,000, which reduces X's gross income by $100,000. The basis of the property is reduced to $300,000 ($400,000–$100,000) prior to any adjustments for depreciation. In 1996, more than 50 percent of the use of the property is other than in X's trade or business. Because the property is no longer used predominantly in X's business, X must recapture three-fifths of the section 179A deduction or $60,000 ($100,000x(5–2)/5=$60,000) and include that amount in gross income on its 1996 federal income tax return. The recapture amount of $60,000 is added to the basis of the property as of January 1, 1996, the beginning of the taxable year of recapture, and to the extent the property remains depreciable, the adjusted basis is recoverable over the remaining recovery period.

Example 4. X, a calendar-year taxpayer, purchases and places in service for business use on January 1, 1994, qualified clean-fuel vehicle refueling property costing $350,000. Assume this property has a 5 year recovery period. On X's 1994 federal income tax return, X claims a deduction of $100,000, which reduces X's gross income by $100,000. The basis of the property is reduced to $250,000 ($350,000–$100,000) prior to any adjustments for depreciation. In 1995, X converts the property to store and dispense gasoline. Because the property is no longer used as qualified clean-fuel vehicle refueling property in 1995, X must recapture four-fifths of the section 179A deduction or $80,000 ($100,000x(5–1)/5=$80,000) and include that amount in gross income on its 1995 federal income tax return. The recapture amount of $80,000 is added to the basis of the property as of January 1, 1995, the beginning of the taxable year of recapture, and to the extent the property remains depreciable, the adjusted basis is recoverable over the remaining recovery period.

Example 5. The facts are the same as in *Example 4.* In 1996, X sells the refueling property for $351,000, recognizing a gain from this sale. Under paragraph (f) of this section, section 1245 of the Code will apply to any gain recognized on the sale of depreciable property to the extent the basis of the property was reduced by the section 179A deduction net of any basis increase from recapture of the section 179A deduction. Accordingly, the gain from the sale of the property is subject to section 1245 to the extent of the depreciation allowance for the property plus the deduction allowed under section 179A ($100,000), less the previous recapture amount ($80,000). Any remaining amount of gain may be subject to other applicable provisions of the Internal Revenue Code.

(h) *Effective date.* This section is effective on October 14, 1994. If the recapture date is before the effective date of this section, a taxpayer may use any reasonable method to recapture the benefit of any deduction allowable under section 179A(a) consistent with section 179A and its legislative history. For this purpose, the recapture date is defined in paragraph (c) of this section.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 94–25415 Filed 10–13–94; 8:45 am]

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26 CFR Part 1

[INTL–0064–93]

RIN 1545–AS40

Conduit Arrangements Regulations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations relating to conduit financing arrangements issued under the authority granted by section 7701(l). The proposed regulations apply to persons engaging in multiple-party financing arrangements and are necessary in order to determine which of those arrangements should be recharacterized under section 7701(l). This document also provides notice of a public hearing on these proposed regulations.

DATES: Written comments, requests to speak and outlines of topics to be discussed at the public hearing scheduled for December 16, 1994, must be received by December 13, 1994.

ADDRESSES: Send submissions to: CC:DOM:CORP:T:R (INTL–0064–93), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:T:R (INTL–0064–93), Courier's Desk, Internal Revenue Service, 1111 Constitution Ave. NW, Washington, DC. The public hearing will be held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations Richard L. Chewning, Ramon Camacho, or Elissa Shendalman (202) 622–3870, concerning submissions and the hearing, Christina Vasquez, (202) 622–7782 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act (44 U.S.C. 3504(h)). Comments on the collections of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, PC:FP, Washington, DC 20224.

The collections of information are in §§ 1.881–4(c), 1.6038–2, 1.6038A–2, and 1.6038A–3. The information is required by the IRS so that a district director can determine whether a financing arrangement is subject to recharacterization under § 1.881–3. The data will be used by the IRS and taxpayers to verify that the proper amount of tax is withheld. The likely respondents are withholding agents and foreign investors.

Estimated total annual recordkeeping burden: 10,000 hours.

Estimated average annual burden per taxpayer: 10 hours.

Estimated number of recordkeepers: 1,000.

Estimated total annual reporting burden: 3,000 hours.

Estimated average burden per respondent: 3 hours.

Estimated number of respondents: 1,000.

Estimated frequency of responses: Annually.

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) under §§ 1.871–1, 1.881–0, 1.881–3, 1.881–4, 1.1441–3, 1.1441–7, 1.6038–2, 1.6038A–2, 1.6038A–3 and 1.7701(l)-1 that are issued under the authority granted by section 7701(l). Section 7701(l) was enacted as part of the Omnibus Budget Reconciliation Act of 1993 (Pub.L. 103–66). These proposed regulations provide guidance with regard to conduit financing arrangements.

Explanation of Provisions

Section 7701(l) authorizes the Secretary to "prescribe regulations recharacterizing any multiple-party financing transaction as a transaction directly among any 2 or more of such parties where the Secretary determines that such recharacterization is appropriate to prevent avoidance of any tax imposed by this title." Pursuant to this authority, these regulations provide rules that permit the district director to disregard, for purposes of sections 871, 881, 1441 and 1442, the participation of one or more persons in a conduit financing arrangement.

Section 1.881–3

1. Definitions

Section 1.881–3(a)(2) provides definitions of certain terms used throughout the regulations. A "financing arrangement" generally means two or more financing transactions pursuant to which one person (the financing entity) advances money or other property to another person (the intermediate entity) and the intermediate entity advances money or other property to a third person (the financed entity). The term also includes two or more financing transactions that achieve substantially the same result through any other series of steps (e.g., a loan from a foreign person to a U.S. person, followed by an assignment of

the loan by the foreign person to another person in exchange for a note issued by the assignee).

A "financing transaction" generally means any advance of money or other property in exchange for debt; any advance of money or other property in exchange for certain types of stock or a similar interest in a partnership or trust; any lease or license; any other advance of money or other property pursuant to which the transferee is obligated to repay or return a substantial portion of the money or other property advanced (or the equivalent in value); and any transaction by which a person becomes a party to an existing financing transaction. An advance of money or other property in exchange for stock will be considered a financing transaction only if the issuer or holder of the stock has rights, or there are arrangements in place, that are intended to ensure that payments on the instrument will be made as contemplated. Therefore, an exchange for common stock or ordinary perpetual preferred stock will not be included. However, an exchange for certain instruments, such as dividend-linked notes or other perpetual subordinated debt (which, though denominated as debt, are treated as equity under U.S. tax principles), will be included if those instruments provide for normal creditors' rights, such as the right, arising upon a default on a payment, to enforce the payment through a legal proceeding or to cause the liquidation of the issuer. The IRS solicits comments on the definition of a financing transaction.

A "conduit entity" means an intermediate entity whose participation in a financing arrangement is disregarded pursuant to § 1.881–3.

The regulations also define the terms "guarantee" and "related," which are discussed elsewhere in this preamble.

The IRS and the Treasury recognize the potential overlap of these regulations with the proposed regulations governing securities lending issued under sections 861, 871, 881, 894 and 1441, published in the issue of the Federal Register for January 9, 1992, 57 F.R. 860. In connection with the finalization of the proposed regulations concerning securities lending and these regulations, guidance will be provided coordinating the two sets of regulations.

2. Authority of District Director

Section 1.881–3(a)(3) authorizes the district director to treat an intermediate entity as a conduit entity if the financing arrangement satisfies the standard for conduit treatment set forth in § 1.881–3(a)(4). The district director's exercise of this authority will be subject to judicial review under an "abuse of discretion" standard.

In applying the standard for conduit treatment, the district director has the authority to determine which financing transactions comprise the financing arrangement and which persons are parties to the financing arrangement. For example, if an intermediate entity borrows $100 from a related person and $100 from an unrelated person, and in turn lends $100 to a U.S. person, the district director may determine based on the facts, whether the financing arrangement is among the U.S. borrower, the intermediate entity and the related person or the U.S. borrower, the intermediate entity and the unrelated person.

3. Standard for Conduit Treatment

Section 1.881–3(a)(4) provides the standard to be applied by the district director in determining whether an intermediate entity is disregarded for purposes of section 881. The standard depends upon the relationship of the parties in the financing arrangement. If the intermediate entity is related to the financing entity or the financed entity, the financing arrangement will be subject to recharacterization if two conditions are satisfied: (i) The participation of the intermediate entity in the financing arrangement reduces the tax imposed by section 881; and (ii) the participation of the intermediate entity in the financing arrangement is pursuant to a tax avoidance plan, which is defined in § 1.881–3(c)(1) as a plan one of the principal purposes of which is the avoidance of tax imposed by section 881. The definition of the term "related" contained in § 1.881–3(a)(2)(v), with certain exceptions, is consistent with the definition of related party (and the related attribution rules) in § 1.6038A–1 (d) and (e).

If the intermediate entity is unrelated to both the financing entity and the financed entity, the financing arrangement will be subject to recharacterization if the two conditions described above are satisfied and, in addition, the intermediate entity would not have participated in the financing arrangement on substantially the same terms but for the fact that the financing entity engaged in the financing transaction with the intermediate entity. Section 1.881–3(b) provides that, if the financing entity guarantees the liability of the financed entity to the intermediate entity, it will be presumed that the intermediate entity would not have participated in the financing arrangement on substantially the same terms but for the fact that the financing entity engaged in the financing transaction with the intermediate entity. A taxpayer may rebut this presumption by producing clear and convincing evidence to the contrary.

Section 1.881–3(a)(2)(iv) defines a "guarantee" as any arrangement under which a person, directly or indirectly, assures, on a conditional or unconditional basis, the payment of another person's obligation with respect to a financing transaction. The regulations further provide that the term is to be interpreted in accordance with the definition of guarantee in section 163(j)(6)(D)(iii).

Section 1.881–3(a)(4)(ii)(A) provides that the district director may apply principles consistent with the general recharacterization standard described above in cases involving multiple intermediate entities. Section 1.881–3(a)(4)(ii)(B) contains a special rule that applies if two (or more) financing transactions involving two (or more) related persons would form part of a financing arrangement but for the absence of a financing transaction between the related persons. In such a case, the district director may treat the related persons as a single intermediate entity if he or she determines based upon all the facts and circumstances that the avoidance of the application of § 1.881–3 is one of the principal purposes for the structuring of the financing transactions. That paragraph also permits the district director to apply similar principles if a financing transaction exists between related persons, but one of the principal purposes for the existence of the financing transaction is to prevent the district director from treating the related persons as a single intermediate entity.

4. Determination of Existence of Tax Avoidance Plan

Section 1.881–3(c) contains rules for determining whether the participation of the intermediate entity in the financing arrangement is pursuant to a plan one of the principal purposes of which is the avoidance of tax imposed by section 881 (tax avoidance plan). This determination is to be based upon all of the facts and circumstances. In this regard, the only relevant purposes are those pertaining to the participation of the intermediate entity in the financing arrangement, not those pertaining to the existence of the financing arrangement in general. Moreover, the fact that an intermediate entity is a resident of a country that has a treaty with the United States that significantly reduces the tax that otherwise would have been imposed under section 881 is not sufficient, by itself, to establish the existence of a tax

avoidance plan. The application of these regulations only to an intermediate entity whose participation is pursuant to a plan ensures that these regulations apply only to transactions that are related to each other through the taxpayer's intention to secure, in an artificial manner, exemptions or reductions of withholding tax that would not otherwise be available given the economic substance of its transactions.

Section 1.881–3(c)(2) lists several nonexclusive factors that are relevant to the determination of whether the intermediate entity's participation is pursuant to a tax avoidance plan. Avoidance of the tax imposed by section 881 may be one of the principal purposes for such a plan even though it is outweighed by other purposes (taken together or separately).

Section 1.881–3(c)(3) provides that it shall be presumed that the participation of an intermediate entity (or entities) in a financing arrangement is not pursuant to a tax avoidance plan if the intermediate entity is related to the financing entity or the financed entity and the intermediate entity performs significant financing activities, as defined, with respect to the financing transactions forming part of the financing arrangement to which it is a party. The district director may rebut the presumption by establishing that the participation of the intermediate entity in the financing arrangement is pursuant to a tax avoidance plan. The IRS solicits comments on the significant financing activity presumption.

Section 1.881–3(c)(4) provides a set of special rules applicable in cases where the financing entity is unrelated to the intermediate entity (or entities) and the financed entity. Section 1.881–3(c)(4)(i) provides that, in such cases, if the intermediate entity (or, in the case of multiple intermediate entities, the intermediate entity that has engaged in a financing transaction with the financed entity) is actively engaged in a substantial trade or business (other than the business of making or managing investments, except pursuant to a banking, insurance, financing or similar trade or business, the income from which is earned predominantly in transactions with unrelated persons), it will be presumed that the participation of the intermediate entity in the financing arrangement is not pursuant to a tax avoidance plan. This presumption may be rebutted if the district director establishes that the participation of the intermediate entity in the financing arrangement is pursuant to such a plan.

Section 1.881–3(c)(4)(ii) provides that, in any case where a financing entity is unrelated to the financed entity and the intermediate entity (or entities), the financing entity will not be liable for tax under section 881 pursuant to these regulations unless the financing entity knows or has reason to know that the financing arrangement is subject to recharacterization under § 1.881–3(a)(3). Section 1.881–3(c)(4)(ii) does not relieve the section 881 liability for purposes of determining whether any person is liable for withholding tax pursuant to § 1.1441–3(j) or whether any party to a financing arrangement is entitled to a refund of tax actually withheld by a withholding agent pursuant to section 1441. Accordingly, if the requirements of § 1.881–3(a)(4) are satisfied, the financed entity is required to pay withholding tax without regard to the knowledge of the financing entity and no party to the financing arrangement is entitled to a refund (except to the extent the amount withheld exceeds the amount determined under section 881).

A person is not considered to have reason to know that the financing arrangement is subject to recharacterization if the person knows of the financing transactions that comprise the financing arrangement but does not know or have reason to know of facts sufficient to establish that the intermediate entity's participation was pursuant to a tax avoidance plan. The IRS solicits comments on the treatment of unrelated financing entities.

5. Determination of Amount of Tax Liability

Section 1.881–3(d) provides rules for determining the portion of each payment made by a financed entity that is recharacterized under § 1.881–3(a)(3). The recharacterized portion is proportionate to a ratio of the principal amounts of the financing transactions that comprise the financing arrangement. This ratio measures the proportion of money or other property advanced by the financing entity to the intermediate entity that is considered to flow through to the financed entity.

If a financing arrangement involves multiple conduit entities, the ratio is based upon a comparison of the smallest financing transaction between a conduit entity and a party other than the financed entity, and the financing transaction involving the financed entity. Thus, if pursuant to a financing arrangement, A lends $500 to B, B lends $300 to C, and C lends $350 to D, and B and C are conduit entities, the ratio equals $300/$350 (assuming at the time of the payment from the financed entity to the conduit entity the principal amounts have not changed). This rule does not apply, however, in a case where the district director treats related persons as a single intermediate entity under § 1.881–3(a)(4)(ii)(B).

Section 1.881–3(d)(1)(iii) provides that the principal amount of a financing transaction will be determined on the basis of all of the facts and circumstances. The principal amount generally will equal the amount of money, or the fair market value of other property (determined as of the time that the financing transaction is entered into), advanced in the financing transaction. In the case of a debt instrument or stock, the fair market value of the property advanced will be considered to equal the issue price unless the fair market value differs materially from the issue price. The principal amount of a financing transaction will be subject to adjustments, as appropriate. The IRS solicits comments on the definition of principal amount.

Section 1.881–3(d)(2) provides that payments made by a financed entity pursuant to a financing arrangement that is recharacterized under § 1.881–3(a)(3) are subject to tax at the rate applicable to payments made directly to the financing entity. Thus, the rate of tax will be affected by whether an income tax treaty is in existence between the United States and the country in which the financing entity is a resident. However, special withholding rules apply under § 1.1441–3(j).

6. Interaction With Treaties

These regulations are intended to provide anti-abuse rules that supplement, but do not conflict with, the limitation on benefits articles in U.S. income tax treaties. Treaty limitation on benefits articles commonly limit the tax benefits of the treaty to those residents of the other contracting state that have a substantial business nexus with, or otherwise have a significant business purpose for residing in, the other contracting state. These articles generally provide objective, bright-line rules for determining whether an entity has a sufficient nexus to the contracting state to be treated as a resident for treaty purposes. It has been recognized that contracting states may supplement these rules by transactionally-based domestic anti-abuse rules, including rules under which a particular transaction may be recast, in accordance with the substance of the transaction. These regulations, which reflect common law substance over form principles as applied to conduit financing arrangements, complement the limitation on benefits

provisions of income tax treaties and are not precluded by the inclusion of such provisions, just as those provisions have not overridden the applicability of existing anti-conduit rulings such as Rev. Rul. 84–152, 1984–2 C.B. 381, Rev. Rul. 84–153, 1984–2 C.B. 383, and Rev. Rul. 87–89, 1987–1 C.B. 195.

Accordingly, § 1.881–3(d)(3) provides that a financing arrangement may be recharacterized under § 1.881–3 regardless of whether the conduit entity is a resident of a country that has an income tax treaty with the United States. Thus, the treaty applicable to determine the amount of tax due under section 881, if any, will be based upon the substance of the financing arrangement.

7. Alternative Approach Not Adopted

In formulating these regulations, the IRS and the Treasury considered several alternative standards for recharacterizing a financing arrangement. For example, consideration was given to a test that would measure the similarity of the cash flows of the financing transactions that comprise the financing arrangement, with respect to both the advance and repayment of funds. This test was rejected principally for the following reasons. First, the delineation of cash flows considered characteristic of a conduit arrangement would be inherently arbitrary. In a substantial number of cases, the application of the test would produce results that were either overinclusive or underinclusive. Second, such a test could be circumvented, particularly with respect to cash flows on repayment. Related parties have particular flexibility to structure the terms of their financing transactions to satisfy a bright-line test. Unrelated parties may have less flexibility. However, in either case, parties could alter the financial consequences of holding an asset or liability with particular cash flows through the use of derivative financial instruments.

Although the regulations do not adopt a bright-line cash flow test, § 1.881–3(c)(2) (i)(C) and (ii)(B) provides that the timing of the advances of money or other property to the intermediate entity and the financed entity pursuant to the financing arrangement is a factor relevant to whether the intermediate entity's participation is pursuant to a tax avoidance plan. The regulations do not set forth as a factor the similarity of the repayment terms of the financing transactions. This is because of concerns about the extent to which the similarity of repayment terms is a useful indication of a tax avoidance plan. The IRS solicits comments on this point.

8. Equity Investments

The legislative history to section 7701(l) authorizes the issuance of regulations that apply to financing arrangements involving equity investments. These regulations, however, generally do not include investments in common stock (or investments in ordinary perpetual preferred stock) in the definition of financing transaction principally for the following reasons. First, because a corporation has no legal obligation to make distributions with respect to its common stock, inclusion of ordinary common stock in the definition of financing transaction could add significant uncertainty and complexity to the application of the regulations. Second, there are substantial questions about the extent to which common stock and ordinary perpetual preferred stock can be used in a conduit financing arrangement to avoid U.S. withholding tax. Nevertheless, the IRS and the Treasury remain concerned about the potential for abuse with respect to such equity investments and will monitor developments in this area. If the IRS and the Treasury determine that taxpayers are structuring conduit financing arrangements with such stock to avoid U.S. withholding tax, these regulations may be extended to cover such stock.

9. Guarantees

The legislative history to section 7701(l) authorizes the issuance of regulations that apply to financing arrangements involving debt guarantees. These regulations, however, generally do not treat debt guarantees as a financing transaction as defined in § 1.881–3(a)(2)(ii). Nevertheless, the IRS and the Treasury remain concerned about the potential for abuse with respect to debt guarantees and will monitor developments in this area. If the IRS and the Treasury determine that taxpayers are structuring conduit financing arrangements with debt guarantees to avoid U.S. withholding tax, these regulations may be extended to cover debt guarantees.

10. Collateral Consequences of Recharacterization

These regulations do not provide that a financing arrangement recharacterized for purposes of sections 871, 881, 1441 or 1442 is also recharacterized for purposes of other Code sections. The IRS and the Treasury are considering, however, the circumstances under which the recharacterization should be extended to other Code sections. The IRS solicits comments on this point.

11. Use of Regulations by Taxpayers

Section 1.881–3(a)(3) provides that a taxpayer may not apply § 1.881–3 to reduce its tax liability. However, a taxpayer may comply with the provisions of § 1.881–3 in order to avoid the imposition of interest and penalties.

Section 1.881–4

Section 1.881–4 provides rules for the furnishing of information and the maintenance of records concerning financing arrangements to which § 1.881–3 applies.

Section 1.881–4(b) provides that a financed entity that is a reporting corporation within the meaning of section 6038A(a) and the regulations under that section, or that is required to report pursuant to section 6038(a) and the regulations under that section, must comply with certain reporting requirements with respect to any financing transaction to which the financed entity is a party that it knows or has reason to know forms a part of a financing arrangement described in § 1.881–3(a)(4) (determined without regard to the tax avoidance purpose rule of § 1.881–3(a)(4)(i)(B)). This rule applies only if a person with respect to which the financed entity is required to report under sections 6038 or 6038A is a party to that financing arrangement.

Section 1.881–4(c) provides that a financed entity or any other person subject to the general recordkeeping requirements of section 6001, or the recordkeeping requirements of § 1.6038A–3, must keep the permanent books of account or records, as required by section 6001 or § 1.6038A–3, that may be relevant to the determination of whether the financing arrangement is subject to recharacterization under § 1.881–3.

Section 1.1441–3(j)

Section 1.1441–3(j) provides that a financed entity or other person required to withhold tax under section 1441 with respect to a financing arrangement subject to recharacterization under § 1.871–1(b)(7) or 1.881–3(a)(3), is required to withhold in accordance with the recharacterization on the portion of each payment subject to recharacterization, as determined by § 1.881–3(d).

Section 1.1441–7

Section 1.1441–7(d) provides that a person is required to withhold tax under section 1441 in accordance with the recharacterization of a financing arrangement under § 1.881–3(a)(3) if the

person knows or has reason to know that the financing arrangement is subject to recharacterization under those sections and the person otherwise is a withholding agent with respect to the financing arrangement. The "knows or has reason to know" standard is the standard that generally applies to withholding agents presented with a claim for treaty benefits. See, e.g., Rev. Rul. 85–4, 1985–1 C.B. 294, 295; Rev. Rul. 76–224, 1976–1 C.B. 268, 269. A person is not considered to have reason to know that a financing arrangement is subject to recharacterization under § 1.881–3(a)(3) if the person knows of the financing transactions that comprise the financing arrangement but does not know or have reason to know of facts sufficient to establish that the intermediate entity's participation was pursuant to a tax avoidance plan. The IRS solicits comments on the standard applicable to withholding agents.

Proposed Effective Date

Sections 1.881–3, 1.881–4, 1.1441–3(j) and 1.1441–7(d) are proposed to be effective for payments made after the date which is 30 days after publication of final regulations in the **Federal Register**. This regulation shall not apply with respect to interest payments made by United States corporations to Netherlands Antilles corporations in connection with debt obligations issued prior to October 15, 1984 (see Rev. Rul. 85–163, 1985–2 C.B. 349) and payments of interest covered by section 127(g)(3) of the Tax Reform Act of 1984.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for Friday, December 16, 1994, at 10 a.m., in the Internal Revenue Service Auditorium, 7400 corridor. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue Building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons that wish to present oral comments at the hearing must submit written comments and submit an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by December 13, 1994.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

Several persons from the Office of Chief Counsel and the Treasury Department participated in developing these regulations.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendment to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by removing the entry for §§ 1.6038A–1 through 1.6038A–7 and adding entries in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.871–1 also issued under 26 U.S.C. 7701(l). * * *

Section 1.881–3 also issued under 26 U.S.C. 7701(l). * * *

Section 1.881–4 also issued under 26 U.S.C. 7701(l). * * *

Section 1.1441–3 also issued under 26 U.S.C. 7701(l). * * *

Section 1.1441–7 also issued under 26 U.S.C. 7701(l). * * *

Section 1.6038–2 also issued under 26 U.S.C. 7701(l). * * *

Section 1.6038A–1 also issued under 26 U.S.C. 6038A.

Section 1.6038A–2 also issued under 26 U.S.C. 6038A and 7701(l).

Section 1.6038A–3 also issued under 26 U.S.C. 6038A and 7701(l).

Section 1.6038A–4 also issued under 26 U.S.C. 6038A.

Section 1.6038A–5 also issued under 26 U.S.C. 6038A.

Section 1.6038A–6 also issued under 26 U.S.C. 6038A.

Section 1.6038A–7 also issued under 26 U.S.C. 6038A. * * *

Section 1.7701(l)–1 also issued under 26 U.S.C. 7701(l). * * *

Par. 2. In § 1.871–1, paragraph (b)(7) is added to read as follows:

§ 1.871–1 Classification and manner of taxing alien individuals.

* * * * *

(b) * * *

(7) *Conduit financing arrangements.* For rules regarding conduit financing arrangements, see §§ 1.881–3 and 1.881–4.

* * * * *

Par. 3. Sections 1.881–0, 1.881–3 and 1.881–4 are added to read as follows:

§ 1.881–0 Table of contents.

This section lists the major headings for §§ 1.881–1 through 1.881–4.

§ 1.881–1 Manner of taxing foreign corporations.

(a) Classes of foreign corporations.
(b) Manner of taxing.
(1) Foreign corporations not engaged in U.S. business.
(2) Foreign corporations engaged in U.S. business.
(c) Meaning of terms.
(d) Rules applicable to foreign insurance companies.
(1) Corporations qualifying under subchapter L.
(2) Corporations not qualifying under subchapter L.
(e) Other provisions applicable to foreign corporations.
(1) Accumulated earnings tax.
(2) Personal holding company tax.
(3) Foreign personal holding companies.
(4) Controlled foreign corporations.
(i) Subpart F income and increase of earnings invested in U.S. property.
(ii) Certain accumulations of earnings and profits.
(5) Changes in tax rate.
(6) Consolidated returns.
(7) Adjustment of tax of certain foreign corporations.

§ 1.881–2 Taxation of foreign corporations not engaged in U.S. business.

(a) Imposition of tax.
(b) Fixed or determinable annual or periodical income.
(c) Other income and gains.
(1) Items subject to tax.
(2) Determination of amount of gain.
(d) Credits against tax.
(e) Effective date.

§ 1.881–3 Conduit financing arrangements.

(a) General rules and definitions.
(1) Purpose and scope.
(2) Definitions.
(i) Financing arrangement.
(ii) Financing transaction.

(iii) Conduit entity.
(iv) Guarantee.
(v) Related.
(vi) Tax avoidance plan.
(3) Treatment of intermediate entity as conduit entity.
(i) Authority of district director.
(ii) Taxpayer's use of this section.
(4) Standard for conduit treatment.
(i) In general.
(ii) Multiple intermediate entities.
(A) In general.
(B) Special rule for related persons.
(b) Determination of whether intermediate entity would not have participated in financing arrangement on substantially same terms.
(c) Determination of whether participation of intermediate entity is pursuant to a tax avoidance plan.
(1) In general.
(2) Factors taken into account in determining the presence or absence of a tax avoidance plan.
(3) Presumption if significant financing activities performed by a related intermediate entity.
(i) General rule.
(ii) Requirements.
(4) Special rules for cases where financing entity is unrelated to both intermediate entity and financed entity.
(i) Presumption of no tax avoidance.
(ii) Liability of financing entity.
(d) Determination of amount of tax liability.
(1) Amount of payment subject to recharacterization.
(i) In general.
(ii) Multiple conduit entities.
(iii) Determination of principal amount.
(2) Rate of tax.
(3) Effect of income tax treaties.
(4) Withholding tax due.
(e) Coordination with sections 871, 884, 1441 and 1442.
(f) Examples.
(g) Effective date.

§ 1.881–4 Reporting and recordkeeping requirements concerning conduit financing arrangements.

(a) Scope.
(b) Reporting requirements.
(1) Persons required to report.
(2) Reporting requirement.
(3) Additional disclosure.
(c) Recordkeeping requirements.
(d) Application of sections 6038 and 6038A.
(1) In general.
(2) Duplication of reporting requirements.
(e) Effective date.

§ 1.881–3 Conduit financing arrangements.

(a) *General rules and definitions*—(1) *Purpose and scope.* Pursuant to the authority of section 7701(l), this section provides rules that permit the district director to disregard, for purposes of section 881, the participation of one or more persons in a conduit financing arrangement. These rules also apply for purposes of sections 871, 1441, and 1442. See § 1.881–4 for reporting and recordkeeping requirements concerning conduit financing arrangements. See §§ 1.1441–3(j) and 1.1441–7(d) for withholding rules applicable to conduit financing arrangements.

(2) *Definitions.* The following definitions apply to this section and to §§ 1.881–4, 1.1441–3(j) and 1.1441–7(d).

(i) *Financing arrangement* means two or more financing transactions pursuant to which one person (the financing entity) advances money or other property to another person (the intermediate entity) and the intermediate entity advances money or other property to a third person (the financed entity), and, if there is more than one intermediate entity, there is a chain of financing transactions linking each intermediate entity. For this purpose, a transfer of money or other property in satisfaction of a repayment obligation is not an advance of money or other property. The term financing arrangement also includes two or more financing transactions that achieve substantially the same result through any other series of steps. A financing arrangement exists only for the period during which all of the financing transactions are coexistent. See *Example 1* of paragraph (f) of this section for an illustration of the term financing arrangement.

(ii) *Financing transaction* means—

(A) Any advance of money or other property in exchange for debt;

(B) Any advance of money or other property in exchange for stock (or a similar interest in a partnership or trust) if—

(*1*) As of the issue date, the holder has the right (or, as of the issue date, it is more likely than not that the holder will receive the right) to cause the issuer to redeem the stock, or will receive such a right upon the occurrence of a specified event and such event is more likely than not to occur, or, as of the issue date, it is more likely than not that the stock will be redeemed as a result of an issuer's right to redeem the stock (assuming for all purposes of this paragraph (a)(2)(ii)(B)(*1*) that the issuer will have the legally available funds to redeem the stock);

(*2*) The holder possesses the right (or, as of the issue date, it is more likely than not that the holder will obtain the right) to cause, directly or indirectly, the issuer to make any payment (other than a payment described in paragraph (a)(2)(ii)(B)(*1*) of this section) with respect to the stock (assuming for this purpose that the issuer will have the legally available funds to make such a payment), including the right, arising upon a default on a payment (other than rights arising, in the ordinary course, between the date that a payment is declared and the date that a payment is made), to enforce the payment through a legal proceeding, cause the issuer to be liquidated, or elect a majority of the issuer's board of directors, but not including a right derived from ownership of a controlling interest in the issuer in cases where the control does not arise from a default or similar contingency under the instrument; or

(*3*) Under circumstances similar to those described in paragraph (a)(2)(ii)(B)(*1*) or (*2*) of this section, the holder has the right to require a person related to the issuer (or any other person who is acting pursuant to a plan or arrangement with the issuer) to acquire the stock or make a payment with respect to the stock;

(C) Any lease or license;

(D) Any advance of money or other property not described in paragraph (a)(2)(ii)(A), (B) or (C) of this section (including an advance by any person to a trust described in sections 671 through 679) pursuant to which the transferee is obligated to repay or return a substantial portion of the money or other property advanced, or the equivalent in value. This paragraph (a)(2)(ii)(D) shall not apply to the posting of collateral unless the intermediate entity is permitted to reduce such collateral to cash (through a transfer, grant of a security interest or similar transaction) prior to default on the financing transaction secured by the collateral; and

(E) Any transaction by which a person becomes a party to an existing financing transaction.

(iii) *Conduit entity* means an intermediate entity whose participation in a financing arrangement is disregarded in whole or in part pursuant to this section.

(iv) *Guarantee* means any arrangement under which a person, directly or indirectly, assures, on a conditional or unconditional basis, the payment of another person's obligation with respect to a financing transaction. The term shall be interpreted in accordance with the definition of the term in section 163(j)(6)(D)(iii). However, a guarantee that was neither in existence nor contemplated at the time the financing transaction between the intermediate entity and the financed entity was entered into is not a guarantee for these purposes.

(v) *Related* means related within the meaning of sections 267(b) or 707(b)(1), or controlled within the meaning of section 482, and the regulations under those sections. For purposes of determining whether a person is related to another person, the constructive ownership rules of section 318 shall

apply, and the attribution rules of section 267(c) also shall apply to the extent they attribute ownership to persons to whom section 318 does not attribute ownership.

(vi) *Tax avoidance plan* is defined in paragraph (c)(1) of this section.

(3) *Treatment of intermediate entity as conduit entity*—(i) *Authority of district director.* For purposes of section 881, the district director may determine that an intermediate entity is a conduit entity under the standard set forth in paragraph (a)(4) of this section. In applying that paragraph, the district director may determine the composition of the financing arrangement and the number of parties to the financing arrangement.

(ii) *Taxpayer's use of this section.* A taxpayer may not apply this section to reduce the amount of its Federal income tax liability by disregarding the form of its financing transactions for Federal income tax purposes or by compelling the district director to do so.

(4) *Standard for conduit treatment*—(i) *In general.* The district director, in his or her discretion, may treat an intermediate entity in a financing arrangement as a conduit entity if—

(A) The participation of the intermediate entity in the financing arrangement reduces the tax imposed by section 881;

(B) The participation of the intermediate entity in the financing arrangement is pursuant to a tax avoidance plan; and

(C) Either—

(*1*) The intermediate entity is related to the financing entity or the financed entity; or

(*2*) The intermediate entity would not have participated in the financing arrangement on substantially the same terms but for the fact that the financing entity engaged in the financing transaction with the intermediate entity.

(ii) *Multiple intermediate entities*—(A) *In general.* If a financing arrangement involves multiple intermediate entities, the district director may apply principles consistent with those of paragraph (a)(4)(i) of this section to the entire financing arrangement so as to treat two or more intermediate entities as conduit entities. For an illustration of this rule see *Example 2* of paragraph (f) of this section.

(B) *Special rule for related persons.* If two (or more) financing transactions involving two (or more) related persons would form part of a financing arrangement but for the absence of a financing transaction between the related persons, the district director may treat the related persons as a single intermediate entity if he or she determines that the avoidance of the application of this section is one of the principal purposes for the structuring of the financing transactions. This determination shall be based upon all of the facts and circumstances, including, without limitation, the factors set forth in paragraph (c)(2) of this section. The district director may apply similar principles if a financing transaction exists between related persons, but one of the principal purposes for the existence of the financing transaction is to prevent the district director from treating the related persons as a single intermediate entity. For examples illustrating the special rule of this paragraph, see *Examples 3*, *4* and *5* of paragraph (f) of this section.

(b) *Determination of whether intermediate entity would not have participated in financing arrangement on substantially same terms.* The determination of whether an intermediate entity would not have participated in a financing arrangement on substantially the same terms but for the financing transaction between the financing entity and the intermediate entity shall be based upon all of the facts and circumstances. It shall be presumed that the intermediate entity would not have participated in the financing arrangement on substantially the same terms if the financing entity guarantees the liability of the financed entity to the intermediate entity under that financing transaction. A taxpayer may rebut this presumption by producing clear and convincing evidence to the contrary.

(c) *Determination of whether participation of intermediate entity is pursuant to a tax avoidance plan*—(1) *In general.* A tax avoidance plan is a plan one of the principal purposes of which is the avoidance of tax imposed by section 881. The plan may be formal or informal, written or oral, and may involve any one or more of the parties to the financing arrangement. It may be inferred from the facts and circumstances, but must be in existence no later than the last date that any of the financing transactions comprising the financing arrangement are entered into. The determination of whether the participation of the intermediate entity in the financing arrangement is pursuant to a tax avoidance plan shall be based upon all of the facts and circumstances relevant to the existence of a plan and to the purposes for the participation of the intermediate entity in the financing arrangement.

(2) *Factors taken into account in determining the presence or absence of a tax avoidance plan.* Among the facts and circumstances taken into account in determining whether the participation of an intermediate entity in a financing arrangement is pursuant to a tax avoidance plan are—

(i) Whether the participation of the intermediate entity in the financing arrangement significantly reduces the tax that otherwise would have been imposed under section 881 (determined by comparing the rate of tax imposed on payments made by the financed entity to the intermediate entity with the rate that would have been imposed had the payments been made by the financed entity to the financing entity). However, the fact that an intermediate entity is a resident of a country that has a treaty with the United States that significantly reduces the tax that otherwise would have been imposed under section 881 is not sufficient, by itself, to establish the existence of a tax avoidance plan;

(ii) Whether the intermediate entity would have been able to make the advance of the money or other property to the financed entity without the advance of money or other property to it by the financing entity;

(iii) The length of the period of time that separates the advances of money or other property by the financing entity to the intermediate entity and by the intermediate entity to the financed entity. A short period of time is indicative of a tax avoidance plan while a long period of time is not; and

(iv) If the intermediate entity is related to the financed entity, whether the two entities enter into a financing transaction to finance a trade or business actively engaged in by the financed entity that forms a part of, or is complementary to, a substantial trade or business actively engaged in by the intermediate entity (other than the business of making or managing investments, except pursuant to a banking, insurance, financing or similar trade or business the income from which is earned predominantly in transactions with unrelated persons). A financing transaction described in the preceding sentence is indicative that no tax avoidance plan exists.

(3) *Presumption if significant financing activities performed by a related intermediate entity*—

(i) *General rule.* It shall be presumed that the participation of an intermediate entity (or entities) in a financing arrangement is not pursuant to a tax avoidance plan if the intermediate entity is related to either or both the financing entity or the financed entity, and the intermediate entity performs significant financing activities with respect to the financing transactions forming part of the financing

arrangement to which it is a party. This presumption may be rebutted if the district director establishes that the participation of the intermediate entity in the financing arrangement is pursuant to a tax avoidance plan. For illustrations of this presumption, see *Examples 12, 13* and *14* of paragraph (f) of this section.

(ii) *Requirements.* For purposes of this paragraph (c)(3), an intermediate entity performs significant financing activities with respect to such financing transactions if—

(A) Rents or royalties earned with respect to leases or licenses constituting such financing transactions are derived in the active conduct of a trade or business within the meaning of § 1.954–2T(c) or (d), to be applied by substituting the term intermediate entity for the term controlled foreign corporation; or

(B) Officers and employees of the intermediate entity, without the material participation of any officer or employee of a related person, other than participation in the approval of any guarantee of a financing transaction—

(*1*) Participate actively and materially in arranging the intermediate entity's participation in such financing transactions. This requirement shall not apply to a financing transaction that is the advance of property in exchange for a trade receivable that is ordinary and necessary to carrying on a substantial trade or business of either the financed entity or the financing entity if officers or employees of that entity participated actively and materially in arranging the financing transaction; and

(*2*) Within the country in which the intermediate entity is organized (or, if different, within the country with respect to which the intermediate entity is claiming the benefits of a tax treaty)—

(*i*) Exercise management and oversight of (and actually carry out) the intermediate entity's strategic business decision-making process and of its day-to-day operations, which must consist of a substantial trade or business, or supervision, administration and financing of a substantial group of related persons; and

(*ii*) Actively manage, on an ongoing basis, material business risks arising from such financing transactions as an integral part of the management of the intermediate entity's financial and capital requirements (including management of risks of currency and interest rate fluctuations) and management of the intermediate entity's short-term investments of working capital.

(4) *Special rules for cases where financing entity is unrelated to both intermediate entity and financed entity*—(i) *Presumption of no tax avoidance.* It shall be presumed that the participation of an intermediate entity (or entities) in a financing arrangement is not pursuant to a tax avoidance plan if the financing entity is unrelated to the intermediate entity (or entities) and the financed entity, and the intermediate entity (or, in the case of multiple intermediate entities, the intermediate entity that has engaged in a financing transaction with the financing entity) is actively engaged in a substantial trade or business (other than the business of making or managing investments, except pursuant to a banking, insurance, financing or similar trade or business the income from which is earned predominantly in transactions with unrelated persons). This presumption may be rebutted if the district director establishes that the participation of the intermediate entity in the financing arrangement is pursuant to a tax avoidance plan. For an illustration of this special rule see *Example 15* of paragraph (f) of this section.

(ii) *Liability of financing entity*—(A) *In general.* Notwithstanding that the district director may treat an intermediate entity in a financing arrangement as a conduit entity under paragraph (a)(4) of this section, a financing entity that is unrelated to the financed entity and the intermediate entity (or entities) shall not be liable for tax under section 881 pursuant to this section unless the financing entity knows or has reason to know that the financing arrangement is subject to recharacterization under paragraph (a)(3) of this section. This paragraph (c)(4)(ii) shall not apply, however, for purposes of determining whether any person is liable for withholding tax pursuant to § 1.1441–3(j) or whether any party to a financing arrangement is entitled under sections 1461 to 1464 to a refund of tax actually withheld by a withholding agent pursuant to section 1441. Accordingly, if the conditions of paragraph (a)(4) of this section are satisfied, the financed entity shall be required to pay withholding tax without regard to the knowledge of the financing entity and no party to the financing arrangement shall be entitled to a refund except to the extent the amount withheld exceeds the amount determined under section 881 by recharacterizing the transaction and disregarding the conduit entity pursuant to paragraph (a)(4).

(B) *Know or have reason to know standard.* The standard described in paragraph (c)(4)(ii)(A) shall be satisfied if the person knows or has reason to know those facts relevant to whether the financing arrangement satisfies the conditions set forth in paragraph (a)(4) of this section, including whether the participation of the intermediate entity in the financing arrangement is pursuant to a tax avoidance plan. A person shall not be considered to have reason to know that the financing arrangement is subject to recharacterization under paragraph (a)(3) of this section if the person knows of the financing transactions that comprise the financing arrangement but does not know or have reason to know of facts sufficient to establish that the participation of the intermediate entity in the financing arrangement was pursuant to such a plan.

(d) *Determination of amount of tax liability*—(1) *Amount of payment subject to recharacterization*—(i) *In general.* If the district director treats an intermediate entity as a conduit entity pursuant to paragraph (a)(3) of this section, a portion of each payment made by the financed entity with respect to the financing transactions that comprise the financing arrangement shall be subject to recharacterization as a transaction directly between the financed entity and the financing entity. The recharacterized portion shall be the portion of the payment that is equal to the ratio (not to exceed 1:1) of the average principal amount of such financing transaction(s) between the conduit entity and the financing entity to the average principal amount of such financing transaction(s) between the financed entity and the conduit entity, for the period to which the payment made by the financed entity relates. The average may be computed using any method applied consistently that reflects with reasonable accuracy the amount outstanding for the period. For an illustration of the calculation of the amount of tax liability see *Example 16* of paragraph (f) of this section.

(ii) *Multiple conduit entities.* Except in the case of a financing arrangement described in paragraph (a)(4)(ii)(B) of this section, if a financing arrangement involves multiple intermediate entities that are treated as conduit entities, the ratio described in paragraph (d)(1)(i) of this section shall be based upon a comparison of the financing transaction between a conduit entity and a party other than the financed entity that has the lowest average principal amount, and the financing transaction involving the financed entity.

(iii) *Determination of principal amount.* The principal amount of a financing transaction shall be determined on the basis of all of the facts and circumstances. The principal amount generally will equal the amount

of money, or the fair market value of other property (determined as of the time that the financing transaction is entered into), advanced in the financing transaction. In the case of a debt instrument or stock, the fair market value of the property advanced will be considered to equal the issue price unless the fair market value differs materially from the issue price. The principal amount of a financing transaction shall be subject to adjustments, as appropriate. For example, in the case of an OID debt instrument that is repaid in installments and has an issue price equal to the fair market value of the property advanced, appropriate adjustments will be made for accruals of original issue discount and repayments of principal (including accrued original issue discount).

(2) *Rate of tax.* If a financing arrangement is recharacterized under paragraph (a)(3) of this section, the payments by the financed entity described in section 881 shall be subject to tax at the rate that would have been applicable had payments been made directly to the financing entity. The applicable rate shall be determined by reference to the character of the financing transaction (e.g., loan or lease) between the intermediate entity and the financed entity.

(3) *Effect of income tax treaties.* A financing arrangement shall be subject to recharacterization under this section regardless of whether a conduit entity is a resident of a country that has an income tax treaty with the United States. Accordingly, if the financing arrangement is recharacterized as a transaction directly between the financed entity and a person that is not entitled to claim the benefits of the income tax treaty, the treaty shall not operate to reduce the amount of tax due under section 881.

(4) *Withholding tax due.* For withholding rules applicable to financing arrangements described in paragraph (a)(4) of this section, see §§ 1.1441–3(j) and 1.1441–7(d).

(e) *Coordination with sections 871, 884, 1441 and 1442.* For purposes of this section, any reference to tax imposed under section 881 includes, as the context may require, a reference to tax imposed under sections 871, 884(f)(1)(A), 1441, or 1442.

(f) *Examples.* The following examples illustrate this section. For purposes of these examples, unless otherwise indicated, it is assumed that FP, a corporation organized in country X, owns all of the stock of FS, a corporation organized in country Y, and DS, a corporation organized in the United States. Country Y, but not country X, has an income tax treaty with the United States. The treaty exempts interest, rents and royalties paid by a resident of one state (the source state) to a resident of the other state from tax in the source state.

Example 1. Financing arrangement. (i) On January 1, 1995, FP lends $1,000,000 to DS in exchange for a note issued by DS. On January 1, 1996, FP assigns the DS note to FS in exchange for a note issued by FS. After receiving notice of the assignment, DS remits payments due under its note to FS.

(ii) FP's loan to DS and FP's assignment of the DS note to FS are financing transactions within the meaning of paragraph (a)(2)(ii) of this section, and the transactions together constitute a financing arrangement within the meaning of paragraph (a)(2)(i) of this section. Therefore, for purposes of section 881, the district director may treat FS as a conduit entity if the conditions of paragraph (a)(4)(i) of this section are satisfied.

Example 2. Multiple conduits. (i) On January 1, 1995, FP deposits $1,000,000 with BK, a bank that is organized in country Y and is unrelated to FP and its subsidiaries. On January 1, 1996, at a time when the FP-BK deposit is still outstanding, BK lends $500,000 to BK2, a bank that is wholly-owned by BK and is organized in country Y. On the same date, BK2 lends $500,000 to FS. On July 1, 1996, FS lends $500,000 to DS. FP pledges its deposit to BK2 in support of FS' obligation to repay the BK2 loan. FS', BK's and BK2's participation in the financing arrangement is pursuant to a tax avoidance plan.

(ii) Since there are multiple intermediate entities, under paragraph (a)(4)(ii)(A) of this section, principles consistent with those of paragraph (a)(4)(i) of this section apply to the entire financing arrangement for purposes of determining whether the requirements of paragraph (a)(4) of this section are satisfied. Since BK and BK2 are unrelated to FP, FS and DS, the conditions of paragraph (a)(4)(i)(C)(*2*) of this section must be satisfied with respect to the financing transactions between FP, BK, BK2 and FS. The conditions of that paragraph are presumed under paragraph (b) of this section to be satisfied because FP's pledge of an asset in support of FS' obligation to repay the BK2 loan is a guarantee within the meaning of paragraph (a)(2)(iv) of this section. Since BK and BK2 are related, it is not necessary that the conditions of paragraph (a)(4)(i)(C)(*2*) of this section be satisfied independently with respect to the financing transactions between FP, BK and BK2. In addition, the conditions of paragraphs (a)(4)(i)(A) and (B) of this section are satisfied because the participation of BK, BK2 and FS in the financing arrangement reduces the tax imposed by section 881, and FS', BK's and BK2's participation in the financing arrangement is pursuant to a tax avoidance plan. Accordingly, for purposes of section 881, the district director may treat FP as a financing entity and BK, BK2 and FS as conduit entities, and recharacterize the financing arrangement as a financing transaction directly between DS and FP.

Example 3. Related persons treated as a single conduit entity. (i) On January 1, 1995, FP deposits $1,000,000 with BK, a bank that is organized in country X and is unrelated to FP and its subsidiaries. M, a corporation also organized in country X, is wholly-owned by the sole shareholder of BK but is not a bank within the meaning of section 881(c)(3)(A). On July 1, 1995, M lends $1,000,000 to DS in exchange for a note maturing on July 1, 2005. The note is in registered form within the meaning of section 881(c)(2)(B)(i) and DS has received from M the statement required by section 881(c)(2)(B)(ii). The conditions of paragraph (a)(4)(i) of this section would be satisfied with respect to the financing transactions between FP, BK, M and DS but for the absence of a financing transaction between BK and M. One of the principal purposes for the absence of a financing transaction between BK and M is the avoidance of the application of this section.

(ii) Pursuant to paragraph (a)(4)(ii)(B) of this section, the district director may treat the financing transactions between FP, BK, M and DS as a financing arrangement for purposes of this section even though BK and M do not engage in a financing transaction. In such a case, BK and M would be considered a single intermediate entity for purposes of this section.

Example 4. Related persons treated as a single conduit entity. (i) On January 1, 1995, FP lends $10,000,000 to FS in exchange for a 10-year note that pays interest annually at a rate of 8 percent per annum. On January 2, 1995, FS contributes $10,000,000 to FS2, a wholly-owned subsidiary of FS organized in country Y, in exchange for common stock of FS2. On January 1, 1996, FS2 lends $10,000,000 to DS in exchange for an 8-year note that pays interest annually at a rate of 10 percent per annum.

(ii) FS is a holding company that has no significant assets other than the stock of FS2. Throughout the period that the FP–FS loan is outstanding, FS causes FS2 to make distributions to FS, most of which are used to make interest and principal payments on the FP–FS loan. Without the distributions from FS2, FS would not have had the funds with which to make payments on the FP–FS loan.

(iii) The conditions of paragraph (a)(4)(i) of this section would be satisfied with respect to the financing transactions between FP, FS, FS2 and DS but for the absence of a financing transaction between FS and FS2. One of the principal purposes for the absence of a financing transaction between FS and FS2 is the avoidance of the application of this section.

(iv) Pursuant to paragraph (a)(4)(ii)(B) of this section, the district director may treat the financing transactions between FP, FS, FS2 and DS as a financing arrangement for purposes of this section even though FS and FS2 do not engage in a financing transaction. In such a case, FS and FS2 would be considered a single intermediate entity for purposes of this section.

Example 5. Related persons treated as a single conduit entity. Assume the same facts as in *Example 4* except that FS contributes $9,900,000 and lends $100,000 to FS2. Pursuant to paragraph (a)(4)(ii)(B) of this section, the district director may treat the financing transactions between FP, FS, FS2

and DS as a financing arrangement for purposes of this section even though FS and FS2 engage in a financing transaction since from the facts and circumstances the district director may determine that one of the principal purposes for the existence of the financing transaction is to prevent the district director from treating the related persons as a single intermediate entity. In such a case, FS and FS2 would be considered a single intermediate entity for purposes of this section.

Example 6. Reduction of tax. (i) On January 1, 1995, FP licenses to FS the rights to use a patent in the U.S. to manufacture product A. FS agrees to pay FP a fixed amount in royalties each year under the license. On January 1, 1996, FS sublicenses to DS the rights to use the patent in the U.S. Under the sublicense, DS agrees to pay FS royalties based upon the units of product A manufactured by DS each year. Although the formula for computing the amount of royalties paid by DS to FS differs from the formula for computing the amount of royalties paid by FS to FP, each represents an arm's length rate. The fair market value of the patent rights do not increase between January 1, 1995, and January 1, 1996.

(ii) Under the country Y–U.S. income tax treaty, the royalties paid by DS to FS are exempt from U.S. withholding tax. However, pursuant to §§ 1.881–2(b) and 1.1441–2(a), the parties withhold tax at a 30 percent rate on the royalties paid to FP because the royalties are paid in consideration for the privilege of using the patent in the United States, and therefore the royalties constitute income from U.S. sources under section 861(a)(4).

(iii) Because the principal amount of the license between FS and DS is equal to or less than the principal amount of the license between FP and FS, the royalties paid by DS and FS represent an arm's length rate, and the rate of tax imposed on royalties paid by FS to FP is the same as the rate that would have been imposed on royalties paid by DS to FP, the participation of FS in the FP–FS–DS financing arrangement is not considered to reduce the tax imposed by section 881 within the meaning of paragraph (a)(4)(i)(A) of this section.

Example 7. A principal purpose of plan. (i) On January 1, 1995, FS lends $10,000,000 to DS in exchange for a 10-year note that pays interest annually at a rate of 8 percent per annum. As was intended at the time of the loan from FS to DS, on July 1, 1995, FP makes an interest-free demand loan of $10,000,000 to FS. A principal purpose for FS' participation in the FP–FS–DS financing arrangement is that FS generally coordinates the financing for all of FP's subsidiaries (although FS does not engage in significant financing activities with respect to such financing transactions). However, another principal purpose for FS' participation is to allow the parties to benefit from the lower withholding tax rate provided under the treaty between country Y and the United States.

(ii) The financing arrangement satisfies the tax avoidance purpose requirement of paragraph (a)(4)(i)(B) of this section since FS participated in the financing arrangement pursuant to a plan one of the principal purposes of which is to allow the parties to benefit from the country Y–U.S. treaty.

Example 8. Reduction of tax. (i) FX is a wholly-owned subsidiary of FP and is a resident of country Y. FX owns all of the stock of FS1, which also is a resident of country Y. FS1 owns all of the stock of DX, a corporation organized in the United States. On January 1, 1995, FP contributes $10,000,000 to the capital of FX. On July 1, 1995, FX lends $10,000,000 to FS1. On January 1, 1996, FS1 lends $10,000,000 to DX. Under the terms of the country Y–U.S. income tax treaty, a country Y resident is not entitled to the reduced withholding rate on interest income provided by the treaty if the resident is entitled to, even if it does not claim, special tax benefits under country Y law. In order to qualify for the reduced withholding rate on the interest it receives from DX, FS1 does not claim the special tax benefits under country Y law. FX, however, obtains the special tax benefits under country Y law, which substantially reduces the rate of tax imposed on the interest it receives from FS1. Accordingly, if FX had made a loan directly to DX, payments of interest by DX to FX would have been subject to tax under section 881 at a 30 percent rate.

(ii) Pursuant to paragraph (a)(3)(i) of this section, the district director may determine that the FX–FS1 loan and the FS1–DX loan comprise a financing arrangement. Pursuant to paragraph (c)(2)(i)(A) of this section, the significant reduction in tax resulting from the participation of FS1 in the financing arrangement is evidence that the participation of FS1 in the financing arrangement is pursuant to a tax avoidance plan. However, other facts relevant to the presence of such a plan must also be taken into account.

Example 9. Time period between financing transactions. (i) On January 1, 1995, FP lends $10,000,000 to FS in exchange for a 10-year note that pays no interest annually. When the note matures, FS is obligated to pay $24,000,000 to FP. On January 1, 1996, FS lends $10,000,000 to DS in exchange for a 10-year note that pays interest annually at a rate of 10 percent per annum.

(ii) Pursuant to paragraph (c)(2)(i)(C) of this section, the twelve-month period between the loan by FP to FS and the loan by FS to DS is evidence that the participation of FS in the financing arrangement is pursuant to a tax avoidance plan. However, other facts relevant to the presence of such a plan must also be taken into account.

Example 10. Active conduct of a trade or business. (i) FP is a holding company. FS is actively engaged in country Y in the business of manufacturing and selling product A. DS manufactures product B, which is a principal component used by FS in the manufacture of product A. FS' business activity is substantial. On January 1, 1995, FP lends $100,000,000 to FS to finance FS' business operations. On January 1, 1996, FS lends $30,000,000 to DS to finance its manufacturing business.

(ii) Pursuant to paragraph (c)(2)(ii)(C) of this section, the fact that FS makes a loan to DS in order to finance a business actively engaged in by DS that forms a part of, or is complementary to, a substantial business actively engaged in by FS is evidence that the participation of FS in the financing arrangement is not pursuant to a tax avoidance plan. However, other facts relevant to the presence of such a plan must also be taken into account.

Example 11. Ordinary course deposits of working capital. (i) Over a period of years, FP has maintained a deposit with BK, a bank that is organized in country Y and is unrelated to FP and its subsidiaries. FP has placed funds in the bank account in order to maintain sufficient liquidity to meet its working capital needs. On January 1, 1995, BK lends $5,000,000 to DS. FP guarantees to BK that DS will satisfy its repayment obligation on the loan. Both prior to and after the loan is made, the balance in FP's bank account remains within a range appropriate to meet FP's working capital needs.

(ii) The fact that FP has historically maintained an account with BK to meet its working capital needs and that, prior to and after BK's loan to DS, the balance within the account remains within a range appropriate to meet those business needs, is evidence that the participation of BK in the FP–BK–DS financing arrangement is not pursuant to a tax avoidance plan. However, other facts relevant to the presence of such a plan must also be taken into account.

(iii) Assume the same facts, except that on January 1, 2000, FP's deposit with BK substantially exceeds FP's expected working capital needs. On January 2, 2000, BK lends additional funds to DS. FP would have lent the funds to DS directly but for the imposition of the withholding tax on payments made directly to FP by DS.

(iv) The presence of funds substantially in excess of FP's working capital needs and FP's willingness to lend funds directly to DS is evidence that the participation of BK in the FP–BK–FS financing arrangement is pursuant to a tax avoidance plan. However, other facts relevant to the presence of such a plan must also be taken into account.

(v) In either case, the taxpayer may establish, pursuant to paragraph (b) of this section, that BK would have made the loan to DS on substantially the same terms in the absence of FP's deposit with BK.

Example 12. Presumption with respect to significant financing activities. (i) FS has 100 employees located in country Y who are responsible for coordinating the financing of all of the subsidiaries of FP, which are engaged in a substantial trade or business and are located in both country Y and country X. FS maintains a centralized cash management accounting system for FP and its subsidiaries in which it records all intercompany payables and receivables; these payables and receivables ultimately are reduced to a single balance either due from or owing to FS and each of FP's subsidiaries. FS is responsible for disbursing or receiving any cash payments required by transactions between its affiliates and unrelated parties. FS must borrow any cash necessary to meet those external obligations and invests any excess cash for the benefit of the FP group. FS enters into interest rate and foreign exchange contracts as necessary to manage the risks arising from mismatches in

incoming and outgoing cash flows. At the request of DS, on January 1, 1995, FS pays a supplier $1,000,000 for materials delivered to DS and charges DS an open account receivable for this amount. On February 3, 1995, FS reverses the account receivable from DS to FS when DS delivers to FP goods with a value in excess of $1,000,000.

(ii) The accounts payable from DS to FS and from FS to other subsidiaries of FP constitute financing transactions within the meaning of paragraph (a)(2)(ii) of this section, and the transactions together constitute a financing arrangement within the meaning of paragraph (a)(2)(i) of this section. FS performs significant financing activities with respect to the financing transactions even though FS did not actively and materially participate in arranging the financing transactions because the financing transactions consisted of advances of property in exchange for trade receivables that were ordinary and necessary to carry on the trades or businesses of DS and the other subsidiaries of FP. Accordingly, pursuant to paragraph (c)(3)(i) of this section, FS's participation in the financing arrangement is presumed not to be pursuant to a tax avoidance plan.

Example 13. Active management of material business risks. (i) The facts are the same as in *Example 12*, except that, in addition to its short-term funding needs, DS needs long-term financing to fund an acquisition of another U.S. company; the acquisition is scheduled to close on January 15, 1995. FS has a revolving credit agreement with a syndicate of banks located in Country X. On January 14, 1995, FS borrows $10 billion for 10 years under the revolving credit agreement, paying yen LIBOR plus 50 basis points on a quarterly basis. FS enters into a currency swap with BK, an unrelated bank that is not a member of the syndicate, under which FS will pay BK 10 billion and will receive $100 million on January 15, 1994; these payments will be reversed on January 15, 2004. FS will pay BK U.S. dollar LIBOR plus 50 basis points on a notional principal amount of $100 million semiannually and will receive yen LIBOR plus 50 basis points on a notional principal amount of $10 billion quarterly. Upon the closing of the acquisition on January 15, 1995, DS borrows $100 million from FS for 10 years, paying U.S. dollar LIBOR plus 50 basis points semiannually.

(ii) Although FS performs significant financing activities with respect to certain financing transactions to which it is a party, FS does not perform significant financing activities with respect to the financing transactions between FS and the syndicate of banks and between FS and DS because FS has eliminated all material business risks arising from those financing transactions through its currency swap with BK. Accordingly, the financing arrangement does not benefit from the presumption of paragraph (c)(3)(i) and the district director must determine whether the participation of FS in the financing arrangement is pursuant to a tax avoidance plan on the basis of all the facts and circumstances.

Example 14. A principal purpose of plan. (i) The facts are the same as in *Example 12*, except that, on January 1, 1995, FP lends to FS 20,000,000 deutsche marks (worth $10,000,000) in exchange for a 10-year note that pays interest annually at a rate of 5 percent per annum. Also, on January 1, 1995, FS lends $10,000,000 to DS in exchange for a 10-year note that pays interest annually at a rate of 8 percent per annum. FS would not have had sufficient funds to make the loan to DS without the loan from FP. FS does not enter into any long-term hedging transaction with respect to these financing transactions, but manages its currency risk arising from the transactions on a daily, weekly or quarterly basis by entering into forward currency contracts.

(ii) Because FS performs significant financing activities with respect to the financing transactions between FS, DS and FP, the participation of FS in the financing arrangement is presumed not to be pursuant to a tax avoidance plan. The district director may rebut this presumption by establishing that the participation of FS is pursuant to a tax avoidance plan, based on all the facts and circumstances. The mere fact that FS is a resident of country Y is not sufficient to establish the existence of a tax avoidance plan. However, the existence of a plan can be inferred from other factors in addition to the fact that FS is a resident of country Y. For example, the loans are made on the same day and FS would not have been able to make the loan to DS without the loan from FP.

Example 15. Presumption with respect to unrelated financing entity. (i) FP is a corporation organized in country Y that is actively engaged in a substantial manufacturing business. On January 1, 1995, FP obtains a 20-year $100,000,000 loan from BK, a bank that is organized in country X and is unrelated to FP and its subsidiaries. On January 1, 1996, FP lends $10,000,000 to DS.

(ii) Pursuant to paragraph (c)(4)(i) of this section, FP's participation in the financing arrangement with BK and DS is presumed not to be pursuant to a tax avoidance plan because BK is unrelated to both FP and DS, and FP is actively engaged in a substantial manufacturing business.

Example 16. Calculation of amount of tax liability. (i) On January 1, 1996, FP makes two three-year installment loans of $250,000 each to FS that pay interest at a rate of 9 percent per annum. Payments on each loan are $7,950 per month. On the same date, FS lends $1,000,000 to DS in exchange for a two-year note that pays interest semi-annually at a rate of 10 percent per annum, beginning on June 30, 1996. The district director determines that the financing transactions between FP and FS, and FS and DS, are made pursuant to a financing arrangement involving FP, FS and DS, that satisfies the conditions of paragraph (a)(4) of this section.

(ii) Assume that for the period of January 1, 1996 through June 30, 1996, the average principal amount of the financing transactions between FP and FS that comprise the financing arrangement is $469,319. Further, assume that for the period of July 1, 1996 through December 31, 1996, the average principal amount of the financing transactions between FP and FS is $393,632. The average principal amount of the financing transaction between FS and DS for the same periods is $1,000,000.

(iii) Pursuant to paragraph (d)(1)(i) of this section, the portion of the $50,000 interest payment made by DS to FS on June 30, 1996, that is recharacterized as a payment to FP is $23,450 computed as follows: ($50,000 x $469,319/$1,000,000) = $23,450. The portion of the interest payment made on December 31, 1996 that is recharacterized as a payment to FP is $19,650, computed as follows: ($50,000 x $393,632/$1,000,000)=$19,650.

(iv) Under § 1.1441–3(j), DS is liable for withholding tax at a 30 percent rate on the portion of the $50,000 payment to FS that is recharacterized as a payment to FP, i.e., $7,035 with respect to the June 30, 1996 payment and $5,895 with respect to the December 31, 1996 payment.

(g) *Effective date.* This section is effective for payments made after the date which is 30 days after publication of final regulations in the **Federal Register**. This section shall not apply with respect to interest payments made by United States corporations to Netherlands Antilles corporations in connection with debt obligations issued prior to October 15, 1984 and payments of interest covered by section 127(g)(3) of the Tax Reform Act of 1984.

§ 1.881–4 Reporting and recordkeeping requirements concerning conduit financing arrangements.

(a) *Scope.* This section provides rules for the furnishing of information and the maintenance of records concerning certain financing arrangements to which the provisions of § 1.881–3 apply. This section also provides rules for coordinating the application of sections 6038 and 6038A with the application of this section.

(b) *Reporting requirements*—(1) *Persons required to report.* A financed entity that is a reporting corporation within the meaning of section 6038A(a) and the regulations under that section, or that is required to report pursuant to section 6038(a) and the regulations under that section, shall be required to comply with the requirements of this paragraph (b) with respect to any financing transaction to which the financed entity is a party, that the financed entity knows or has reason to know forms a part of a financing arrangement described in § 1.881–3(a)(4) (determined without regard to § 1.881–3(a)(4)(i)(B)). For purposes of this paragraph (b), a financed entity will be considered to know or have reason to know that the conditions of § 1.881–3(a)(4)(i)(C)(*2*) are satisfied with respect to a financing arrangement if the financed entity knows or has reason to know that the financing entity has guaranteed the liability of the financed entity under the financing transaction. This paragraph (b) applies only if a person with respect to which the

financed entity is required to report under sections 6038 or 6038A is a party to the financing arrangement.

(2) *Reporting requirement.* A financed entity described in paragraph (b)(1) of this section shall be required to attach to the Form 5471 or 5472, whichever is applicable, for each year in which it is a party to a financing transaction described in paragraph (b)(1) of this section, a statement setting forth the following information (rendered in the English language and expressed in United States currency, with disclosure of applicable exchange rates) concerning each financing transaction—

(i) The character (e.g., loan, stock, lease, license) of the financing transaction;

(ii) The name of the person that advanced money or other property to the financed entity in the financing transaction, and the name of the person (if different) to which the financed entity has made payments pursuant to the financing arrangement;

(iii) The date and amount of each advance of money or other property to the financed entity;

(iv) The amount of money or other property paid by the financed entity pursuant to the financing transaction, and the date on which each payment was made;

(v) A description of any guarantee provided by the financing entity in connection with the financing arrangement; and

(vi) With respect to each party to the financing arrangement that is related to the financed entity within the meaning of § 1.881–3(a)(2)(v)—

(A) The name, address, taxpayer identification number, if any, and country of residence of the related person; and

(B) A description of the manner in which the financed entity and the person are related.

(3) *Additional disclosure.* A financed entity may be required to disclose on its Federal income tax return, or on other forms (including Form 5471 or Form 5472, if otherwise applicable), information concerning its participation in a financing arrangement described in paragraph (b)(1) of this section, regardless of whether the financed entity is required to report pursuant to paragraph (b)(1) of this section. Information disclosed on the return or other forms need not also be reported pursuant to paragraph (b)(2) of this section.

(c) *Recordkeeping requirements.* A financed entity or any other person subject to the general recordkeeping requirements of section 6001 must keep the permanent books of account or records, as required by section 6001, that may be relevant to whether that person is a party to a financing arrangement that is subject to recharacterization under § 1.881–3. In addition, a financed entity that is a reporting corporation within the meaning of section 6038A(a) and the regulations under that section, and any other person that is subject to the recordkeeping requirements of § 1.6038A–3, must comply with such recordkeeping requirements with respect to records that may be relevant to whether the financed entity is a party to a financing arrangement that is subject to recharacterization under § 1.881–3.

(d) *Application of sections 6038 and 6038A*—(1) *In general.* Any information that a financed entity is required to report pursuant to paragraph (b) of this section, or any records that any person is required to maintain pursuant to paragraph (c) of this section, shall be considered information that is required to be reported, or records that are required to be maintained, pursuant to sections 6038 or 6038A if such person is required to report information or maintain records concerning transactions between the financed entity and any other party to the financing arrangement under either section 6038 or section 6038A. Accordingly, the provisions of sections 6038 and 6038A (including, without limitation, the penalty provisions thereof), and the regulations under those sections, shall apply to any information required to be reported or records required to be maintained pursuant to this section.

(2) *Duplication of reporting requirements.* Information that is required to be reported on Form 5471 by § 1.6038–2(f) or on Form 5472 by § 1.6038A–2(b) need not be duplicated on the statements required by paragraph (b)(2) of this section. Information that is required to be reported about a particular financing transaction on the statement required by paragraph (b)(2) of this section shall not be considered to duplicate information required to be reported in the aggregate on Form 5471 or Form 5472 about more than one financing transaction.

(e) *Effective date.* This section is effective for tax years in which payments described in § 1.881–3 are made. This section shall not apply with respect to interest payments made by United States corporations to Netherlands Antilles corporations in connection with debt obligations issued prior to October 15, 1984 and payments of interest covered by section 127(g)(3) of the Tax Reform Act of 1984.

Par. 4. In § 1.1441–3, paragraph (j) is added to read as follows:

§ 1.1441–3 Exceptions and rules of special application.

* * * * *

(j) *Conduit financing arrangements.* A financed entity or other person required to withhold tax under section 1441 with respect to a financing arrangement subject to recharacterization under § 1.871–1(b)(7) or 1.881–3(a)(3), shall be required to withhold in accordance with the recharacterization on the portion of each payment subject to recharacterization, as determined by § 1.881–3(c). If the financing entity is entitled to the benefit of a treaty that provides a reduced rate of tax on a payment of the type recharacterized, the financed entity may withhold tax at that reduced rate if the financing entity complies with the procedures, if any, prescribed in the relevant treaty, or in regulations under section 1441. See § 1.1441–7(d) relating to withholding tax liability of the withholding agent in conduit financing arrangements subject to § 1.881–3. This paragraph (j) is effective for payments made after the date which is 30 days after publication of final regulations in the Federal Register. This section shall not apply with respect to interest payments made by United States corporations to Netherlands Antilles corporations in connection with debt obligations issued prior to October 15, 1984 and payments of interest covered by section 127(g)(3) of the Tax Reform Act of 1984.

Par. 5. In § 1.1441–7, paragraph (d) is added to read as follows:

§ 1.1441–7 General provisions relating to withholding agents.

* * * * *

(d) *Conduit financing arrangements.* A person shall be required to withhold tax under section 1441 in accordance with the recharacterization of a financing arrangement under § 1.871–1(b)(7) or 1.881–3(a)(3) if the person knows or has reason to know that the financing arrangement is subject to recharacterization under those sections and the person otherwise is a withholding agent with respect to the financing arrangement. This standard shall be satisfied if the person knows or has reason to know those facts relevant to whether the financing arrangement satisfies the conditions set forth in § 1.881–3(a)(4), including whether the participation of the intermediate entity is pursuant to a tax avoidance plan. A person shall not be considered to have reason to know that the financing arrangement is subject to recharacterization under § 1.871–1(b)(7)

or 1.881–3(a)(3) if the person knows of the financing transactions that comprise the financing arrangement but does not know or have reason to know facts sufficient to establish that the participation of the intermediate entity in the financing arrangement was pursuant to such a plan. This paragraph is effective for payments made after the date which is 30 days after publication of final regulations in the **Federal Register**. This section shall not apply with respect to interest payments made by United States corporations to Netherlands Antilles corporations in connection with debt obligations issued prior to October 15, 1984 and payments of interest covered by section 127(g)(3) of the Tax Reform Act of 1984.

Par. 6. In § 1.6038–2, paragraph (f)(12) is added to read as follows:

§ 1.6038–2 Reporting requirements for conduit financing arrangements.

* * * * *

(f) * * *

(12) *Conduit financing arrangements.* See § 1.881–4 for additional information that must be reported on (or attached to) Form 5471 relating to conduit financing arrangements.

* * * * *

Par. 7. In § 1.6038A–2, paragraph (b)(9) is added to read as follows:

§ 1.6038A–2 Requirement of return.

* * * * *

(b) * * *

(9) See § 1.881–4 for additional information that must be reported on (or attached to) Form 5472 relating to conduit financing arrangements.

* * * * *

Par. 8. In § 1.6038A–3, paragraphs (b)(5) and (c)(2)(vii) are added to read as follows:

§ 1.6038A–3 Record maintenance.

* * * * *

(b) * * *

(5) *Records relating to conduit financing arrangements.* See § 1.881–4 relating to conduit financing arrangements.

(c) * * *

(2) * * *

(vii) *Records relating to conduit financing arrangements.* See § 1.881–4 relating to conduit financing arrangements.

* * * * *

Par. 9. Section 1.7701(l)–1 is added to read as follows:

§ 1.7701(l)–1 Conduit financing arrangements.

(a) *Scope.* Section 7701(l) authorizes the issuance of regulations that recharacterize any multiple-party financing transaction as a transaction directly among any two or more of such parties where the Secretary determines that such recharacterization is appropriate to prevent avoidance of any tax imposed by title 26 of the United States Code.

(b) *Regulations issued under authority of section 7701(l).* The following regulations are issued under the authority of section 7701(l)—

(1) § 1.871–1(b)(7);
(2) § 1.881–3;
(3) § 1.881–4;
(4) § 1.1441–3(j);
(5) § 1.1441–7(d);
(6) § 1.6038A–2(f)(12);
(7) § 1.6038A–2(b)(9);
(8) § 1.6038A–3(b)(5); and
(9) § 1.6038A–3(c)(2)(vii).

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 94–25403 Filed 10–11–94; 8:48 am]

BILLING CODE 4830–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[FRL–5090–2]

Operating Permits Program Interim Approval Criteria

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of comment period for proposal to revise interim approval criteria for operating permits programs.

SUMMARY: On August 29, 1994, EPA proposed in the **Federal Register** (59 FR 44572) revisions to the interim approval criteria within the regulations in part 70 of chapter I of title 40 of the Code of Federal Regulations. The comment period provided in that notice was 30 days and closed on September 28, 1994. Today's action extends that comment period an additional 30 days until October 28, 1994.

DATES: Comments on the regulatory changes to the interim approval criteria proposed on August 29, 1994 must be received by October 28, 1994.

ADDRESSES: Comments must be mailed (in duplicate if possible) to: EPA Air Docket (LE–131), Attn: Docket No. A–93–50, room M–1500, Waterside Mall, 401 M Street SW, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Michael Trutna (telephone 919/541–5345), mail drop 15, United States Environmental Protection Agency, Office of Air Quality Planning and Standards, Air Quality Management Division, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION: Part 70 contains regulations requiring States to develop, and submit to EPA for approval, programs for issuing operating permits to major, and certain other, stationary sources of air pollution. The minimum elements of operating permits programs are contained in part 70 which was promulgated on July 21, 1992 (57 FR 32250). If a submitted program does not fully meet the requirements of part 70, full approval of the program cannot be granted by EPA. If a program, however, "substantially meets" the provisions of part 70, the program can be granted interim approval giving the permitting authority a period of time to revise its program and correct deficiencies identified by EPA. Full approval could then be granted before expiration of the interim approval and possible application of sanctions. The criteria EPA will use in determining if a program can be granted interim approval are listed in § 70.4(d) of the part 70 regulations.

The August 29, 1994 proposal would change the interim approval criteria in § 70.4(d) with respect to the procedures for revising operating permits to reflect changes that are subject to preconstruction review under programs adopted by States pursuant to section 110(a)(2)(C) of the Clean Air Act and approved by EPA into their State Implementation Plans. Such changes are termed "minor new source review (NSR)" changes. The EPA has solicited comment on whether operating permit programs which provide for adopting minor NSR changes into operating permits through the part 70 minor permit modification process are consistent with the requirements of part 70. The part 70 regulations provide, among other things, that a change that is a "modification under any provision of title I of the Act" is not eligible for the minor permit modification process. The Agency has solicited comment on whether minor NSR changes are "modifications under any provision of title I." Under the proposed changes to the interim approval criteria, EPA would be able to grant interim approval to operating permits programs that do not treat minor NSR changes as title I modifications, even if EPA determines that minor NSR changes are title I modifications. By granting interim approval, EPA would be providing permitting authorities up to 18 months (i.e., the program corrections would be due to EPA at least 6 months prior to expiration of the interim approval which could be granted for up to 2

years) to correct these program provisions.

Several requests for an extension of the comment period on the interim approval criteria notice were received soon after publication of the proposal notice. Because of the significance of the issues (e.g., the definition of title I modification), these commenters felt the 30-day comment period provided was not long enough to prepare their comments. In another **Federal Register** document also published on August 29 (59 FR 44460), EPA has proposed to add a definition of title I modification to the part 70 regulations. That document provides a 90-day comment period. However, EPA must resolve the issue of the proper definition of title I modification in order to complete the interim approval criteria rulemaking, since that issue bears on the decision to change the criteria as proposed. The Agency is required to begin making final decisions on the approvability of part 70 programs in the next several months, so EPA must complete the interim approval criteria rulemaking soon. In view of that timeframe, EPA is extending the comment period on the interim approval criteria rulemaking by 30 days, until October 28. Anyone wishing to submit comments on the definition of title I modification should submit their comments on that issue by October 28. The Agency will make its determination on the title I modification definition based on comments received on the interim approval criteria notice. Both of the August 29 proposals have the same docket number (A–93–50).

Dated: October 4, 1994.

Robert D. Brenner,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 94–25228 Filed 10–13–94; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 70

[CO–001; FRL–5090–5]

Clean Air Act Proposed Interim Approval of Operating Permit Program; State of Colorado

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed interim approval.

SUMMARY: The EPA proposes interim approval of the Operating Permits Program submitted by the State of Colorado. Colorado's Operating Permits Program was submitted for the purpose of complying with federal requirements which mandate that states develop, and submit to EPA, programs for issuing operating permits to all major stationary sources, and to certain other sources.

DATES: Comments on this proposed action must be received in writing by November 14, 1994.

ADDRESSES: Comments on this action should be addressed to Laura Farris, 8ART–AP, U.S. Environmental Protection Agency, Region 8, Air Programs Branch, 999 18th Street, Suite 500, Denver, Colorado 80202.

Copies of the State's submittal and other supporting information used in developing the proposed rule are available for inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region 8, 999 18th Street, suite 500, Denver, Colorado 80202.

FOR FURTHER INFORMATION CONTACT: Laura Farris, (303) 294–7539.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

Introduction

As required under title V of the Clean Air Act ("the Act") as amended (1990), EPA has promulgated rules which define the minimum elements of an approvable state operating permits program and the corresponding standards and procedures by which the EPA will approve, oversee, and withdraw approval of state operating permits programs (see 57 FR 32250 (July 21, 1992)). These rules are codified at 40 Code of Federal Regulations (CFR) part 70. Title V requires states to develop, and submit to EPA, programs for issuing these operating permits to all major stationary sources and to certain other sources.

The Act requires that states develop and submit these programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within 1 year after receiving the submittal. The EPA's program review occurs pursuant to section 502 of the Act and the part 70 regulations, which together outline criteria for approval or disapproval. Based on a material change to the State's submittal, which consisted of a revised permit fee demonstration, the EPA is extending the review period for an additional 3 months. Where a program substantially, but not fully, meets the requirements of part 70, EPA may grant the program interim approval for a period of up to 2 years. If EPA has not fully approved a program by 2 years after the November 15, 1993 date, or by the end of an interim program, it must establish and implement a Federal program.

II. Proposed Action and Implications

A. Analysis of State Submission

1. Support Materials

The Governor of Colorado submitted an administratively complete Title V Operating Permit Program (PROGRAM) for the State of Colorado on November 5, 1993. EPA deemed the PROGRAM administratively complete in a letter to the Governor dated December 28, 1993. The PROGRAM submittal includes a legal opinion from the Attorney General of Colorado stating that the laws of the State provide adequate legal authority to carry out all aspects of the PROGRAM, and a description of how the State intends to implement the PROGRAM. The submittal additionally contains evidence of proper adoption of the PROGRAM regulations, application and permit forms, a transition plan, and a permit fee demonstration.

2. Regulations and Program Implementation

The Colorado PROGRAM, including the operating permit regulation (part C of Regulation No. 3), substantially meets the requirements of 40 CFR 70.2 and 70.3 with respect to applicability; §§ 70.4, 70.5, and 70.6 with respect to permit content including operational flexibility; § 70.5 with respect to complete application forms and criteria which define insignificant activities; § 70.7 with respect to public participation and minor permit modifications; and § 70.11 with respect to requirements for enforcement authority.

Section II.E. of part C of Regulation 3 lists the insignificant activities that sources do not have to include in their operating permit application. This list includes emission thresholds for criteria pollutants in nonattainment areas (less than one ton per year), criteria pollutants in attainment areas (less than two tons per year); lead (less than 100 pounds per year); non-criteria pollutants (less than the de minimis levels determined by the method set forth in Appendix A of Regulation 3); as well as other specific activities and sources which are considered to be insignificant activities. Section II.E. states that sources may not use any insignificant activity exemptions from the list to avoid any applicable requirements.

Part 70 of the operating permits regulations requires prompt reporting of deviations from the permit requirements. Section 70.6(a)(3)(iii)(B) requires the permitting authority to define "prompt" in relation to the degree and type of deviation likely to occur and the applicable requirements.

Although the permit program regulations should define "prompt" for purposes of administrative efficiency and clarity, an acceptable alternative is to define "prompt" in each individual permit. The EPA believes that "prompt" should generally be defined as requiring reporting within two to ten days of the deviation. Two to ten days is sufficient time in most cases to protect public health and safety as well as to provide a forewarning of potential problems. For sources with a low level of excess emissions, a longer time period may be acceptable. However, prompt reporting must be more frequent than the semiannual reporting requirement, given that this is a distinct reporting obligation under § 70.6(a)(3)(iii)(A). Where "prompt" is defined in the individual permit but not in the program regulations, EPA may veto permits that do not contain sufficiently prompt reporting of deviations. Colorado's PROGRAM, in section V.C.7.b of part C of Regulation 3, states that "prompt" will be defined in each individual permit, depending on the type and degree of deviation likely to occur and the applicable requirements; however, "prompt" reporting will be required at least every six months, except as otherwise specified by the State in the permit.

Colorado State law does not authorize variances from Clear Air Act requirements. Additionally, the Attorney General's opinion that was part of the PROGRAM submittal states that the State will not authorize the granting of a variance from an applicable requirement or from the terms of an operating permit.

Comments noting deficiencies in the Colorado PROGRAM were sent to the State in a letter dated April 8, 1994. The deficiencies were segregated into those that require corrective action prior to interim PROGRAM approval, and those that require corrective action prior to final PROGRAM approval. The State committed to address the deficiencies that require corrective action prior to interim PROGRAM approval in a letter dated May 12, 1994, and subsequently held a public hearing to consider and finalize these changes on August 18, 1994. EPA has reviewed these changes and has determined that they are adequate to allow for interim approval. One issue noted in the April 8th letter related to insignificant activities requires further corrective action prior to full PROGRAM approval as follows: The State must revise its administrative process in section II.D.5 of part A of Regulation 3, for adding additional exemptions to the insignificant activities list, to require approval by the EPA of any new exemptions before such exemptions can be utilized by a source. An additional deficiency that requires corrective action prior to full PROGRAM approval regarding the implementation of section 112(r) of the Act is addressed in section 4.a below. Refer to the technical support document accompanying this rulemaking for a detailed explanation of each comment and the State's corrective actions.

1994 Colorado Senate Bill 94–139, now codified at section 13–25–126.5 of the Colorado Revised Statutes, contains an "environmental self-evaluation privilege" which prevents the admission of voluntary environmental audit reports as evidence in any civil, criminal or administrative proceeding, with certain exceptions. It is not clear at this time what effect, if any, this privilege might have on title V enforcement actions. In addition, EPA is currently establishing a national position regarding EPA approval of environmental programs in States which adopt statutes that confer an evidentiary privilege for environmental audit reports. The EPA regards Senate Bill 94–139 as wholly external to the program submitted for approval under part 70, and consequently proposes to take no action on this provision of State law. If, during PROGRAM implementation, EPA determines that this provision interferes with Colorado's enforcement responsibilities under part 70, EPA will consider this grounds for withdrawing PROGRAM approval in accordance with 40 CFR section 70.10(c).

3. Permit Fee Demonstration

The Colorado PROGRAM included an original fee structure that set fees below the presumptive minimum set in part 70. Specific fee provisions included $17.23 per ton fee for regulated air pollutants for fiscal year 1994, to be increased on an annual basis to $22.17 in fiscal year 1995, $27.01 in fiscal year 1996 and $28.30 in fiscal year 1997; an additional fee of $100 per ton for hazardous air pollutants (HAPs), including ozone depleting substances, for fiscal year 1994 and thereafter; a permit application processing fee of $50 per hour; and a fee of $100 to accompany air pollution emission notices required of new, modified and existing sources by the State which must be renewed every five years (fees will not be charged on emissions exceeding 4,000 tons per year per pollutant at a source). Because Colorado's estimated aggregate fee per ton (i.e. total revenues divided by annual tons of emissions subject to fees) was below the presumptive minimum set in part 70, it was necessary for the State to include a permit fee demonstration in their PROGRAM submittal.

Legislation recently adopted by the Colorado Legislature (SB 217) reduced the per ton fee for regulated air pollutants. After careful review, the State has determined that these fees would support the Colorado PROGRAM costs as required by 40 CFR part 70.9(a). Subsequently, the State submitted a material change to their original PROGRAM submittal on July 27, 1994, which consisted of a revised permit fee demonstration and addressed how the State will adjust to the new fees set in SB 217 and adequately fund the operation of the Colorado PROGRAM. The revised permit fee demonstration also included a workload analysis which estimated the annual cost of running the PROGRAM to be $1.87 million for fiscal year 1994/1995; and a new fee structure that consists of a $9.02 per ton fee for regulated air pollutants for fiscal year 1994, to be increased on an annual basis to $10.87 in fiscal year 1995, $13.66 in fiscal year 1996 and $11.58 in fiscal year 1997; with the additional HAP and permit application processing fees given above.

Upon review of the revised permit fee demonstration, the EPA noted the following concern (which is not a disapproval issue at this time): Although the Colorado Legislature gives the State the authority to assess and collect annual permit fees in an amount sufficient to cover all reasonable direct and indirect costs of the PROGRAM for a two year period of time, the State must authorize an increase in the spending of such fees for title V activities annually. If such an increase in spending authority is not granted, and the State is not able to fund all the costs of the PROGRAM, the EPA would be required to disapprove or withdraw the part 70 program, impose sanctions, and implement a federal permitting program.

4. Provisions Implementing the Requirements of Other Titles of the Act

a. Authority and/or commitments for section 112 implementation. Colorado has demonstrated in its PROGRAM submittal adequate legal authority to implement and enforce all section 112 requirements through the title V permit This legal authority is contained in Colorado's enabling legislation and in regulatory provisions defining "applicable requirements" and stating that the permit must incorporate all applicable requirements. EPA has determined that this legal authority is sufficient to allow Colorado to issue

permits that assure compliance with all section 112 requirements.

EPA is interpreting the above legal authority to mean that Colorado is able to carry out all section 112 activities. However, the following areas of concern have been identified in the Colorado PROGRAM: The Colorado Air Quality Control Act (25–7–109.6(5)) states that implementation and effectiveness of an accidental release prevention program, required under section 112(r) of the Act, is contingent on the receipt of federal funding. This condition is unacceptable since the State cannot put a condition on a specific requirement mandated through EPA rulemaking. Section 25–7–109.6(5) of the Colorado Air Quality Control Act must be revised before full PROGRAM approval can be granted. An additional concern lies in the definition of applicable requirement in section I.B.9. of part A of Regulation 3 which excludes the contents of any risk management plan, and in section V.C.17 of part C of Regulation 3 which specifies that the contents of risk management plans shall not be incorporated into operating permits. Although the contents of risk management plans are not an applicable requirement at this time that must be incorporated into operating permits, section 112(r) rulemaking is ongoing in an effort to define the requirements. Changes to the PROGRAM may be necessary in the future to comply with any new or supplemental rulemaking concerning section 112(r).

For further rationale on this interpretation, please refer to the Technical Support Document accompanying this rulemaking and the April 13, 1993 guidance memorandum titled "Title V Program Approval Criteria for Section 112 Activities," signed by John Seitz.

b. Implementation of 112(g) upon program approval. As a condition of approval of the part 70 PROGRAM, Colorado is required to implement section 112(g) of the Act from the effective date of the part 70 PROGRAM. Imposition of case-by-case determinations of maximum achievable control technology (MACT) or offsets under section 112(g) will require the use of a mechanism for establishing federally enforceable restrictions on a source-specific basis. The EPA is proposing to approve Colorado's preconstruction permitting program found in Regulation 3, part B under the authority of title V and part 70 solely for the purpose of implementing section 112(g) during the transition period between title V approval and adoption of a State rule implementing EPA's section 112(g) regulations. EPA believes this approval is necessary so that Colorado has a mechanism in place to establish federally enforceable restrictions for section 112(g) purposes from the date of part 70 approval. Section 112(l) provides statutory authority for approval for the use of State air programs to implement section 112(g), and title V and section 112(g) provide authority for this limited approval because of the direct linkage between implementation of section 112(g) and title V. The scope of this approval is narrowly limited to section 112(g), and does not confer or imply approval for purposes of any other provision under the Act. If Colorado does not wish to implement section 112(g) through its preconstruction permit program and can demonstrate that an alternative means of implementing section 112(g) exists, the EPA may, in the final action approving Colorado's PROGRAM, approve the alternative instead. To the extent Colorado does not have the authority to regulate HAPs through existing State law, the State may disallow modifications during the transition period.

This approval is for an interim period only, until such time as the State is able to adopt regulations consistent with any regulations promulgated by EPA to implement section 112(g). Accordingly, EPA is proposing to limit the duration of this approval to a reasonable time following promulgation of section 112(g) regulations so that Colorado, acting expeditiously, will be able to adopt regulations consistent with the section 112(g) regulations. The EPA is proposing here to limit the duration of this approval to 12 months following promulgation by EPA of section 112(g) regulations. Comment is solicited on whether 12 months is an appropriate period considering Colorado's procedures for adoption of federal regulations.

c. Program for straight delegation of section 112 standards. Requirements for approval, specified in 40 CFR § 70.4(b), encompass section 112(l)(5) requirements for approval of a program for delegation of section 112 General Provisions Subpart A and standards as promulgated by EPA as they apply to part 70 sources. Section 112(l)(5) requires that the State's PROGRAM contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. Therefore, the EPA is also proposing to grant approval under section 112(l)(5) and 40 CFR Part 63.91 of the State's program for receiving delegation of section 112 standards that are unchanged from the Federal standards as promulgated. Colorado has informed EPA that it intends to accept delegation of section 112 standards through a combination of case-by-case rulemaking and incorporation by reference. This program applies to both existing and future standards but is limited to sources covered by the part 70 program.

The radionuclide national emission standard for HAPs (NESHAP) is a section 112 regulation and therefore, also an applicable requirement under the State PROGRAM. Sources which are currently defined as part 70 sources and emit radionuclides are subject to federal radionuclide standards. Additionally, sources which are not currently part 70 sources may be defined as major sources under forthcoming federal radionuclide regulations. The EPA will work with the State in the development of its radionuclide program to ensure that permits are issued in a timely manner.

d. Program for implementing title IV of the Act. Colorado's PROGRAM contains adequate authority to issue permits which reflect the requirements of Title IV of the Act, and commits to adopt the rules and requirements promulgated by EPA to implement an acid rain program through the title V permit.

B. Options for Approval/Disapproval and Implications

The EPA is proposing to grant interim approval to the operating permits program submitted by the State of Colorado on November 5, 1993. The State must make the following changes, as discussed above, to receive full PROGRAM approval: (1) The State must revise its administrative process in section II.D.5 of part A of Regulation 3, for adding additional exemptions to the insignificant activities list, to require approval by the EPA of any new exemptions before such exemptions can be utilized by a source. (2) The State must revise the Colorado Air Quality Control Act (25–7–109.6(5)) to remove the condition that an accidental release prevention program will only be implemented if federal funds are available. Evidence of these statutory and regulatory revisions must be submitted to the EPA within 18 months of the EPA's interim approval of the Colorado PROGRAM.

This interim approval, which may not be renewed, extends for a period of up to two years. During the interim approval period, the State is protected from sanctions for failure to have a program, and EPA is not obligated to promulgate a Federal permits program in the State. Permits issued under a program with interim approval have full

standing with respect to part 70, and the one year time period for submittal of permit applications by subject sources begins upon interim approval, as does the three year time period for processing the initial permit applications.

The EPA is proposing to disapprove the operating permits program submitted by Colorado if the specified changes are not made within 18 months of the effective date of final interim approval. If promulgated, this disapproval would constitute a disapproval under section 502(d) of the Act (see generally 57 FR 32253–54). As provided under section 502(d)(1) of the Act, Colorado would have up to 180 days from the date of EPA's notification of disapproval to the Governor of Colorado to revise and resubmit the PROGRAM. The EPA will apply sanctions to Colorado if the Governor fails to submit a corrected PROGRAM within 18 months following EPA disapproval of the PROGRAM. If the State has not come into compliance within 6 months after EPA applies the first sanction, a second sanction is required. In addition, discretionary sanctions may be applied any time during the 18-month period following PROGRAM disapproval. If the State has not received full PROGRAM approval within two years after final interim PROGRAM approval, the EPA must promulgate, administer, and enforce a Federal permits program for the State.

Requirements for approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a program for delegation of section 112 standards as promulgated by EPA as they apply to part 70 sources. Section 112(l)(5) requires that the State's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. Therefore, the EPA is also proposing to grant approval under section 112(l)(5) and 40 CFR Part 63.91 of the State's program for receiving delegation of section 112 standards that are unchanged from federal standards as promulgated. This program for delegations only applies to sources covered by the part 70 program.

III. Administrative Requirements

A. Request for Public Comments

The EPA is requesting comments on all aspects of this proposed rule. Copies of the State's submittal and other information relied upon for the proposed interim approval are contained in a docket maintained at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this proposed rulemaking. The principal purposes of the docket are:

(1) To allow interested parties a means to identify and locate documents so that they can effectively participate in the rulemaking process, and

(2) To serve as the record in case of judicial review. The EPA will consider any comments received by November 14, 1994.

B. Executive Order 12866

The Office of Management and Budget has exempted this action from Executive Order 12866 review.

C. Regulatory Flexibility Act

The EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permits programs submitted to satisfy the requirements of 40 CFR part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–76719.

Dated: September 30, 1994.

Jack W. McGraw,

Acting Regional Administrator.

[FR Doc. 94–25388 Filed 10–13–94; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 82

[FRL–5087–6]

Protection of Stratospheric Ozone

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: This document proposes to allocate potential production allowances to producers who have baseline allowances for the production of methyl bromide. These potential production allowances would be intended solely for the production of methyl bromide for export to Article 5 countries, as defined under Article 5 of the Montreal Protocol on Substances that Deplete the Ozone Layer. In drafting the accelerated phaseout rule, which was published in the **Federal Register** on December 10, 1993, the Agency inadvertently omitted methyl bromide from the list of chemicals for which potential production allowances were granted. Today's action proposes an allocation of potential production allowances for all control periods beginning January 1, 1994, and ending before January 1, 2001, equal to 10 percent of a company's baseline production allowances. The Agency may propose potential production allowances for methyl bromide for control periods after January 1, 2001, at a later date.

DATES: Written comments on this proposed rule must be received on or before November 14, 1994, unless a public hearing is requested. In the case where a public hearing is requested, the public hearing will be scheduled on October 31, 1994. Comments must then be received on or before 30 days following the public hearing. Any party requesting a public hearing must notify the contact person listed below by October 24, 1994. Inquiries regarding a public hearing should be directed to the Stratospheric Ozone Information Hotline at 1–800–296–1996.

ADDRESSES: Comments on this proposed rulemaking should be submitted in duplicate (two copies) to: Air Docket No. A–92–13, U.S. Environmental Protection Agency, 401 M Street, SW., room M–1500, Washington, DC 20460.

Materials relevant to this proposed rulemaking are contained in Docket No. A–92–13. The Docket is located in room M–1500, First Floor, Waterside Mall at the address above. The materials may be inspected from 8 a.m. until 4 p.m. Monday through Friday. A reasonable fee may be charged by EPA for copying the docket.

FOR FURTHER INFORMATION CONTACT: Tom Land, Program Implementation Branch, Stratospheric Protection Division, Office of Atmospheric Programs, Office of Air and Radiation (6205J), 401 M Street, SW., Washington, DC 20460, (202) 233–9185. The Stratospheric Ozone Hotline at 1–800–296–1996 can also be contacted for further information.

I. Background

When Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer (the Protocol) first met in 1987, they agreed to allow additional production of controlled substances for developing countries beyond the levels being set for the developed countries. The United States, as well as other Parties to the Protocol, recognized the need to continue to supply controlled substances to developing countries during the period of scheduled reductions and for a limited time after the phaseout of production of controlled substances. In Article 2H of the

Protocol, the Parties agreed to allow production after the phaseout occurred. Under Article 5 of the Protocol, developing countries are defined as Parties to the Protocol consuming less than 0.3 kilograms per capita of class I, Group I and II controlled substances. These Article 5 countries have limited resources to adopt alternative technologies to replace the phased out controlled substances. To ensure that such countries do not purchase the technologies to produce controlled substances and otherwise bypass controls on controlled substances, the Parties to the Protocol agreed to provide a set-aside level of production for Article 5 countries. Article 5 countries must ensure that these imported controlled substances are used to meet basic domestic needs.

The Environmental Protection Agency (EPA) implements a program domestically that limits and monitors production and consumption of controlled substances, including methyl bromide. Production for Article 5 countries in the United States is monitored by allocating potential production allowances to those companies that have baseline production allowances. Since 1989, EPA has allocated potential production allowances equal to 10 percent of baseline production allowances for specific controlled substances. Upon the complete phaseout of a controlled substance, and until 10 years after the phaseout, companies are allocated up to 15 percent of their production baseline for export to Article 5 countries. EPA grants authorization to convert potential production allowances to production allowances to producers once they have exported to an Article 5 country. The July 30, 1992 **Federal Register** document (57 FR 33754) as well as the December 10, 1993 **Federal Register** document (58 FR 65018) explain these controls, as well as the recordkeeping and reporting required for such transactions. The specific provisions governing production for, and export to, Article 5 countries are in §§ 82.9 and 82.11. Appendix D of subpart A of 40 CFR part 82 contains a listing of Article 5 countries.[1]

II. Need To Allocate Methyl Bromide Production Allowances

In the December 10, 1993 publication of the accelerated phaseout (58 FR 65018) adding methyl bromide to list of class I controlled substances, the Agency inadvertently neglected to also allocate potential production allowances for methyl bromide. At the time of proposal, the Agency focused on the level of control of methyl bromide and its phaseout, but inadvertently failed to propose additional production of methyl bromide for Article 5 countries. Due to this oversight, EPA is proposing through this Notice to grant potential production allowances to methyl bromide producers equal to 10 percent of their baseline allowances beginning in the current control period (which began January 1, 1994). As with other controlled substances, the 10 percent level of production for Article 5 countries would continue until the effective date of the phaseout of production of the substance, in this case, until January 1, 2001, for methyl bromide. Section 602(d) of the CAA establishes the phaseout date for methyl bromide by stating that production may not extend beyond, "a date more that seven years after January 1 of the year after the year in which the substance is added to the list of class I substances." With this proposal, EPA is reserving action in allocating potential production allowances for control periods starting with January 1, 2001, and beyond.

III. Legal Authority

EPA believes that it has the authority, under both the Montreal Protocol and Section 604 (e) of the Clean Air Act Amendments of 1990 (CAA) to allow increased production of methyl bromide for export to Article 5 countries for the control periods from 1994 to the end of 2000. The Parties to the Protocol, in the Fourth Meeting in Copenhagen, agreed to list methyl bromide as a class I substance. The CAA requires EPA to phase out any newly-listed substances seven years after January 1 of the year following the year in which the chemical was listed. In following the mandate of the CAA, methyl bromide is phased out in the United States by January 1, 2001. The December 10, 1993 final rule incorporates such a phaseout of methyl bromide and on December 30, 1993, EPA allocated baseline production and consumption allowances for methyl bromide.

Both the Protocol and the CAA allow persons with baseline production allowances to produce an additional 10 percent for export to Article 5 countries. As discussed earlier, in Article 2H of the Protocol, the Parties agreed to permit continued production of up to 10 percent of baseline levels of controlled substances for export to Article 5 countries. The CAA also authorizes continued production for such purposes. CAA section 604(e) (Developing Countries) states:

(1) Exception.—Notwithstanding the phase-out and termination of production required under subsections (a) and (b), the Administrator, after notice and opportunity for public comment may, consistent with the Montreal Protocol, authorize the production of limited quantities of a class I substance in excess of the amounts otherwise allowable under subsection (a) or (b), or both, solely for export to, and use in, developing countries that are Parties to the Montreal Protocol and are operating under article 5 of such Protocol. Any production authorized under this paragraph shall be solely for purposes of satisfying the basic domestic needs of such countries.

(2) Cap on Exception.—(A) Under no circumstances may the authority set forth in paragraph (1) be applied to authorize any person to produce a class I substance in any year for which a production percentage is specified in Table 2 of subsection (a) in an annual quantity greater than the specified percentage, plus an amount equal to 10 percent of the amount produced by such person in the baseline year.

Section 604(e)(1) authorizes the production of limited quantities of a class I substance in excess of the amounts otherwise allowable "under subsection (a) or (b)." In the case of methyl bromide, the production reductions and phaseout schedules listed in subsection (a) and (b) have been modifed according to section 602(d) to require a freeze at 1994 production levels for methyl bromide until January 1, 2001, at which time methyl bromide may no longer be produced. Thus, sections 604(e)(1) & (2), as applied to methyl bromide, authorize additional production equal to 10% of 1994 baseline allowances solely for export to Article 5 countries until the year in which methyl bromide is phased out.

The Clean Air Act Amendments anticipated the need to continue to supply controlled substances to Article 5 countries despite the freeze and the eventual elimination of production and consumption of these chemicals. Section 604(e) allows for this production, provided it is consistent with the Montreal Protocol. Accordingly, EPA allocated potential production allowances for class I substances in the December 10, 1993 final rule. The authority to allocate such allowances applied to the newly-listed methyl bromide. However, due to an oversight, methyl bromide was not included in the list of chemicals for

[1] EPA is drafting proposed amendments to the accelerated phaseout rule that will make minor adjustments to the provisions for exports to Article 5 countries.

which potential production allowances were granted.

IV. Proposed Production Levels

EPA proposes that companies that produced methyl bromide in 1991 be allowed to produce up to 10 percent of their baseline allowances for Article 5 countries for the control periods starting January 1, 1994, and ending before January 1, 2001. EPA is setting the level at 10 percent to be consistent with Article 2H of the Montreal Protocol, and to be consistent with the approach used for all Class I controlled substances except for Group VII, the hydrobromofluorocarbons (no additional production for Article 5 countries is granted under the Protocol for these chemicals).

Although EPA considered setting the level of additional production at less than 10 percent, EPA believes that a more stringent level would be disadvantageous to U.S. producers, with no added environmental benefit. If U.S. companies were limited to additional production of less than 10 percent for export to Article 5 countries, producers from other countries would easily meet the existing demand of Article 5 countries. In other words, the total potential supply that the Protocol allows all developed countries to produce for Article 5 countries is much greater than the demand of all the developing countries that are Parties to the Protocol. Thus, if U.S. companies do not produce the methyl bromide for Article 5 countries, another Party will. Since the same amount of methyl bromide will be consumed by the developing countries, whether the U.S. or another Party produces it, a U.S. reduction in the percent of additional production would have no environmental impact.

EPA believes it is important that the network of United States exports of methyl bromide be maintained in order to continue market contacts. EPA presumes that United States producers will be leaders in developing alternative pesticides to methyl bromide. EPA believes that it is U.S. producers of methyl bromide who will quickly develop alternative pesticide practices, and therefore provide Article 5 countries with the alternatives necessary to eliminate the use of this controlled substance. The current international sales networks of U.S. methyl bromide producers will serve as a conduit for disseminating to Article 5 countries alternatives to methyl bromide once they are developed.

In today's rule, EPA clarifies that under the current regulations, the production allowances for Article 5 countries may be retroactive to the beginning of the control period starting January 1, 1994. The current regulations refer to control periods and do not prohibit companies from seeking authorizations for potential production allowances already exported, as long as that export occurred and the potential production allowance is used in the same control period.

V. Summary of Supporting Analysis

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether this regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant" regulatory action as one that is likely to lead to a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely and materially affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined by OMB and EPA that this amendment to the final rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review under the Executive Order.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601–602, requires that Federal agencies examine the impacts of their regulations on small entities. Under 5 U.S.C. 604(a), whenever an agency is required to publish a general notice of proposed rulemaking, it must prepare and make available for public comment an initial regulatory flexibility analysis (RFA). Such an analysis is not required if the head of an agency certifies that a rule will not have a significant economic impact on a substantial number of small entities, pursuant to 5 U.S.C. 605(b).

EPA believes that any impact that this amendment will have on the regulated community will serve only to provide relief from otherwise applicable regulations, and will therefore limit the negative economic impact associated with the regulations previously promulgated under sections 604 and 606. An examination of the impacts on small entities was discussed in the final rule (58 *FR* 65018 and 58 *FR* 69235). That final rule assessed the impact the rule may have on small entities. A separate regulatory impact analysis accompanied the final rule and is contained in Docket A–92–01. I certify that this amendment to the accelerated phaseout rule will not have any additional negative economic impacts on any small entities.

C. Paperwork Reduction Act

Any information collection requirements in a rule must be submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Because no additional informational collection requirements are required by this amendment, EPA has determined that the Paperwork Reduction Act does not apply to this rulemaking and no new Information Collection Request document has been prepared.

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Chemicals, Chlorofluorocarbons, Exports, Hydrochlorofluorocarbons, Imports, Interstate commerce, Nonessential products, Reporting and recordkeeping requirements, Stratospheric ozone layer.

Dated: September 30, 1994.

Carol M. Browner,

Administrator.

40 CFR part 82 is proposed to be amended as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

1. The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7671–671q.

Subpart A—Production and Consumption Controls

2. Section 82.9 is amended by revising paragraphs (a) introductory text, and (a)(1) and (a)(2) to read as follows:

§ 82.9 Availability of production allowances in addition to baseline production allowances.

(a) Every person apportioned baseline production allowances for class I controlled substances under § 82.5 (a) through (f) is granted potential production allowances equal to:

(1) 10 percent of his apportionment under § 82.5 for each control period

ending before January 1, 2000 (January 1, 2001 for methyl bromide); and

(2) 15 percent of his apportionment under § 82.5 for each control period beginning after December 31, 1999, and ending before January 1, 2011 (January 1, 2013 in the case of methyl chloroform; except for methyl bromide which is reserved).

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[FR Doc. 94–25200 Filed 10–13–94; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 418

[BPD–820–N]

RIN 0938–AG93

Hospice Services Under Medicare Program; Intent To Form Negotiated Rulemaking Committee

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of intent.

SUMMARY: We are considering establishing a Negotiated Rulemaking Committee under the Federal Advisory Committee Act (FACA). The Committee's purpose would be to negotiate the wage index used to adjust payment rates for hospice services under the Medicare program. The Committee would consist of representatives of interests that are likely to be significantly affected by the proposed rule. The Committee would be assisted by a neutral facilitator.

We request public comment on whether:

- We should establish a Federal Advisory Committee;
- We have properly identified interests that will be affected by key issues listed below;
- Negotiated rulemaking is appropriate for this issue.

EFFECTIVE DATE: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on November 14, 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–820–N, P.O. Box 26676, Baltimore, MD 21207.

If you prefer, you may deliver your written comments (1 original and 3 copies) 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–820–N. 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).

FOR FURTHER INFORMATION CONTACT:

Randal S. Ricktor, (410) 966–5650—For issues related to hospice payment.

Maryann Troanovitch, (202) 690–7890—For issues related to the establishment of the committee or administrative matters.

Judith Ballard, (202) 690–7419—Convener.

SUPPLEMENTARY INFORMATION:

I. Negotiated Rulemaking Act

The Negotiated Rulemaking Act (Public Law 101–648, 5 U.S.C. 581–590) establishes a framework for the conduct of negotiated rulemaking and encourages agencies to use negotiated rulemaking to enhance the informal rulemaking process. Under the Act, the head of an agency must consider whether—

- There is a need for a rule;
- There are a limited number of identifiable interests that will be significantly affected by the rule;
- There is a reasonable likelihood that a committee can be convened with a balanced representation of persons who—

(1) can adequately represent the interests identified; and

(2) are willing to negotiate in good faith to reach a consensus on the proposed rule;

- There is a reasonable likelihood that a committee will reach a consensus on the proposed rule within a fixed period of time;
- The negotiated rulemaking procedure will not unreasonably delay the notice of proposed rulemaking and the issuance of a final rule;
- The agency has adequate resources and is willing to commit such resources, including technical assistance, to the committee; and
- The agency, to the maximum extent possible consistent with the legal obligations of the agency, will use the consensus of the committee with respect to the proposed rule as the basis for the rule proposed by the agency for notice and comment.

Negotiations are conducted by a committee chartered under the Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2). The committee includes an agency representative and is assisted by a neutral facilitator. The goal of the Committee is to reach consensus on the language or issues involved in a rule. If consensus is reached, it is used as the basis of the agency's proposal. The process does not affect otherwise applicable procedural requirements of the FACA, the Administrative Procedure Act and other statutes.

II. Subject and Scope of the Rule

A. Need for the Rule

The Medicare hospice benefit was enacted in the Tax Equity and Fiscal Responsibility Act of 1982 and implemented effective November 1, 1983. The statutory authority for payment to Medicare hospices is contained in section 1814(i) of the Social Security Act (the Act). Final regulations for Medicare hospice care services were published in the **Federal Register** on December 16, 1983 (48 FR 56008), effective for hospice services furnished on or after November 1, 1983, and are codified at 42 CFR part 418. These regulations provide for payment to hospices based on one of four prospectively determined rates for each day in which a qualified Medicare beneficiary is under the care of the hospice. The four rate categories are routine home care, continuous home care, inpatient respite care, and general inpatient care. Payment rates are established for each rate category. Our regulations at 42 CFR 418.306(c) authorize adjustment to the payment rates to reflect local differences in area wage levels. Since hospice care is labor intensive, this local adjustment is necessary to permit payment of higher rates in areas with high wage levels and proportionately lower rates in areas with wage levels below the national average.

In the preamble to the final rule, we specified that the wage index used to adjust the hospice payment rates is the wage index published in the **Federal Register** on September 1, 1983 (48 FR 39871) for purposes of determining Medicare inpatient hospital prospective payment rates. This hospital wage index, which is still in use for hospices, was based on calendar year 1981

hospital wage and employment data obtained from the Bureau of Labor Statistics' (BLS) ES 202 Employment, Wages and Contributions file for hospital workers. In applying the hospital wage index to the hospice rates, our rules provide for the use of a "floor" index value of 0.8 if a particular hospital wage index value is lower than 0.8. The use of the "floor" on the index reflected our belief that use of an index below 0.8 would unduly jeopardize the availability of the benefit in rural areas by preventing hospices from attracting and retaining sufficient skilled staff to provide the hospice benefit.

While Medicare hospice payment rates have been periodically updated since the inception of the Medicare hospice program in late 1982, we have never updated the wage index. Previous attempts to begin to develop an updated wage index through rulemaking brought to our attention the divergent views within the hospice industry itself and between the industry and HCFA on how best to update the index. During discussions preliminary to developing a new wage index, the industry voiced concerns over the adverse financial impact of a new wage index on individual hospices and a possible reduction in overall Medicare hospice care payments, the effect of overarching Federal budgetary constraints. The end result is that, in the absence of agreement, we continue to use a wage index to geographically adjust payment to Medicare hospices that is over a decade old and clearly obsolete.

We believe it is appropriate and desirable to take prompt steps to update the hospice wage index. We believe the index must be changed through the rulemaking process because a specific wage index was named in the initial Medicare hospice regulations and there will be a significant impact on hospices when we adopt a new wage index. Any new index developed through this proposed negotiated rulemaking would be subject to public notice and comment procedures.

We believe that the hospice wage index is an appropriate subject for development through the negotiated rulemaking process. With the assistance of a neutral facilitator, we believe it may be possible to reach consensus with hospice industry groups and other affected interests on how best to propose an update of the present outdated hospice wage index. We also believe a new wage index based on consensus would be less controversial and easier to administer. We solicit comment on the appropriateness of this issue for negotiated rulemaking.

B. Subject and Scope of the Rule

The current hospice wage index is based on 1981 BLS data that contained serious deficiencies. In fact, those deficiencies led us to construct our own survey-based hospital wage index for use in geographically adjusting Medicare hospital payments. We have periodically updated the hospital wage index and the survey database since that time. The most recent survey is based on hospital wage data beginning in fiscal year 1991 (that is, cost reporting periods beginning October 1, 1990 and ending before October 1, 1991). Those survey data are the basis for the current HCFA Fiscal Year 1995 hospital wage index, which was published in the **Federal Register** on September 1, 1994.

We are considering pursuing an update to the Medicare hospice wage index based on the HCFA hospital wage index. We are considering using the hospital wage index since hospice-specific data have been unreliable. We believe the HCFA hospital wage index provides a good measure of area wage differences, not only for hospitals, but also for hospices since hospitals and hospices generally compete in the same labor market. The HCFA hospital wage index and related information data base are available and we will share that information with negotiation participants.

While recognizing that it is difficult to predict the end product of negotiated rulemaking on the hospice wage index, we anticipate that the scope of the proposed rule resulting from negotiations will include a specific recommended wage index, adjustments to that index, a decision on retaining a floor index value, and a possible phase-in schedule.

C. Issues and Questions To Be Resolved

Hospice wage index rulemaking will address a limited number of specific issues. Issues that we anticipate are outlined below. We also invite public comment on other wage index issues not identified.

Since Medicare regulations require only that the hospice rates be adjusted to reflect local differences in wages, there is a range of wage index options that could potentially be acceptable. We believe the well-developed hospital wage data base will enhance meaningful discussion and resolution of these issues.

1. What Data Should Be Used for a Wage Index for Hospices?

We propose to use hospital data for a hospice wage index since previous efforts to collect hospice cost data have resulted in unreliable data. Hospices contend that there are differences in the way hospices and hospitals operate that are relevant in determining geographic differences in wages. If hospital data are used, the negotiations would address whether such differences exist, whether they are relevant to the wage index, and, if so, whether there should be adjustments to the hospital data to account for such differences.

We also invite discussion on and encourage participants to share any alternative data upon which a hospice wage index can be constructed. The Committee will need to ascertain how those data might be adaptable and whether they may be appropriate to the hospice setting.

2. How Would a New Wage Index Be Phased In?

Projections by both HCFA and the industry indicate that most hospices would have their wage indices lowered if a new wage index were based on unadjusted current hospital data. These decreases would occur for any hospices in areas where the current indices are artificially high due to flaws in the 1981 BLS data or where wages have gone down relative to other geographic areas. The negotiations would address what phase-in period, if any, is appropriate (1) to enable these hospices to plan and implement strategies to reduce costs or obtain other funding; or (2) to offset decreases in reimbursement due to a lower index by automatic yearly increases in hospice payment rates provided for by statute. (These automatic increases are based on the rate of increase in the hospital market-basket index, but recent legislation reduces the increase by 2 percent in fiscal year 1994, and by 1.5 percent in 1995 and 1996.) For those hospices whose wage index would be increased, the negotiations may also address what phase-in period is appropriate. A related issue to discussions on the phase-in period is what should be the effective date of any new index.

3. Should the 0.8 Floor Be Retained?

The wage index uses a value of one (1.0) for national average wages. The current hospice rule provides for the use of a "floor" index value of 0.8 if the applicable wage index value for any particular area is lower than 0.8. The rationale for the "floor" was that hospices needed to attract and retain sufficient skilled staff to provide the hospice benefit, and use of an index below 0.8 would unduly jeopardize the availability of the benefit in rural areas. We anticipate that retaining, replacing, or eliminating this "floor" will be a

discussion issue. Also, if participants agree to retain a "floor," discussion may arise on the appropriateness and methods of adjusting the wage index to offset the cost of the "floor" wage index value of 0.8 against wage index values above the "floor."

4. How Can Budget Neutrality Be Achieved?

As mentioned above, we are considering pursuing an update to the Medicare hospice wage index based on the HCFA hospital wage index. Since the latest HCFA hospital wage index generally results in lower payments to hospices in the aggregate than the existing hospice wage index, whether to adjust the new index and addressing its aggregate budget impact are likely to be a key issue. We anticipate discussion on the budget impact of the new wage index and on acceptable methodologies to compute and apply an adjustment factor to the baseline hospital wage index data, if participants agree that an adjustment factor is appropriate. We consider it a given parameter of negotiations that any revised wage index would have to be at least budget neutral; that is, total aggregate payments for the same services could not be more using the revised wage index than if such payments were made using the current index.

5. Should the Wage Index Be Updated More Frequently?

We anticipate discussion addressing future updates to the Medicare hospice wage index, including which data sources will be used and the frequency of updates.

D. Issues and Questions Not Open to Negotiation

Two additional issues have been raised which are related to hospice payments, but which we have determined cannot be resolved as part of the proposed negotiations because no reliable data exist.

Occupational Mix Issue

The occupational mix issue refers to the argument of some in the industry that the mix of occupations represented in the hospital wage data differs from that encountered in the hospice setting, and, therefore, these critics argue, adjustments to the hospital wage data may be necessary and appropriate to adapt such data to the hospice setting. We believe any adjustment to the underlying wage data of hospital workers to isolate hospice-type services is impractical. We believe attempts to compare hospital services with hospice services may be difficult because of differences in the palliative rather than curative approach to care unique to the hospice setting. Also, Medicare experience with the collection of practitioner-level hospital wage data has shown that such data have been highly unreliable. Presently, we do not possess reliable national practitioner-level hospital wage data. We are open to the possibility of a separate study of this issue in the future provided reliable data become available. We plan to provide an explanation of the occupational mix issue to Committee members when appropriate to the discussion of other wage index issues. We do not, however, intend to negotiate an occupational mix adjustment based on practitioner-level hospital wage data.

Possible Changes to Labor-Related Portion of the Hospice Rates

Final hospice regulations published in 1983 established labor and non-labor components of the Medicare hospice rates for purposes of determining what portion of the rates would be subject to adjustment by the wage index. These labor/non-labor components were established in 1983, using existing Medicare program data. The same ratios reflected in the original labor/non-labor breakdown have been applied to all subsequent updates to the hospice rates. We plan to explain the labor/non-labor breakdown to the Committee. We have determined, however, that it would be impractical to include in these negotiations a change to the labor/non-labor proportions of the hospice rates based on hospice-specific data. Including this issue would require examining the entire spectrum of hospice costs and divert resources from discussions on the wage index.

III. Affected Interests and Potential Participants

The Convener has proposed and we agree to accept the following individuals as negotiation participants. We believe these individuals represent an appropriate mix of interests and backgrounds:

Donna Bales, Kansas Hospice Association
Janice Casey, Hospice of Stamford, Connecticut
Kate Colburn, Hospice of Des Moines, Iowa
Randall DuFour, Hospice of Louisville, Kentucky
Thomas Hoyer, Bureau of Policy Development, HCFA
Mary Labiak, Hospice of the Florida Suncoast, Florida
John J. Mahoney, National Hospice Organization
Janet Neigh, Hospice Association of America
Mark Sterling, VITAS Healthcare
Claire Tehan, Hospital Home Health and Hospice, Torrance, California

We also propose to include Mary Ellen Bliss, a representative of the American Association of Retired Persons. We invite public comment on this list of negotiation participants.

The intent in establishing the negotiating committee is that all interests are represented, not necessarily all parties. We believe this proposed list of participants represents all interests associated with adoption of a new wage index for hospices. The proposed participants include the two major hospice associations, as well as hospice organizations representing differences in geographic location (the major characteristic related to the wage index) and other differences in the hospice community (such as proprietary versus non-profit). One participant is with a State association which has been active with rural hospices and understands their concerns. Consumers and hospice employees were also identified as being potentially affected by any change in the wage index. This effect would be relatively minimal, however, and would vary depending on whether the wage index in any particular area is increased or decreased. Because of our strong commitment to obtaining consumer input, we nonetheless are proposing a consumer representative for the committee. We preliminarily determined that any employee interest could best be represented by the hospices themselves, who have an even stronger interest in the wage index, and by the hospice associations. Both associations have employee members.

IV. Schedule for the Negotiation

We have set a deadline of 6 months beginning with the date of the first meeting for the Committee to complete work on the proposed rule. We intend to terminate the activities of the Committee if it does not appear likely to reach consensus on a schedule that is consistent with HCFA's rulemaking needs.

If we make a final decision to negotiate, the first meeting is scheduled for Wednesday, November 30, 1994 through Friday, December 2, 1994 at the Comfort Inn, 6921 Baltimore Annapolis Blvd., Baltimore Maryland, 21225. The first day's meeting will begin at 10 a.m. The purpose of this meeting will be to discuss in detail how the negotiations will proceed and how the Committee will function. Also, HCFA will present technical information related to the rule. The Committee will agree to

groundrules for Committee operation, will determine how best to address the principal issues, and, if time permits, will begin to address those issues.

A second meeting is scheduled for Tuesday, January 17, 1995 through Wednesday, January 18, 1995. We expect that by this meeting the Committee can complete action on any procedural matters outstanding from the organizational meeting and either begin or continue to address the issues.

Subsequent meetings of the Committee would be held approximately once a month in the Baltimore, Maryland/Washington, D.C. area.

V. Formation of the Negotiating Committee

A. Procedure for Establishing an Advisory Committee

As a general rule, an agency of the Federal government is required to comply with the requirements of FACA when it establishes or uses a group that includes non-federal members as a source of advice. Under FACA, an advisory committee is established only after both consultation with the General Services Administration and receipt of a charter. We have prepared a charter and initiated the requisite consultation process. Only upon successful completion of this process and the receipt of the approved charter will we form the Committee and begin negotiations. Notice of approval of the charter will be published in the **Federal Register**.

B. Participants

The number of participants in the group is estimated to be 10 and should not exceed 25 participants. A number larger than this could make it difficult to conduct effective negotiations. One purpose of this notice is to help determine whether the proposed rule would significantly affect interests not adequately represented by the proposed participants. We do not believe that each potentially affected organization or individual must necessarily have its own representative. However, each interest must be adequately represented. Moreover, we must be satisfied that the group as a whole reflects a proper balance and mix of interests.

C. Requests for Representation

If, in response to this notice, an additional individual or representative of an interest requests membership or representation in the negotiating group, we, in consultation with the facilitator, will determine whether that individual or representative should be added to the group. We will make that decision based on whether the individual or interest:

- Would be significantly affected by the rule; and
- Is already adequately represented in the negotiating group.

D. Establishing the Committee

After reviewing any comments on this Notice and any requests for representation, we will take the final steps to form the Committee unless the comments and other relevant considerations convince us that such action is inappropriate or our charter request is disapproved.

VI. Negotiation Procedures

If a committee is formed, the following procedures and guidelines will apply, unless they are modified as a result of comments received on this notice or during the negotiating process.

A. Facilitator

We will use a neutral facilitator. The facilitator will not be involved with the substantive development or enforcement of the regulation. The facilitator's role is to:

- Chair negotiating sessions;
- Help the negotiation process run smoothly; and
- Help participants define and reach consensus.

B. Good Faith Negotiations

Participants must be willing to negotiate in good faith and be authorized to do so. We believe this may best be accomplished by selection of senior officials as participants. We believe senior officials are best suited to represent the interests and viewpoint of their organizations. This applies to HCFA as well, and we are designating Thomas Hoyer, Director, Office of Coverage and Eligibility Policy, Bureau of Policy Development, to represent HCFA.

C. Administrative Support

We will supply logistical, administrative and management support. If it is deemed necessary and appropriate, we will provide technical support to the Committee in gathering and analyzing additional data or information.

D. Meetings

Meetings will be held in the Baltimore/Washington area (or in another location) at the convenience of the Committee. We will announce Committee meetings and agendas in the **Federal Register**. Unless announced otherwise, meetings are open to the public.

E. Committee Procedures

Under the general guidance and direction of the facilitator, and subject to any applicable legal requirements, the members will establish the detailed procedures for Committee meetings which they consider most appropriate.

F. Defining Consensus

The goal of the negotiating process is consensus. Under the Negotiated Rulemaking Act, consensus generally means that each interest concurs in the result unless the term is defined otherwise by the committee. We expect the participants to fashion their working definition of this term.

G. Failure of Advisory Committee To Reach Consensus

If the Committee is unable to reach consensus, HCFA will proceed to develop a proposed rule. Parties to the negotiation may withdraw at any time. If this happens, the remaining Committee members and HCFA will evaluate whether the Committee should continue.

H. Record of Meetings

In accordance with FACA's requirements, we will keep minutes of all Committee meetings. The minutes will be placed in the public rulemaking record.

I. Other Information

In accordance with the provisions of Executive Order 12866 this notice was reviewed by the Office of Management and Budget.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program; No. 93.773, Medicare—Hospital Insurance Program; and No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: October 11, 1994.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Dated: October 12, 1994.

Donna E. Shalala,

Secretary.

[FR Doc. 94–25638 Filed 10–13–94; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 30, 31, 32, 34, 35, 70, 72, 76, 77, 78, 90, 92, 95, 190, and 193

[CGD 83–026]

RIN 2115–AB36

Fire Protection Regulations (CGD 83–026)

AGENCY: Coast Guard, DOT.

ACTION: Notice of termination.

SUMMARY: This rulemaking project was initiated to align Coast Guard regulations with the requirements of the International Convention for Safety of Life at Sea (SOLAS) 1974, as amended. It has been overtaken by the Coast Guard's broader Maritime Regulatory Reform (MRR) effort. Therefore, the Coast Guard is terminating further rulemaking under docket number 83–026.

FOR FURTHER INFORMATION CONTACT: Mr. Albert Kirchner, Marine Technical and Hazardous Materials Division, U.S. Coast Guard Headquarters, (202) 267–0168.

SUPPLEMENTARY INFORMATION: On October 1, 1984 (49 FR 38672), the Coast Guard published an Advance Notice of Proposed Rulemaking (ANPRM). In that ANPRM, the Coast Guard announced that it was considering revisions to the fire protection regulations in 46 CFR subchapters D, H, and I. In part, the amendment under consideration were intended to conform the regulations with the requirements of the International Convention for Safety of Life at Sea (SOLAS) 1974, as amended.

Recently, under its Maritime Regulatory Reform (MRR) effort, the Coast Guard has undertaken a broad review of its existing regulations and applicable international standards. Part of this effort will involve a review of domestic and international fire protection provisions. Existing fire protection regulations will be amended, as necessary, through one or more future rulemaking projects. Therefore, this rulemaking is no longer necessary, and the Coast Guard is terminating further rulemaking under docket number 83–026.

Dated: October 4, 1994.

Joseph J. Angelo,

Acting Chief, Office of Marine Safety Security and Environmental Protection.

[FR Doc. 94–25414 Filed 10–13–94; 8:45 am]

BILLING CODE 4910–14–M

FEDERAL MARITIME COMMISSION

46 CFR Part 540

[Docket Nos. 94–06; 94–21]

Financial Responsibility Requirements for Nonperformance of Transportation; Inquiry Into Alternative Forms of Financial Responsibility for Nonperformance of Transportation

AGENCY: Federal Maritime Commission.

ACTION: Notice of Inquiry.

SUMMARY: The Proposed Rule in Docket No. 94–06 is held in abeyance, pending an Inquiry into alternative methods of establishing financial responsibility. The Inquiry's purpose is to determine whether an acceptable alternative can be fashioned that will address the industry objections to the Proposed Rule, yet ensure that cruise passengers are adequately protected in the event of nonperformance of transportation.

DATES: Comments due on or before November 28, 1994.

ADDRESSES: Send comments (original and 20 copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 800 North Capitol St., NW., Washington, DC 20573–0001, (202) 523–5725.

FOR FURTHER INFORMATION CONTACT: Bryant L. VanBrakle, Director, Bureau of Tariffs, Certification and Licensing, Federal Maritime Commission, 800 North Capitol Street NW., Washington, DC 20573–0001, (202) 523–5796.

SUPPLEMENTARY INFORMATION: The Federal Maritime Commission ("Commission" or "FMC") administers section 3, Pub. L. 89–777, 46 U.S.C. app. 817e ("Section 3"). Section 3 requires certain passenger vessel operators ("PVOs") to establish financial responsibility for nonperformance of transportation.[1] The Commission's regulations implementing section 3, contained in 46 CFR part 540, subpart A, generally provide that a PVO may evidence its financial responsibility by one or more of the following methods: A guaranty, escrow arrangement, surety bond, insurance or self-insurance. The amount required must equal 110 percent of the PVO's highest UPR over a two-year period.[2] The maximum coverage amount currently required is $15 million, subject to a sliding scale.[3]

By Notice of Proposed Rulemaking published in the **Federal Register** on March 31, 1994 ("NPR" or "Proposed Rule"),[4] the Commission proposed to remove the $15 million unearned passenger revenue ("UPR") ceiling now applicable to passenger vessel financial responsibility requirements for nonperformance of transportation. The Commission initiated this proposal in part because there is an estimated $700 million in UPR without section 3 coverage, raising concern that there could be insufficient financial responsibility to indemnify the travelling public for nonperformance. The Commission also proposed to revise the current UPR sliding scale accordingly—and to require coverage of 110 percent of UPR up to $25 million per operator, with coverage of 90 percent of UPR for amounts exceeding $25 million. The NPR also put forth an alternative proposal which would require coverage of 110 percent of UPR up to $25 million per operator; 75 percent of UPR between $25 million and $50 million per operator; and 50 percent coverage for UPR over $50 million per operator. Additionally, the Commission proposed to remove self-insurance as an option for section 3 coverage (except for state or federal entities). Existing self-insured commercial operators would be provided one year following the effective date of any final rule in this matter to obtain other evidence of financial responsibility. In issuing the Proposed Rule, the Commission stated that it considered these changes to be necessary to ensure that cruise passengers are adequately protected in the event of nonperformance of transportation.

Comments on the NPR were originally due by May 2, 1994. The comment period was subsequently extended to

[1] Section 3 provides, in pertinent part:

(a) No person in the United States shall arrange, offer, advertise, or provide passage on a vessel having berth or stateroom accommodations for fifty or more passengers and which is to embark passengers at United States ports without there first having been filed with the Federal Maritime Commission such information as the Commission may deem necessary to establish the financial responsibility of the person arranging, offering, advertising, or providing such transportation, or, in lieu thereof, a copy of a bond or other security, in such form as the Commission, by rule or regulation, may require and accept, for indemnification of passengers for nonperformance of the transportation.

[2] UPR is defined under 46 CFR 540.2(i) as:

. . . that passenger revenue received for water transportation and all other accommodations, services, and facilities relating thereto not yet performed.

[3] The Commission, in Docket No. 92–19, Revision of Financial Responsibility Requirements for Non-Performance of Transportation, amended 46 CFR Part 540, Subpart A, to (1) institute this sliding scale formula for determining the amount of financial responsibility coverage required for operators meeting certain requirements; (2) exclude, under certain conditions, revenue from "wholeship" arrangements from being considered UPR; and (3) publish a suggested form escrow arrangement as a guideline for the industry (57 FR 51887 (September 14, 1992)).

[4] 59 FR 15149.

June 10, 1994,[5] in response to a request for a 90-day extension of the comment period by The Delta Queen Steamboat Co., and was again extended in response to a request by the International Council of Cruise Lines to extend the comment period to June 24, 1994.[6]

Two Congressional interests,[7] four PVOs (two U.S.-Flag[8] and two foreign-flag[9]), and six trade associations (three representing U.S.-flag PVOs,[10] one representing foreign-flag PVOs,[11] one representing surety interests,[12] and one representing travel agents[13]) filed comments on the Proposed Rule.

There is virtually unanimous support for the Commission's existing UPR coverage requirements, and widespread questioning of the need for the Proposed Rule. Many commenters draw attention to the Commission's many recent proceedings in this area, and assert that there have been no industry changes warranting this proposal. Positions range from strong Congressional and U.S.-flag PVO opposition to any further changes to current coverage requirements, to conditional support of a modified version of the Proposed Rule by foreign-flag interests. There is no support for the Proposed Rule outright; however, Carnival supports the Proposed Rule's coverage requirements for those PVO's unable to meet its self-insurance proposal.

Many commenters take issue with the Proposed Rule's requirement for essentially unlimited coverage for UPR. They contend that Pub. L. 89–777's purpose is to insure that PVOs are financially responsible to perform transportation, and interpret the statute and the Commission's past interpretations as requiring evidence of financial responsibility, not a financial guaranty.

U.S.-flag advocates state that the proposal to discontinue self-insurance for commercial PVOs would unfairly impact U.S.-flag operators; foreign-flag advocates criticize it for unduly restricting a maturing industry. U.S.-flag advocates also criticize the impact of the Proposed Rule's increased coverage requirements and associated collateralization requirements upon smaller U.S.-flag PVOs, noting that they face much higher operating costs than their foreign competition. In addition, a number of commenters urge the Commission to perform a cost/benefit analysis on the Proposed Rule's impact.

Many U.S.-flag advocates assert that the impact of the Proposed Rule's increased coverage requirements would be severe enough to cause the cruise industry to generally relocate its embarkations to nearby foreign ports in the Caribbean, Mexico and Canada, thus avoiding FMC jurisdiction and eliminating protection to the U.S. travelling public. However, neither of the commenting foreign-flag PVOs nor ICCL in any way intimate that this would be likely to happen.

The NPR included an alternative coverage requirement,[14] and asked for suggestions for other approaches to ensure adequate UPR coverage. This aspect of the proposal drew considerable comment; although the initial approach set forth in the Proposed Rule drew no unconditional support, the foreign-flag PVO interests in particular supported a modified version of the Proposed Rule's alternative approach. Other alternatives were also offered.

ICCL and Kloster support the Commission's alternative proposal to remove the current $15 million ceiling and to implement a sliding scale, provided (1) that it is gradually phased-in; and (2) the Commission amends its self-insurance requirements to make self-insurance reasonably available to creditworthy operators, regardless of the location of their qualifying assets. These commenters also propose that (1) only existing UPR be covered, rather than the PVO's highest UPR during the preceding two years; and (2) coverage requirements and self-insurance tests should encompass the organization as a whole, thereby enabling a corporate parent to obtain coverage for its entire organization.

Citing American Hawaii Cruises' bankruptcy filing and trade press articles concerning the securing of financing for a Kloster Cruise ship, MAST endorses moves to ensure liquid funds are readily available to protect consumers in the event of a default. It suggests that the Commission give the cruise industry 90 days—under a grant of limited antitrust immunity—to develop its own plan to ensure total and timely consumer protection. Should the industry fail to act in a way satisfactory to the Commission, MAST suggests consideration of higher bonding.

Alaska Sightseeing recommends that the Commission instead require 110% coverage for UPR up to $5 million, and 50% coverage for UPR over $5 million, with no maximum. It also suggests retaining self-insurance for U.S. corporations operating U.S.-flag vessels.

AMCV requests that the current self-insurance option be maintained and that the existing coverage ceiling be left in place. It stresses that self-insurance is an important alternative for U.S. companies and should be retained. It

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[5] 59 FR 23183 (May 5, 1994).

[6] 59 FR 30567 (June 14, 1994).

[7] The U.S. House of Representatives Committee on Merchant Marine and Fisheries and Subcommittee on Merchant Marine and Fisheries ("Committees") filed a comment; Congressman W.J. Tauzin (D-Louisiana) filed a separate comment.

[8] *Alaska Sightseeing/Cruise West* ("Alaska Sightseeing") is a Seattle-based PVO that operates four U.S.-flag vessels ranging in capacity from 58 to 101 passengers, and will be deploying a fifth overnight vessel in 1995. Its 1993 UPR was just under $5 million, and it projects that its UPR will surpass $5 million with the deployment of its fifth vessel.

American Classic Voyages Co. ("AMCV") was formerly known as The Delta Queen Steamboat Co., and now is the corporate parent of The Delta Queen Steamboat Co. ("Delta Queen") and American Hawaii Cruises ("AHC").

[9] *Carnival Corporation* ("Carnival") is the parent company of Carnival Cruise Lines, Holland America Lines and Windstar Cruises, which operate eighteen cruise vessels which embark passengers at U.S. ports and which it states comprise the largest cruise business in the world.

Kloster Cruise Limited ("Kloster") does business under the trade names Norwegian Cruise Line and Royal Viking Line. It is also the parent company of Royal Cruise Line Limited. Kloster states that it is the third largest cruise ship operator in the world.

[10] *The National Cruise Ship Alliance* is an organization of business, government and labor representatives that promotes the development of a U.S.-flag cruise ship industry. It is involved with legislation pending in Congress to attract foreign built cruise ships to U.S. ports and encourage the construction of new U.S.-flag cruise vessels.

The *Transportation Institute* represents 140 U.S.-flag shipping companies engaged in foreign and domestic trades, including AMCV.

The *Passenger Vessel Association* is a 500-member trade association of U.S.-flag passenger vessel owners, operators and suppliers which operate some 1,200 vessels and carry about 80 million people each year. Its members include the American companies which offer overnight cruises, all on U.S.-built, U.S.-crewed, U.S.-flag vessels. With the exception of AMCV, these companies all are small, generally family-owned businesses whose vessels range in size from 49 to 138 passengers and operate throughout the Americas, from Venezuela to Alaska.

[11] The members of the *International Council of Cruise Lines* ("ICCL") have approximately 90% of the cruise industry berth capacity. ICCL's letterhead lists Carnival Cruise Lines, Celebrity Cruise Lines, Commodore Cruise Line, Costa Cruise Lines NV, Crown Cruise Line, Crystal Cruises, Cunard Line Ltd., Dolphin Cruise Line, Epirotiki Lines, Fantasy Cruise Lines, Holland America Line, Majesty Cruise Line, Norwegian Cruise Line, Premier Cruise Lines, Ltd., Princess Cruises, Regency Cruises, Inc., Royal Caribbean Cruises, Ltd., Royal Cruise Line, Royal Viking Line, Seabourn Cruise Line, Sun Line Cruises, Inc., and Windstar Cruises.

[12] The *Surety Association of America* represents 650 surety companies that provide 95% of the surety bonds written in the United States.

[13] *Midwest Agents Selling Travel* ("MAST") is a trade association of over 300 upper Midwestern retail travel agencies which have an estimated $60,000,000 in cruise sales annually, and approximately $10,000,000 in consumer deposits with PVOs at any given time.

[14] The alternative proposal would require coverage of 110 percent of UPR up to $25 million per operator; 75 percent of UPR between $25 million and $50 million per operator; and 50 percent coverage for UPR over $50 million per operator.

therefore urges that self-insurance not be simply discarded, but that any concerns should be addressed individually. It suggests, for example, that the percentage threshold of net worth as a function of UPR could be increased above 110% to provide an additional cushion of coverage.

AMCV's first proposal is that PVOs be required to fully disclose any shortfall between coverage and UPR, and to advise their passengers of the availability of additional insurance coverage. Its second proposal is a new rulemaking to consider a berth-based formula, an indexed increase in the ceiling, or other alternatives to address the coverage "gap".

Carnival believes that the current gap between UPR and coverage levels is a legitimate issue: recent fleet growth has substantially increased the gap between coverage and actual UPR. Carnival therefore suggests that UPR coverage requirements be designed to adjust as PVOs increase in size, and to avoid the need to return to this issue every few years. However, it submits that the Proposed Rule's removal of self-insurance would penalize the most financially sound PVOs. It instead suggests that self-insurance standards be strengthened and made available to PVOs which have either (i) an "investment grade rating" of its debt by at least two accepted bond rating agencies; or (ii) which meet certain minimum financial ratios (liquidity of at least 100% of the PVO's UPR plus at least three times its UPR in tangible net worth (excluding intangible assets such as good will)). Thus, Carnival states that the Commission would be accepting the financial standards the rating agencies and Wall Street use to adjudge a maturing industry, arguing that a PVO meeting its proposed self-insurance tests clearly has the resources to satisfy passenger claims for UPR. In the event that a PVO is unable to self-insure by meeting either the investment grade ratings test or the minimum financial ratios test, Carnival supports a significant increase in coverage requirements. In light of the total amount of UPR, Carnival submits that the Commission's first alternative of bonding 110% of UPR up to $25 million, and 90% of UPR exceeding $25 million appears reasonable.

Discussion

We continue to believe that the Proposed Rule represents a legally-appropriate approach to address the Section 3 coverage issues that are before the Commission. However, in view of the general opposition to the Proposed Rule, the Commission has determined to hold it in abeyance pending the exploration of additional alternatives. The Commission wishes to ensure that full consideration is given to other means of establishing financial responsibility which are more acceptable to the industry. The Commission is therefore instituting this inquiry to determine the feasibility of the PVO industry addressing coverage requirements through (1) the vehicle of voluntary association(s) (such association(s) would be in addition to the current individual methods of evidencing financial responsibility for non-performance); and (2) retained but strengthened self-insurance requirements, as outlined more fully below. The Commission believes that these approaches could provide a level of protection to the travelling public comparable to that envisioned by the Proposed Rule, but with less of an impact upon the industry.

A. Voluntary Association(s)

In Docket No. 92–37, *Financial Responsibility for Non-Vessel-Operating Common Carriers*, the Commission permitted a group or association of non-vessel-operating common carriers ("NVOCC's") to collectively issue bonds to meet financial responsibility coverage requirements imposed upon NVOCC's by the Shipping Act of 1984. Because this approach has proven successful with respect to NVOCC's, the Commission is considering its applicability and adaptability to PVO requirements under Public Law 89–777. At the same time, the Commission recognizes that, because an association approach would necessarily involve concerted carrier activity, such an approach could present issues under the antitrust laws to the extent such activity is not exempted under agreements effective pursuant to the Shipping Act of 1984, 46 U.S.C. app. 1701 ("1984 Act")[15] and/or approved pursuant the Shipping Act, 1916, 46 U.S.C. app. 801 ("1916 Act").[16] The Commission invites comment on these issues.

In general terms, the voluntary association concept would work in a manner whereby the involved association would accept liability for all or a part of a PVO's section 3 liability, pursuant to a Commission-approved surety bond or guaranty in an amount equal to the combined UPR of the two members having the highest amount of UPR during the past two years. We have set forth below one possible methodology which the Commission could take to implement this alternative and is proffered for comments concerning this alternative's viability. Such an approach could revise the Commission's rules under 46 CFR part 540, subpart A in the following four respects.

First, it could revise the heading of 46 CFR 540.5 to read:

"§ 540.5 Insurance, guaranties, escrow accounts, self-insurance, associations".

Second, it could add a new § 540.5(e) to read:

(e) Where a group or association of passenger vessel operators accepts liability for all or part of a passenger vessel operator's or a ticket issuer's financial responsibility under section 3 of Pub. L. 89–777, the group or association of passenger vessel operators must file either a Form FMC–132A Surety Bond or a Form FMC–133A Guaranty clearly identifying each passenger vessel operator or ticket issuer and each passenger vessel covered. In such cases the group or association's coverage must be in the amount equal to the combined unearned passenger revenue of the two members having the highest amount of unearned passenger revenue on the date within the 2 fiscal years immediately prior to the filing of the group or association's coverage.

Third, it could redesignate current § 540.5 (e) and (f) as § 540.5 (f) and (g), respectively.

Finally, it could add a new § 540.9(l) as follows:

(l) Evidence of financial responsibility of the type provided for in §§ 540.5 and 540.6 of this part established through and filed with the Commission by a group or association of passenger vessel operators or ticket issuers on behalf of its members, is subject to the following conditions and procedures:

(1) Each group or association of passenger vessel operators or ticket issuers shall notify the Commission of its intention to participate in such a program and furnish documentation as will demonstrate its authenticity and authority to represent its members, such as articles of incorporation, bylaws, etc.;

(2) Each group or association of passenger vessel operators or ticket issuers shall provide the Commission with a list certified by its Chief Executive Officer containing the names of those passenger vessel operators or ticket issuers to which it will provide coverage, in whole or in part; the manner and amount of existing coverage each covered passenger vessel operator or ticket issuer has; an indication that the existing coverage provided each passenger vessel operator or ticket issuer is provided by a surety bond issued by a surety company found acceptable to the Secretary of the Treasury, or by

[15] The 1984 Act governs concerted ocean common carrier activity in the U.S. foreign waterborne trades.

[16] The 1916 Act governs concerted activity of common carriers by water in interstate commerce in the transportation by water of passengers on the high seas or the Great Lakes on regular routes from port to port between one U.S. State, Territory, District or possession and any other U.S. State, Territory, District or possession or between places in the same Territory, District or possession.

insurance or guaranty issued by a firm acceptable to the Commission; and the name, address and facsimile number of each surety, insurer or guarantor providing coverage pursuant to this section. Each group or association of passenger vessel operators or ticket issuers shall notify the Commission within thirty (30) days of any changes to its list.

(3) The group or association shall provide the Commission with a sample copy of each type of existing financial responsibility coverage used by member passenger vessel operators or ticket issuers.

(4) Each group or association of passenger vessel operators or ticket issuers shall be responsible for ensuring that each member's financial responsibility coverage will discharge that member's legal liability to indemnify the passengers of the member's vessels for nonperformance of transportation within the meaning of section 3 of Public Law 89–777. Each group or association of passenger vessel operators or ticket issuers shall be responsible for requiring each member to provide it with valid proof of financial responsibility annually.

(5) Where the group or association of passenger vessel operators or ticket issuers determines to secure on behalf of its members other forms of financial responsibility, as specified by this subpart to indemnify passengers for nonperformance of transportation within the meaning of section 3, Public Law 89–777, not covered by a member's individual financial responsibility coverage, such additional coverage must:

(i) Allow claims to be made in the United States directly against the group or association's Surety, Insurer or Guarantor against each covered member for nonperformance of transportation within the meaning of section 3 of Public Law 89–777; and

(ii) Be for an amount up to the UPR for each covered member up to a maximum of the UPR in the amount equal to the combined unearned passenger revenue of the two members having the highest amount of unearned passenger revenue on the date within the 2 fiscal years immediately prior to the filing of the group or association's coverage.

(6) The coverage provided by the group or association of passenger vessel operators or ticket issuers on behalf of its members, in whole or in part, shall be provided by:

(i) In the case of a surety bond, a surety company found acceptable to the Secretary of the Treasury and issued by such a surety company on Form FMC–132A; and

(ii) In the case of insurance and guaranty, a firm recognized and approved by the Commission.

B. Reinforced Self-Insurance

Strongly-argued support remains for continuing at least a modified version of self-insurance. The Commission is concerned that its present self-insurance standards may be inadequate, but it will consider an approach whereby it would restore its former ((net worth = 100% UPR) + (working capital = 100% UPR)) standard,[17] but require prospective self-insurers to provide alternative coverage for a percentage (e.g., 50% or 25%) of their uncovered UPR, through either a traditional guaranty, surety, escrow agreement or lien or other security instrument, or through participation in a coverage association along the above-described lines. The Commission would, however, still require qualifying assets to be located in the United States.

C. Coverage Requirements

PVO's electing to secure coverage through an association of the nature described above would be required to effect coverage either equal to that PVO's individual exposure under the coverage requirements ultimately adopted in this matter, or the association could be required to cover the combined UPR attributable to its two largest members. The Commission invites comment on other variants that might also provide adequate coverage.

We also solicit comments on any other form of security or proposal that would provide adequate coverage for the travelling public.

Conclusion

The Commission's initiation of this proceeding is not in any way intended to suggest that the PVO industry is unstable or has at any time failed to meet its responsibilities under Public Law 89–777. At the same time, we remain concerned that our present requirements may not provide sufficient coverage in the event of future nonperformance. The Commission affirms its willingness to consider innovative methods of ensuring an adequate degree of Public Law 89–777 coverage without unduly burdening the PVO industry and appreciates the input it has received to date on the development of its rules in this area.

Now therefore, it is ordered that this Notice of Inquiry be published in the **Federal Register**; and

Is further ordered, that the Proposed Rule in Docket No. 94–06 is hereby held in abeyance pending further notice.

By the Commission,

Joseph C. Polking,

Secretary.

[FR Doc. 94–25437 Filed 10–13–94; 8:45 am]

BILLING CODE 6730–01–P

[17] The former standard provided that the Commission could, for good cause shown, waive the requirement as to the amount of working capital.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 638, 640, 642, 646, and 659

[I.D. 100494B]

South Atlantic Fishery Management Council; Meetings and Hearings

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

ACTION: Public meetings and public hearings.

SUMMARY: The South Atlantic Fishery Management Council (Council) and its committees will hold meetings and hearings on a variety of issues, including developing regulations for fishery management plans (FMPs) within their geographical area.

DATES: The public meetings and hearings will be held October 24–28, 1994. See **SUPPLEMENTARY INFORMATION** for times of the meetings and hearings.

ADDRESSES: All meetings and hearings will be held at the Holiday Inn, 1706 N. Lumina Avenue, Wrightsville Beach, NC; telephone 910–256–2231. A detailed agenda of the October 24–28 meetings and hearings is available from the South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407–4699.

FOR FURTHER INFORMATION CONTACT: Carrie Knight, Public Information Officer, South Atlantic Fishery Management Council, telephone 803–571–4366.

SUPPLEMENTARY INFORMATION: Following is an agenda of items to be discussed during the public meetings and hearings scheduled for October 24–28, 1994:

1. October 24, 1994, from 1:30 p.m. to 5 p.m.—the Advisory Panel Selection Committee will meet in a closed session to develop recommendations for appointment of advisory panel members and to review a new advisory panel questionnaire and brochure.

2. October 25, 1994, from 8:30 a.m. to 10:30 a.m.—the Shrimp Committee will review public comments received on Amendment 1 to the Shrimp FMP and develop recommendations to the Council.

3. October 25, 1994, from 10:30 a.m. to noon—the Mackerel Committee will meet to review results from a meeting held on stock identification and to discuss boundary options between the South Atlantic and Gulf of Mexico.

4. October 25, 1994, from 1:30 p.m. to 3:30 p.m.—the Spiny Lobster Committee

will begin with a public hearing on Amendment 4 to the Spiny Lobster FMP. The Committee will then review public hearing and NMFS comments before developing recommendations to the Council.

5. October 25, 1994, from 3:30 p.m. to 5 p.m.—the Habitat and Environmental Protection Committee will review the amendment on live rock aquaculture, octocoral harvest, and anchoring in the Oculina Bank. The Committee will also review public hearing comments before developing recommendations to the Council.

6. October 25, 1995, at 6:30 p.m.—public scoping meetings are scheduled on the following topics:

(a) Amendment 8 to the Snapper-Grouper FMP,

(b) Amendment 8 to the Coastal Migratory Pelagics (mackerels) FMP, and

(c) Controlled access for Atlantic Spanish mackerel.

7. October 25, 1994, at 6:30 p.m.—a public hearing is scheduled on live rock aquaculture, octocoral harvest, and anchoring in the Oculina Bank.

8. October 26, 1994, from 8:30 a.m. to noon—NMFS will present reports to the Snapper-Grouper Committee. From 1:30 p.m. to 5 p.m. the Committee will review Snapper-Grouper Amendment 8 and will develop recommendations to the Council.

9. October 27, 1994, from 8:30 a.m. to 6 p.m. and October 28, 1994, from 8:30 a.m. to noon—the full Council will meet to discuss Committee reports, recommendations, and other items.

These meetings and hearings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Carrie Knight at the above Council address by October 17, 1994.

Dated: October 7, 1994.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–25499 Filed 10–13–94; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 59, No. 198
Friday, October 14, 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. 94–078–1]

Rangeland Grasshopper Cooperative Management Program Environmental Impact Statement

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service intends to prepare a programmatic environmental impact statement for the Rangeland Grasshopper Cooperative Management Program. The programmatic environmental impact statement will analyze the potential environmental effects of programs to control grasshoppers and Mormon crickets. We are requesting comments from the public, including government agencies and private industry, concerning the scope of issues that should be addressed in the programmatic environmental impact statement. Our request for comments is the first step in the development of a programmatic environmental impact statement.

DATES: Consideration will be given only to comments received on or before December 13, 1994.

ADDRESSES: Please send an original and three copies of your comments to Mr. Robert E. Pizel, Environmental Analysis and Documentation, BBEP, APHIS, USDA, room 828, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 94–078–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Pizel or Mr. Charles Brown, Environmental Analysis and Documentation, BBEP, APHIS, USDA, room 828, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8565; or Mr. Charles Bare, Senior Operations Officer, Domestic and Emergency Operations, Plant Protection and Quarantine, APHIS, USDA, room 643, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8247.

SUPPLEMENTARY INFORMATION:

Background

Grasshoppers and Mormon crickets are members of the Class Insecta and the Order Orthoptera, which contains several hundred species, although only about 35 species are perennial pests of plants. Grasshoppers and Mormon crickets have the potential for sudden and explosive population increases, which can be so extreme that all vegetation is consumed in outbreak situations. These infestations are often so extensive that individual land managers alone cannot control the damage.

The migratory and widespread nature of grasshoppers and Mormon crickets also makes coordination of management programs across multi-jurisdictional boundaries essential. The purpose of the Animal and Plant Health Inspection Service's (APHIS) Rangeland Grasshopper Cooperative Management Program is to protect American agriculture and natural resources from losses caused by economically significant infestations of grasshoppers and Mormon crickets. APHIS fulfills the need to coordinate and provide direct supervision for grasshopper and Mormon cricket management programs in cooperation with other Federal agencies, State agricultural agencies, and private individuals.

The geographic area affected by management programs consists of the States of Arizona, California, Colorado, Idaho, Kansas, Minnesota, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, Wyoming, and the Delta Junction region in Alaska.

Significant new information and management techniques indicate the need for APHIS to develop a new programmatic environmental impact statement (EIS). The following agencies have been asked to cooperate with APHIS in preparing the EIS: Agricultural Research Service, Agricultural Stabilization and Conservation Service, and Forest Service, United States Department of Agriculture; National Marine Fisheries Service, U.S. Department of Commerce; U.S. Army Corps of Engineers, U.S. Department of Defense; Bureau of Indian Affairs, Bureau of Land Management, Fish and Wildlife Service, and National Park Service, U.S. Department of Interior; and the Environmental Protection Agency. The purpose of the programmatic EIS is to examine alternatives for Federal grasshopper and Mormon cricket management efforts in the United States. The EIS will incorporate information from the 1987 programmatic EIS for the Rangeland Grasshopper Cooperative Management Program and will also present information that has been developed since 1987. The resulting EIS will be used for planning, decisionmaking, and to inform the public regarding the environmental effects of grasshopper and Mormon cricket management programs. The analysis and resulting EIS will also provide the programmatic overview to which APHIS can tier site-specific analyses and environmental assessments.

We are issuing this notice of intent to prepare an EIS in accordance with the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and § 1501.7 of the Council on Environmental Quality regulations (40 CFR 1501.7).

Scoping Process

The initial step in the process of EIS development is scoping. Scoping includes solicitation of public involvement in the form of written comments, and evaluation of these comments. This process is used for determining the scope of issues to be addressed. We are therefore asking for written comments that identify significant environmental issues that should be analyzed in the EIS. We invite comments from the public, including private industry and Federal, State, and local government agencies that have an

interest in the Rangeland Grasshopper Cooperative Management Program or related programs, and from Federal and State agencies that have either jurisdiction by law or special expertise regarding any national program issue or environmental impact that should be discussed in the EIS.

Alternatives

We will consider all reasonable and realistic action alternatives recommended in the comments we receive. The following alternatives have already been identified for comprehensive analysis in the EIS:

(1) Chemical control (e.g. chemical pesticide sprays and baits);

(2) Biological control (e.g. pathogens and predators);

(3) Cultural control (e.g. range management practices);

(4) Integrated pest management (e.g., some combination of the above methods); and

(5) No action.

Major Issues

The following are some of the major issues that will be discussed in the EIS:

(1) The use of organisms exotic to the United States as biocontrol agents. Pathogenic and parasitic organisms native to areas outside of the United States have been proposed as biocontrol agents to control native grasshoppers. The concern is the potential for effects on native ecosystems.

(2) The effects of grasshopper and Mormon cricket management programs on nontarget organisms. The need is to encapsulate and summarize the considerable amount of information that has been developed since 1987 regarding the effects of program treatments on flora and fauna, including endangered and threatened species.

(3) Treatments on lands enrolled in the Federal Conservation Reserve Program. The issue is the responsibility for grasshopper and Mormon cricket management on lands that have been removed from agricultural production and enrolled in the Conservation Reserve Program.

(4) Public involvement in site-specific planning and decisionmaking.

(5) Emerging technologies for grasshopper and Mormon cricket management.

(6) Monitoring grasshopper and Mormon cricket management programs. The need is to summarize and analyze monitoring data that has been collected since 1987 and to guide future monitoring plans.

(7) The relationship of grazing practices to grasshopper and Mormon cricket populations and outbreaks.

(8) The economics of grasshopper and Mormon cricket management.

Preparation of the EIS

Following the scoping, we will prepare an EIS for the Rangeland Grasshopper Cooperative Management Program. A notice announcing that the EIS is available for review will then be published in the **Federal Register**. The notice will also request comments concerning the EIS.

Done in Washington, DC, this 6th day of October 1994.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94–25422 Filed 10–13–94; 8:45 am]

BILLING CODE 3410–34–P

Rural Electrification Administration

Pacific Northwest Generating Cooperative; Finding of No Significant Impact

AGENCY: Rural Electrification Administration, USDA.

ACTION: Notice of Finding of No Significant Impact.

SUMMARY: Notice is hereby given that the Rural Electrification Administration (REA) has made a finding of no significant impact (FONSI), with respect to the potential environmental impact resulting from a proposal by Pacific Northwest Generating Cooperative (PNGC), to construct and operate the Coffin Butte Resource Project in Benton County, Oregon. The FONSI is based on a Borrower's Environmental Report (BER) prepared for PNGC by CH2M Hill and submitted to REA covering the proposed action. REA conducted an independent evaluation of the BER and concurs with its scope and content. In accordance with REA Environmental Policies and Procedures, 7 CFR 1794.61, REA has adopted the BER as its environmental assessment for this project.

REA has concluded that the impacts associated with the proposed project would not be significant and that the proposed action is not a major Federal action significantly affecting the quality of the human environment. Therefore the preparation of an environmental impact statement is not necessary.

FOR FURTHER INFORMATION CONTACT: Lawrence R. Wolfe, Chief, Environmental Compliance Branch, Electric Staff Division, room 1246, South Agriculture Building, Rural Electrification Administration, Washington, DC 20250–1500, telephone (202) 720–1784.

SUPPLEMENTARY INFORMATION: The proposed project will be located in Benton County, near the city of Adair Village and approximately 10 miles north of Corvallis, Oregon. The 11.4 acre plant site is located adjacent to Coffin Butte Road and State Highway 99W. The site, which is owned by Valley Landfills, Inc. (VLI), is immediately adjacent to VLI's Coffin Butte Landfill. PNGC proposes to construct and operate a 2.2 megawatt (MW) net diesel electric generation facility that will be fueled by methane gas collected from the adjacent VLI landfill. The generation facilities will initially consist of three 850 kilowatt diesel engines designed to burn landfill gas. Planned expansion of the landfill is expected to provide sufficient methane to fuel three additional diesel units. The engines will be enclosed in a sound treated building that will be approximately 80 feet long by 45 feet wide and 20 feet high. The exhaust stack on each engine will extend approximately 5 feet above the top of the building. A pipe system, installed by VLI, will collect the landfill gas and deliver the gas to a compressor in the generating facility. Access to the enclosed fenced site will be via a single lane gravel road from Coffin Butte Road. A 12.5 kilovolt overhead powerline will connect the facility to the existing 12.5 kV distribution line of Consumers Power, Inc., (CPI) a PNGC member. The distribution line is located adjacent and parallel to Coffin Butte Road.

Alternatives examined for the proposed project included no action, energy conservation, purchased power, and alternative generating technologies. REA has considered these alternatives and has concluded that the project as proposed will meet the needs of PNGC and CPI with a minimum of adverse impacts.

Based on analysis of the adopted BER and other available project related information, REA has concluded that construction and operation of the proposed Coffin Butte Resource Project will have no significant impact on air quality, wetlands, existing land uses, or flora and fauna. In addition, REA has determined that construction and operation of the proposed project will have no effect on water quality, important farmland, floodplains, cultural resources, federally listed threatened and endangered species or designated critical habitat, or species proposed for listing or proposed critical habitat. No other potential significant impact resulting from the construction and operation of the proposed project has been identified.

In accordance with REA Environmental Policies and Procedures

for Electric and Telephone Borrowers, 7 CFR part 1794, PNGC published notices in the Corvallis Gazette Times on August 25 and 26, 1994. The notices announced the project and identified locations at which the BER could be reviewed. No comments were received. Copies of the BER and FONSI are available for review at, or can be obtained from REA at the address provided herein or obtained from the offices of Pacific Northwest Generating Cooperative, 771 Northeast Halsey Street, Suite 200, Portland, Oregon 97232–1288, during normal business hours.

Dated: October 9, 1994.

Adam M. Golodner,

Deputy Administrator—Program Operations.

[FR Doc. 94–25467 Filed 10–13–94; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Institute of Standards and Technology (NIST).

Title: Advance Technology Program Application.

Agency Form Numbers: NIST–1262 and NIST–1263.

OMB Approval Number: 0693–0009.

Type of Request: Revision of a currently approved collection.

Burden: 30,000 hours.

Number of Respondents: 1,000.

Avg Hours Per Response: 30.

Needs and Uses: NIST has established the Advanced Technology Program to accelerate the commercialization of technological innovations and refinement of manufacturing technologies by U.S. businesses. The information requested is necessary to assure a fair and equitable process to evaluate and fund proposals submitted to the program.

Affected Public: Businesses, federal agencies, small businesses, non–profit institutions, state or local governments.

Frequency: On occasion — one–time only per application.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Virginia Hughes, (202) 395–3785.

Copies of the above information collection proposal can be obtained by calling or writing Gerald Tache, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent to Virginia Hughes, OMB Desk Officer, Room 10236, New Executive Office Building, Washington, D.C. 20503.

Dated: October 7, 1994.

Gerald Tache,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 94–25395 Filed 10–13–94; 8:45 am]

BILLING CODE 3510–CW–F

Minority Business Development Agency

Business Development Center Applications: Sacramento, California

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625 and 15 U.S.C. 1512, the Minority Business Development Agency (MBDA) is soliciting competitive applications for its Sacramento, California Minority Business Development Center (MBDC).

The purpose of the MBDC Program is to provide business development services to the minority business community to help establish and maintain viable minority businesses. To the end, MBDA funds organizations to identify and coordinate public and private sector resources on behalf of minority individuals and firms; to offer a full range of client services to minority entrepreneurs; and to serve as a conduit of information and assistance regarding minority business. The MBDC will provide service in the Sacramento, California Metropolitan Area. The award number of the MBDC will be 09–10–95007–01.

DATES: The closing date for applications is November 17, 1994. Applications must be received in the San Francisco Regional Office on or before November 17, 1994. A pre-application conference will be held on November 1, 1994, at 10:00 a.m., at Caltrans, 1120 "N" Street, Room 6510, Sacramento, California.

ADDRESSES: U.S. Department of Commerce, Minority Business Development Agency, San Francisco Regional Office, 221 Main Street, Room 1280, San Francisco, California 94105.

FOR FURTHER INFORMATION CONTACT: Steve Saho at (415) 744–3001.

SUPPLEMENTARY INFORMATION: Contingent upon the availability of Federal funds, the cost of performance for the first budget period (12 months) from March 1, 1995 to February 29, 1996, is estimated at $222,196. The total Federal amount is $188,867 and is composed of $184,260 plus the Audit Fee amount of $4,607. The application must include a minimum cost share 15% $33,329 in non-federal (cost-sharing) contributions for a total project cost of $222,196. Cost-sharing contributions may be in the form of cash, client fees, third party in-kind contributions, non-cash applicant contributions or combinations thereof.

The funding instrument for this project will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

Applications will be evaluated on the following criteria: the knowledge, background and/or capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (45 points), the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (25 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to each evaluation criteria category to be considered programmatically acceptable and responsive. Those applications determined to be acceptable and responsive will then be evaluated by the Director of MBDA. Final award selections shall be based on the number of points received, the demonstrated responsibility of the applicant, and the determination of those most likely to further the purpose of the MBDA program. Negative audit findings and recommendations and unsatisfactory performance under prior Federal awards may result in an application not being considered for award. The applicant with the highest point score will not necessarily receive the award. Periodic reviews culminating in year-to-date evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the total discretion of MBDA based on such factors as the MBDC's performance, the availability of funds and Agency priorities.

The MBDC shall be required to contribute at least 15% of the total project cost through non-Federal

contributions. To assist in this effort, the MBDC may charge client fees for services rendered. Fees may range from $10 to $60 per hour based on the gross receipts of the client's business.

Anticipated processing time of this award is 120 days. Executive order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. Federal funds for this project include audit funds for non-CPA recipients. In event that a CPA firm wins the competition, the funds allocated for audits are not applicable. Questions concerning the preceding information can be answered by the contact person indicated above, and copies of application kits and applicable regulations can be obtained at the above address. The collection of information requirements for this project have been approved by the Office of Management and Budget (OMB) and assigned OMB control number 0640–0006.

Awards under this program shall be subject to all Federal laws, and Federal and Departmental regulations, policies, and procedures applicable to Federal financial assistance awards.

Pre-Award Costs—Applicants are hereby notified that if they incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that an applicant may have received, there is no obligation on the part of the Department of Commerce to cover pre-award costs.

Outstanding Account Receivable—No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, repayment schedule is established and at least one payment is received, or other arrangements satisfactory to the Department of Commerce are made.

Name Check Policy—All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury or other matters which significantly reflect on the applicant's management honesty or financial integrity.

Award Termination—The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the award recipient has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are failure to meet cost-sharing requirements; unsatisfactory performance of the MBDC work requirements; and reporting inaccurate or inflated claims of client assistance. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

False Statements—A false statement on an application for Federal financial assistance is grounds for denial or termination of funds, and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Primary Applicant Certifications—All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying."

Nonprocurement Debarment and Suspension—Prospective participants (as defined at 15 CFR Part 26, Section 105) are subject to 15 CFR Part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies.

Drug Free Workplace—Grantees (as defined at 15 CFR Part 26, Section 605) are subject to 15 CFR Part 26, Subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies.

Anti-Lobbying—Persons (as defined at 15 CFR Part 28, Section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000.

Anti-Lobbying Disclosures—Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR Part 28, Appendix B.

Lower Tier Certifications—Recipients shall require applications/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

Buy American-Made Equipment or Products—Applicants are hereby notified that they are encouraged, to the extent feasible, to purchase American-made equipment and products with funding provided under this program in accordance with Congressional intent as set forth in the resolution contained in Public Law 103–121, Sections 606 (a) and (b).

(Catalog of Federal Domestic Assistance) 11.800 Minority Business Development Center.

Dated: October 7, 1994.

Donald L. Powers,

Federal Register Liaison Officer, Minority Business Development Agency.

[FR Doc. 94–25420 Filed 10–13–94; 8:45 am]

BILLING CODE 3510–21–P–M

Business Development Center Applications: Queens, New York

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625 and 15 U.S.C. 1512, the Minority Business Development Agency (MBDA) is soliciting competitive applications for its Queens, New York Minority Business Development Center (MBDC). The purpose of the MBDC Program is to provide business development services to the minority business community to help establish and maintain viable minority businesses. To this end, MBDA funds organizations to identify and coordinate public and private sector resources on behalf of minority individuals and firms; to offer a full range of client services to minority entrepreneurs; and to serve as a conduit of information and assistance regarding minority business. The MBDC will provide service in the Queens, New York Metropolitan Area. The award number of the MBDC will be 02–10–95004–01.

DATES: The closing date for applications is December 5, 1994. Applications must be received in the New York Regional Office on or before December 5, 1994.

ADDRESSES: U.S. Department of Commerce, Minority Business Development Agency, New York Regional Office, 26 Federal Plaza, Room 3720, New York, New York 10278.

FOR FURTHER INFORMATION CONTACT: William Fuller at (212) 264–3262.

SUPPLEMENTARY INFORMATION: Contingent upon the availability of

Federal funds, the cost of performance for the first budget period (12 months) from April 1, 1995 to March 31, 1996, is estimated at $226,705. The total Federal amount of $192,700 and is composed of $188,000 plus the Audit Fee amount of $4,700. The application must include a minimum cost share 15% $34,005 in non-federal (cost sharing) contributions for a total project cost of $226,705. Cost-sharing contributions may be in the form of cash, client fees, third party in-kind contributions, non-cash applicant contributions or combinations thereof.

The funding instrument for this project will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

Applications will be evaluated on the following criteria: the knowledge, background and/or capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (45 points), the resources available to the firm in providing business development service (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (25 points). An application must receive at least 70% of the points assigned to each evaluation criteria category to be considered programmatically acceptable and responsive. Those applications determined to be acceptable and responsive will then be evaluated by the Director of MBDA. Final award selections shall be based on the number of points received, the demonstrated responsibility of the applicant, and the determination of those most likely to further the purpose of the MBDA program. Negative audit findings and recommendations and unsatisfactory performance under prior Federal awards may result in an application not being considered for award. The applicant with the highest point score will not necessarily receive the award.

The MBDC shall be required to contribute at least 15% of the total project cost through non-Federal contributions. To assist in this effort, the MBDC may charge client fees for services rendered. Fees may range from $10 to $60 per hour based on the gross receipts of the client's business.

Periodic reviews culminating in year-to-date evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the total discretion of MBDA based on such factors as the MBDC's performance, the availability of funds and Agency priorities.

Anticipated processing time of this award is 120 days. Executive order 12372, "Intergovernmental Review of Federal Programs", is not applicable to this program. Federal funds for this project include audit funds for non-CPA recipients. In the event that a CPA firm wins the competition, the funds allocated for audits are not applicable. Questions concerning the preceding information can be answered by the contact person indicated above, and copies of application kits and applicable regulations can be obtained at the above address. The collection of information and requirements for this project have been approved by the Office of Management and Budget (OMB) and assigned OMB control number 0640–0006.

Pre-Award Costs—Applicants are hereby notified that if they incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that an applicant may have received, there is no obligation on the part of the Department of Commerce to cover pre-award costs.

Awards under this program shall be subject to all Federal laws, and Federal and Departmental regulations, policies, and procedures applicable to Federal financial assistance awards.

Outstanding Account Receivable—No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, repayment schedule is established and at least one payment is received, or other arrangements satisfactory to the Department of Commerce are made.

Name Check Policy—All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury or other matters which significantly reflect on the applicant's management honesty or financial integrity.

Award Termination—The Department Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the award recipient has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are failure to meet cost-sharing requirements; unsatisfactory performance of the MBDC work requirements; and reporting inaccurate or inflated claims of client assistance. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

False Statements—A false statement on an application for Federal financial assistance is grounds for denial or termination of funds, and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Primary Applicant Certifications—All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying."

Nonprocurement Debarment and Suspension—Prospective participants (as defined at 15 CFR Part 26, Section 105) are subject to 15 CFR Part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies.

Drug Free Workplace—Grantees (as defined at 15 CFR Part 26, Section 605) are subject to 15 CFR Part 26, Subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies.

Anti-Lobbying—Persons (as defined at 15 CFR Part 28, Section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000.

Anti-Lobbying Disclosures—Any applicant that has paid or will pay for lobbying using any funds must submit an SF-LLL, "Disclosure of Lobbying Activities," as required under 15 CFR Part 28, Appendix B.

Lower Tier Certifications—Recipients shall require applications/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions and Lobbying" and disclosure form, SF-LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF-LLL submitted by any tier recipient or

subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

Buy American Made Equipment or Products—Applicants are hereby notified that they are encouraged, to the extent feasible, to purchase American-made equipment and products with funding provided under this program in accordance with Congressional intent as set forth in the resolution contained in Public Law 103–121, Sections 606 (a) and (b).

(Catalog of Federal Domestic Assistance) 11.800 Minority Business Development Center.

Dated: October 7, 1994.

Donald L. Powers,

Federal Register Liaison Officer, Minority Business Development Agency.

[FR Doc. 94–25419 Filed 10–13–94; 8:45 am]

BILLING CODE 3510–21–P–M

Business Development Center Applications: Williamsburg, Brooklyn, New York

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625 and 15 U.S.C. 1512, the Minority Business Development Agency (MBDA) is soliciting competitive applications for its Williamsburg, Brooklyn, New York Minority Business Development Center (MBDC). The purpose of the MBDC Program is to provide business development services to the minority business community to help establish and maintain viable minority businesses. To this end, MBDA funds organizations to identify and coordinate public and private sector resources on behalf of minority individuals and firms; to offer a full range of client services to minority entrepreneurs; and to serve as a conduit of information and assistance regarding minority business. The MBDC will provide service in the Williamsburg, Brooklyn, New York Metropolitan Area. This project will focus on assisting the minority community in general, and specifically the Hasidic Community of Williamsburg. The award number of the MBDC will be 02–10–95005–01.

DATES: The closing date for applications is December 5, 1994. Applications must be received in the New York Regional Office on or before December 5, 1994.

ADDRESSES: U.S. Department of Commerce, Minority Business Development Agency, New York Regional Office, 26 Federal Plaza, Room 3720, New York, New York 10278.

FOR FURTHER INFORMATION CONTACT: William Fuller at (212) 264–3262.

SUPPLEMENTARY INFORMATION: Contingent upon the availability of Federal funds, the cost of performance for the first budget period (12 months) from April 1, 1995 to March 31, 1996, is estimated at $385,882. The total Federal amount is $328,000 and is composed of $320,000 plus the Audit Fee amount of $8,000. The application must include a minimum cost share 15% $57,882 in non-federal (cost sharing) contributions for a total project cost of $385,882. Cost-sharing contributions may be in the form of cash, client fees, third party in-kind contributions, non-cash applicant contributions or combinations thereof.

The funding instrument for this project will be a cooperative agreement. Competition is open to individuals, non-profit organizations, state and local governments, American Indian tribes and educational institutions.

Applications will be evaluated on the following criteria: the knowledge, background and/or capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (45 points), the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (25 points). An application must receive at least 70% of the points assigned to each evaluation criteria category to be considered programmatically acceptable and responsive. Those applications determined to be acceptable and responsive will then be evaluated by the Director of MBDA. Final award selections shall be based on the number of points received, the demonstrated responsibility of the applicant, and the determination of those most likely to further the purpose of the MBDA program. Negative audit findings and recommendations and unsatisfactory performance under prior Federal awards may result in an application not being considered for award. The applicant with the highest point score will not necessarily receive the award.

The MBDC shall be required to contribute at least 15% of the total project cost through non-Federal contributions. To assist in this effort, the MBDC may charge client fees for services rendered. Fees may range from $10 to $60 per hour based on the gross receipts of the client's business.

Periodic reviews culminating in year-to-date evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the total discretion of MBDA based on such factors as the MBDC's performance, the availability of funds and Agency priorities.

Anticipated processing time of this award is 120 days. Executive order 12372, "Intergovernmental Review of Federal Programs", is not applicable to this program. Federal funds for this project include audit funds for non-CPA recipients. In the event that a CPA firm wins the competition, the funds allocated for audits are not applicable. Questions concerning the preceding information can be answered by the contact person indicated above, and copies of application kits and applicable regulations can be obtained at the above address. The collection of information and requirements for this project have been approved by the Office of Management and Budget (OMB) and assigned OMB control number 0640–0006.

Pre-Award Costs—Applicants are hereby notified that if they incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that an applicant may have received, there is no obligation on the part of the Department of Commerce to cover pre-award costs.

Awards under this program shall be subject to all Federal laws, and Federal and Departmental regulations, policies, and procedures applicable to Federal financial assistance awards.

Outstanding Account Receivable—No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, repayment schedule is established and at least one payment is received, or other arrangements satisfactory to the Department of Commerce are made.

Name Check Policy—All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury or other matters which significantly reflect on the applicant's management honesty or financial integrity.

Award Termination—The Departmental Grants Officer may terminate any grant/cooperative

agreement in whole or in part at any time before the date of completion whenever it is determined that the award recipient has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are failure to meet cost-sharing requirements; unsatisfactory performance of the MBDC work requirements; and reporting inaccurate or inflated claims of client assistance. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

False Statements—A false statement on an application for Federal financial assistance is grounds for denial or termination of funds, and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Primary Applicant Certifications—All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying."

Nonprocurement Debarment and Suspension—Prospective participants (as defined at 15 CFR Part 26, Section 105) are subject to 15 CFR Part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies.

Drug Free Workplace—Grantees (as defined at 15 CFR Part 26, Section 605) are subject to 15 CFR Part 26, Subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies.

Anti-Lobbying—Persons (as defined at 15 CFR Part 28, Section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000.

Anti-Lobbying Disclosures—Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR Part 28, Appendix B.

Lower Tier Certifications—Recipients shall require applications/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

Buy American Made Equipment or Products—Applicants are hereby notified that they are encouraged, to the extent feasible, to purchase American-made equipment and products with funding provided under this program in accordance with Congressional intent as set forth in the resolution contained in Public Law 103–121, Sections 606 (a) and (b).

(Catalog of Federal Domestic Assistance) 11.800 Minority Business Development Center.

Dated: October 7, 1994.

Donald L. Powers,

Federal Register Liaison Officer, Minority Business Development Agency.

[FR Doc. 94–25418 Filed 10–13–94; 8:45 am]

BILLING CODE 3510–21–P–M

National Oceanic and Atmospheric Administration

Intent To Conduct a Public Meeting on the Preparation of a Draft Environmental Impact Statement for the Proposed St. Lawrence River National Estuarine Research Reserve, New York

AGENCY: National Oceanic and Atmospheric Administration, National Ocean Service, Office of Ocean and Coastal Resource Management.

ACTION: Notice of public meetings and intent to prepare a Draft Environmental Impact Statement.

SUMMARY: In accordance with section 315 of the Coastal Zone Management Act of 1972, as amended, the State of New York and the National Oceanic and Atmospheric Administration (NOAA) intend to a conduct public scoping meeting to present a preliminary draft management plan outline for the proposed St. Lawrence River Bay National Estuarine Research Reserve and to solicit comments on significant issues related to the preparation of a Draft Environmental Impact Statement (DEIS) and Draft Management Plan (DMP). The DEIS and DMP will address research, monitoring, education and resource protection needs for the Reserve.

In August 1944, NOAA approved the nomination of St. Lawrence River in New York as a proposed research reserve. Research reserves provide natural coastal habitats as field laboratories for baseline ecological studies and education program. Research and monitoring programs are designed to enhance basic scientific understanding of the coastal environment and aid in resource management decision making.

The New York State St. Lawrence-East Ontario Commission (NYSLEOC) has been identified by the Governor as the responsible agency to develop a draft management plan for the proposed reserve. The draft plan will identify specific needs and priorities related to research, monitoring, education, and resource protection at the approved site. It will also contain a five-year administration plan and budget as well as a discussion of volunteer programs, public access, visitor use policies, and facilities development needs.

At the public meeting, NYSLEOC and NOAA will provide a synopsis of the process for developing a DMP and will solicit comments on significant environmental issues that will be incorporated into a DEIS.

The public meeting will be held at 6 p.m. Thursday, November 3, 1994, in the Massena Town Hall, located on Main Street in Massena, New York 13662.

Interested parties who wish to submit suggestions, comments or substantive information regarding the scope or content of the proposed DEIS/DMP are invited to attend the above meeting. Parties who wish to respond in writing should do so by December 5, 1994, to Ms. Doris Grimm, Program Specialist, Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, NOAA, SSMC4, Station 12609, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Ms. Doris Grimm, Program Specialist, Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, NOAA, SSMC4, 12609, Silver Spring, MD 20910, (Telephone 301/713–3132x118).

Federal Domestic Assistance Catalog Number 11.420 (Coastal Zone Management) Research Reserves

W. Stanley Wilson,

Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 94–25445 Filed 10–13–94; 8:45 am]

BILLING CODE 3510–08–M

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 a commodity and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: November 14, 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 August 5, 1994, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (59 F.R. 40010) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodity and service, fair market price, and impact of the additions on the current or most recent contractors, the Committee has determined that the commodity and service 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 and service to the Government.

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

3. The action will result in authorizing small entities to furnish the commodity and service 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 and service proposed for addition to the Procurement List. Accordingly, the following commodity and service are hereby added to the Procurement List:

Commodity

Napkin, Table, Paper
8540–00–965–4691

Service

Janitorial/Custodial
Federal Building
Wilkes-Barre, Pennsylvania

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. 94–25514 Filed 10–13–94; 8:45 am]

BILLING CODE 6820–33–P

Procurement List; Proposed Additions and Deletions

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

ACTION: Proposed additions to and deletions from Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete commodities previously furnished by such agencies.

COMMENTS MUST BE RECEIVED ON OR BEFORE: November 14, 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.

Additions

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and 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 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.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information. The following commodities and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodities

Fax Transmittal Memo Pad
7540–01–317–7368
NPA: Association for the Blind & Visually Impaired of Greater Rochester, Rochester, New York

Box, Storage, Magnetic Tape
8115–00–432–6729
8115–00–432–6730
NPA: Mid-Iowa Workshops, Inc. Marshalltown, Iowa

Services

Facilities Services Support
Missoula Fire Technology Center
(excluding International Fire Sciences Laboratory)
Highway 10
Missoula, Montana
NPA: Opportunity Resources, Inc. Missoula, Montana

Patient Escort Service
Veterans Administration Hospital
Houston, Texas
NPA: Center for the Retarded, Inc. Houston, Texas

Toner Cartridge Remanufacturing
Wright-Patterson Air Force Base, Ohio
NPA: Kentucky Industries for the Blind Louisville, Kentucky

Deletions

The following commodities have been proposed for deletion from the Procurement List:

Pallet Cover
3990–00–930–1481
Tray, Desk
7520–00–286–5801
7520–00–285–5043
Slacks, Utility, Woman's
8410–01–074–7874
8410–01–074–6198
8410–01–074–6197
8410–01–074–6196
8410–01–074–7004
8410–01–074–6200
8410–01–074–7872
8410–01–074–7871
8410–01–074–6195
8410–01–074–7869
8410–01–074–7870
8410–01–074–7873
8410–01–074–7868
8410–01–074–6193
8410–01–074–7003
8410–01–074–6199
8410–01–074–6194

Beverly L. Milkman,

Executive Director.

[FR Doc. 94–25515 Filed 10–13–94; 8:45 am]

BILLING CODE 6820–33–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Tenders of Service—Air Freight Forwarders

Headquarters Air Mobility Command (AMC), as the Department of Defense (DOD) single face to the air industry, will implement the United States Transportation Command policy requiring the use of Civil Reserve Air Fleet (CRAF) carriers for transportation of DOD air freight by air freight forwarders. A list of qualified CRAF carriers is available from HQ AMC/DOJT, 100 Heritage Drive, Room 102, Scott AFB IL 62225–5002.

HQ AMC/DOJT is the DOD office responsible for acceptance and approval of tenders of service for CONUS-only cargo; international direct procurement method air movement; and solicited international tenders from air freight forwarders.

Domestic air freight tenders are limited to providing services within the continental United States, excluding Alaska, Hawaii, and Puerto Rico. Current DOD policy concerning international air freight forwarders will not change. That is—AMC will continue to solicit, accept, and approve air freight forwarders' Tenders of Service (TOS) when CRAF carriers cannot meet DOD requirements. Unsolicited voluntary tenders for international freight traffic or domestic tenders that include offshore points will be returned without action.

For further information contact Mr. Bob Shannon (618) 256–5890.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 94–25449 Filed 10–13–94; 8:45 am]

BILLING CODE 3910–01–P

Community College of the Air Force Meeting

The Community College of the Air Force (CCAF) Board of Visitors will hold a meeting on Thursday, 18 November 1994 at 8:30 a.m. in the Sheppard Air Force Base Officer's Club, Sheppard Air Force Base, Texas. The meeting will be open to the public.

The purpose of the meeting is to review and discuss academic policies and issues relative to the operation of the CCAF. Agenda items include a CCAF mission briefing, faculty credentials, and reaffirmation of the CCAF.

For further information contact First Lieutenant Kyle Monson, (205) 953–2703, Community College of the Air Force, Maxwell Air Force Base, Alabama 36112–6653.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 94–25448 Filed 10–13–94; 8:45 am]

BILLING CODE 3910–01–P

Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for a Proposed Storm Damage Reduction and Beach Erosion Control Project at Dewey Beach and Rehoboth Beach, Sussex County, Delaware

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

ACTION: Notice of intent.

SUMMARY: The action being taken is an evaluation of the alternatives for storm damage reduction and the control of further erosion at Dewey Beach and Rehoboth Beach, Delaware. The purpose of any consequent work would be to provide shore property protection and to stabilize the shoreline at a predetermined width.

ADDRESSES: U.S. Army Corps of Engineers, Philadelphia District, Wanamaker Building, 100 Penn Square East, Philadelphia, PA 19107–3390.

FOR FURTHER INFORMATION CONTACT: Mr. Steve Allen, (215) 656–6559.

SUPPLEMENTARY INFORMATION:

1. Proposed Action

a. The proposed document evaluates a study area approximately 2.5 miles in length and includes the land between Henlopen Acres and North Indian Beach. This area is subject to daily and storm wave action which creates severe beach erosion problems. A potential offshore and sand borrow source in the vicinity of Hen and Chickens Shoal will be investigated in this study.

b. The authority for the proposed project is the resolution adopted by the U.S. Senate Committee on Environment and Public Works dated 23 June 1988.

2. Alternatives

In addition to the no action alternative, the alternatives considered for storm damage reduction and erosion control will fall into structural and non-structural categories. The structural measures to correct the beach erosion include bulkheads, seawalls, revetments, offshore breakwaters, groins, beach restoration/nourishment, and beach sills. Non-structural measures are flood insurance, development regulations, and land acquisition.

3. Scoping

a. Numerous studies and reports addressing beach erosion along the Delaware Coast were conducted by the Corps of Engineers. The most recent study is a Reconnaissance Report: Delaware Coast From Cape Henlopen to Fenwick Island (September 1991), which had identified a number of problem areas where erosion was negatively impacting the adjacent shorelines. This study identified the Dewey-Rehoboth Beach as one of the primary areas to be recommended for further study in the feasibility phase.

b. The scoping process is on-going and has involved preliminary coordination with Federal, State, and local agencies. Participation of the general public and other interested parties and organizations will be invited by means of a public notice. Based on the input of these agencies and the interested public, a decision to have a formal scoping meeting will be made.

c. The significant issues and concerns that have been identified include the impacts of the project on aquatic biota, water quality, intertidal habitat, shallow water habitat, cultural resources, and economics.

4. Availability

It is estimated the DEIS will be made available to the public in December 1995.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 94–25453 Filed 10–13–94; 8:45 am]

BILLING CODE 3710–GR–M

Intent To Prepare a Supplemental Environmental Impact Statement (SEIS) for Aquatic Plant Management at Lake Seminole, Florida-Georgia-Alabama

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

ACTION: Notice of intent.

SUMMARY: The Mobile District, U.S. Army Corps of Engineers intends to prepare a Supplemental Environmental Impact Statement (SEIS), in conjunction with a Supplement to the Master Plan for Aquatic Plant Management at Lake Seminole, Florida-Georgia-Alabama. Aquatic plants, particularly hydrilla, are causing significant water resource problems at the lake, covering about 75 percent of the surface area. The Mobile District will evaluate the aquatic plant problems at Lake Seminole, determine achievable levels of control, develop and evaluate alternatives for long-term aquatic plant control at the lake, and recommend an environmentally and economically sound plan.

ADDRESSES: U.S. Army Corps of Engineers, Mobile District, Inland Environment Section, P.O. Box 2288, Mobile, Alabama 36628–0001.

FOR FURTHER INFORMATION CONTACT: Mr. Michael J. Eubanks, (205) 694–3861.

SUPPLEMENTARY INFORMATION: The Jim Woodruff Lock and Dam and Lake Seminole were authorized by Congress in the River and Harbor Act of 1946 for the primary purposes of navigation and hydropower and construction was completed in 1957. Other project purposes include public recreation, regulation of stream flow, water quality, and fish and wildlife conservation. Since impoundment of this 37,500-acre Corps lake, aquatic plants (particularly hydrilla) have grown to problem levels. The aquatic plant management at Lake Seminole has been discussed in two environmental impact statements (EIS's) prepared by the Corps:

1. Final EIS for Lake Seminole and Jim Woodruff Lock and Dam (Operation and Maintenance), Alabama, Florida, and Georgia, filed with Council on Environmental Quality on April 16, 1976, and,

2. Final EIS for the Aquatic Plant Control Program—Mobile District, filed with the Council on Environmental Quality on October 16, 1978.

However, the level of aquatic plant coverage at the lake has increased from approximately 21 percent at the time these EIS's were prepared to the current estimated 75 percent. This increase in aquatic plants is causing significant adverse impacts on small boat navigation interference, water quality degradation, fish and wildlife habitat degradation, recreation area use interference (e.g., swimming beaches and boat ramps), increased shoreline extension into the lake by trapping sediments, increased mosquito production, hydropower intake structure blockage, and a decrease in lakeshore property values. A number of aquatic plant management techniques have been utilized since project construction, including chemical (herbicides), biological, and mechanical. Herbicidal control applications have been the most effective technique demonstrated to date; however, these repetitive applications are costly (annual herbicidal program expenditures are approximately $750,000. Two potential aquatic plant management techniques which have not been utilized to date at Lake Seminole: water level fluctuation (drawdown) and stocking of the triploid (sterile) grass carp, have been discussed for many years by the Corps, federal and state agencies, and the public. However, a number of technical concerns about these methods remain resolved. Therefore, no consensus has been reached regarding the viability of their use on Lake Seminole.

Proposed Action and Alternatives

The Mobile District will formulate and evaluate alternatives to address long-term aquatic plant management on the lake including all reasonable chemical, biological, and mechanical methods, as well as considering various combinations. The no action alternative evaluation will include two options:

1. Continuation of the "status quo" aquatic plant control activities, and

2. Cessation of all aquatic plant control activities.

Scoping

The Mobile District will conduct public scoping meetings at various locations around Lake Seminole. Copies of a draft Plan of Study were mailed for review to appropriate federal and state agencies on September 6, 1994, and an interagency meeting was conducted at Lake Seminole on September 15, 1994. As soon as dates and locations of the public scoping meetings have been established, they will be published in local newspapers which serve the population near Lake Seminole. The purpose of the meetings will be to gather information from the public about the issues they would like to see addressed in the SEIS. Comments may be made orally or in writing at the meetings, or they may be sent to the Mobile District at the address listed above. Potentially significant issues that will be analyzed in depth in the SEIS include environmental and economic impacts of various aquatic plant management alternatives (e.g., grass carp and drawdown) on fishery, waterfowl, water quality, endangered and threatened species, and wetland resources. The evaluation will not only consider potential direct effects of these options on Lake Seminole, but also the potential effects on upstream and downstream resources.

Environmental Review and Consultation Requirements

Coordination with the U.S. Fish and Wildlife Service will be accomplished in compliance with Section 7 of the Endangered Species Act. Evaluation of the potential use of grass carp will be coordinated with the Florida Game and Fresh Water Fish Commission, Georgia Department of Natural Resources, and Alabama Department of Conservation and Natural Resources. Coordination required by other laws and regulations will also be conducted.

SEIS Preparation

The Mobile District estimates that the draft SEIS will be available for public view in February 1996.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 94–25452 Filed 10–13–94; 8:45 am]

BILLING CODE 3710–CR–M

Termination of the Preparation of a Draft Environmental Impact Statement Supplement (DEIS, No. 4), Red River Waterway, Louisiana, Texas, Arkansas, and Oklahoma and Related Projects, Shreveport, Louisiana to Daingerfield, Texas, Re-Evaluation

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

ACTION: Notice of termination to prepare a DEIS.

SUMMARY: In 1991, the Vicksburg District, initiated preparation of a DEIS Supplement for the proposed extension of the Red River Waterway Navigation Project from Shreveport Louisiana, to Daingerfield, Texas. In accordance with the Council on Environmental Quality's Final Regulations for the Implementation of Procedural Provisions of the National Environmental Policy Act (40 CFR Parts 1500–1508), a Notice of Intent was published in the **Federal Register**, 56 FR 4210, February 22, 1991. The preliminary evaluation of the alternative plans for the Shreveport to Daingerfield Research of the Waterway Project

indicated the extension of navigation was not economically feasible and significant adverse environmental consequences could occur. The Corps recommendation to terminate the re-evaluation study was approved and the Shreveport, Louisiana, to Daingerfield, Texas, component of the Red River Waterway Project has been classified as inactive. The preparation of a DEIS Supplement is no longer required pursuant to the National Environmental Policy Act. Therefore, related EIS studies have been terminated, and the Notice of Intent is hereby withdrawn.

ADDRESSES: U.S. Army Corps of Engineers, Vicksburg District, 2101 North Frontage Road, Vicksburg, Mississippi 39180–5191.

FOR FURTHER INFORMATION CONTACT: Ms. Maryetta L. Smith, (601) 631–5433.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 94–25451 Filed 10–13–94; 8:45 am]

BILLING CODE 3710–PU–M

Executive Session of the Chief of Engineers Environmental Advisory Board

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

ACTION: Notice of open meeting.

SUMMARY: In accordance with section 10(a)(2) of Public Law 92–463, The Federal Advisory Committee Act, this announces the forthcoming Executive Session of the Chief of Engineers Environmental Advisory Board.

DATES: October 27, 1994.

TIME: 9 a.m.–3 p.m.

ADDRESSES: Headquarters, U.S. Army Corps of Engineers, Room 8228, 20 Massachusetts Avenue NW., Washington, D.C. 20314–1000.

FOR FURTHER INFORMATION CONTACT: Mr. Paul D. Rubenstein, Office of Environmental Policy, U.S. Army Corps of Engineers, Washington, D.C. 20314–1000, Phone: (202) 272–8731.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 94–25450 Filed 10–13–94; 8:45 am]

BILLING CODE 3710–92–M

DEPARTMENT OF EDUCATION

President's Board of Advisors on Historically Black Colleges and Universities; Notice of Meeting

AGENCY: President's Board of Advisors on Historically Black Colleges and Universities, Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and agenda of the Strategic Planning Task Force of the President's Board of Advisors on Historically Black Colleges and Universities. This notice also describes the functions of the Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act.

DATE AND TIME: October 31, 1994, from 12:00 p.m. to 5:00 p.m. and November 1, 1994, from 9:00 a.m. to 5:00 p.m.

ADDRESSES: The Chestnut Library, J.C. Jones Board of Trustees Room, Fayetteville State University, 1200 Murchinson Road, Fayettevile, North Carolina, 28301–4298.

FOR FURTHER INFORMATION CONTACT: Catherine W. LeBlanc, Executive Director, White House Initiative on Historically Black Colleges and Universities, U.S. Department of Education, 7th and D Streets, SW, Washington, DC 20202–5120. Telephone: (202) 708–8667.

SUPPLEMENTARY INFORMATION: The President's Board of Advisors on Historically Black Colleges and Universities is established under Executive Order 12876 of November 1, 1993. The Board is established to advise on the financial stability of Historically Black Colleges and Universities, to issue an annual report to the President on HBCU participation in Federal programs, and to advise the Secretary of Education on increasing the private sector role in strengthening HBCUs.

The meeting of the Strategic Planning Task Force is open to the public. The following items will be included on the agenda: educational policy issues, kindergarten through high school linkages, and private sector involvement with historically black college and universities.

Records are kept of all Board proceedings, and are available for public inspection at the White House Initiative on Historically Black Colleges and Universities at 7th and D streets SW, Room 3682, Washington, DC 20202, from the hours of 8:30 a.m. to 5:00 p.m.

Dated: October 11, 1994.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 94–25510 Filed 10–13–94; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2426–063; California]

California Department of Water Resources; Availability of Environmental Assessment

October 7, 1994.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR part 380 (Order 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed an application to amend the license for the California Aqueduct Hydroelectric Project. The application, for Commission approval, is to build a new water intake tower in Silverwood Lake, part of the California Aqueduct, in San Bernardino County, California. The Commission prepared an Environmental Assessment (EA) for the application. In the EA, Commission staff concludes that approval of the application would not constitute a major Federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 3104, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC. 20426.

Please submit any comments within 25 days from the day of this notice. Any comments, conclusions, or recommendations that draw upon studies, reports, or other working papers of substance should be supported by appropriate documentation.

Comments should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC. 20426. Please affix Project No. 2426–063 to all comments. For further information, please contact Steve Hocking at (202) 219–2656.

Lois D. Cashell,

Secretary.

[FR Doc. 94–25430 Filed 10–13–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–43–000]

ANR Pipeline Company; Informal Settlement Conference

October 7, 1994.

Take notice that an informal settlement conference will be convened in this proceeding on Tuesday, November 1, 1994, at 10:00 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street, N.E.,

Washington, D.C., for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, please contact William J. Collins (202) 208–0248 or Warren C. Wood (202) 208–2091.

Lois D. Cashell,

Secretary.

[FR Doc. 94–25431 Filed 10–13–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–96–000, et al.]

CNG Transmission Corporation; Informal Settlement Conference

October 7, 1994.

Take notice that an informal settlement conference will be convened in this proceeding on October 13, 1994, at 1:00 p.m. at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE, Washington, DC, for the purpose of exploring the possible settlement of the above-referenced dockets.

Any part, as defined by 18 CFR 385.201(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's Regulations (18 CFR 385.214).

For additional information, please contact David R. Cain at (202) 208–0917 or Neil L. Levy at (202) 208–5705.

Lois D. Cashell,

Secretary.

[FR Doc. 94–25432 Filed 10–13–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–421–001]

National Fuel Gas Supply Corporation; Tariff Filing

October 7, 1994.

Take notice that on October 4, 1994, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Fourth Revised Sheet No. 236, with a proposed effective date of November 1, 1994.

National states that this sheet was inadvertently omitted from its General Rate Filing made on September 30, 1994.

National further states that copies of this filing were served upon the company's jurisdictional customers and the Regulatory Commission's of the States of New York, Ohio, Pennsylvania, Delaware, Massachusetts, and New Jersey.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protest should be filed on or before October 7, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–25433 Filed 10–13–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–220–000]

Northwest Pipeline Corporation; Informal Settlement Conference

October 7, 1994.

Take notice that an informal settlement conference will be convened in the above-captioned proceeding at 10 a.m. on October 25, 1994, at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE, Washington, D.C., for the purpose of exploring the possible settlement of the above-referenced dockets.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214) prior to attending.

For additional information please contact Michael D. Cotleur, (202) 208–1076, or Donald Williams (202) 208–0743.

Lois D. Cashell,

Secretary.

[FR Doc. 94–25434 Filed 10–13–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–105–000, Phase 2]

Ozark Gas Transmission System; Informal Settlement Conferences

October 7, 1994.

Take notice that an informal settlement conference will be convened in the above-captioned proceeding at 1 p.m. on October 27, 1994, resuming on November 16, 1994, at 10 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street NE., Washington, D.C., for the purpose of exploring the possible settlement of the above-referenced dockets.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, please contact Michael D. Cotleur, (202) 208–1076 or Russell B. Mamone (202) 208–0744.

Lois D. Cashell,

Secretary.

[FR Doc. 94–25435 Filed 10–13–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM95–2–29–000]

Transcontinental Gas Pipe Line Corporation; Proposed Changes in FERC Gas Tariff

October 7, 1994.

Take notice that on October 4, 1994, Transcontinental Gas Pipe Line Corporation (TGPL) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, First Revised Sixteenth Revised Sixth Revised Sheet No. 28 and Substitute Seventeenth Revised Sixth Revised Sheet No. 28 to which tariff sheets are proposed to be effective on August 1, 1994 and November 1, 1994, respectively.

TGPL states that the purpose of the instant filing is to track a rate change attributable to storage service purchased from Texas Eastern Transmission Corporation (TETCO) under its Rate Schedule X–28 the costs of which are included in the rates and charges payable under TGPL's Rate Schedule S–2. The tracking filing is being made pursuant to Section 26 of the General Terms and Conditions of Volume No. 1 of TGPL's FERC Gas Tariff.

TGPL states that included in Appendix A attached to the filing is an explanation of the rate change and details regarding the computation of the revised S–2 rates.

TGPL states that copies of the filing are being mailed to each of its S–2 customers and interested State Commissions.

Any person desiring to be heard or to protect said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825

North Capitol Street, N.E. Washington, D.C. 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 17, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–25436 Filed 10–13–94; 8:45 am]

BILLING CODE 6717–01–M

Office of Hearings and Appeals

Notice of Cases Filed During the Week of July 29 Through August 5, 1994

During the Week of July 29 through August 5, 1994, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585

Dated: October 4, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of July 29 through August 5, 1994]

Date	Name and location of applicant	Case No.	Type of submission
8/1/94	Robert Sanchez, D.D.S., Albuquerque, NM.	LFA–0407 ..	Appeal of an Information Request Denial. If granted: The July 19, 1994 Freedom of Information Request Denial issued by the Albuquerque Operations Office would be rescinded, and Robert Sanchez would receive access to all documents relating to Sandia National Laboratories/New Mexico's (SNL/NM) Solicitation for Offers (SFO) TU–0050.
8/2/94	Woody Voinche, Marksville, LA	LFA–0408 ..	Appeal of an Information Request Denial. If granted: Woody Voinche would receive access to documents on the sale of US and European Nuclear Technology to China and the Soviet Union.
8/3/94	Dr. Naresh Mehta, De Soto, TX	LWN–0003 .	Interim Relief. If granted: Dr. Naresh Mehta would receive interim reinstatement pursuant to 10 C.F.R. 708.10(e)(3).

REFUND APPLICATIONS RECEIVED

[Week of July 29 to August 5, 1994]

Date received	Name of refund proceeding/name of refund applicant	Case No.
7/29/94 thru 8/5/94	Crude Oil Refund Applications	RF272–99142 thru RF272–99144.
7/29/94 thru 8/5/94	Texaco Refund Applications	RF321–21016 thru RF321–21021.
8/1/94	U.S. Oil & Refining Co	RF345–19.
8/4/94	David Gottlier	RF349–17.

[FR Doc. 94–25506 Filed 10–13–94; 8:45 am]

BILLING CODE 6450–01–P

Notice of Cases Filed; Week of July 1 Through July 8, 1994

During the Week of July 1 through July 8, 1994, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: October 4, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

List of Cases Received by the Office of Hearings and Appeals

[Week of July 1 through July 8, 1994]

Date	Name and location of applicant	Case No.	Type of submission
7/5/94	Cooperative Oil Company, Osage, Iowa.	LEE–0132	Exception to the Reporting Requirements. *If granted:* Cooperative Oil Company would not be required to file Form EIA–782B, "Resellers'/Retailers Monthly Petroleum Product Sales Report."
7/5/94	General Asphalt Company, Inc., Los Angeles, CA.	RR272–146	Request for Modification/Rescission in the Crude Oil Refund Procedure. *If granted:* The December 31, 1991 Dismissal Letter (Case No. RF272–57618) issued to General Asphalt Co., Inc. would be modified regarding the firm's application for refund submitted in the Crude Oil refund proceeding.
7/5/94	Heinz U.S.A., Los Angeles, CA	RR272–145	Request for Modification/Rescission in the Crude Oil Refund Proceeding. *If granted:* The May 17, 1991 Dismissal Letter (Case No. RF272–56467) issued to Heinz U.S.A. would be modified regarding the firm's application for refund submitted in the Crude Oil refund proceeding.
7/5/94	Lovelace Gas Service, Inc., Orlando, FL.	LEE–0131	Exception to the Reporting Requirements. *If granted:* Lovelace Gas Service, Inc. would not be required to file Form EIA–782B, "Resellers'/Retailers Monthly Petroleum Product Sales Report."
7/5/94	Marilyn Cribb Stanley, Wrightsville, GA.	LFA–0399	Appeal of an Information Request Denial. *If granted:* The June 16, 1993 Freedom of Information Request Denial issued by the Oak Ridge Operations Office would be rescinded, and Marilyn Cribb Stanley would receive access to medical records.
7/5/94	Midland Asphalt Corporation, Los Angeles, CA.	RR272–144	Request for Modification/Rescission in the Crude Oil Refund Proceeding. *If granted:* The June 17, 1991 Dismissal Letter (Case No. RF272–37291) issued to Midland Asphalt Corporation would be modified regarding the firm's application for refund submitted in the Crude Oil refund proceeding.
7/6/94	Guinn Oil Company, Versailles, Missouri.	LEE–0133	Exception to the Reporting Requirements. *If granted:* Guinn Oil Company would not be required to file Form EIA–782B, "Reseller's/Retailer's Monthly Petroleum Product Sales Report."
7/6/94	Star Kist Foods, Inc., Newport, Kentucky.	RR272–148	Request for Modification/Rescission in the Crude Oil Refund Proceeding. *If granted:* The March 24, 1992 Dismissal RF272–25303 issued to Star Kist Foods Inc. would be modified regarding the firm's application for refund submitted in the Crude Oil refund proceeding.
7/6/94	Texas Fuel and Asphalt, Inc., Los Angeles, CA.	RR272–147	Request for Modification/Rescission in the Crude Oil Refund Procedure. *If granted:* The January 21, 1992 Dismissal Letter (Case No. RF272–27159) issued to Texas Fuel and Asphalt, Inc. would be modified regarding the firm's application for refund submitted in the Crude Oil refund proceeding.
7/7/94	Brian P. Conlon, Idaho Falls, ID	LFA–0400	Appeal of an Information Request Denial. *If granted:* Brian P. Conlon would receive access to documents of allegations, investigative material and final reports pertaining to allegations made against him by a fellow employee at the Idaho National Engineering Laboratory.
7/7/94	Hood River Supply Association, Hood River, Oregon.	LEE–0134	Exception to the Reporting Requirements. *If granted:* Hood River Supply Association would not be required to file Form EIA–782B, "Reseller's/Retailer's Monthly Petroleum Product Sales Report."

Refund Applications Received

Date received	Name of refund proceeding/name of refund application	Case No.
7/1–7/8/94	Crude Oil Refund Applications	RF272–98160 thru RF272–99103.
7/7/94	Empire Coal Company	RF304–15459.
7/7/94	Southwest Airlines Company	RF344–18.
7/8/94	Empire Coal Company	RF304–15460.

[FR Doc. 94–25503 Filed 10–13–94; 8:45 am]

BILLING CODE 6450–01–P

Notice of Cases Filed; Week of July 15 Through July 22, 1994

During the Week of July 15 through July 22, 1994, the appeal and the applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

Dated: October 4, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of July 15 through July 22 1994]

Date	Name and location of applicant	Case No.	Type of submission
July 18, 1994	O'Brian Oil Company, Shellsburg, Iowa.	LEE–0138	Exception to the reporting requirements. *If Granted*: O'Brian Oil Company would not be required to file Form EIA–782B, "Resellers'/Retailers Monthly Petroleum Product Sales Report."
July 19, 1994	L.P. Gas Company, Inc., Nocona, Texas.	LEE–0141	Exception to the reporting requirements. *If Granted*: L.P. Gas Company, Inc. would not be required to file Form EIA–782B, "Resellers'/Retailers Monthly Petroleum Product Sales Report."
Do	Seibert's Service Stations, Richmond, Virginia.	LEE–0140	Exception to the Reporting Requirements. *If Granted*: Seibert's Service Stations would not be required to file Form EIA–782B, "Resellers'/Retailers Monthly Petroleum Sales Report."
Do	Wayne M. Cooper, Overland Park, KS.	LFA–0403	Appeal of an information request denial. *If Granted*: The June 19, 1994 Freedom of Information Request Denial issued by the Office of the Deputy Assistant Secretary for Human Resources would be rescinded, and Wayne M. Cooper would receive access to documents regarding the selection process under the Senior Executive Service Candidate Development Program.
July 20, 1994	Charter/California, Sacramento, California.	RM23–270	Request for modification/rescission in the charter second stage refund Proceeding. *If Granted*: The May 12, 1990 Decision and Order (RQ23–546) issued to California would be modified regarding the State's application for refund submitted in the Charter second stage refund proceeding.
July 21, 1994	Capozzi Bros. Fuel Company, Bridgeport, Connecticut.	LEE–0143	Exception to the reporting requirements. *If Granted*: Capozzi Bros. Fuel Co. would not be requried to file Form EIA–782B, "Resellers/Retailers Monthly Petroleum Product Sales Report."
Do	Shuster Oil Company, Inc., Escondido, California.	LEE–0142	Exception to the Reporting Requirements. *If Granted*: Shuster Oil Co., Inc. would not be required to file Form EIA–782B, "Resellers'/Retailers Monthly Petroleum Product Sales Report."
July 22, 1990	Applebee Oil & Propane, Ovid, Michigan.	LEE–0145	Exception to the reporting requirements. *If Granted*: Applebee Oil & Propane would not be required to file Form EIA–782B, "Resellers' Retailers Monthly Petroleum Product Sales Report.
Do	Hawk Oil Company, Medford, Oregon.	LEE–0139	Exception to the reporting requirements. *If Granted*: Hawk Oil Company would not be required to file Form EIA–782B, "Resellers'/Retailers Monthly Petroleum Product Sales Report."
Do	Pro Fuels, Inc	LEE–0144	Exception to the reporting requirements. *If Granted*: Pro Fuels, Inc. would not be required to file Form EIA–782B, "Resellers/Retailers Monthly Petroleum Product Sales Report" and EIA–821, "Annual Fuel Oil and Kerosene Sales Report."

REFUND APPLICATIONS RECEIVED

[Week of July 15 to July 22, 1994]

Date received	Name of refund proceeding/name of refund applicant	Case No.
7/15/94 thru 7/22/94	Texaco Refund Applications	RF321–21012 thru RF321–21013.

[FR Doc. 94–25504 Filed 10–13–94; 8:45 am]

BILLING CODE 6450–01–P

Notice of Cases Filed; Week of July 22 Through July 29, 1994

During the Week of July 22 through July 29, 1994, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

Dated: October 4, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of July 22 through July 29, 1994]

Date	Name and Location of Applicant	Case No.	Type of Submission
7/22/94	Texaco/Raymond G. Brockett, Texaco/R.G. Brockett, Texaco/Wellman Oil Company, Des Moines, IA.	RR321–160, RR321–161, RR321–162.	Request for Modification/Rescission in the Texaco Refund Proceeding. *If Granted:* The June 24, 1994 Dismissal Letter (Case Nos. RF321–14291, RF321–14292 and RF321–14293) issued to Raymond G. Brockett, R.G. Brockett and Wellman Oil Company would be modified regarding three Applications for Refund submitted in the Texaco refund proceeding.
7/25/94	Englefield Oil Company, Newark, OH.	LEE–0148 ..	Exception to the Reporting Requirements. *If Granted:* Englefield Oil Company would not be required to file Form EIA–782B, the "Resellers/Retailers' Monthly Petroleum Product Sales Report."
7/25/94	Hattenhauer Distributing Company, The Dalles, OH.	LEE–0146 ..	Exception to the Reporting Requirements. *If Granted:* Hattenhauer Distributing Co. would not be required to file Form EIA–782B, the "Resellers/Retailers' Monthly Petroleum Product Sales Report."
7/25/94	John E. Retzner Oil, Company, Inc., Sunman, IN.	LEE–0147 ..	Exception to the Reporting Requirements. *If Granted:* John E. Retzner Oil Company, Inc. would not be required to file a DOE form.
7/25/94	Kenneth H. Besecker, Martinez, GA.	LFA–0404 ..	Appeal of an Information Request Denial. If Granted: The June 29, 1994 Freedom of Information Request Denial issued by the Office of Civil Rights would be rescinded, and Kenneth H. Besecker would receive access to a response regarding the investigation and processing of a complaint of discrimination.
7/26/94	Pioneer Press, Wilmette, IL	LFA–0406 ..	Appeal of an Information Request Denial. *If Granted:* The June 20, 1994 Freedom of Information Request Denial issued by the FOI and Privacy Acts Branch would be rescinded, and Pioneer Press would receive access to records of documents pertaining to experiments involving radioisotopes or other forms of radiation research done at North Shore Health Resort or North Shore Hospital.
7/26/94	William H. Payne, Albuquerque, NM.	LFA–0405 ..	Appeal of an Information Request Denial. *If Granted:* The July 8 and 19, 1994 Freedom of Information Request Denials issued by the Office of Intergovernmental and External Affairs would be rescinded, and William H. Payne would receive access to documents withheld containing information about him in reference to employment, retirement, insurance and other benefits and written and verbal disclosure concerning telephone billings from various telephone numbers by employees of the U.S. Dept. of Energy, Albuquerque Operations Office and Sandia National Laboratories/New Mexico.
7/27/94	Texaco/State of Missouri, Jefferson City, MO.	RR321–163	Request for Modification/Rescission in the Texaco Refund Proceeding. *If Granted:* The June 15, 1994 Decision and Order (Case No. RF321–14215) issued to the State of Missouri would be modified regarding the state's Application for Refund submitted in the Texaco refund proceeding.

REFUND APPLICATIONS RECEIVED

[Week of July 22 to July 29, 1994]

Date received	Name of refund proceeding/name of refund applicant	Case No.
7/22/94 thru 7/29/94	Texaco Refund Applications	RF321–21014 thru RF321–21016.
7/25/94	Ida Pearl Mann and Hopetin	RF349–15.
7/25/94	Summit Oil Co.	RF351–25.
7/25/94	Atlanta Boat Works	RF351–26.
7/25/94	Tri-LINE Express Ways Ltd.	RF272–99140.
7/25/94	Lacrosse	RF272–99141.
7/26/94	Pan American World Airways	RF344–19.
7/26/94	R Keith Martin Distr.	RF300–21799.
7/26/94	Snapper Creek Marina, Inc.	RF349–16.
7/27/94	Church of St. John the Baptist	RC272–239.

[FR Doc. 94–25505 Filed 10–13–94; 8:45 am]
BILLING CODE 6450–01–P

Notice of Issuance of Proposed Decision and Order; Week of September 19 Through September 23, 1994

During the week of September 19 through September 23, 1994, the proposed decision and order summarized below was issued by the Office of Hearings and Appeals of the Department of Energy with regard to an application for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For

purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of this proposed decision and order are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays.

Dated: October 4, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

Wes-Pet., New Orleans, LA, LEE–0156, Reporting Requirements

Wes-Pet., Inc. filed an Application for Exception from the Energy Information Administration (EIA) requirement that it file Form EIA–782B, the "Resellers'/ Retailers' Monthly Petroleum Product Sales Report." In considering this request, the DOE found that the firm was not suffering a gross inequity or serious hardship. Accordingly, on September 23, 1994, the DOE issued a Proposed Decision and Order determining that the exception request should be denied.

[FR Doc. 94–25508 Filed 10–13–94; 8:45 am]

BILLING CODE 6450–01–P

Notice of Issuance of Proposed Decision and Order During the Week of September 12 Through September 16, 1994

During the week of September 12 through September 16, 1994, the proposed decision and order summarized below was issued by the Office of Hearings and Appeals of the Department of Energy with regard to an application for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of this proposed decision and order are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays.

October 4, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

Shuster Oil Co., Inc. Escondido, CA, LEE–0142

Shuster Oil Co., Inc. filed an Application for Exception from the Energy Information requirement that it file Form EIA–782B, the "Resellers'/ Retailers' Monthly Petroleum Product Sales Report." In considering this request, the DOE found that the firm was not suffering a gross inequity or serious hardship. Accordingly, on September 13, 1994, the DOE issued a Proposed Decision and Order determining that the exception request should be denied.

[FR Doc. 94–25507 Filed 10–13–94; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–4716–3]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared September 26, 1994 Through September 30, 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 FR dated April 08, 1994 (59 FR 16807).

Draft EISs

ERP No. D–BLM–K65161–CA Rating EC2, Caliente Land and Resource Management Plan, Implementation, Kern, Tulare, King, San Luis Obispo, Santa Barbara and Ventura Counties, CA.

Summary: EPA expressed environmental concerns regarding potential impacts to soils and watersheds, air quality and biological resources, including riparian areas and springs. EPA requested additional information in the Final EIS on soil and watershed conditions and project impacts; the biological opinions by the US Fish & Wildlife Service; oil and gas developments in the planning area; and mitigating and monitoring adverse impacts.

ERP No. D–DOE–A00166–00 Rating EC2, NAT, Programmatic Spent Nuclear Fuel Management and Idaho National Engineering Laboratory Environmental Restoration and Waste Management Programs, Implementation.

Summary: EPA had environmental concerns and requested additional information in the final EIS concerning regulatory requirements, water quality impacts, radiation exposure, environmental justice, and mitigation measures.

ERP No. D–FHW–B40078–NH Rating EC2, Broad Street Parkway Project, Construction, Broad Street near Exit 6 of the FE Everett Turnpike on the North to the West Hollis Street/ Kinsley Street area near Pine Street on the South, Funding and Possible COE Section 404 Permit, Hillsborough County, NH.

Summary: EPA had environmental concerns and requested refinements of the air quality analysis and an analysis of the capacity of the proposed drainage system to protect water supply

resources from stormwater runoff and potential roadway spills.

Final EISs

ERP No. F–BLM–K67022–NV, Robinson Mining Project, Construction, Operation and Expansion, Plan of Operation Approval, White Pine, Elko and Eureka Counties, NV.

Summary: EPA expressed environmental concerns regarding the potential quality of water in the mine pits and tailing impoundments. EPA requested that the Record of Decision clarify future reporting requirements to the State of Nevada and contingency measures. EPA requests clarification from BLM to determine whether the mining company needs to obtain a Clean Water Act Section 404 permit from the Army Corps of Engineers, prior to placing dredged or fill material in waters of the United States.

ERP No. F–FHW–B40073–MA, MA–146/Massachusetts Turnpike Interchange Project, Improvements from MA–146 between I–290 at Brosnihan Square in Worcester and MA–122A in Millbury, Funding, COE Section 404 Permit and EPA NPDES Permit, Cities of Worcester and Millbury, Worcester County, MA.

Summary: EPA requested commitments in the Record of Decision regarding level of protection provided to regional water quality and water supply resources from the design, operation and maintenance of the roadway drainage and spill control system. EPA recommended the ROD include project level determination of conformity with Massachusetts State Implementation Plan. EPA also requested that the approved wetland mitigation plan be made a condition of the Section 404 permit.

ERP No. F–FTA–K40130–CA, Los Angeles Eastside Corridor Transportation Improvement, Los Angeles Central Business District to just east of Atlantic Boulevard, Funding, NPDES and COE Section 404 Permits, Los Angeles County, CA.

Summary: Review of the final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. F–USA–E65040–MS Camp Shelby Continued Military Training Activities, Use of National Forest Lands, Special Use Permit, Desoto National Forest, Forrest, George and Perry Counties, MS.

Summary: EPA finds that its previous environmental concerns have been addressed largely through mitigation measures.

ERP No. F–USN–K11053–CA, Miramar Landfill General Development Plan/Fiesta Island Replacement Project/ Northern Sludge Processing Facility/ West Miramar Landfill Phase II/ Overburden Disposal, Implementation, Funding, COE Section 404 Permit and NPDES Permit, Naval Air Station Miramar, San Diego County, CA.

Summary: EPA noted that it is currently discussing the project's total air emissions with the City of San Diego in order to determine the applicability of Section 176(c) of the Clean Air Act.

Dated: October 11, 1994.

Marshall Cain,

Senior Legal Advisor, Office of Federal Activities.

[FR Doc. 94–25500 Filed 10–13–94; 8:45 am]

BILLING CODE 6560–50–U

[ER-FRL–4716–2]

Environmental Impact Statements; Availability

RESPONSIBLE AGENCY: Office of Federal Activities, General Information (202) 260–5076 OR (202) 260–5075. Weekly receipt of Environmental Impact Statements Filed October 03, 1994 Through October 07, 1994 Pursuant to 40 CFR 1506.9.

EIS No. 940416, Final EIS, FTA, UT, I–15/State Street Corridor Highway and Transit Improvements, Funding, Salt Lake County, UT, Due: November 14, 1994, Contact: Louis F. Mraz, Sr. (303) 844–3242.

EIS No. 940417, Final EIS, CGD, VA, Parallel Crossing of the Chesapeake Bay, Construction and Operation, US 13 between the Delmarva Peninsula and southeastern Virginia, Funding, COE Section 10 and 404 Permits and CGD Bridge Permit, Virginia Beach, Northampton County, VA, Due: November 14, 1994, Contact: Ann B. Deaton (804) 398–6222.

EIS No. 940418, Final EIS, COE, KY, Louisville Waterfront Park/Falls Harbor Development Project, Construction, COE Section 10 and 404 Permits, Ohio River, Louisville, Jefferson County, KY, Due: November 14, 1994, Contact: Williams R. Haynes (502) 582–6475.

EIS No. 940419, Final EIS, FHW, MT, US 93 (Somers to Whitefish West) Transportation Improvements, Funding and COE Section 404 Permit, Glacier National Park and Flathead National Forest, Flathead County, MT, Due: November 14, 1994, Contact: Dale Paulson (406) 449–5305.

EIS No. 940420, Final EIS, FHW, NB, SD, Missouri River Bridge (Project No. F–14–4(104)) Construction, Connecting N–12 in Nebraska to SD–37 in South Dakota, COE Section 404, US Coast Guard Bridge and Flood Plan Permits, Knox Co., NB and Bon Homme Co., SD, Due: November 14, 1994, Contact: Phillip E. Barnes (402) 437–5521.

EIS No. 940421, Draft EIS, FRC, NY, Felts Mills Hydroelectric Project (FERC No. 4715–006), Issuance of Original License, Construction, Operation and Maintain, Site Specific, Black River, Jefferson County, NY, Due: November 28, 1994, Contact: Thomas Camp (202) 219–2832.

Amended Notices

EIS No. 940322, Draft EIS, DOE, OR, Columbia River System Operation Review (SOR), Multiple Use Management, Long-Term System Planning By Interested Parties Other than Management Agencies, Canadian Entitlement Allocation Agreement Renewal or Modification and Pacific NW Coordination Agreement Renewal or Renegotiation, OR, Due: November 07, 1994, Contact: Interagency Team (800) 622–4519. Published FR 08–12–94—Review period extended.

EIS No. 940324, Draft EIS, FHW, IL, FAP Route 340 Transportation Project, Construction from I–55 to I–80, Funding, US Coast Guard Permit and COE Section 404 Permit, Cook, Dupage and Will Counties, IL, Due: December 01, 1994, Contact: Lyle Renz (217) 492–4600. Published FR 08–19–94—Review period extended.

EIS No. 940349, Draft EIS, UAF, AK, Alaska Military Operations Areas (MOAs) Temporary MOAs Conversion to Permanent MOAs; New MOAs Creation; MOAs Modification; Supersonic Aircraft Operations and Routine Flying Training, Joint/ Combined Flying Training and Major Flying Exercises Activities, Elmendorf Air Force Base, AK, Due: November 30, 1994, Contact: Major G. Virgil Hanson (907) 552–1807. Published FR 08–26–94—Review period extended.

Dated: October 11, 1994.

Marshall Cain,

Senior Legal Advisor, Office of Federal Activities.

[FR Doc. 94–25501 Filed 10–13–94; 8:45 am]

BILLING CODE 6560–50–U

[FRL–5091–5]

Clean Air Act Advisory Committee; Emergency Notice of Public Meeting

Under Section (10)(a)(2) of Title 5 U.S.C. App 2, "The Federal Advisory Committee Act," notice is hereby given that the Subcommittee on Mobile Source Emissions and Air Quality in the Northeastern States of the Clean Air Act

Advisory Committee will meet on Tuesday, October 25, 1994 beginning at 8:30 A.M. to 5:00 P.M. at the Ramada Renaissance Hotel, located at 999 Ninth Street, N.W., Washington, D.C. 202/898–9000. Because the Subcommittee last met on October 12, 1994 and set October 25, 1994 as the next meeting date this emergency notice is hereby given. These meetings are open to the public. For further information concerning the meeting, please contact the individuals listed below.

Mobile Source Emissions and Air Quality in the Northern States Subcommittee

The Mobile Source Emissions and Air Quality in the Northeastern States Subcommittee of the Clean Air Act Advisory Committee will conduct a meeting to discuss the pending petition offered by the Ozone Transport Commission regarding the adoption of Low Emission Vehicle Emission Standards in the northeastern states and related issues. In addition, the meeting agenda will include progress reports from various work groups established at previously by the Subcommittee.

Further Information and Providing Comments

For additional information concerning these meetings, please contact Mike Shields, Designated Federal Official, Office of Mobile Sources, U.S. Environmental Protection Agency, 401 M Street, SW. Washington, D.C. 20460 (202) 260–7645.

Dated: October 12, 1994.

Rob Brenner,

Director, Office of Policy Analysis and Review, Office of Air and Radiation, U. S. Environmental Protection Agency.

[FR Doc. 94–25626 Filed 10–13–94; 8:45 am]

BILLING CODE 6560–50–P

[OPPTS–211040; FRL 4915–4]

1,2,4-Trichlorobenzene; Response to Citizens Petition

AGENCY: Environmental Protection Agency (EPA).

ACTION: Denial of TSCA Section 21 Petition.

SUMMARY: This notice responds to a citizen's petition submitted by Valley Watch, Inc. under section 21 of the Toxic Substances Control Act (TSCA) (15 U.S.C. 2620). The petitioner requested EPA to exercise authority under TSCA section 5(e) to prohibit the manufacture, processing, distribution in commerce, use, and disposal of 1,2,4-trichlorobenzene (TCB) as a transformer retrofill fluid. EPA is denying the petition because EPA does not have authority under section 5(e) of TSCA to issue an order prohibiting the manufacture, processing, distribution in commerce, use, or disposal of this chemical substance. Section 5(e) applies only when EPA is reviewing a notice submitted under section 5(a) for a new chemical substance or a significant new use of a chemical substance. TCB is not a "new chemical substance" under section 3(9) of TSCA nor does its use as a transformer retrofill fluid represent a "significant new use under section 5(a)(2)."

In addition, if the citizen's petition had requested the Agency to take action under section 6 of TSCA, the petition would still be denied because there is insufficient information to make an unreasonable risk determination under section 6.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Rm. E–543B, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 544–0551.

SUPPLEMENTARY INFORMATION:

I. Background

A. TSCA Section 21

Section 21 of TSCA provides that any person may petition the Administrator of EPA to initiate a rulemaking under section 4 (rules requiring chemical testing), section 6 (rules imposing substantive controls on chemicals), or section 8 (information gathering rules). Also, section 21 authorizes a petitioner to request the issuance, amendment, or repeal of orders under section 5(e) of TSCA (orders affecting new chemical substances or significant new uses covered under section 5(a) notifications) or section 6(b)(2) (orders affecting quality control procedures). Section 21(b)(3) requires that EPA grant or deny citizen's petitions within 90 days of the filing date of the petition (15 U.S.C. 2620(b)(3)).

If the Administrator grants a section 21 petition, the Agency must promptly commence an appropriate proceeding. If the Administrator denies the petition, the reasons for denial must be published in the **Federal Register**.

In the case of a section 21 petition which requests an order under section 5(e), EPA may grant the petition only if EPA determines that the substance is subject to section 5 jurisdiction, that available information is insufficient to evaluate the health or environmental effects of the substance, and that either activities involving the substance may present an unreasonable risk of injury to health or the environment, or the substance is or will be produced in substantial quantities and there is or may be substantial or significant human exposure or substantial environmental release (15 U.S.C. 2604(e)(1)(A)).

B. Summary of Petition

On July 4, 1994, Valley Watch, Inc. petitioned EPA under section 21 of TSCA to issue an order under section 5(e) of TSCA to prohibit the manufacture, processing, distribution in commerce, use, and disposal of TCB as a retrofill transformer fluid. TCB is used as a constituent in an interim transformer fluid mixture, called TF–1. As such, TCB resides for a limited time in transformers. Valley Watch has based their request on the assertion that EPA had previously determined under TSCA section 4(a)(1)(a) that: (1) TCB may present an unreasonable risk of cancer to humans, and (2) there is sufficient human exposure to TCB to make the "may present" finding (51 FR 24660, July 8, 1986). Valley Watch also believes that TCB presents an unreasonable risk to the environment and humans due to its propensity to create dioxins and furans in the event of a transformer fire. Valley Watch maintains that exposure to TCB is increased by its use in retrofill transformers.

II. EPA's Decision

EPA denies this petition because the petitioner has not requested relief which EPA can properly grant under TSCA section 5(e) and because there is insufficient information to make an unreasonable risk determination under section 6 of TSCA. EPA has jurisdiction to issue a section 5(e) order only with respect to a chemical substance subject to the section 5(a) notification requirements, and in this case, these notification requirements are not applicable. Nor does the requested relief involve issuance, amendment, or repeal of a rule under sections 4, 6, or 8 or an order under section 6(b)(2).

EPA recognized the concern regarding the potential risk of TCB at least as early as 1986 when EPA responded to an earlier petition from Valley Watch (51 FR 6423, February 24, 1986). As such, EPA promulgated a TSCA section 4 test rule for oncogenicity testing for several chlorinated benzenes, including TCB (51 FR 24660, July 8, 1986) and has received and evaluated the data submitted in compliance with the test rule. EPA is presently conducting a thorough assessment of these data as well as of exposure data in order to assess potential risks associated with

exposure to TCB. At the conclusion of this process, EPA will decide whether activities involving TCB pose an unreasonable risk and if further regulatory action is warranted.

EPA, as was done for the nearly identical 1991 petition submission by Valley Watch Inc., has also considered whether this petition could be read as seeking some action by EPA, properly within the bounds of section 21, other than issuing an order under section 5(e).

The ultimate action requested is to prohibit the manufacture, processing, distribution in commerce, use, and disposal of TCB as a retrofill transformer fluid. Under section 6, EPA may promulgate rules to control such activities if the Agency finds there is a reasonable basis to conclude that activities involving a chemical substance present or will present an unreasonable risk of injury to health or the environment.

EPA recognizes that there are some general concerns about risks posed by TCB. As mentioned above, EPA is committed to evaluate any potential hazards presented by TCB in its use as a transformer retrofill fluid or any other use. However, at present, EPA does not have sufficient evidence which shows that the presence of residues of this substance from its use as a temporary retrofill fluid poses a risk to humans who live and work near retrofilled transformers.

EPA has addressed Valley Watch's concern regarding dioxin and furan formation during a transformer fire in its PCB Transformer Fires regulation (40 CFR 761.30). a detailed discussion of this regulation is contained in the **Federal Register** Notice entitled "1,2,4-trichlorobenzene; Response to Citizen's Petition" (56 FR 15618, April 17, 1991) at page 15619.

Valley Watch provided no definitive evidence that trace amounts of 1,2,4-trichlorobenzene which might remain after retrofilling could result in the creation of dioxin or furans in the event of a transformer fire. Valley Watch supports its petition request with unsupported allegations. EPA has received no evidence from the petitioner of the likelihood of fires in retrofilled transformers. Thus, EPA has determined that Valley Watch's assertions do not support its request to ban the production of this substance for its use as a retrofilling fluid.

III. Public Record

A public record has been established for its response to this petition (OPPTS–211040). The public record contains the petition and the basic information considered by EPA in reaching its decision on this matter. The public record in this action is available for public inspection in Rm. B–607 Northeast Mall at the address noted above from 12 noon to 4 p.m., Monday through Friday, except legal holidays.

IV. References

1. Section 21 petition from Valley Watch, Inc. to the EPA, July 4, 1994.

2. USEPA. Chlorinated Benzenes; Final Test Rule 51 FR 24660, July 8, 1986.

3. Moore, Michael R., "104–Week Dietary Carcinogenicity Study With 1,2,4–Trichlorobenzene in Rats," Hazleton Washington (June 10, 1994).

4. Moore, Michael R., "104–Week Dietary Carcinogenicity Study With 1,2,4–Trichlorobenzene in Mice," Hazleton Washington (June 6, 1994)

V. Conclusion

For the above reasons, EPA is denying Valley Watch's petition filed under section 21 of TSCA.

Authority: 15 U.S.C. 2620

Dated: October 6, 1994.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 94–25465 Filed 10–13–94; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL HOUSING FINANCE BOARD

[No. 94–N–05]

Notice of Federal Home Loan Bank Members Selected for Community Support Review

AGENCY: Federal Housing Finance Board.

ACTION: Notice.

SUMMARY: The Financial Institutions Reform, Recovery, and Enforcement Act of 1989 added a new Section 10(g) to the Federal Home Loan Bank Act of 1932 requiring that members of the Federal Home Loan Bank (FHLBank) System meet standards for community investment or service in order to maintain continued access to long-term FHLBank System advances. In compliance with this statutory change, the Federal Housing Finance Board (Finance Board) promulgated Community Support regulations (12 CFR Part 936) that were published in the **Federal Register** on November 21, 1991 (56 FR 58639). Under the review process established in the regulations, the Finance Board will select a certain number of members for review each quarter, so that all members that are subject to the Community Reinvestment Act of 1977, 12 U.S.C. § 2901 *et seq.*, (CRA), will be reviewed once every two years. The purpose of this Notice is to announce the names of the members selected for the third quarter review (1994–95 cycle) under the regulations. The Notice also conveys the dates by which members need to comply with the Community Support regulation review requirements and by which comments from the public must be received.

DATES: *Due Date For Member Community Support Statements for Members Selected in Third Quarter Review:* November 30, 1994.

Due Date For Public Comments on Members Selected in Third Quarter Review: November 30, 1994.

FOR FURTHER INFORMATION CONTACT: Sylvia C. Martinez, Director, Housing Finance Directorate, (202) 408–2825, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006. A telecommunications device for deaf persons (TDD) is available at (202) 408–2579.

SUPPLEMENTARY INFORMATION:

A. Selection for Community Support Review

The Finance Board currently reviews all FHLBank System members that are subject to CRA once every two years. Approximately one-eighth of the FHLBank members in each district will be selected for review by the Finance Board each calendar quarter. To date, only members that are subject to CRA have been reviewed. In selecting members, the Finance Board will follow the chronological sequence of the members' CRA Evaluations post-July 1, 1990, to the greatest extent practicable, selecting one-eighth of each District's membership for review each calendar quarter. However, the Finance Board will postpone review of new members until they have been in the System for one full year.

The Finance Board is currently in the process of promulgating amendments to the Community Support regulation that would specify the procedures to be used to evaluate those members that are not subject to CRA (insurance companies and credit unions). As soon as these regulations are adopted, this review will include those members that are not subject to CRA.

Selection for review is not, nor should it be construed as, any indication of either the financial condition or Community Support performance of the institutions listed.

B. List of FHLBank Members To Be Reviewed in the Third Quarter, Grouped by FHLBank District

Member	City	State
Federal Home Loan Bank of Boston—District 1 Post Office Box 9106, Boston, Massachusetts 02205–9106		
Old Stone Bank of California, FSB	Hayward	CA
Great Country Bank	Ansonia	CT
Collinsville Savings Society	Collinsville	CT
Guilford Savings Bank	Guilford	CT
First National Bank of Litchfield	Litchfield	CT
First New London Savings & Loan Association, Inc	New London	CT
Fairfield County Savings Bank	Norwalk	CT
Norwalk Savings Society	Norwalk	CT
Eastern Savings and Loan Association, Inc	Norwich	CT
Ridgefield Bank	Ridgefield	CT
Southington Savings Bank	Southington	CT
Tolland Bank	Vernon	CT
Northwest Bank for Savings	Winsted	CT
Abington Savings Bank	Abington	MA
Andover Bank	Andover	MA
The Massachusetts Company, Inc	Boston	MA
The Bank of Canton/Canton Inst. for Savings	Canton	MA
Charlestown Cooperative Bank	Charlestown	MA
Clinton Savings Bank	Clinton	MA
Danvers Savings Bank	Danvers	MA
First Federal Savings Bank of America	Fall River	MA
Lafayette Federal Savings Bank	Fall River	MA
Falmouth Co-operative Bank	Falmouth	MA
Florence Savings Bank	Florence	MA
Colonial Co-operative Bank	Gardner	MA
Greenfield Co-operative Bank	Greenfield	MA
United Savings Bank	Greenfield	MA
Haverhill Co-operative Bank	Haverhill	MA
Hingham Institution for Savings	Hingham	MA
Ipswich Co-operative Bank	Ipswich	MA
Roxbury-Highland Co-operative Bank	Jamaica Plain	MA
Leicester Savings Bank	Leicester	MA
Equitable Co-operative Bank	Lynn	MA
Mansfield Co-operative Bank	Mansfield	MA
Milford FS&LA	Milford	MA
Orange Savings Bank	Orange	MA
Sandwich Co-operative Bank	Sandwich	MA
South Boston Savings Bank	South Boston	MA
Woronoco Savings Bank	Westfield	MA
South Shore Co-operative Bank	Weymouth	MA
Weymouth Savings Bank	Weymouth	MA
Cape Cod Co-operative Bank	Yarmouth Port	MA
Bangor Savings Bank	Bangor	ME
Bar Harbor Banking and Trust Company	Bar Harbor	ME
Bar Harbor Savings and Loan Association	Bar Harbor	ME
Bethel Savings Bank, FSB	Bethel	ME
Calais Federal Savings and Loan Association	Calais	ME
Damariscotta Bank and Trust Company	Damariscotta	ME
Rockland Savings and Loan Association	Rockland	ME
The Waldoboro Bank, FSB	Waldoboro	ME
Berlin City Bank	Berlin	NH
Bow Mills Bank and Trust	Bow	NH
Cornerstone Bank	Derry	NH
First Savings of New Hampshire	Exeter	NH
Village Bank and Trust Company	Gilford	NH
Granite Bank of Keene	Keene	NH
Milford Co-Op Bank	Milford	NH
New London Trust FSB	New London	NH
Newport Federal Savings Bank	Newport	RI
Citizens Savings Bank	Providence	RI
Westerly Savings Bank	Westerly	RI
Bank of Vermont	Burlington	VT
Union Bank	Morrisville	VT
Federal Home Loan Bank of New York—District 2 One World Trade Center, 103rd Floor, New York, New York 10048		
Bogota Savings & Loan Association	Bogota	NJ
Somerset Savings Bank, SLA	Bound Brook	NJ
Century FS&LA of Bridgeton	Bridgeton	NJ
Valley Savings Bank, SLA	Closter	NJ

Member	City	State
NVE Savings Bank, SLA	Englewood	NJ
Glen Rock Savings Bank, SLA	Glen Rock	NJ
Statewide Savings Bank, SLA	Jersey City	NJ
Lincoln Park Savings & Loan Association	Lincoln Park	NJ
The Metuchen Savings and Loan Association	Metuchen	NJ
Boiling Springs Savings Bank	Rutherford	NJ
Gloucester County Federal Savings Bank	Sewell	NJ
Sturdy Savings Bank	Stone Harbor	NJ
Summit Bank	Summit	NJ
Roma Federal Savings Bank	Trenton	NJ
South Jersey Savings and Loan Association	Turnersville	NJ
Lehigh Savings Bank, SLA	Union	NJ
Security Savings Bank, SLA	Vineland	NJ
Penn Federal Savings Bank	West Orange	NJ
Westwood Savings Bank, SLA	Westwood	NJ
Elmira Savings Bank, FSB	Elmira	NY
First FS&LA of Middletown	Middletown	NY
Chinatown Federal Savings Bank	New York	NY
Savings Bank of Utica	Utica	NY
Wallkill Valley Federal S&L Association	Wallkill	NY
Oriental Federal Savings Bank	Humacao	PR

Federal Home Loan Bank of Pittsburgh—District 3
601 Grant Street, Pittsburgh, Pennsylvania 15219–4455

Bernville Bank, NA	Bernville	PA
Pennsylvania State Bank	Camp Hill	PA
Farmers Trust Company	Carlisle	PA
First Federal S&L Association of Carnegie	Carnegie	PA
Lincoln Savings Bank	Carnegie	PA
Unitas National Bank	Chambersburg	PA
Coatesville Savings Bank	Coatesville	PA
Slovenian S&L of Franklin-Conemaugh	Conemaugh	PA
Corry Savings Bank	Corry	PA
First National Community Bank	Dunmore	PA
Firstrust Bank	Flourtown	PA
People's National Bank of Susquenanna County	Hallstead	PA
Mifflinburg Bank and Trust Company	Mifflinburg	PA
Community Banks, NA	Millersburg	PA
New Bethlehem Bank	New Bethlehem	PA
Polonia Federal Savings & Loan Association	Philadelphia	PA
Pittsburgh Home Savings Bank	Pittsburgh	PA
Slovak Savings Bank	Pittsburgh	PA
Pennsylvania National Bank & Trust Company	Pottsville	PA
Century National Bank and Trust Company	Rochester	PA
Schuylkill Haven Trust Company	Schuylkill Haven	PA
Merchants National Bank of Shenandoah	Shenandoah	PA
Franklin First Savings Bank	Wilkes-Barre	PA
Northern Central Bank	Williamsport	PA
Peoples State Bank of Wyalusing	Wyalusing	PA
The Drovers & Mechanics Bank	York	PA
York Federal Savings & Loan Association	York	PA
Bank One, West Virginia, Charleston, NA	Charleston	WV
City National Bank of Charleston	Charleston	WV
Empire National Bank of Clarksburg	Clarksburg	WV
WesBanco Fairmount	Fairmont	WV
One Valley Bank of Marion County, NA	Fairmont	WV
Citizens Bank of Morgantown, Inc.	Morgantown	WV
Advance Financial Savings Bank, FSB	Wellsburg	WV

Federal Home Loan Bank of Atlanta—District 4
Post Office Box 105565, Atlanta, Georgia 30348

First FS&LA of Dekalb County	Fort Payne	AL
Headland National Bank	Headland	AL
Bank of Prattville	Prattville	AL
First National Bank of Bonita Springs	Bonita Springs	FL
Charter Bank	Delray Beach	FL
Destin Bank	Destin	FL
Unifirst Federal Savings Bank	Hollywood	FL
First Federal S&LA of Osceola County	Kissimmee	FL
Eagle National Bank of Miami	Miami	FL
Murdock Florida Bank	Murdock	FL
Kislak National Bank	North Miami	FL

Member	City	State
Turnberry Savings and Loan Association	North Miami Beach	FL
Lochaven Federal Savings & Loan Association	Orlando	FL
Flamingo Bank	Pembroke Pines	FL
Presidential Bank, FSB	Sarasota	FL
Capital City First National Bank	Tallahassee	FL
Indian River Federal Savings Bank	Vero Beach	FL
Allatoona Federal Savings Bank	Acworth	GA
Metro Bank	Atlanta	GA
Baxley FSB	Baxley	GA
Bank of North Georgia	Canton	GA
The Prudential Savings Bank, FSB	Cartersville	GA
Coffee County Bank	Douglas	GA
Douglas Federal Bank, a FSB	Douglasville	GA
Elberton Federal Savings & Loan Association	Elberton	GA
Citizens Union Bank	Greensboro	GA
First Liberty Bank	Macon	GA
Mountain National Bank	Tucker	GA
Advance Federal Savings & Loan Association	Baltimore	MD
Leeds Federal Savings & Loan Association	Baltimore	MD
Madison and Bradford FS&LA	Baltimore	MD
Westview Federal Savings & Loan Association	Baltimore	MD
Presidential Savings Bank, FSB	Bethesda	MD
Chevy Chase Savings Bank, FSB	Chevy Chase	MD
Peoples Bank of Elkton	Elkton	MD
Glen Burnie Mutual Savings Bank	Glen Burnie	MD
Laurel Federal Savings Bank	Laurel	MD
Baltimore County Savings Bank, FSB	Perry Hall	MD
Reisterstown Federal Savings Bank	Reisterstown	MD
American Federal Savings Bank	Rockville	MD
First Shore Federal Savings & Loan Association	Salisbury	MD
Cowenton Federal Savings and Loan	White Marsh	MD
Clyde Savings Bank, SSB	Clyde	NC
First Charter National Bank	Concord	NC
Gaston Federal Savings and Loan Association	Gastonia	NC
First Carolina Federal Savings Bank	Kings Mountain	NC
Home Federal Savings Bank	Kings Mountain	NC
Scotland Savings Bank, SSB	Laurinburg	NC
Progressive Savings and Loan, Ltd	Lumberton	NC
Mooresville Federal Savings & Loan Association	Mooresville	NC
Roxboro Savings Bank, SSB	Roxboro	NC
SNB Savings Bank, Inc., SSB	Valdese	NC
Haywood Savings Bank, Inc., SSB	Waynesville	NC
Perpetual Federal Savings Bank	Anderson	SC
Colonial Savings Bank of South Carolina, Inc	Camden	SC
Spratt Savings and Loan Association	Chester	SC
Atlantic Savings Bank, FSB	Hilton Head Island	SC
Heritage FS&LA	Laurens	SC
Coastal Federal Savings Bank	Myrtle Beach	SC
Home Federal Savings Bank	Rock Hill	SC
Oconee Federal Savings & Loan Association	Seneca	SC
First Commonwealth Savings Bank FSB	Alexandria	VA
Acacia Federal Savings Bank	Annandale	VA
First Security Federal Savings Bank, Inc	Annandale	VA
Virginia Commerce Bank, NA	Arlington	VA
Fairfax Bank and Trust Company	Fairfax	VA
Virginia Savings Bank	Front Royal	VA
Co-operative Savings Bank, FSB	Lynchburg	VA
First Federal Savings Bank of Virginia	Petersburg	VA
Franklin FS&LA of Richmond	Richmond	VA
Regency Bank	Richmond	VA
Community Federal Savings Bank	Staunton	VA
Virginia Beach Federal Savings Bank	Virginia Beach	VA

Federal Home Loan Bank of Cincinnati—District 5
Post Office Box 598, Cincinnati, Ohio 45201

Bank of Ashland, Inc	Ashland	KY
The Farmers Bank	Butler	KY
Catlettsburg Federal Savings and Loan Association	Catlettsburg	KY
Citizens Federal Savings and Loan Association	Covington	KY
Farmers-Deposit Bank	Flemingsburg	KY
People's Bank of Fleming County	Flemingsburg	KY
Harlan Federal Bank, a FSB	Harlan	KY
First Lancaster Federal Savings Bank	Lancaster	KY

Member	City	State
First Federal Savings and Loan Association	Morehead	KY
Mount Sterling National Bank	Mount Sterling	KY
Commonwealth Bank, FSB	Mt. Sterling	KY
Republic Bank of Shelby County	Shelbyville	KY
Farmers National Bank of Williamsburg	Williamsburg	KY
Summit Bank	Akron	OH
Belmont Federal Savings and Loan Association	Bellaire	OH
Buckeye Savings Bank	Bellaire	OH
First Federal Bank	Bowling Green	OH
First Federal Savings & Loan Association	Bucyrus	OH
Peoples Savings and Loan Company	Bucyrus	OH
First FS&LA of Centerburg	Centerburg	OH
Benchmark Federal Savings Bank	Cincinnati	OH
Franklin Savings and Loan Company	Cincinnati	OH
Oak Hills Savings & Loan Company	Cincinnati	OH
Suburban Federal Savings Bank	Cincinnati	OH
Warsaw Federal Savings and Loan Company	Cincinnati	OH
Charter One Bank, FSB	Cleveland	OH
Third Federal Savings and Loan Association	Cleveland	OH
State Savings Bank	Columbus	OH
Midwest Savings Bank	DeGraf	OH
NCB Savings Bank, FSB	Hillsboro	OH
First Federal Savings Bank of Kent	Kent	OH
Home Savings and Loan Company of Kenton	Kenton	OH
Kenwood Savings and Loan Association	Kenwood	OH
First Federal Savings and Loan Association	Lakewood	OH
Fairfield Federal Savings & Loan Association	Lancaster	OH
First National Bank of Lebanon	Lebanon	OH
Leesburg Federal Savings and Loan Association	Leesburg	OH
Citizens Loan & Savings Company	London	OH
First-Knox National Bank of Mount Vernon	Mount Vernon	OH
Market Building and Savings Company	Mt. Healthy	OH
New Carlisle Federal Savings Bank	New Carlisle	OH
Park National Bank	Newark	OH
Fidelity Federal Savings Bank	Norwood	OH
Third Savings and Loan Company	Piqua	OH
Home City FS&LA of Springfield	Springfield	OH
Belmont National Bank	St. Clairsville	OH
Perpetual Federal Savings Bank	Urbana	OH
First FS&LA of Van Wert	Van Wert	OH
First Federal Savings and Loan Association	Warren	OH
First FSB of Washington Court House	Washington Court House	OH
Jefferson Savings Bank	West Jefferson	OH
Milton Federal Savings and Loan Association	West Milton	OH
Liberty Savings Bank, FSB	Wilmington	OH
Bank of Alamo	Alamo	TN
Bank of Crockett	Bells	TN
Pickett County Bank and Trust Company	Byrdstown	TN
Peoples Bank	Dickson	TN
First City Bank	Murfreesboro	TN
Citizens Bank	New Tazewell	TN
Newport Federal Savings and Loan Association	Newport	TN
Citizens National Bank of Sevierville	Sevierville	TN

Federal Home Loan Bank of Indianapolis—District 6
P.O. Box 60, Indianapolis, IN 46205–0060

Boonville Federal Savings Bank	Boonville	IN
First State Bank	Brazil	IN
Riddell National Bank of Brazil	Brazil	IN
Union Savings and Loan Association	Connersville	IN
Union Federal Savings and Loan Association	Crawfordsville	IN
First Federal Savings Bank	Evansville	IN
Citizens Savings Bank	Frankfort	IN
Union Federal Savings Bank of Frankton	Indianapolis	IN
Kentland Bank	Kentland	IN
The Logansport S&LA	Logansport	IN
Home Bank, SB	Martinsville	IN
Community Bank, FSB	Michigan City	IN
Peoples Bank, a FSB	Munster	IN
Mid-Southern Savings Bank	Salem	IN
Owen County State Bank	Spencer	IN
The Merchants National Bank of Terre Haute	Terre Haute	IN
Homestead Savings Bank, FSB	Albion	MI

Member	City	State
LaSalle Federal Savings Bank	Buchanan	MI
Branch County Federal S&L Association	Coldwater	MI
MFC First National Bank—Marquette	Marquette	MI
Marshall Savings Bank, FSB	Marshall	MI
New Buffalo Savings Bank, FSB	New Buffalo	MI
Citizens Federal Savings Bank	Port Huron	MI
First National Bank of Three Rivers	Three Rivers	MI

Federal Home Loan Bank of Chicago—District 7
111 East Wacker Drive, Suite 700, Chicago, Illinois 60601

Batavia Savings Bank, FSB	Batavia	IL
Farmers State Bank of Beecher	Beecher	IL
Bradley Bank	Bradley	IL
First National Bank in Carlyle	Carlyle	IL
Centralia Savings Bank	Centralia	IL
Bank of Illinois in Champaign	Champaign	IL
Illinois-Service Federal S&LA	Chicago	IL
Northwestern Savings & Loan Association	Chicago	IL
Preferred Savings Bank	Chicago	IL
Pulaski Savings Bank	Chicago	IL
South Central Bank and Trust Company	Chicago	IL
Home FS & LA of Elgin	Elgin	IL
Fairbury Federal Savings and Loan Association	Fairbury	IL
Galena State Bank and Trust Company	Galena	IL
Highland Savings and Loan Association	Highland	IL
Security Savings Bank, FSB	Hillsboro	IL
McHenry Savings Bank	McHenry	IL
The Farmers Bank	Mt. Pulaski	IL
Regency Savings Bank, a FSB	Naperville	IL
Financial Federal Trust and Savings Bank	Olympia Fields	IL
Pekin Savings and Loan Association	Pekin	IL
First State Bank & Trust Company of Rockford	Rockford	IL
HomeBanc, FSB	Rockford	IL
Citizens State Bank of Shipman	Shipman	IL
Town & Country Bank of Springfield	Springfield	IL
Tremont Savings Bank	Tremont	IL
Northwest Savings Bank	Amery	WI
First National Bank of Baldwin	Baldwin	WI
Banner Banks	Birnamwood	WI
North Shore Bank, FSB	Brookfield	WI
Norwest Bank Wisconsin Eau Claire, NA	Eau Claire	WI
State Bank of Lodi	Lodi	WI
Anchor Bank, SSB	Madison	WI
The Peoples State Bank	Mazomanie	WI
Milton Savings and Loan Association	Milton	WI
Maritime Savings Bank	Milwaukee	WI
Mutual Savings Bank of Wisconsin, SA	Milwaukee	WI
Associated Bank, NA	Neenah	WI
Fox Cities Bank, FSB	Neenah	WI
Oshkosh Savings Bank, FSB	Oshkosh	WI
Reedsburg Bank	Reedsburg	WI

Federal Home Loan Bank of Des Moines—District 8
907 Walnut Street, Des Moines, Iowa 50309

Brenton Bank and Trust Company of Cedar Rapids	Cedar Rapids	IA
Perpetual Savings Bank, FSB	Cedar Rapids	IA
Dubuque Bank & Trust Company	Dubuque	IA
Harvest Savings Bank, FSB	Dubuque	IA
First Federal Savings Bank	Fort Dodge	IA
Security Bank	Marshalltown	IA
Community State Bank	Tipton	IA
Hawkeye Bank of Tipton	Tipton	IA
Webster City Federal Savings Bank	Webster City	IA
American Federal Savings Bank	East Grand Forks	MN
Community First National Bank of Fergus Falls	Fergus Falls	MN
Community Federal Savings & Loan Association of Little Falls	Little Falls	MN
First Federal Savings Bank	Morris	MN
First National Bank	Thief River Falls	MN
Winona National and Savings Bank	Winona	MN
The Farmers Bank	Carrollton	MO
First Bank, A Savings Bank	Clayton	MO
Joachim Savings and Loan Association	DeSoto	MO

Member	City	State
Fulton Savings Bank	Fulton	MO
Mutual Savings Bank	Jefferson City	MO
First Savings Bank, FSB	Mt. Vernon	MO
Capital Bank of Perryville, NA	Perryville	MO
Progressive Ozark Bank, FSB	Salem	MO
First National Bank of Sarcoxie	Sarcoxie	MO
Central West End Bank, a FSB	St. Louis	MO
Reliance Federal Savings and Loan Association of St. Louis County	St. Louis	MO
Community First National Bank & Trust Company	Dickinson	ND
Community First National Bank of Lidgerwood	Lidgerwood	ND
First Premier Bank, NA	Sioux Falls	SD

Federal Home Loan Bank of Dallas—District 9
5605 North MacArthur Boulevard, 9th Floor, Dallas/Fort Worth, Texas 75261–9026

Benton Savings and Loan Association	Benton	AR
First National Bank of Howard County	Dierks	AR
Home Federal Savings and Loan Association	Jonesboro	AR
Pulaski Bank & Trust Company	Little Rock	AR
Newport Federal Savings and Loan Association	Newport	AR
River Valley Savings Bank, FSB	Ozark	AR
Grant Federal Savings Bank	Sheridan	AR
United Federal Savings Bank	Springdale	AR
First Federal Savings and Loan Association	Texarkana	AR
Crowley Building and Loan Association	Crowley	LA
Jefferson Federal Savings Bank	Gretna	LA
Bank of LaPlace at St. John the Baptist	LaPlace	LA
Iberia Savings Bank	New Iberia	LA
Eureka Homestead Society	New Orleans	LA
Fidelity Homestead Association	New Orleans	LA
West Carroll National Bank	Oak Grove	LA
Iberville Building & Loan Association	Plaquemine	LA
New South Bank	Batesville	MS
Grand Bank for Savings, FSB	Leakesville	MS
First Federal Savings and Loan Association	Pascagoula	MS
Western Bank of Clovis	Clovis	NM
Home Federal Savings Bank of New Mexico	Deming	NM
Gallup Federal Savings and Loan Association	Gallup	NM
Citizens Bank of Las Cruces	Las Cruces	NM
Century Bank, FSB	Santa Fe	NM
Lamar Bank	Beaumont	TX
Shelby County Savings Association	Center	TX
Fidelity Bank, NA	Dallas	TX
Inwood National Bank	Dallas	TX
Texas Trust Savings Bank, FSB	Dallas	TX
First State Bank of Texas	Denton	TX
Bank of North Texas, NA	Fort Worth	TX
Henderson Federal Savings Association	Henderson	TX
Coastal Banc Savings Association	Houston	TX
First Heights Bank, FSB	Houston	TX
University State Bank	Houston	TX
Community State Bank	Iola	TX
Bayshore National Bank	La Porte	TX
Angelina Savings and Loan Association	Lufkin	TX
First National Bank	Palestine	TX
Olympic Savings Association	Refugio	TX
Canyon Creek National Bank	Richardson	TX
Sulphur Springs State Bank	Sulphur Springs	TX
First Federal Savings and Loan Association	Tyler	TX

Federal Home Loan Bank of Topeka—District 10
Post Office Box 176, Topeka, Kansas 66601

Aurora National Bank	Aurora	CO
The First NB of Canon City	Canon City	CO
Colorado Savings Bank, FSB of Grand County	Denver	CO
The Burns National Bank	Durango	CO
First National Bank of Flagler	Flagler	CO
Key Bank of Colorado	Fort Collins	CO
First National Bank of Fort Morgan	Fort Morgan	CO
Morgan County Federal S&L Association	Fort Morgan	CO
First National Bank in Lamar	Lamar	CO
Colorado Federal Savings Bank	Sterling	CO
First FS&LA of Lincoln-Iowa	Council Bluffs	IA

Member	City	State
Citizens Savings and Loan Association	Leavenworth	KS
First Savings Bank, FSB	Manhattan	KS
First FS&LA of Olathe	Olathe	KS
First National Bank and Trust	Osawatomie	KS
Commercial Federal Bank, a FSB	Omaha	NE
State National Bank of Marlow	Marlow	OK
Republic Bank of Norman	Norman	OK

Federal Home Loan Bank of San Francisco—District 11
307 East Chapman Avenue, Orange, California 92666

Bank of Stockdale, FSB	Bakersfield	CA
Paramount Bank, FSB	Bakersfield	CA
Fremont Bank	Fremont	CA
Fidelity Federal Bank, FSB	Glendale	CA
Brentwood Bank of California	Los Angeles	CA
First Los Angeles Bank	Los Angeles	CA
Metrobank	Los Angeles	CA
The Vintage Bank	Napa	CA
Long Beach Bank	Orange	CA
Palm Desert National Bank	Palm Desert	CA
Bay Cities National Bank	Redondo Beach	CA
De Anza National Bank	Riverside	CA
Summit Savings, FSB	Rohnert Park	CA
Watsonville Federal Savings	Watsonville	CA
American Federal Savings Bank	Reno	NV
Home Federal Bank, SB	Reno	NV

Federal Home Loan Bank of Seattle—District 12
1501 4th Avenue, Seattle, Washington 98101–1693

Northrim Bank	Anchorage	AK
Guam Savings and Loan Association	Agana	GU
Finance Factors, Limited	Honolulu	HI
American Bank of Commerce	Boise	ID
First Federal Savings Bank of Twin Falls	Twin Falls	ID
Pioneer Federal Savings & Loan Association	Dillon	MT
United Savings Bank, FA	Great Falls	MT
Pacific Continental Bank	Eugene	OR
First FS&LA of McMinnville	McMinnville	OR
Douglas National Bank	Roseburg	OR
Bank of American Fork	American Fork	UT
Utah Federal Savings Bank	Odgen	UT
Home Credit Bank	Salt Lake City	UT
Klickitat Valley Bank	Goldendale	WA
Continental Savings Bank	Seattle	WA
Viking Community Bank	Seattle	WA
Washington First International Bank	Seattle	WA

C. Due Dates

Members selected for review must submit completed Community Support Statements to their FHLBanks no later than November 30, 1994.

All public comments concerning the Community Support performance of selected members must be submitted to the members' FHLBanks no later than November 30, 1994.

D. Notice to Members Selected

Within 15 days of this Notice's publication in the **Federal Register**, the individual FHLBanks will notify each member selected to be reviewed that the member has been selected and when the member must return the completed Community Support Statement. At that time, the FHLBank will provide the member with a Community Support Statement form and written instructions and will offer assistance to the member in completing the Statement. The FHLBank will only review Statements for completeness, as the Finance Board will conduct the actual review.

E. Notice to Public

At the same time that the FHLBank members selected for review are notified of their selection, each FHLBank will also notify community groups and other interested members of the public.

The purpose of this notification will be to solicit public comment on the Community Support records of the FHLBank members pending review.

Any person wishing to submit written comments on the Community Support performance of a FHLBank member under review in this quarter should send those comments to the member's FHLBank by the due date indicated in order to be considered in the review process.

By the Federal Housing Finance Board.

Dated: October 5, 1994.

Nicolas P. Retsinas,

HUD Secretary's Designee to the Board.

[FR Doc. 94–25309 Filed 10–13–94; 8:45 am]

BILLING CODE 6725–01–P

FEDERAL MARITIME COMMISSION

[Docket No. 94–20]

Cancellation of Tariffs for Failure To Comply With Automated Tariff Filing and Information System ("ATFI") Filing Requirements; Order To Show Cause

Section 8 of the Shipping Act of 1984 ("1984 Act"), 46 U.S.C. app. 1707, and section 18(a) of the Shipping Act, 1916, ("1916 Act"), 46 U.S.C. app. 817, and section 2 of the Intercoastal Shipping Act of 1933 ("1933 Act"), 46 U.S.C. app. 844, require common carriers in the United States foreign commerce and domestic offshore commerce, respectively, to file tariffs with the Commission. The 1984 Act also directs carriers and conferences that offer service contracts to publish the essential terms of those contracts in an ETP. Marine terminal operators operating in both the foreign and/or domestic offshore commerce of the United States are required by Commission regulations to file tariffs with the Commission. (46 CFR part 514)

Section 17 of the 1984 Act, 46 U.S.C. app. 1716, section 43 of the 1916, 46 U.S.C. 841a, and section 2 of the 1933 Act empower the Commission to prescribe rules and regulations necessary to carry out the provisions of the corresponding statutes. Pursuant to this authority, the Commission instituted Docket No. 90–23, *Automated Tariff Filing and Information System ("ATFI")*, to establish regulations governing the conversion of tariff filing to an electronic system. Proposed Rules were issued on September 9, 1991 (56 FR 46,044) and Interim Rules were issued on August 12, 1992 (57 FR 36,248) and January 4, 1993 (58 FR 25). The rules issued in Docket No. 90–23 are codified in 46 CFR part 514. This new part modifies and combines all non-obsolete tariff regulations of 46 CFR parts 515, 550, 580 and 581, and establishes regulations to facilitate and implement the conversion of tariffs to ATFI.[1]

On December 17, 1992, the Commission issued Supplemental Report No. 3 and Notice ("Supplemental Report No. 3") (57 FR 59,999) in Docket No. 90–23. Supplemental Report No. 3 prescribed the schedule by which entities serving specific trades must convert tariff data into ATFI, and defined the geographic areas subject to each ATFI filing time frame ("window"). It also provided that tariffs which are not filed in ATFI by the close of the applicable filing window are subject to cancellation by order of the Commission in a show-cause proceeding, unless temporarily exempted.

In January, 1993, the Commission's Bureau of Tariffs, Certification and Licensing ("BTCL") mailed Information Bulletin No. IB 4–93 to over 4,000 firms. This Bulletin included the schedule of filing windows and a statement regarding cancellation of unconverted tariffs by show-cause order. Supplemental Report No. 4 in Docket No. 90–23, issued in June, 1993, again advised the public of the filing schedule and that failure to file in ATFI would subject entities to a proceeding for the cancellation of tariffs.

The Commission has issued three show cause orders cancelling the tariffs or portions thereof of carriers that failed to register and file in an electronic format by the required date.[2] The 243 carriers listed on the Attachment to this Order represent those carriers and conferences that have not filed their ATFI tariffs for the remaining filing windows, i.e., European,[3] African/Mid Eastern, North American/Caribbean, Central/South American, and the domestic-offshore trades. Also included are marine terminal operators and carriers with essential terms publications on file with the Commission that have failed to file their marine terminal tariffs in the ATFI system, failed to file an ATFI essential terms publication or failed to cancel its paper ETP.[4] Also included are approximately 20 carriers whose rate tariffs have been cancelled for various reasons but whose ETP's remain on file.

Now therefore, it is ordered that pursuant to section 11 of the 1984 Act, 46 U.S.C. 1710, the entities listed in the Attachment to this Order are directed to show cause, within 45 days after the publication of this Order in the **Federal Register**, why the Commission should not cancel their tariffs for failure to conform to the requirements of section 8 of the 1984 Act, 46 CFR part 514, and Supplemental Reports Nos. 2, 3, and 4 issued in Docket No. 90–23;

It is further ordered, that a copy of this Order be sent by certified mail to the last known address of the entities listed in the Attachment;

It is further ordered, that this order be published in the **Federal Register**.

By the Commission.

Ronald D. Murphy,

Assistant Secretary.

Attachment

A/S Dampskibsselskabet Torm
Able Warehousing
Adm/Growmark River System, Inc.
Aegis Logistic System, Inc.
Agrex Incorporated
Air & Sea Inc.
Airport Brokers Corporation
Alaska Cargo Transport, Inc.
Alliance Navigation Line Inc.
Allied Pickfords U.S.A., Inc.
Amazon Lines Limited
America Africa Europe Line GMBH
America Russia Turkey Ocean Navigation Shipping Lines
American Automar, Inc.
American Container Transport, Inc.
American Contract Freight Line, Ltd.
American Transport Line, Ltd.
American Transport Lines, Inc.
Anchor Container Services Company
Aremar C.I.F.S.A.
Arpin International Group
Arrowpac, Inc.
Associated Container Transportation (Australia) Limited
Atlantic Land and Improvement Company, The
Atlantik Express Linie Thien & Heyenga Schiffaharts GMBH & Co.
Australia-Eastern U.S.A. Shipping Conference
Australia-Pacific Coast Rate Agreement
B.C.R. Line
Baltimore Forest Products Terminals
Bangladesh Shipping Corporation
BCSL-U.S. Med Line Limited
Ben Federico Freight Consolidator, Inc.
Bernuth Lines Ltd.
Bim Enterprises, Ltd.
Binkley Company, The
Blue Caribe Line, Ltd.
Blue Star Line Ltd.

[1] Section 502(b)(1) of Pub. L. No. 102–582 requires all tariffs and essential terms of service contracts to be filed electronically with the Commission. 106 Stat. 4900, 4910–11.

[2] Docket No. 93–19—*Cancellation of Tariffs for Failure to Comply with Automated Tariff Filing and Information System ("ATFI") Filing Requirements.* By order issued January 12, 1994 (59 FR 1737), the paper tariffs or portions thereof of 67 carriers were cancelled for failure to register and file; Docket No. 93–25, *Cancellation of Tariffs for Failure to Comply with Automated Tariff Filing and Information System ("ATFI") Filing Requirements (European Trade).* By order issued May 5, 1994 (59 FR 24430), the paper tariffs or portions thereof of 19 carriers were cancelled for failure to register and file; and Docket No. 94–04—*Cancellation of Tariffs for Failure to Comply with Automated Tariff Filing and Information System ("ATFI") Filing Requirements.* By order issued July 29, 1994 (59 FR 38605), the tariffs or portion thereof of 37 carriers were cancelled for failure to file.

[3] The order issued in Docket No. 93–25 included only those persons in the European Trade that did not register and file by the required date. The Order to Show Cause issued this date includes those carriers that have registered in ATFI but have failed to file a tariff in electronic format.

[4] Certain carriers have paper ETP's on file with the Commission as well as an effective ATFI filed ETP. These paper ETP's are being made the subject of this show cause proceeding except to the extent that they continue to have application with respect to essential terms and service contracts that were filed prior to ATFI's implementation. The Commission is not allowing new essential terms and service contracts to be filed in paper format. Accordingly, paper ETP's, not having been voluntarily cancelled by the carriers on even a limited basis must now be cancelled by the Commission.

Bluefields Marine Ltd.
Boston Docks Services Association
Bulkstar Shipping Corporation
Capital Maritime Terminal
Central America Shippers, Inc.
Central American Container Line
Centroline, Inc.
Char Ching Marine Company, Ltd.
Charles, Willmore A.
Chickasaw Terminal Corporation
Chipman Corporation
City Marine Terminal, Inc.
Coastal Stevedoring Company
Columbus River Transportation Center
Compagnie Maritime Marfret
Companhia De Navegacao Lloyd Brasileiro
Compania Transatlantica Espanola, S.A.
Concorde Line Central American Service
Connecticut Terminal Company, Inc.
Consorcio Naviero Del Occidente, C.A.
Container Express Lines, Inc.
Container Management, Inc.
Container Services of Washington, Inc.
Container Services, Inc.
Continental North Atlantic Westbound Freight Conference
Contract Marine Carriers, Inc.
Convoy Intercontinental Container Transport GMBH & Co. KG
Cool Carriers (SVENSKA) AB
Costa Container Lines
Cottman Company, The
Crescent Western Warehouse Company
CSX/SEA-Land Logistics, Inc.
D.B. Turkish Cargo Lines
Distribution-Warehousing, Inc.
Dole Fresh Fruit Company
Dorick Navigation, S.A.
Empresa Maritima, S.A.—Chile
Empresa Naviera Santa, S.A.
Energy Resources-Imports & Exports, Inc.
Euro-Gulf International, Inc.
Family Islands Shipping Company Ltd.
Fednav (USA) Inc.
Fednav Lakes Services, Inc.
Flagship Container Line, Inc.
Forward Marine, Inc.
Fourchon Int'l Shipping, Inc.
Frata Container Lines Pte. Ltd.
Gateway Service Center, Inc.
Gateways International, Inc.
Gearbulk Container Services
Gearbulk Ltd.
Georgia-Pacific Corporation
Godchaux-Henderson Terminal
Great Lakes Transcaribbean Line Limited
Great Western Unifreight System
Greece Westbound Conference
Guarani Line Limited
Gulf & Mexico Shipping Lines, Inc.
Gulf European Freight Association
Gulf Florida Terminal Company
Gulf Motorships, Inc.
H & A Trading Company, Inc.
Hale Shipping Corporation
Hapag-Lloyd, A.G.
Heide Warehouse Company
Horizons Shipping and Trading Ltd., Inc.
Hugo Stinnes Schiffahrt GMBH
Imex Shipping Group, Inc.
IML Freight, Inc.
Inagua Lines, Inc.
Incotrans BV
The Inter-American Freight Conference—Pacific Coast Area
Inter-Shipping Chartering Co.
Iowa Trader L.P.
Island Shipping and Trading, Ltd.
Jackson Shipping, Inc.
Jacksonville Caribbean Broker Services, Inc.
Jebsen New Zealand Line
Jet Pac Corporation
Johnson Scanstar
Johnson Shipping Agency, Inc.
Kimberly Navigation Company Ltd.
KKL (Kangaroo Line) Pty., Ltd.
Knik Construction Co., Inc.
Land Link, Ltd.
Lauritzen Reefers A/S
Lineas Navieras Bolivianas S.A.M. (LINABOL)
Little Rock Terminal Company
Malaysia Pacific Rate Agreement
Manufacturers Export Service, Inc.
Marcella Shipping Company
Mares Transport
Maritima Aragua, S.A.
MB Canadian Tropic Line
Mediterranean Shipping Company S.A.
MFP St. Elmo and Myrtle Grove Terminal Elevators
Miami International Container Freight Station
Miami Marine Terminal Corporation
Midwest Machinery Movers, Inc.
Mobile River Terminal Company
Naviera Del Pacifico C.A.
Naviera Lavinel C.A.
Naviera Mercante C.A.
Naviera Neptuno, S.A.
Naviera Universal, S.A. (Uniline)
Naviera Venline C.A.
Navieros Interamericanos, S.A.
Nedlloyd Lijnen B.V.
Nexos Line, Inc.
Nichiro Corporation
Nissui Shipping Corporation
North Atlantic Westbound Freight Association
Northern Shipping Company
Ocean Express Lines, Inc.
Ocean Steamship (Nigeria) Ltd.
Ocean Trading & Marine Terminals S.A.
Omega Shipping (CA), Inc.
Osborne Truck Line, Inc.
P.T. Moges Shipping Co. Ltd.
Pacific Commerce Line Inc.
Pacific Europe Express
Pacific Great Lakes Transport
Pacific Ocean Express, Inc.
Pan Caribbean Freight Consolidators, Inc.
Parker Warehouses, Inc.
Parr Terminal Railroad
Pegasus (N.Y.) Inc.
Pier Haulage, Inc.
Pioneer Shipping, Inc.
Port Covington Grain Elevator
Port of Galena Park Corporation
Portuguese American Export Line, Inc.
Prairie Maritime Corporation
Principal Lines, Ltd.
Prudential Lines, Inc.
Rainier Overseas Movers, Inc.
Ranvar Corporation
Reserve Elevator Corporation
Rokuchu Marine Corporation
Ryder/Pie Nationwide Inc.
S.T.S. Inc.
Salem Marine Terminal Corporation
Salt Lake Container Freight Station
Savannah Sound Maritime Company Limited
Scandinavia Baltic U.S. North Atlantic Freight Conference
Sea Terminals Inc.
Sea-Alaska Terminal, Inc.
Sea-Barge, Inc.
Seaboerd Caribe Ltd.
Seaport of Chicago
Sentry Household Shipping, Inc.
Sesko Marine Trailers, Inc.
Seth Shipping Corp.
Shawneetown, Illinois, Port of
Societe Ivoirienne De Transport Maritime (SITRAM)
Societe Navale Et Commerciale Delmas-Vieljeux and America-Africa Europe Line GMBH, Joint Service
South and East Africa/USA Conference
South River Terminal Company
Southern Freight Tariff Bureau
Southern Oceans Container Line Limited
Southwest Forest Industries
Southwestern Freight Bureau, Agent
St. Joe Stevedoring Company
St. Lucie Terminal Company, Inc.
Staten Island Operating, Inc.
Stockton Elevators
Stolt Terminals (Chicago) Inc.
Strachan Shipping Company
Sunshine Express Line, Inc.
Sunshine Express, Inc.
Superior Assembly & Distribution Center, Inc.
Surinam Navigation Co.
SWF Gulf Coast, Inc.
Sylvan Shipping Company, Inc.
Tampa Bay Shipping Ltd.
Tangi Trans-Port, Inc.
Tecomar, S.A.
Thames Shipping, Ltd.
Thriftcargo Florida, Inc.
Tientsin Marine Shipping Company
Top Freight Systems, Inc.
Traffic Executive Assoc.—Eastern Railroads
Trailer Marine Transport Corporation
Trans Caribbean Terminal Co.
Trans Pacific Freight Conference of Hong Kong
Trans-Atlantic American Flag Liner Operators
Transocean Marine, Inc.
Tri-Seas Marine Terminal, Inc.
U.S. Atlantic/Italy, France & Spain Freight Conference
United States/Colombia Conference
Unico Shipping Company
United Arab Shipping Company (S.A.G.)
United Grain Corporation
Universal Alco Ltd.
Universal Shipping Terminal, Inc.
V.I. Ferries Incorporated
Vencaribe C.A.
Venezuela Transport Line, Incorporated
Victoria Shipping Line, Inc.
Volkswagen of America, Inc.
Westlake Harbor Terminals, Inc.
Westvaco Corporation
Wolfgang Jobmann GMBH
Y Il Shipping Company Limited
Zim Isreal Navigation Co., Ltd.

[FR Doc. 94–25438 Filed 10–13–94; 8:45 am]
BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

The New Prosperity Banking Corporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than November 7, 1994.

A. **Federal Reserve Bank of Atlanta** (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *The New Prosperity Banking Corporation*, St. Augustine, Florida; to become a bank holding company by acquiring 90 percent of the voting shares of Prosperity Banking Company, St. Augustine, Florida, and thereby indirectly acquire Prosperity Bank of St. Augustine, St. Augustine, Florida.

2. *TB&C Bancshares, Inc.*; Columbus, Georgia; to acquire an additional 7.04 percent (for a total of 13.47 percent) of the voting shares of Synovus Financial Corp., Columbus, Georgia; and thereby indirectly acquire Columbus Bank and Trust Company, Columbus, Georgia; Commercial Bank, Thomasville, Georgia; Commercial Bank and Trust Co. of Troup County, LaGrange, Georgia; Security Bank and Trust Co., Albany, Georgia; Sumter Bank and Trust Company, Americus, Georgia; The Coastal Bank of Georgia, Brunswick, Georgia; First State Bank and Trust Co., Valdosta, Georgia; Bank of Hazlehurst, Hazlehurst, Georgia; Citizens Bank and Trust Co. of West Georgia, Carrolton, Georgia; Cohutta Banking Company, Chatsworth, Georgia; Bank of Coweta, Newnan, Georgia; First Community Bank of Tifton, Tifton, Georgia; The National Bank of Walton County, Monroe, Georgia; CB&T Bank of Middle Georgia, Warner Robins, Georgia; Sea Island Bank, Statesboro, Georgia; Citizens First Bank, Rome, Georgia; The Citizens Bank of Cochran, Cochran, Georgia; The Citizens Bank, Fort Valley, Georgia; Athens First Bank and Trust Co., Athens, Georgia; Peachtree National Bank, Peachtree City, Georgia; Bank of Pensacola, Pensacola, Florida; The Quincy State Bank, Quincy, Florida; The Tallahassee State Bank, Tallahassee, Florida; Vanguard Bank and Trust Company, Valparaiso, Florida; First Coast Community Bank, Fernandina Beach, Florida; First Commercial Bank, Birmingham, Alabama; First Commercial Bank of Huntsville, Huntsville, Alabama; First National Bank of Jasper, Jasper, Alabama; Sterling Bank, Montgomery, Alabama; Fort Rucker National Bank, Fort Rucker, Alabama; The Bank of Tuscaloosa, Tuscaloosa, Alabama; and CB&T Bank of Russell County, Phoenix City, Alabama.

B. **Federal Reserve Bank of Kansas City** (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *HF Limited Partnership*, Marshall, Missouri; to become a bank holding company by acquiring 49.85 percent of the voting shares of Wood & Huston Bancorporation, Inc., Marshall, Missouri; and thereby indirectly acquire South East Missouri Bank, Cape Girardeau, Missouri; Missouri Southern Bank, West Plains, Missouri; and Wood and Huston Bank, Marshall, Missouri.

Board of Governors of the Federal Reserve System, October 7, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94–25444 Filed 10–13–94; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

On Fridays, the Department of Health and Human Services, Office of the Secretary publishes a list of information collections 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 are those information collections recently submitted to OMB.

1. FY 1995 Social Security Client Satisfaction Survey—0990–0171—Extension—The survey of Social Security clients will provide both Congress and the OIG with oversight information on SSA performance and will provide SSA with data needed to comply with the Chief Financial Officers Act and Executive Order 12862. Respondents: Individuals or households; Number of Respondents: 975; Frequency of Response: one time; Average Burden per Response: 25 minutes; Estimated Annual Burden: 224 hours.

2. Uniform Relocation and Real Property Acquisition Under Federal and Federally-assisted Programs (45 CFR Part 15 and 49 CFR Part 24)—0990–0150—Extension—HHS has adopted standard government-wide regulations on acquisition of real property and relocation of persons thereby displaced. Federal agencies and State and local governments must maintain records of their displacement activities sufficient to demonstrate compliance with those regulations. Agencies may be required to file reports every three years (or more often with good cause) to permit Federal verification of compliance. Respondents: State or local governments; Annual Number of Respondents: one; Frequency of Response: once; Burden per Response: one hour; Total Annual Burden: one hour.

OMB Desk Officer: Allison Eydt.

Copies of the information collection packages listed above can be obtained by calling the OS Reports Clearance Officer on (202) 619–1053. Written comments and recommendations for the proposed information collection should be sent directly to the OMB desk officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503.

Dated: October 5, 1994.

Dennis P. Williams,

Deputy Assistant Secretary, Budget.

[FR Doc. 94–25544 Filed 10–13–94; 8:45 am]

BILLING CODE 4150–04–M

Administration for Children and Families

Meeting of the U.S. Advisory Board on Child Abuse and Neglect

AGENCY: Administration for Children and Families, DHHS.

ACTION: Notice of meeting.

SUMMARY: The U.S. Advisory Board on Child Abuse and Neglect will hold a meeting in the Old Georgetown Room at the Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, Maryland, 20814, from 9:00 a.m., Wednesday, October 26, through 2:30 p.m., Friday, October 28, 1994.

This meeting is open to the public. If a sign language interpreter is needed, you may contact David Siegel at (202) 401–9215.

FOR FURTHER INFORMATION CONTACT: Marilyn J. Gosdeck, Special Projects Specialist, U.S. Advisory Board on Child Abuse and Neglect, Room 303–D, Humphrey Building, Washington, D.C. 20201, (202) 690–8604.

SUPPLEMENTARY INFORMATION: During this meeting, the Advisory Board will discuss the content of the Board's 1994 report on child maltreatment-related fatalities; a Board report on cultural diversity; the reauthorization of the Child Abuse Prevention and Treatment Act; and future Board endeavors.

Dated: October 4, 1994.

Preston Bruce,

Executive Director, U.S. Advisory Board on Child Abuse and Neglect.

[FR Doc. 94–25410 Filed 10–13–94; 8:45 am]

BILLING CODE 4184–01–P

Food and Drug Administration

[Docket No. 94N–0357]

Surveillance System for Antimicrobial Resistance; Public Hearing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public hearing; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public hearing regarding approaches to surveillance for the development of bacterial resistance to human and animal antimicrobial drugs. The purpose of the hearing is to solicit information from, and the views of, interested persons, including scientists, professional groups, and consumers, on the issues and concerns relating to approaches for regulatory purposes to surveillance for the development of bacterial resistance to antibacterial agents used in humans and in animals.

DATES: The public hearing will be held on November 9 and 10, 1994, from 8:30 a.m. to 5 p.m. Submit written notices of participation and comments by November 1, 1994. Written comments will be accepted until February 1, 1995.

ADDRESSES: The hearing will be held at the Rockville Civic Center, F. Scott Fitzgerald Theater, 603 Edmonston Dr., Rockville, MD. For recorded directions to the Civic Center call 301–309–3007. Submit written notices of participation and comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Transcripts of the hearing will be available for review at the Dockets Management Branch (address above).

FOR FURTHER INFORMATION CONTACT: Ermona B. McGoodwin, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455.

SUPPLEMENTARY INFORMATION:

I. Background

On May 11 and 12, 1994, FDA's Anti-Infective Drugs Advisory Committee and the Veterinary Medicine Advisory Committee were jointly convened to discuss the use of fluoroquinolone drug products in animal husbandry, in terms of both the therapeutic benefits of these drugs to animals and the potential risks to humans with respect to the use of these drugs in animals, inducing further antimicrobial resistance in human pathogens. One of the recommendations of the joint advisory committee was for improved surveillance for the development of antimicrobial resistance in both animals and humans. A cooperative surveillance effort, involving Government, academia, and industry, was recommended.

II. Scope of The Hearing

In light of the significant public health impact of increasing bacterial resistance on the future utility of antibacterial agents in animals and humans, FDA is soliciting broad public participation and comment on how best to implement an animal and human bacterial resistance monitoring system for regulatory purposes. The agency encourages investigators with information relevant to bacterial resistance monitoring, as well as other interested persons, to respond to this notice. Examples of issues that are of interest to the agency include the following: (1) FDA's role in using data from a surveillance system to regulate antibacterial agents in humans and animals in order to minimize the emergence of antibacterial resistance; (2) the objectives of a surveillance system for regulatory purposes; (3) the populations of animal and human pathogens to be tested; (4) the surveillance information to be collected; (5) whether current systems are adequate to provide unbiased, timely information to FDA; and (6) funding and maintenance options for a surveillance system if current systems are not adequate. FDA is actively seeking the views of professional and consumer groups regarding the implications of an animal and human bacterial resistance monitoring system for regulatory purposes on their constituent populations.

III. Notice of Hearing Under 21 CFR Part 15

The Commissioner of Food and Drugs is announcing that the public hearing will be held in accordance with part 15 (21 CFR part 15). The presiding officer will be the Commissioner of Food and Drugs or his designee. The presiding officer will be accompanied by a panel of Public Health Service employees with the relevant expertise.

Persons who wish to participate in the part 15 hearing must file a notice of participation with the Dockets Management Branch (address above) by November 1, 1994. To ensure timely handling, any outer envelope should be clearly marked with the docket number found in brackets in the heading of this document and the statement "Surveillance System for Antimicrobial Resistance Hearing." Groups should submit two copies. The notice of participation should contain the person's name, address, telephone number, affiliation if any, brief summary of the presentation, and approximate amount of time requested for the presentation. The agency asks that interested persons and groups having similar interests consolidate their comments and present them through a single representative. FDA will allocate the time available for the hearing among the persons who file notices of participation as described above. If time permits, FDA may allow interested persons attending the hearing who did not submit a written notice of participation, in advance, to make an oral presentation at the conclusion of the hearing.

After reviewing the notices of participation and accompanying information, FDA will schedule each appearance and notify each participant by telephone of the time allotted to the person and the approximate time the person's oral presentation is scheduled to begin. The hearing schedule will be

available at the hearing. After the hearing, it will be placed on file in the Dockets Management Branch under the docket number found in brackets in the heading of this document.

Under § 15.30 the hearing is informal, and the rules of evidence do not apply. No participant may interrupt the presentation of another participant. Only the presiding officer and panel members may question any person during or at the conclusion of their presentation.

Public hearings, including hearings under part 15, are subject to FDA's guideline (21 CFR part 10, Subpart C) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings. Under § 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. The hearing will be transcribed as stipulated in § 15.30(b). Orders for copies of the transcript can be placed at the meeting or through the Dockets Management Branch (address above).

Any handicapped persons requiring special accommodations in order to attend the hearing should direct those needs to the contact person listed above.

To the extent that the conditions for the hearing, as described in this notice, conflict with any provisions set out in part 15, this notice acts as a waiver of those provisions as specified in § 15.30(h).

To permit time for all interested persons to submit data, information, or views on this subject, the administrative record of the hearing will remain open following the hearing until February 1, 1995. Persons who wish to provide additional materials for consideration should file these materials with the Dockets Management Branch (address above) by February 1, 1995.

Dated: October 7, 1994.

William K. Hubbard,

Interim Deputy Commissioner for Policy.

[FR Doc. 94–25443 Filed 10–13–94; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 94M–0327]

Hybritech Inc.; Premarket Approval of Tandem®-R, E, and ERA PSA Assays

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the supplemental application by Hybritech, Inc., San Diego, CA, for premarket approval, under the Federal Food, Drug, and Cosmetic Act (the act), of Tandem®-R, E, and ERA PSA Assays. After reviewing the recommendation of the Immunology Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of August 25, 1994, of the approval of the supplemental application.

DATES: Petitions for administrative review by November 14, 1994.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Peter E. Maxim, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–594–1293.

SUPPLEMENTARY INFORMATION: On June 29, 1992, Hybritech Inc., San Diego, CA 92196–9006, submitted to CDRH a supplemental application for premarket approval of Tandem®-R, E, and ERA PSA Assays. These devices were originally approved for use as an aid in the prognosis and management of patients with prostate cancer. The supplemental PMA application is for a modification of the intended use for all three formats to read as follows: The Tandem®-R PSA Immunoradiometric Assay, Tandem®-E PSA Immunoenzymetric Assay, or Tandem®-ERA PSA Immunoenzymetric Assay, * * * is an *In Vitro* device for the quantitative measurement of prostate-specific antigen (PSA) in human serum. This device is indicated for the measurement of serum PSA in conjunction with digital rectal examination (DRE) as an aid in the detection of prostate cancer in men aged 50 years or older. Prostatic biopsy is required for diagnosis of cancer. This device is further indicated for the serial measurement of PSA to aid in the prognosis and management of patients with prostate cancer.

On June 29, 1993, the Immunology Devices Panel of the Medical Devices Advisory Committee, an FDA advisory committee, reviewed and recommended approval of the supplemental application. On August 25, 1994, CDRH approved the supplemental application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before November 14, 1994, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: October 3, 1994.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 94–25516 Filed 10–13–94; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 94M–0339]

IOLAB Corp.; Premarket Approval of the Models LI30U, LI32U, and LI41U SOFLEX™ Ultraviolet-Absorbing Silicone Posterior Chamber Intraocular Lenses

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by IOLAB Corp., Claremont, CA, for premarket approval, under the Federal Food, Drug, and Cosmetic Act (the act), of the Models LI30U, LI32U, and LI41U SOFLEX™ ultraviolet-absorbing silicone posterior chamber intraocular lenses. After addressing the concerns of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of September 2, 1994, of the approval of the application.

DATES: Petitions for administrative review by November 14, 1994.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Donna L. Rogers, Center for Devices and Radiological Health (HFZ–463), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–594–2053.

SUPPLEMENTARY INFORMATION: On October 8, 1991, IOLAB Corp., Claremont, CA 91711, submitted to CDRH an application for premarket approval of the Models LI30U, LI32U, and LI41U SOFLEX™ ultraviolet-absorbing silicone posterior chamber intraocular lenses. The devices are intraocular implants and are indicated for primary implantation for the visual correction of aphakia in persons 60 years of age or older where a cataractous lens has been removed by extracapsular cataract extraction. The lenses are intended to be placed in either the ciliary sulcus or capsular bag.

On May 20, 1993, the Ophthalmic Devices Panel of the Medical Devices Advisory Committee, an FDA advisory committee, reviewed and recommended disapproval of the application. The concerns of the panel have been adequately addressed by IOLAB Corp. in subsequent submissions to FDA. On September 2, 1994, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before November 14, 1994, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: October 3, 1994.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 94–25518 Filed 10–13–94; 8:45 am]

BILLING CODE 4160–01–F

Advisory Committee Meeting; Amendment of Notice; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of September 1, 1994 (59 FR 45294), that announced an amendment to a notice of meeting of the Antiviral Drugs Advisory Committee, scheduled for September 12 and 13, 1994. The document was published with an error in the signer's title. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: LaJuana D. Caldwell, Office of Policy (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2994.

In the FR Doc. 94–21654, appearing on page 45294 in the **Federal Register** of Thursday, September 1, 1994, in the second column, at the end of the document, the title "Interim Deputy Commissioner for Policy" is corrected to read "Interim Deputy Commissioner for Operations".

Dated: October 5, 1994.

Lireka P. Joseph,

Acting Interim Deputy Commissioner for Operations.

[FR Doc. 94–25397 Filed 10–13–94; 8:45 am]

BILLING CODE 4160–01–F

Temporary Deferment of Activities Relating to Medical Device Submissions

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the Office of Device Evaluation (ODE), Center for Devices and Radiological Health (CDRH) will be moving in October 1994. During the period required for relocation of files, equipment, and agency personnel, the agency will not officially receive premarket notifications, premarket approval applications (PMA's), or investigational device exemption (IDE) applications, and the agency's review of pending submissions will be delayed.

The statutory review period on pending submissions will be suspended during this period needed for relocation of ODE. ODE will renew work on and will officially receive submissions after the relocation is completed. FDA estimates that the deferment period will be 7 calendar days, but it may be up to 14 days, depending on the circumstances of the move and the timing of the particular submission. Following the move, FDA will publish a notice in the **Federal Register** providing the new address for submissions and identifying the exact period during which action on new and existing submissions was temporarily deferred.

FOR FURTHER INFORMATION CONTACT: Joseph M. Sheehan, Center for Devices and Radiological Health (HFZ–84), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–4765, extension 157.

SUPPLEMENTARY INFORMATION: ODE is responsible for many CDRH activities under sections 510, 513, 515, and 520 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360, 360c, 360e, and 360j). These activities include:

1. Advising the Director, CDRH, and other FDA officials on all medical device submissions, such as premarket notification submissions under section 510(k) of the act, device classifications under section 513 of the act, PMA's and product development protocols (PDP's) under section 515 of the act, and clinical investigations under section 520 of the act;
2. Determining substantial equivalence for premarket notification submissions;
3. Planning, conducting, and coordinating CDRH actions regarding PMA's, PDP's, and IDE approvals, denials, or withdrawals of approval;
4. Monitoring sponsors' compliance with regulatory requirements; and
5. Conducting a continuing review, surveillance, and medical evaluation of the labeling, clinical experience, and required reports submitted by sponsors holding approved applications.

FDA is moving ODE and other CDRH offices from their present Rockville, MD location to another facility in Rockville, MD. This move will occur in October 1994. Because the move affects ODE's Document Mail Center and most ODE review staff, the office's capacity to conduct reviews of submissions will be substantially reduced until the move is completed. Therefore, the statutory review period for new and existing submissions affected by the move will be adjusted accordingly.

FDA anticipates that this period will take 7 calendar days but notes that the maximum adjustment for any particular submission may be 14 days, depending on the circumstances of the move and the timing of the submission. The statutory review period on submissions pending when the move begins will be suspended during the relocation period. During this period, FDA will continue to accept mail, but will not officially log it in until the relocation is completed. When ODE functions resume, submissions received during and immediately following the move will then be officially logged in, but on a staggered basis to preserve equity in the order of receipt and manageability of the accumulated workload. Statutory review periods will begin when submissions are officially logged in. ODE will of course attempt to minimize the period during which regular procedures are suspended. Following the move, FDA will publish a notice providing the new address for submissions and identifying the exact period during which action on new and existing submissions was temporarily deferred.

Persons who may be affected by this temporary deferment should contact FDA with any questions they may have regarding ODE's move to the Rockville, MD location. These persons should call CDRH's Division of Small Manufacturers Assistance at 800–638–2041, or 301–443–6597 (in MD).

Dated: October 7, 1994.

William K. Hubbard,

Interim Deputy Commissioner for Policy.

[FR Doc. 94–25517 Filed 10–13–94; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB) for Clearance

AGENCY: Health Care Financing Administration, HHS. The Health Care Financing Administration (HCFA), Department of Health and Human Services (HHS), has submitted to OMB the following for expedited review in compliance with the Paperwork Reduction Act (Pub. L. 96–511).

1. *Type of Request:* Revision; *Title of Information Collection:* End Stage Renal Disease Medical Evidence Report - Medicare Entitlement and/or Patient Registration; *Form No.:* HCFA–2728; *Use:* This data collection captures the specific medical information required to determine the Medicare eligibility of an end stage renal disease claimant. It also collects data for research and policy decisions on this population; *Frequency:* On occasion; *Respondents:* Businesses or other for profit, individuals or households, small businesses or organizations; *Estimated Number of Responses:* 60,000; *Average Hours Per Response:* .42; *Total Estimated Burden Hours:* 25,200.

Additional Information or Comments: Call the Reports Clearance Office on (410) 966–5536 for copies of the clearance request packages. Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 3001, Washington, D.C. 20503.

Dated: October 6, 1994.

Kathleen Larson,

Acting Director, Management Planning and Analysis Staff, Office of Financial and Human Resources, Health Care Financing Administration.

BILLING CODE 4120–03–P

U.S. Department of Health & Human Services
Health Care Financing Administration

FORM APPROVED
OMB NO.

END STAGE RENAL DISEASE MEDICAL EVIDENCE REPORT MEDICARE ENTITLEMENT AND/OR PATIENT REGISTRATION

A. Complete For All ESRD Patients

1. Name (Last, First, Middle Initial)	2. Health Insurance Claim Number	3. Social Security Number
4. Full Address (Include City, State, and Zip)	5. Phone Number ( )	6. Date of Birth (MM/DD/YYYY)
	7. Sex ☐ Male ☐ Female	8. Ethnicity ☐ Hispanic: Mexican ☐ Hispanic: Other ☐ Non-Hispanic

9. Race (Check one box only)
- ☐ White
- ☐ Black
- ☐ American Indian/Alaskan Native
- ☐ Asian
- ☐ Pacific Islander
- ☐ Mid-East/Arabian
- ☐ Indian sub-Continent
- ☐ Other or Multiracial
- ☐ Unknown

10. Medical Coverage (Check all that apply)
- ☐ a. Medicare
- ☐ b. Medicaid
- ☐ c. DVA
- ☐ d. Employer Group Health Insurance
- ☐ e. Other Medical Insurance
- ☐ f. None

11. Is Patient Applying for ESRD Medicare Coverage? ☐ Yes ☐ No
If Yes, enter address of social security office.

12. Primary Cause of Renal Failure (Use code from back of form)	13. Height inches OR centimeters	14. Dry Weight pounds OR kilograms	15. Employment Status (6 mos prior and current status)
			Prior / Current: ☐ ☐ Unemployed; ☐ ☐ Employed Full Time; ☐ ☐ Employed Part Time; ☐ ☐ Homemaker; ☐ ☐ Retired due to Age/Preference; ☐ ☐ Retired (Disability); ☐ ☐ Medical Leave of Absence; ☐ ☐ Student

16. Co-Morbid Conditions (Check ALL that apply currently or during last 10 years.) *See instructions
- ☐ a. Congestive heart failure
- ☐ b. Ischemic heart disease, CAD*
- ☐ c. Myocardial infarction
- ☐ d. Cardiac arrest
- ☐ e. Cardiac dysrhythmia
- ☐ f. Pericarditis
- ☐ g. Cerebrovascular disease, CVA, TIA*
- ☐ h. Peripheral vascular disease*
- ☐ i. History of hypertension
- ☐ j. Diabetes (primary or contributing)
- ☐ k. Diabetes, currently on insulin
- ☐ l. Chronic obstructive pulmonary disease
- ☐ m. Tobacco use (current smoker)
- ☐ n. Malignant neoplasm, Cancer
- ☐ o. Alcohol dependence
- ☐ p. Drug dependence*
- ☐ q. HIV positive status ☐ Can't disclose
- ☐ r. AIDS ☐ Can't disclose
- ☐ s. Inability to ambulate
- ☐ t. Inability to transfer

17. Was pre-dialysis/transplant EPO administered? ☐ Yes ☐ No

18. Laboratory Values Prior to First Dialysis Treatment or Transplant *See Instructions.

Laboratory Test	Value	Date	Laboratory Test	Value	Date
a. Hematocrit (%)			e. Serum Creatinine (mg/dl)		
b. Hemoglobin (g/dl)*			f. Creatinine Clearance (ml/min)*		
c. Serum Albumin (g/dl)			g. BUN (mg/dl)*		
d. Serum Albumin Lower Limit (g/dl)			h. Urea Clearance (ml/min)*		

B. Complete For All ESRD Patients In Dialysis Treatment.

19. Name of Provider	20. Medicare Provider Number	21. Primary Dialysis Setting ☐ Hospital Inpatient ☐ Home ☐ Dialysis Facility/Center

22. Primary Type of Dialysis ☐ Hemodialysis ☐ CCPD ☐ IPD ☐ CAPD ☐ Other	23. Date Regular Dialysis Began (MM/DD/YY)	24. Date Patient Started at Current Facility (MM/DD/YY)	25. Date Dialysis Stopped (MM/DD/YY)	26. Date of Death (MM/DD/YY)

C. Complete For All Kidney Transplant Patients

27. Date of Transplant (MM/DD/YY)	28. Name of Transplant Hospital	29. Medicare Provider Number for Item 28
Date patient was admitted as an inpatient to a hospital in preparation for, or anticipation of, a kidney transplant prior to the date of actual transplantation.	30. Enter Date (MM/DD/YY) / 31. Name of Preparation Hospital	32. Medicare Provider Number for Item 31

33. Current Status of Transplant ☐ Functioning ☐ Nonfunctioning	34. If Nonfunctioning, Date of Return To Regular Dialysis	35. Current Dialysis Treatment Site ☐ Hospital Inpatient ☐ Home ☐ Dialysis Facility/Center

Form HCFA-2728-U4 (7-19-94)

D. Complete For All ESRD Self-Dialysis Training Patients (Medicare Applicants Only)

36. Name of Training Provider	37. Medicare Provider Number of Training Provider
38. Date Training Began (MM/DD/YY)	39. Type of Training ☐ Hemodialysis ☐ IPD ☐ CAPD ☐ CCPD
40. This Patient is Expected to Complete (or has completed) Training and Will Self-dialyze on a Regular Basis. ☐ Yes ☐ No	41. Date When Patient Completed, or is Expected to Complete, Training (MM/DD/YY)

I certify that the above self-dialysis training information is correct and is based on consideration of all pertinent medical, psychological, and sociological factors as reflected in records kept by this training facility.

42. Printed Name and Signature of Physician personally familiar with the patient's training	43. UPIN of Physician in Item 42

E. Physician Identification

44. Attending Physician (Print)	45. Physician's Phone No.	46. UPIN of Physician in Item 44

PHYSICIAN ATTESTATION

I certify, under penalty of perjury, that the information on this form is correct to the best of my knowledge and belief. Based on diagnostic tests and laboratory findings, I further certify that this patient has reached the stage of renal impairment that appears irreversible and permanent and requires a regular course of dialysis or kidney transplant to maintain life. I understand that this information is intended for use in establishing the patient's entitlement to Medicare benefits and that any falsification, misrepresentation, or concealment of essential information may subject me to fine, imprisonment, civil penalty, or other civil sanctions under applicable Federal laws.

47. Attending Physician's Signature of Attestation (Same as Item 44.)	48. Date (MM/DD/YY)

49. Remarks

F. Obtain Signature From Patient

I hereby authorize any physician, hospital, agency, or other organization to disclose any medical records or other information about my medical condition to the Department of Health and Human Services for purposes of reviewing my application for Medicare entitlement under the Social Security Act and/or for scientific research.

50. Signature of Patient (Signature by mark must be witnessed.)	51. Date (MM/DD/YY)

G. Privacy Act Statement

The collection of this information is authorized by Section 226A of the Social Security Act. The information provided will be used to determine if an individual is entitled to Medicare under the End Stage Renal Disease provisions of the law. The information will be maintained in system No. 09-70-0520, "End Stage Renal Disease Program Management and Medical Information System (ESRD PMMIS)", published in the Privacy Act Issuance, 1991 Compilation, Vol. 1, pages 436-437, December 31, 1991 or as updated and republished.

Collection of your Social Security number is authorized by Executive Order 9397. Furnishing the information on this form is voluntary, but failure to do so may result in denial of Medicare benefits.

Information from the ESRD PMMIS may be given to a congressional office in response to an inquiry from the congressional office made at the request of the individual; an individual or organization for a research, demonstration, evaluation, or epidemiologic project related to the prevention of disease or disability, or the restoration or maintenance of health. Additional disclosures may be found in the *Federal Register* notice cited above.

You should be aware that P.L. 100-503, the Computer Matching and Privacy Protection Act of 1988, permits the government to verify information by way of computer matches.

H. For ESRD Network Use Only in Cases Referred to ESRD Medical Review Board

52. Network Confirmed as ESRD ☐ Yes ☐ No	53. Authorized Signature	54. Date (MM/DD/YY)	55. Network Number

LIST OF PRIMARY CAUSES OF END STAGE RENAL DISEASE

Item 12. Primary Cause of Renal Failure should be completed by the attending physician from the list below. Enter the ICD-9-CM code plus the letter code to incidate the primary cause of end stage renal disease. If there are several probable causes of renal failure, choose one as primary.

ICD-9	LTR	NARRATIVE
DIABETES		
25000	A	Type II, adult-onset type or unspecified type diabetes
25001	A	Type I, juvenile type, ketosis prone diabetes
GLOMERULONEPHRITIS		
5829	A	Glomerulonephritis (GN) (histologically not examined)
5821	A	Focal glomerulosclerosis, focal sclerosing GN
5831	A	Membranous nephropathy
5832	A	Membranoproliferative GN type I, diffuse MPGN
5832	C	Dense deposit disease, MPGN type 2
58381	B	IgA nephropathy, Berger's disease (proven by immunofluorescence)
58381	C	IgM nephropathy (proven by immunofluorescence)
5804	B	Rapidly progressive GN
5834	C	Goodpasture's Syndrome
5800	C	Post infectious GN, SBE
5820	A	Other proliferative GN
SECONDARY GN/VASCULITIS		
7100	E	Lupus erythematosus, (SLE nephritis)
2870	A	Henoch-Schonlein syndrome
7101	B	Scleroderma
2831	A	Hemolytic uremic syndrome
4460	C	Polyarteritis
4464	B	Wegener's granulomatosis
5839	C	Nephropathy due to heroin abuse and related drugs
4462	A	Vasculitis and its derivatives
5839	B	Secondary GN, other
INTERSTITIAL NEPHRITIS/PYELONEPHRITIS		
9659	A	Analgesic abuse
5830	B	Radiation nephritis
9849	A	Lead nephropathy
5909	A	Nephropathy caused by other agents
27410	A	Gouty nephropathy
5920	C	Nephrolithiasis
5996	A	Acquired obstructive uropathy
5900	A	Chronic pyelonephritis, reflux nephropathy
58389	B	Chronic interstitial nephritis
58089	A	Acute interstitial nephritis
5929	B	Urolithiasis
2754	A	Nephrocalcinosis

ICD-9	LTR	NARRATIVE
HYPERTENSION/LARGE VESSEL DISEASE		
4039	D	Renal disease due to hypertension (no primary renal disease)
4401	A	Renal artery stenosis
59381	B	Renal artery occlusion
59381	E	Cholesterol emboli, renal emboli
CYSTIC/HEREDITARY/CONGENITAL DISEASES		
75313	A	Polycystic kidneys, adult type (dominant)
75314	A	Polycystic, infantile (recessive)
75316	A	Medullary cystic disease, including nephronophthisis
7595	A	Tuberous sclerosis
7598	A	Hereditary nephritis, Alport's syndrome
2700	A	Cystinosis
2718	B	Primary oxalosis
2727	A	Fabry's disease
7533	A	Congenital nephrotic syndrome
5839	D	Drash syndrome, mesangial sclerosis
7532	A	Congenital obstructive uropathy
7530	B	Renal hypoplasia, dysplasia, oligonephronia
7567	A	Prune belly syndrome
7598	B	Hereditary/familial nephropathy
NEOPLASMS/TUMORS		
1890	B	Renal tumor (malignant)
1899	A	Urinary tract tumor (malignant)
2230	A	Renal tumor (benign)
2239	A	Urinary tract tumor (benign)
2395	A	Renal tumor (unspecified)
2395	B	Urinary tract tumor (unspecified)
20280	A	Lymphoma of kidneys
2030	A	Multiple myeloma
2030	B	Light chain nephropathy
2773	A	Amyloidosis
99680	A	Complication post bone marrow or other transplant
MISCELLANEOUS CONDITIONS		
28260	A	Sickle cell disease/anemia
28269	A	Sickle cell trait and other sickle cell (HbS/Hb other)
64620	A	Post partum renal failure
0429	A	AIDS nephropathy
8660	A	Traumatic or surgical loss of kidney(s)
5724	A	Hepatorenal syndrome
5836	A	Tubular necrosis (no recovery)
59389	A	Other renal disorders
7999	A	Etiology uncertain

INSTRUCTIONS FOR COMPLETION OF END STAGE RENAL DISEASE MEDICAL EVIDENCE REPORT MEDICARE ENTITLEMENT AND/OR PATIENT REGISTRATION

For whom should this form be completed:

This form **SHOULD NOT** be completed for those patients who are in acute renal failure. Acute renal failure is a condition in which kidney function can be expected to recover after a short period of dialysis, i.e., several weeks or months.

This form **MUST BE** completed within 45 days for **ALL** patients beginning any of the following:

A. For all patients who initially receive a kidney transplant instead of a course of dialysis.
B. All patients for whom a regular course of dialysis has been prescribed by a physician because they have reached that stage of renal impairment that a kidney transplant or regular course of dialysis is necessary to maintain life. The first date of a regular course of dialysis is the date this prescription is implemented whether as an inpatient of a hospital, an outpatient in a dialysis center or facility, or a home patient. This form should be completed for all patients in this category even if the patient dies within this time period.
C. For beneficiaries who have already been entitled to ESRD Medicare benefits and those benefits were terminated because their coverage stopped 3 years post transplant but now are again applying for Medicare ESRD benefits because they returned to dialysis or received another kidney transplant.
D. For beneficiaries who stopped dialysis for more than 12 months, have had their Medicare ESRD benefits terminated and now returned to dialysis or received a kidney transplant. These patients will be re-applying for Medicare benefits.

All Items except as follows:	To be completed by the attending physician, head nurse, or social worker involved in this patient's treatment of renal disease
Items 12, 16, 47-48:	To be completed by the attending physician.
Item 42:	To be signed by the attending physician or the physician familiar with the patient's self-care dialysis training.
Items 50 and 51:	To be signed and dated by the patient.

1 Enter the patient's legal name (Last, first, middle initial). Name should appear exactly the same as it appears on patient's social security or Medicare card.

2 If the patient is covered by Medicare, enter his/her Health Insurance Claim Number as it appears on his/her Medicare card. This number can be verified from his/her Medicare card.

3 Enter the patient's own social security number. This number can be verified from his/her social security card.

4 Enter the patient's mailing address (number and street or post office box number, city, state, and ZIP code.)

5 Enter the patient's home area code and telephone number.

6 Enter patient's date of birth (2-digit Month, Day, and 4-digit Year). Example 07/25/1950.

7 Check the appropriate block to identify sex.

8 Check the appropriate block to identify ethnicity. Definitions of the basic ethnicity categories for Federal statistics are as follows:
Hispanic: Mexican—A person of Mexican culture or origin, regardless of race.
Hispanic: Other—A person of Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race.
Non-Hispanic—A person of culture or origin not described above, regardless of race.

9 Check one appropriate block to identify race. Definitions of the basic racial categories for Federal statistics are as follows:
White—A person having origins in any of the original white peoples of Europe.
Black—A person having origins in any of the black racial groups of Africa.
American Indian/Alaskan Native—A person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition.
Asian—A person having origins in any of the original peoples of the Far East and Southeast Asia. Examples of this area include China, Japan and Korea.
Pacific Islander—A person having origins in any of the peoples of the Pacific Islands. Examples of this area include the Philippine Islands, Samoa and Hawaiian Islands.
Mid-East/Arabian—A person having origins in any of the peoples of the Middle East and Northern Africa. Examples of this area include Egypt, Israel, Iran, Iraq, Saudi Arabia, Jordan, and Kuwait.
Indian Sub-Continent—A person having origins in any of the peoples of the Indian Sub-continent. Examples of this area include India and Pakistan.
Other or Multiracial—A person not having origins in any of the above categories or who is multiracial.
Unknown—Check this block if race is unknown.

10 Check **all** the blocks that apply to this patient's current medical insurance status.
Medicare—Patient is currently entitled to Federal Medicare benefits.
Medicaid—Patient is currently receiving State Medicaid benefits.
DVA—Patient is receiving medical care from a Department of Veterans Affairs facility.
Employer Group Health Insurance—Patient receives medical benefits through an employer group health plan that covers employees, former employees, or the families of employees or former employees.
Other Medical Insurance—Patient is receiving medical benefits under a health insurance plan that is not Medicare, Medicaid, Department of Veterans Affairs, nor an employer group health insurance

DISTRIBUTION OF COPIES:

- Forward the first part (white) of this form to the Social Security office servicing the claim.
- Forward the second and third parts (blue and yellow) of this form to the ESRD Network Coordinating Council.
- Retain the last part (green) in the patient's medical records file.

Public reporting burden for this collection of information is estimated to average 25 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to HCFA, P.O. Box 26684, Baltimore, MD 21207; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503.

plan. Examples of other medical insurance are Railroad Retirement and CHAMPUS beneficiaries.
None—Patient has no medical insurance plan.

11 Check the appropriate yes or no block to indicate if patient is applying for ESRD Medicare. Note: Even though a person may already be entitled to general Medicare coverage, he should re-apply for ESRD Medicare coverage. If answer is yes, enter the address of the local Social Security office (street address, city, state and zip code) where patient will be applying for benefits.

12 **To be completed by the attending physician.** Enter the ICD-9-CM plus letter code from back of form to indicate the primary cause of end stage renal disease. These are the only acceptable causes of end stage renal disease.

13 Enter the patient's most recent recorded height in inches **OR** centimeters at time form is being completed. If entering height in centimeters, round to the nearest centimeter. Estimate or use last known height for those unable to be measured. (Example of inches - 62. DO NOT PUT 5'2") NOTE: For amputee patients, enter height prior to amputation.

14 Enter the patient's most recent recorded dry weight in pounds **OR** kilograms at time form is being completed. If entering weight in kilograms, round to the nearest kilogram. NOTE: For amputee patients, enter actual dry weight.

15 Check the first box to indicate employment status 6 months prior to renal failure and the second box to indicate current employment status. **Check only one box for each time period.** If patient is under 6 years of age, leave blank.

16 **To be completed by the attending physician.** Check all co-morbid conditions that apply.
*Ischemic heart disease includes prior coronary artery bypass (CABG), angioplasty and diagnoses of coronary artery disease (CAD)/Coronary Heart Disease.
*Cerebrovascular Disease includes history of stroke/cerebrovascular accident (CVA) and transient ischemic attack (TIA).
*Peripheral Vascular Disease includes absent foot pulses, prior typical claudication, amputations for vascular disease, gangrene and aortic aneurysm.
*Drug dependence means dependent on illicit drugs.

17 If EPO (erythropoietin) was administered to this patient prior to dialysis treatments or kidney transplant, check "Yes". If EPO was not administered to this patient prior to dialysis treatments or kidney transplant, check "No".

NOTE: For those patients re-entering the Medicare program after benefits were terminated, Items 18a thru 18h should contain initial laboratory values within 45 days of the most recent ESRD episode.

18a Enter the hematocrit value (%) and date test was taken. This value and date must be within 45 days prior to first dialysis treatment or transplant. If hematocrit value is not available, complete 18b. hemoglobin.

18b Enter the hemoglobin value (g/dl) and date test was taken. This value and date must be within 45 days prior to first dialysis treatment or transplant. Enter value if hematocrit is not available.

18c Enter the serum albumin value (g/dl) and date test was taken. This value and date must be within 45 days prior to first dialysis treatment or transplant.

18d Enter the lower limit of the normal range for serum albumin (g/dl) from the laboratory which performed the serum albumin test entered in 18c.

18e Enter the serum creatinine value (mg/dl) and date test was taken. This value and date must be within 45 days prior to first dialysis treatment or transplant. **THIS FIELD MUST BE COMPLETED.**

NOTE: Except for diabetic and transplant patients, it has been determined by a consensus panel that the value of this field should be greater than or equal to 8.0 for a patient to receive renal replacement therapy without further justification. If this value is less than 8.0 AND creatinine clearance is equal to or greater than 10.0 this case will be subject to ESRD Network Medical Review Board Review. In these cases, please annotate in Remarks (Item 49) additional medical evidence to support renal replacement therapy. If there is not enough room in the remarks section, you may attach an additional sheet of paper.

18f If value of 18e. serum creatinine is < 8.0 mg/dl, enter creatinine clearance value (ml/min) and date test was taken. This value and date must be within 45 days prior to first dialysis treatment or transplant. If these data are not available, creatinine clearance will be computed, therefore Items 13 and 14 must be completed.

18g If value of 18e. serum creatinine is < 8.0 mg/dl, enter BUN value (mg/dl) and date test was taken. This value and date must be within 45 days prior to the first dialysis treatment or transplant.

18h If value of 18e. serum creatinine is < 8.0 mg/dl and 18f. creatinine clearance is > 10.0, enter the urea clearance value (ml/min) and date test was taken. This value and date must be 45 days prior to the first dialysis treatment or transplant.

19 Enter the name of the dialysis provider where patient is currently receiving care and who is completing this form for patient.

20 Enter the 6-digit Medicare identification code of the dialysis facility in item 19.

21 If a person is receiving a regular course of dialysis treatment, check the appropriate **anticipated long term treatment setting** at the time this form is being completed. If a patient is a resident of and receives their dialysis in an intermediate care facility or nursing home, check home.

22 If the patient is, or was, on regular dialysis, **check the anticipated long term primary type of dialysis:** Hemodialysis, IPD (Intermittent Peritoneal Dialysis), CAPD (Continuous Ambulatory Peritoneal Dialysis), CCPD (Continuous Cycle Peritoneal Dialysis), or Other. **Check only one block.** NOTE: Other has been placed on this form to be used only if a new method of dialysis is developed prior to the renewal of this form by Office of Management and Budget in 1997.

23 Enter the date (month, day, year) that a "regular course of dialysis" began. The beginning of the course of dialysis is counted from the beginning of regularly scheduled dialysis necessary for the treatment of end stage renal disease (ESRD) regardless of the dialysis setting. The date of the first dialysis treatment after the physician has determined that this patient has ESRD and has written a prescription for a "regular course of dialysis" is the "Date Regular Dialysis Began" regardless of whether this prescription was implemented in a hospital inpatient, outpatient, or home setting and regardless of any acute treatments received prior to the implementation of the prescription.

NOTE: For these purposes, end stage renal disease means irreversible damage to a person's kidneys so severely affecting his/her ability to remove or adjust blood wastes that in order to maintain life he or she must have either a course of dialysis or a kidney transplant to maintain life.

If re-entering the Medicare program, enter beginning date of the current ESRD episode. Note in Remarks, Item 49, that patient is restarting dialysis.

24 Enter date patient started at current provider of dialysis services. In cases where patient transferred to current dialysis provider, this date will be after the date in Item 23.

25 If a patient began a regular course of dialysis, then stopped dialysis therapy, enter the last dialysis treatment date. Examples of when this field should be completed are: (1) dialysis stopped due to transplant; (2) patient died during Medicare 3-month qualifying period (also complete item 26); (3) patient withdrew from treatment.

26 If the patient has died, enter the date of death. If date of death is completed, please also complete HCFA-2746 ESRD Death Notification and attach to ESRD Network copy of HCFA-2728.

27 Enter the date(s) of the patient's kidney transplant(s). If re-entering the Medicare program, enter current transplant date.

28 Enter the name of the hospital where the patient received a kidney transplant on the date in Item 27.

29 Enter the 6-digit Medicare identification code of the hospital in Item 28 where the patient received a kidney transplant on the date entered in Item 27.

30 Enter date patient was admitted as an inpatient to a hospital in preparation for, or anticipation of, a kidney transplant prior to the date of the actual transplantation. This includes hospitalization for transplant workup in order to place the patient on a transplant waiting list.

31 Enter the name of the hospital where patient was admitted as an inpatient in preparation for, or anticipation of, a kidney transplant prior to the date of the actual transplantation.

32 Enter the 6-digit Medicare identification number for hospital in Item 31.

33 Check the appropriate functioning or nonfunctioning block.

34 If transplant is nonfunctioning, enter date patient returned to a regular course of dialysis. If patient did not stop dialysis post transplant, enter transplant date.

35 If applicable, check where patient is receiving dialysis treatment following transplant rejection. A nursing home or skilled nursing facility is considered as home setting.

Self-dialysis Training Patients (Medicare Applicants Only)

Normally, Medicare entitlement begins with the third month after the month a patient begins a regular course of dialysis treatment. This 3-month qualifying period may be waived if a patient begins a self-dialysis training program in a Medicare approved training facility and is expected to self-dialyze after the completion of the training program. Please complete items 36-43 if the patient has entered into a self-dialysis training program. Items 36-43 must be completed if the patient is applying for a Medicare waiver of the 3-month qualifying period for dialysis benefits based on participation in a self-care dialysis training program.

36 Enter the name of the provider furnishing self-care dialysis training.

37 Enter the 6-digit Medicare identification number for the training provider in Item 36.

38 Enter the date self-dialysis training began. (While it is expected that this date will be after the date patient started a regular course of dialysis, it should not be more than 30 days prior to the start of a regular course of dialysis.)

39 Check the appropriate block which describes the type of self-care dialysis training the patient began.

40 Check the appropriate block as to whether or not the physician certifies that the patient is expected to complete the training successfully and self-dialyze on a regular basis.

41 Enter date patient completed or is expected to complete self-dialysis training.

42 Enter printed name and signature of the attending physician or the physician familiar with the patient's self-care dialysis training.

43 Unique Physician Identification Number (UPIN) of physician in Item 42. (See Item 46 for explanation of UPIN.)

44 Enter the name of the physician who is supervising the patient's renal treatment at the time this form is completed.

45 Enter the area code and telephone number of the physician who is supervising the patient's renal treatment at the time this form is completed.

46 Enter the physician's UPIN assigned by HCFA.
A system of physician identifiers is mandated by Section 9202 of the Consolidated Omnibus Budget Reconciliation Act of 1985. It requires a unique identifier for each physician who provides services for which Medicare payment is made. An identifier is assigned to each physician regardless of his or her practice configuration. The UPIN is established in a national Registry of Medicare Physician Identification and Eligibility Records (MPIER). Transamerica Occidental Life Insurance Company is the Registry Carrier that establishes and maintains the national registry of physicians receiving Part B Medicare payment. Its address is: UPIN Registry, Transamerica Occidental Life, P.O. Box 2575, Los Angeles, CA 90051-0575.

47 To be signed by the physician supervising the patient's kidney treatment. Signature of physician identified in Item 44. A stamped signature is unacceptable.

48 Enter date physician signed this form.

49 This remarks section may be used for any necessary comments by either the physician, patient, ESRD Network or social security field office.

50 The patient's signature authorizing the release of information to the Department of Health and Human Services must be secured here. If the patient is unable to sign the form, it should be signed by a relative, a person assuming responsibility for the patient or by a survivor.

51 The date patient signed form.

NOTICE

This form is to be completed for all End Stage Renal Disease patients beginning January 1, 1995, regardless of when the patient started dialysis or received a kidney transplant. Prior blank versions of this form should be destroyed. Old versions of the HCFA-2728 will not be accepted by the Social Security Administration or the ESRD Network Coordinating Councils after December 31, 1994.

[FR Doc. 94–25455 Filed 10–13–94; 8:45 am]
BILLING CODE 4120–03–C

Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB) for Clearance

AGENCY: Health Care Financing Administration, HHS.

The Health Care Financing Administration (HCFA), Department of Health and Human Services (HHS), has submitted to OMB the following proposals for the collection of information in compliance with the Paperwork Reduction Act (Public Law 96–511).

1. *Type of Request:* Reinstatement; *Title of Information Collection:* Outpatient Rehabilitation Provider Cost Report; *Form No.:* HCFA–2088; *Use:* The information collection is used to determine Medicare reimbursement for outpatient services rendered to Medicare beneficiaries; *Frequency:* Annually; *Respondents:* Businesses or other for profit; *Estimated Number of Responses:* 2,050 (reporting), 2,050 (recordkeeping); *Average Hours Per Response:* 10 (reporting), 90 (recordkeeping); *Total Estimated Burden Hours:* 205,000.

2. *Type of Request:* Reinstatement; *Title of Information Collection:* Skilled Nursing Facility and Skilled Nursing Facility Care Complex Cost Report; *Form No.:* HCFA–2540; *Use:* The cost report is used by freestanding skilled nursing facilities to submit annual information to achieve a settlement of costs for health care services rendered to Medicare beneficiaries; *Frequency:* Annually; *Respondents:* State and local governments, nonprofit institutions, and small businesses or organizations; *Estimated Number of Responses:* 7,000 (reporting), 7,000 (recordkeeping); *Average Hours Per Response:* 64 (reporting), 132 (recordkeeping); *Total Estimated Burden Hours:* 1,372,000.

3. *Type of Request:* Reinstatement; *Title of Information Collection:* Criteria for Medicare Coverage of Adult Heart Transplants; *Form No.:* HCFA-R–106; *Use:* Medicare participating hospitals must file an application to be approved for coverage and payment of adult heart transplants performed on Medicare beneficiaries; *Frequency:* Annually; *Respondents:* Nonprofit institutions and small businesses or organizations; *Estimated Number of Responses:* 8 (reporting), 73 (recordkeeping); *Average Hours Per Response:* 100 (reporting), 20 (recordkeeping); *Total Estimated Burden Hours:* 2,260.

4. *Type of Request:* Reinstatement; *Title of Information Collection:* State Drug Rebate (Medicaid); *Form No.:* HCFA–368, HCFA-R–144; *Use:* The Omnibus Budget Reconciliation Act of 1990 requires State Medicaid agencies to report to drug manufacturers and HCFA on the drug utilization for their State and the amount of rebate to be paid by the manufacturers; *Frequency:* Quarterly; *Respondents:* State and local governments; *Estimated Number of Responses:* 51; *Average Hours Per Response:* 5 States, 1 hour (administrative data reports), 51 States, 30 hours × 4 quarters; *Total Estimated Burden Hours:* 6,125.

5. *Type of Request:* Reinstatement; *Title of Information Collection:* Skilled Nursing Facility Prospective Payment Cost Report; *Form No.:* HCFA–2540S–87; *Use:* This form is to be used by skilled nursing facilities with less than 1,500 Medicare patient days, at their option, to report costs incurred for providing services to Medicare patients; *Frequency:* Annually; *Respondents:* Nonprofit institutions and small businesses or organizations; *Estimated Number of Responses:* 1,441 (reporting), 1,441 (recordkeeping); *Average Hours Per Response:* 14 (reporting), 85 (recordkeeping); *Total Estimated Burden Hours:* 142,659.

6. *Type of Request:* Revision to currently approved collection; *Title of Information Collection:* Organ Procurement Agency/Histocompatibility Laboratory Statement of Reimbursable Costs; *Form No.:* HCFA–216; *Use:* This form is used by Organ Procurement Agency/Histocompatibility Labs to report their health care costs to determine amounts reimbursable for services furnished to Medicare beneficiaries; *Frequency:* Annually; *Respondents:* Businesses or other for profit and nonprofit institutions; *Estimated Number of Responses:* 104; *Average Hours Per Response:* 1; *Total Estimated Burden Hours:* 4,680.

7. *Type of Request:* Revision to currently approved collection; *Title of Information Collection:* Information Collection Requirements in 405.2112, 405.2123, 405.2136, 405.2137, 405,2138, 405.2139, 405.2140, and 405.2171; *Form No.:* HCFA-R–52; *Use:* This information collection is used to ensure proper distribution and effective utilization of end stage renal disease treatment sources while maintaining and improving the efficient delivery of care by physicians and facilities; *Frequency:* Annually; *Respondents:* Nonprofit institutions and small businesses or organizations; *Estimated Number of Responses: 2,321; Average Hours Per Response:* 37.52; *Total Estimated Burden Hours:* 87,094.

8. *Type of Request:* Revision to currently approved collection; *Title of Information Collection:* Ambulatory Surgical Center Conditions for Coverage; *Form No.:* HCFA-R–54; *Use:* This information collection is designed to ensure that each ambulatory surgical center facility has a properly trained staff and adequate physical environment to provide the appropriate type and level of care for that type of facility; *Frequency:* Three years (recordkeeping); *Respondents:* Small businesses or organizations, State or local governments; *Estimated Number of Responses;* 1,644; *Average Hours Per Response:* 10; *Total Estimated Burden Hours:* 16,640.

9. *Type of Request:* Revision to currently approved collection; *Title of Information Collection:* Home and Community Based Services: Waiver Requirements; *Form No.:* HCFA–8003; Use: Under a Secretarial waiver, States may offer a wide array of home and community based services to individuals who otherwise would require institutionalization. States requesting a waiver must provide certain assurances, documentation, and cost/utilization estimates; *Frequency:* Three years; *Respondents:* State and local governments; *Estimated Number of Responses:* 140; *Average Hours Per Response:* 2.8; *Total Estimated Burden Hours:* 12,600.

Additional Information or Comments: Call the Reports Clearance Office on (410) 966–5536 for copies of the clearance request packages. Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 3001, Washington, DC 20503.

Dated: October 6, 1994.

Kathleen Larson,

Acting Director, Management Planning and Analysis Staff, Office of Financial and Human Resources, Health Care Financing Administration.

[FR Doc. 94–25454 Filed 10–13–94; 8:45 am]

BILLING CODE 4120–03–M

National Institutes of Health

National Cancer Institute; Opportunity for a Cooperative Research Agreement (CRADA) for the Clinical Evaluation of Magnetic Resonance Imaging in Breast Cancer

AGENCY: National Institutes of Health, PHS, DHHS.

ACTION: Notice.

SUMMARY: The National Cancer Institute (NCI) seeks major pharmaceutical companies that can effectively pursue the joint research, development, evaluation and commercialization of imaging drugs to be used for magnetic resonance imaging (MRI) in breast cancer. NCI will enter into CRADA negotiations with the sponsor(s) of the selected proposal(s).

ADDRESSES: Questions about this opportunity may be addressed to Mr. Eric Hale, Office of Technology Development, National Cancer Institute, Building 31, Room 4A34, 9000 Rockville Pike, Bethesda, Maryland 20892, (301) 496–0477.

DATES: Proposals must be received by January 1, 1995.

SUPPLEMENTARY INFORMATION: "Cooperative Research and Development Agreement" or "CRADA" means the anticipated joint agreement to be entered into by NCI pursuant to the Federal Technology Transfer Act of 1986 and Executive Order 12591 of October 10, 1987 to collaborate on the specific research project described below.

Recent studies reported at the Diagnostic Imaging Research Branch, Radiation Research Program (DIRB/RRP) workshop indicated that breast MRI is more sensitive than conventional x-ray mammography in the detection of early breast cancer. Over the last few years, MRI of the breast also has emerged as one of the most promising clinical tools for staging (i.e. definition of multifocal and multicentric lesions) of breast cancer. Contrast-enhanced MRI has been shown to be a promising adjunctive diagnostic tool in the following clinical situations: (1) Failure of conventional mammography and physical examination to provide diagnosis; (2) detection of small lesions; (3) detection of multifocal and multicentric breast cancer; (4) breast cancer staging; and (5) differentiation of dysplasia and scarring versus cancer. While the sensitivity of breast MRI appears promising, the specificity of this technique has been reported to be low. However, the recent development of specialized coils and other equipment for MRI-guided biopsy is expected to have an important impact on tissue characterization of the MRI-detected lesions.

DIRB/RRP convened a meeting of the NCI Advisory Group consisting of leading members of the international academic community and industry in order to discuss the possibility and feasibility of clinical trials in breast MRI at this time and to formulate specific clinical questions that can be answered by such studies. Current results support the hypothesis that MRI (combined with image-guided biopsy) can improve early detection and accurate staging of breast cancer. A number of important clinical issues will be addressed by the clinical trials in breast MRI anticipated under the CRADA(s), including:

1. Definition of clinical indications for breast MRI studies and for MRI guided breast biopsy;
2. Definition of clinical indications for breast MRI versus conventional x-ray mammography and other technologies;
3. Study of the sensitivity and specificity of breast MRI in patients who will get pathological confirmation (eg., mastectomy, lumpectomy);
4. Development of a patient follow-up database which would allow addressing of future clinical issues, such as whether or not breast MRI can eliminate unnecessary and inappropriate diagnostic and therapeutic interventions; and
5. Study of the impact of MRI on the cost-effectiveness of breast cancer management (eg. through possible elimination of repeated lumpectomies, unnecessary radiation treatment, etc.).

The expected duration of the CRADA is less than or equal to five (5) years.

The role of the Diagnostic Imaging Research Branch (DIRB) of NCI under the CRADA(s) will include:

1. The government initiating, coordinating, and sponsoring a multi-institutional cooperative group involving three to four institutions for a period of four years;
2. The government supporting and coordinating the development of experimental study designs;
3. The government supporting and coordinating statistical analysis on clinical data; and
4. The government overseeing quality assurance for the clinical trials.

The role of the successful pharmaceutical companies under the CRADA(s) will include:

1. Providing imaging drugs and corresponding information to be used in the investigation of their potential use in MRI breast cancer diagnosis;
2. Providing drug related analytical support that may be necessary during the course of the clinical trials;
3. Providing access to INDs or NDAs that may need to be cross referenced;
4. Providing assistance in clinical monitoring and data management;
5. Providing collaboration in study design and data evaluation;
6. Providing funds for assistance in supporting the clinical trials (eg. by contributing to the support of the NCI clinical study sites or supporting additional clinical sites); and
7. Providing for the commercialization of resulting pharmaceutical products.

Selection criteria for choosing the CRADA partners will include but not be limited to:

1. Ability to provide investigational drugs at no cost to the government and necessary support according to an appropriate timetable to be outlined in the pharmaceutical company's proposal;
2. The level of financial support the pharmaceutical company will supply for CRADA-related government activities;
3. A willingness to cooperate with the NCI in the collection, evaluation, publication, and maintenance of data;
4. An agreement to be bound by the DHHS rules involving human subjects;
5. Experience in clinical drug development;
6. Experience and ability to produce, package, market and distribute pharmaceutical products in the United States;
7. Experience in the monitoring, evaluation and interpretation of the data from investigational clinical studies under an IND; and
8. Provisions for equitable distribution of patent rights to any inventions. Generally, the rights of ownership are retained by the organization which is the employer of the inventor, with (1) an irrevocable, nonexclusive, royalty-free license to the government when a company employee is the sole inventor or (2) the grant of an option to negotiate an exclusive or a nonexclusive license to the company when a government employee is the sole inventor.

Dated: October 6, 1994.

Thomas D. Mays,

Director, Office of Technology Development, National Cancer Institute, National Institutes of Health.

[FR Doc. 94–25400 Filed 10–13–94; 8:45 am]

BILLING CODE 4140–01–P

National Institute of Mental Health; Licensing Opportunity and/or Opportunity for a Cooperative Research and Development Agreement (CRADA) for the Use of Retroviral Vectors With Gibbon Ape Leukemia Virus (GaLV) Components

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The National Institutes of Health is seeking licensees and/or CRADA partners for the further development, evaluation, and commercialization of novel retroviral vectors with Gibbon Ape Leukemia

Virus (GaLV) components. The invention claimed in the following patent application is available for either exclusive or non-exclusive licensing (in accordance with 35 U.S.C. 207 and 37 CFR Part 404) and/or further development under a CRADA for important clinical and research applications as described below in the

SUPPLEMENTARY INFORMATION:

Gibbon Ape Leukemia Virus-based Retroviral Vectors
Eiden, Maribeth (NIMH)
Filed April 6, 1993
Serial No. 08/043,311

To speed the research, development and commercialization of this new class of drugs, the National Institutes of Health is seeking one or more license agreements and/or CRADAs with pharmaceutical or biotechnology companies in accordance with the regulations governing the transfer of Government-developed agents. Any proposal to use or develop the GaLV vectors in gene therapy treatments will be considered.

ADDRESSES: CRADA proposals and questions about this opportunity should be addressed to: Ms. Kathleen Conn, Office of Technology Development, National Institute of Mental Health, Building 10, Room 4N224, Bethesda, MD 20892 (301/496–8826). CRADA proposals must be received by the date specified below.

Licensing proposals and questions about this opportunity should be addressed to: Ms. Carol Lavrich, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Rockville, MD 20852 (301/496–7735 ext. 287).

Information on the patent application and pertinent information not yet publicly described can be obtained under a Confidential Disclosure Agreement. Respondees interested in licensing the invention(s) will be required to submit an Application for License to Public Health Service Inventions. Respondees interested in submitting CRADA proposal should be aware that it may be necessary to secure a license to the above patent rights in order to commercialize products arising from a CRADA agreement.

DATES: There is no deadline by which license applications must be received. CRADA proposals must be received on or before January 12, 1994.

SUPPLEMENTARY INFORMATION: GaLVs have a broad host range and replicate efficiently in a number of human and other primate hematopoietic cell types. Dr. Maribeth Eiden, an investigator at the National Institute of Mental Health, has constructed a full length genomic plasmid clone of GaLV capable of replicating in appropriate target cells following calcium-phosphate-mediated gene transfer. Using this plasmid as a template they have now constructed a series of GaLV-based packageable genomes that contain the bacterial genes encoding B-galactosidase and neomycin phosphotransferase. Because of the therapeutic potential of GaLV component based gene delivery, Dr. Eiden's laboratory is examining the ability of GaLV components to infect cells and deliver genes to appropriate target cells and tissues.

Dr. Eiden and co-workers have determined that GaLV-based packageable genomes can be efficiently packaged in existing packaging cell lines (e.g. PA317, PG13 and psi 2 or PE501 cells). Comparison of the titers of GaLV and similarly constructed MLV-based vectors in different target cells demonstrated that the genes carried within the GaLV-genome were efficiently expressed in target cells not infected by vectors containing MLV-based genomes.

The available GaLV packageable genomes are based on two strains of GaLV virus: GaLV SEATO and GaLV SF. These two strains have different enhancer segments. These enhancers may account for the differences in the diseases they are associated with (GaLV SEATO induces myeloid leukemia and GaLV SF is associated with lymphomas in gibbon apes) and may govern differential viral gene expression in infected cells. Dr. Eiden's lab has already determined that on certain types of cells, vectors containing the GaLV SF genome function more efficiently than vectors with GaLV SEATO genomes whereas in other types of cells the GaLV SEATO genome performs better. Her lab can presently construct vectors composed of GaLV SF and GaLV SEATO genomes along with MLV cores and envelopes and GaLV genomes in combination with MLV core and GaLV envelopes. In the future, she anticipates that the lab will create homogeneous GaLV vectors composed of GaLV genome, core and envelopes.

In order to speed the research, development and commercialization of these GaLV retroviral vectors the National Institute of Mental Health seeks a CRADA partner for the joint research, development, evaluation and possible commercialization of novel retroviral vectors with Gibbon Ape Leukemia Virus (GaLV) components. Any CRADA to use the Gibbon Ape Leukemia Virus as a research tool or in the development of therapeutic approaches will be considered.

The CRADA aims will include the rapid publication of research results and the timely exploitation of commercial opportunities. The CRADA partner will enjoy rights of first negotiation for licensing Government rights to any inventions arising under the agreement and will advance funds payable upon signing the CRADA to help defray Government expenses for patenting such inventions and other CRADA-related costs.

The role of Dr. Eiden's laboratory at the National Institute of Mental Health will be as follows:

1. Provide the collaborator with GaLV vectors (virus), GaLV plasmids and packaging cell lines for evaluation.
2. Continue the development of GaLV vectors and publish these results and provide all data to the Collaborator as soon as that data becomes available.
3. Conduct studies to optimize retroviral mediated gene delivery to desirable human cell targets.

The role of the collaborator will be as follows:

1. Synthesize new GaLV packaging cells (using expression plasmids developed in the Dr. Eiden's laboratory or design improved plasmids constructed by Dr. Eiden's laboratory or in human or other appropriate nonmurine cells).
2. Conduct exhaustive studies designed to assess the relative efficiency of GaLV and MuLV vectors in specific target cells. The Collaborator will supply data to the NIMH in a timely fashion.
3. Conduct controlled animal and clinical trials of GaLV vectors and develop toxicology data as needed in preparation for clinical studies.

Selection criteria for choosing the CRADA partner(s) will include but not limited to:

1. The collaborator must present in the proposal a clear statement of their ability to construct and/or test GaLV vectors in appropriate target cells in culture or in an animal model system. Proposed clinical application should also be included where appropriate. The proposal must contain an experimental outline of objectives to be accomplished in a timely and competitive manner.
2. The level of financial support the Collaborator will supply for CRADA-related Government activities.
3. A willingness to cooperate with the NIMH in publication of research results.
4. An agreement to be bound by the DHHS rules involving human subjects, patent rights, ethical treatment of animals, and randomized clinical trials.
5. Agreement with provisions for equitable distribution of patent rights to any inventions developed under the

CRADA(s). Generally, the rights of ownership are retained by the organization which is the employer of the inventor, with (1) an irrevocable, non-exclusive, royalty-free license to the Government (when a company employee is the sole inventor) or (2) an option to negotiate an exclusive or non-exclusive license to the company on terms that are appropriate (when the Government employee is the sole inventor).

Dated: October 4, 1994.

Barbara M. McGarey,

Deputy Director, Office of Technology Transfer.

[FR Doc. 94–25401 Filed 10–13–94; 8:45 am]

BILLING CODE 4140–01–P

National Cancer Institute; Opportunity for a Cooperative Research and Development Agreement (CRADA) for the Development of a Fluorescent Guanosine Analog To Be Used in the Visualization of Polymerase Chain Reaction (PCR) Products

AGENCY: National Institutes of Health, PHS, DHHS.

ACTION: Notice.

SUMMARY: The National Cancer Institute (NCI) seeks an agreement with a biotechnology company for the purpose of joint development of a technique for visualizing polymerase chain reaction (PCR) products by utilizing a novel, highly fluorescent guanosine analog. NCI will enter into CRADA negotiations with the sponsor(s) of selected proposal(s).

ADDRESSES: Questions about this CRADA opportunity may be addressed to Mr. Eric Hale, Office of Technology Development, National Cancer Institute, Building 31, Room 4A34, 9000 Rockville Pike, Bethesda, Maryland 20892, Tel (301) 496–0477, Fax (301) 402–2117.

DATES: Proposals must be received by 5 p.m., November 30, 1994.

SUPPLEMENTARY INFORMATION: "Cooperative Research and Development Agreement" or "CRADA" means the anticipated joint agreement to be entered into by NCI pursuant to the Federal Technology Transfer Act of 1986 and Executive Order 12591 of October 10, 1987 to collaborate on the specific research project described below.

The compound (2-amino-3-methyl-8-(2-deoxy-β-D-ribofuranosyl)pteridine-4,7-dione) has been investigated in aqueous media at physiologic pH levels and found to be highly fluorescent under those conditions. It has also been found that the phosphoramidite form of this compound may be incorporated into an oligonucleotide through the use of an automated DNA synthesizer. Site-specifically incorporated into an oligonucleotide and annealed to its complement, the compound is accepted by the endonuclease HIV–1 integrase in place of guanosine in the sequence specific cleavage site of a short double strand of DNA. It is hypothesized that the triphosphate form of the monomer may be taken up by polymerase in place of guanosine triphosphate to a sufficient degree to allow detection of a PCR product by monitoring for fluorescence in the product. NCI is interested in establishing a CRADA with a biotechnology company to assist in the continuing investigation of this potential for PCR detection and its possible commercialization as a kit for PCR applications. The expected duration of the CRADA is less than or equal to five (5) years. Pertinent information not yet publicly disclosed may be obtained under a NCI Confidential Disclosure Agreement. For this and further CRADA information, contact Mr. Eric Hale at the above address.

Background patent rights to this technology are available for licensing through the Office of Technology Transfer, NIH. Pertinent patent application claims may be obtained under a NIH Confidentiality Agreement for the Purpose of Reviewing Patent Application Claims. For this and further licensing information contact Ms. Carol Lavrich, Office of Technology Transfer, National Institutes of Health, Suite 325, 6011 Executive Boulevard, Rockville, Maryland 20852, Tel (301) 496–7057, Fax (301) 402–0220.

The role of the Pharmacology and Experimental Therapeutics Section, Pediatric Branch of NCI under the CRADA(s) will include:

1. The government will provide expertise and information available to date relevant to the compound.
2. The government will continue the ongoing development of techniques to phosphorylate this compound, and will investigate the fluorescence characteristics of the phosphorylated form.
3. The government will provide to the CRADA partner the triphosphate form of this compound as soon as it becomes available.
4. The government will collaborate in the development of a large scale synthesis and purification of the triphosphate form of this compound.
5. The government will collaborate in CRADA research study design and data evaluation.

The role of the successful biotechnology company under the CRADA(s) will include:

1. Providing materials and support, including analytical support, to further investigate the phosphorylation of the compound, and otherwise further the CRADA research;
2. Providing assistance in the development of a large scale synthesis and purification of the triphosphate form of the compound;
3. Providing collaboration in CRADA research study design and data evaluation;
4. Providing funds for assistance in supporting the research;
5. Providing an active research and development plan for the application of the triphosphate form of the compound to current PCR technology; and
6. Providing for the commercialization of resulting biotechnology products.

Selection criteria for choosing the CRADA partners will include but not be limited to:

1. Ability to complete the testing and evaluation of the phosphorylated form of the compound in PCR application(s);
2. Experience in PCR related assay development;
3. Experience and ability to produce, package, market and distribute diagnostic products in the United States;
4. Ability to provide the necessary materials and support according to an appropriate timetable to be outlined in the biotechnology company's proposal;
5. The level of financial support the biotechnology company will supply for CRADA-related government activities;
6. A willingness to cooperate with the NCI in the publication of results; and
7. Provisions for equitable distribution of patent rights to any inventions generated in the performance of research under the CRADA. Generally, the rights of ownership are retained by the organization which is the employer of the inventor, with (1) an irrevocable, nonexclusive, royalty-free license to the government when a company employee is the sole inventor or (2) the grant of an option to negotiate for an exclusive or a nonexclusive license to the Collaborator when a government employee is the sole inventor.

Dated: October 6, 1994.

Thomas Mays,

Director, Office of Technology Development, National Cancer Institute, National Institutes of Health.

[FR Doc. 94–25402 Filed 10–13–94; 8:45 am]

BILLING CODE 4140–01–P

National Institute of Mental Health; Cancellation of Meeting

Notice is hereby given of the cancellation of one meeting of the National Institute of Mental Health which was published in the **Federal Register** on September 1, 1994 (59 FR 45296): the Health Behavior and Prevention Review Committee, October 12–14, 1994, Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, Maryland.

The meeting was cancelled due to prior commitments of several members.

Dated: October 7, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–25530 Filed 10–11–94; 3:09 pm]

BILLING CODE 4140–01–M

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, September 30, 1994.

(Call PHS Reports Clearance Officer on 202–690–7100 for copies of request)

1. CDC Model Performance Evaluation Program—0910–0274—The Centers for Disease Control (CDC) had developed a Model Performance Evaluation Program to assess the quality and effectiveness of emerging laboratory technologies. In addition to allowing laboratories to evaluate themselves, CDC hopes to build a database describing current laboratory testing practices for the total HIV–1 and retroviral testing processes. Respondents: Individuals or households.

Title	Number of respondents	Number of responses per respondent	Average burden per response (hours)
Retroviral	800	1	.5
TLI Clinicians	1,667	1	.33
New Enrollment Respondents	200	1	.05
TLI Laboratories	400	1	.05

Estimate Total Annual Burden: 1,160

2. Federal Policy for the Protection of Human Subjects—9999–0020/0925–0418 (Extension, no change)—As required by P.L. 95–622, the Secretary, HHS on behalf of affected Federal Departments and Agencies, published the Final Common Rule that requires applicant and awardee institutions receiving Federal funds to initiate procedures to report, disclose and keep required records for the protection of human subjects of research. This request is for approval of the information requirements associated with the common rule. Respondents: Individuals or households, State or local governments, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, Small businesses or organizations. Number of Respondents: 3,831; Number of Responses per Respondent: 56.8; Average Burden per Response: 0.755 hours; Estimated Annual Burden: * 187,408.

Note: Burden is carried government-wide against 9999–0020. Approval with 1 hour of burden, is carried for administrative purpose also under control number 0925–0418.

3. Application Packets for Real Property for Public Health Purposes—0937–0191 (Extension, no change) State and local governments and non-profit organizations use these applications to apply for excess surplus, under-utilized/unutilized and off-site government real property. These applications are used to determine if institutions/organizations are eligible to purchase, lease or use property under the provisions of the surplus property program. Respondents: State or local governments, Non-profit institutions; Number of Respondents: 114; Number of Responses per Respondent: 1; Average Burden per Response: 200 hours; Estimated Annual Burden: 22,800 hours.

4. 1995 National Health Interview Survey—0920–0214 (Revision)—The National Health Interview Survey an ongoing survey of the civilian, non-institutionalized population monitors the Nation's health. The 1995 NHIS will include supplements on "Disability", "Family Resources", "Immunization", "Aids Knowledge and Attitudes", and "Year 2000 Objectives". Respondents: Individuals or households; Number of Respondents: 41,000; Number of Responses per Respondent: 1; Average Burden per Response: 2.54 hours; Estimated Annual Burden: 104,214 hours.

5. Integrated Evaluation of Public and Private Sector Disease Reporting and Service Delivery—New—A survey methodology has been developed to collect information on STD cases seen by physicians and nursing professionals working both independently or in public and private institutions. This methodology will be used to estimate the actual number of syphilis and gonorrhea cases occurring over a one-year period. These numbers will be compared to the actual number of cases reported to the Centers for Disease Control surveillance system by the State Department of Health. Respondents: Individuals or households; Number of Respondents: 1,000; Number of Responses per Respondent: 1; Average Burden per Response: .882 hours; Estimated Annual Burden: 882 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: October 7, 1994.

James Scanlon,

Director, Division of Data Policy, Office of Health Planning and Evaluation.

[FR Doc. 94–25447 Filed 10–13–94; 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–3778–N–06]

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 William Molster, 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, Public Law 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 unutilized and underutilized

buildings and real property controlled 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 purpose 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 instructions 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 William Molster 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: U.S. Air Force: John Carr, Realty Specialist, HQ–AFBDA/BDR, Pentagon, Washington, DC 20330–5130; (703) 696–5569; (This is not a toll-free number).

Dated: October 7, 1994.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

Title V, Federal Surplus Property Program, Federal Register Report for 10/14/94

Suitable/Available Properties

Buildings (by State)

Ohio

6 Administrative Buildings
Rickenbacker Air National Guard
Columbus Co: Franklin OH 43217–
Landholding Agency: Air Force–BC
Property Number: 199330022
Status: Pryor Amendment
Base closure Number of Units: 6
Comment: 1200–7330 sq. ft., wood, metal or brick frame, access restricted to 440, 548, 549 during military use, also incs. bldgs. 421, 427, 553.

7 Miscellaneous Facilities
Rickenbacker Air National Guard
Columbus Co: Franklin OH 43217–
Location: Include bldgs. 364, 430, 431, 450, 700, 707, 709
Landholding Agency: Air Force–BC
Property Number: 199440005
Status: Pryor Amendment
Base closure Number of Units: 7
Comment: 32–19574 sq. ft., wood, brick, metal or masonry frame, access restricted to bldg. 431 during military use, incs. butler bldg., commissary, exchange stn., limited utilities.

3 Maintenance Facilities
Rickenbacker Air National Guard
Columbus Co: Franklin OH 43217–
Landholding Agency: Air Force–BC
Property Number: 199440006
Status: Pryor Amendment
Base closure Number of Units: 3
Comment: 2120–7500 sq. ft., wood/concrete frame, inc. bldgs. 422, 710, 740—BE maintenance shop, missile maint., equipment maintenance, limited utilities

16 Industrial/Utility Facs.
Rickenbacker Air National Guard
Columbus Co: Franklin OH 43217–
Landholding Agency: Air Force–BC
Property Number: 199440007
Status: Pryor Amendment
Base closure Number of Units: 16
Comment: 45–15600 sq. ft., masonry frame, access restricted during military use for bldgs. 490, 491, 504, 830, 839, 902, 904, incs. elec. power stn., water wells, pump stns., etc.

22 Warehouse Facilities
Rickenbacker Air National Guard
Columbus Co: Franklin OH 43217–
Landholding Agency: Air Force–BC
Property Number: 199440008
Status: Pryor Amendment
Base closure Number of Units: 22
Comment: 26–113529 sq. ft., bldgs. 557 & 874 access restricted during military use, incs. com. storage, cold storage, igloos storage, storage sheds, munitions storage, BE storage facs.

Unsuitable Properties

Buildings (by State)

Ohio

15 Office/Dormitories
Rickenbacker Air National Guard
Columbus Co: Franklin OH 43217–
Location: Include bldgs. 851–854, 857–862, 865–867, 869 & 870
Landholding Agency: Air Force–BC
Property Number: 199330018
Status: Pryor Amendment
Base closure Number of Units: 15
Reason: Within 2000 ft. of flammable or explosive material.

Bldgs. 855 & 856
Rickenbacker Air National Guard
Columbus Co: Franklin OH 43217–
Landholding Agency: Air Force–BC
Property Number: 199330020
Status: Pryor Amendment
Base closure Number of Units: 2
Reason: Within 2000 ft. of flammable or explosive material.

4 Recreational Facilities
Rickenbacker Air National Guard
Columbus Co: Franklin OH 43217–
Location: Include bldgs. 801, 802, 803, 810
Landholding Agency: Air Force–BC
Property Number: 199330021
Status: Pryor Amendment
Base closure Number of Units: 4
Reason: Within 2000 ft. of flammable or explosive material.

Bldg. 812
Rickenbacker Air National Guard
Columbus Co: Franklin OH 43217–
Landholding Agency: Air Force–BC
Property Number: 199440001
Status: Pryor Amendment
Base closure Number of Units: 1
Reason: Within 2000 ft. of flammable or explosive material.

Bldg. 800
Rickenbacker Air National Guard

Columbus Co: Franklin OH 43217–
Landholding Agency: Air Force–BC
Property Number: 199440002
Status: Pryor Amendment
Base closure Number of Units: 1
Reason: Within 2000 ft. of flammable or explosive material.

5 Industrial Facilities
Rickenbacker Air National Guard
Columbus Co: Franklin OH 43217–
Location: Include bldgs. 821, 826–829
Landholding Agency: Air Force–BC
Property Number: 199440003
Status: Pryor Amendment
Base closure Number of Units: 5
Reason: Within 2000 ft. of flammable or explosive material.

3 Warehouses
Rickenbacker Air National Guard
Columbus Co: Franklin OH 43217–
Landholding Agency: Air Force–BC
Property Number: 199440004
Status: Pryor Amendment
Base closure Number of Units: 3
Reason: Extensive deterioration.

[FR Doc. 94–25392 Filed 10–13–94; 8:45 am]

BILLING CODE 4210–29–M

Office of the Secretary

[Docket No. N–94–3617; FR–3444–N–06]

Office of Lead-Based Paint Abatement and Poisoning Prevention; NOFA for Lead-Based Paint Hazard Reduction in Priority Housing: Category I and Category II Grants: Announcement of Funding Awards

AGENCY: Office of the Secretary—Office of Lead-Based Paint Abatement and Poisoning Prevention, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a competition for funding under the NOFA for Lead-Based Paint Hazard Reduction in Priority Housing: Category I and Category II Grants. The announcement contains the names and addresses of the award winners and the amounts of awards.

FOR FURTHER INFORMATION CONTACT: Ellis G. Goldman, Office of Lead-Based Paint Abatement and Poisoning Prevention, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 755–1822, ext. 112. The TDD number for the hearing impaired is (202) 708–9300 (not a toll-free number), or 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The Lead-Based Paint program is authorized by the Departments of Veterans Affairs and Housing and Urban Development, and the Independent Agencies Appropriations Act of 1993 (Pub. L. 102–389, approved October 6, 1992).

The purpose of the competition was to award grant funding for approximately $90,000,000 for a grant program for States and local governments to undertake lead-based paint hazard reduction in priority housing: and Category II, for up to $3,000,000, for grants to States for assistance in implementing a State certification program after passing enabling legislation. The 1994 awards announced in this Notice were selected for funding in a competition announced in a **Federal Register** notice published on June 4, 1993 (58 FR 31848). Applications were scored and selected for funding on the basis of selection criteria contained in that Notice.

A total of $93,351,264 has been awarded, to nineteen Category I grantees, and eight Category II grantees. In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989), the Department is publishing the names, addresses, and amounts of those awards as follows:

NOFA for Lead-Based Paint Hazard Reduction in Priority Housing: Category I and Category II Grants

CATEGORY I

City of New Haven, CT, 54 Meadow Street, New Haven, CT 06519	$3,000,000
City of Cambridge, MA, 57 Inman Street, Cambridge, MA 02139	3,340,433
City of Springfield, MA, 322 Main Street, Springfield, MA 01105	3,279,624
Prince George's County, MD, 9400 Peppercorn Place, Suite 120, Landover, MD 20785	3,649,569
State of Maryland, 100 Community Place, Crownsville, MD 21032	6,000,000
State of Michigan, 3423 N. Logan/Martin Luther King, Jr. Blvd., Box 30195, Lansing, MI 48909	4,934,250
State of Ohio, 246 North High Street, Columbus, OH 42266–0588	5,792,913
Allegheny County, PA, 3333 Forbes Avenue, Pittsburgh, PA 15213	3,427,830
City of Philadelphia, PA, 1234 Market Street, Suite 450, Philadelphia, PA 19107	6,000,000
Shelby County, TN, 100 Mid-America Mall, Suite 1303, Memphis, TN 38103	6,000,000
State of Vermont, 13642 Main Street, Montpelier, VT 05602	2,534,293
Los Angeles County, CA, 2525 Corporate Place, Room 150, Monterey Park, CA 91754	6,000,000
San Francisco, CA, (City and County), 10 United Nations Plaza, Suite 600, San Francisco, CA 94102	6,000,000
Cincinnati, OH, 801 Plum Street, Cincinnati, OH 45202	5,998,390
State of Virginia, 501 N. Second Street, Richmond, VA 23219	5,433,989
State of North Carolina, 430 N. Salisbury Street, Raleigh, NC 27611	4,000,000
Commonwealth of Pennsylvania, PO Box 90, H7W Bldg., Rm. 725, Harrisburg, PA 17108	3,800,000
Chicago, IL, 333 S. State St., Room 200, Chicago, IL 60604	6,930,559
New York City, 100 Gold Street, Room 9Q–3, New York, NY 10038	6,750,223

CATEGORY II

State of Arkansas	$112,003
State of California	200,000
State of Louisiana	200,000
State of Maryland	200,000
State of New Jersey	200,000
State of Vermont	161,754
State of Massachusetts	200,000
State of Missouri	200,000

Dated: September 21, 1994.

Ronald J. Morony,

Acting Director, Office of Lead-Based Paint Abatement and Poisoning Prevention.

[FR Doc. 94–25427 Filed 10–13–94; 8:45 am]

BILLING CODE 4210–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–950–4830–02–P]

Documentation of Current Administrative Boundaries for Bureau of Land Management Offices; Montana, South Dakota, North Dakota

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The management boundaries between districts and resource areas are delineated below. This description is provided to identify the current administrative boundaries to facilitate users, the general public, or other entities desiring office and geographical areas of management responsibility.

EFFECTIVE DATE: October 1, 1994.

FOR FURTHER INFORMATION CONTACT: Janet Singer, BLM Montana State Office, P.O. Box 36800, Billings, MT 59107–6800, 406–255–2742.

SUPPLEMENTARY INFORMATION: The boundaries between districts and resource areas, where applicable, are described as follows:

Dakotas District

The States of North Dakota and South Dakota.

South Dakota Resource Area

The State of South Dakota.

Butte District

Beginning at a point on the Canadian border and the county line between Flathead and Glacier Counties; thence southeasterly along the county line; thence southeasterly along the Flathead-Pondera County line; thence southeasterly along the Flathead-Teton County line; thence southerly along the Flathead-Lewis and Clark County line; thence southerly along the Powell-Lewis and Clark County line to a point at the southwest corner of Township 15 North, Range 9 West; thence easterly along the township line to the Cascade County line; thence south and east along the Lewis and Clark-Cascade County line; thence southeast along the Lewis and Clark-Meagher County line; thence southeast along the Broadwater-Meagher County line; thence easterly along the southern line of Meagher County; thence south and east along the Park-Sweetgrass County line; thence east along the Park-Stillwater County line; thence south along the Park-Carbon County line to the Wyoming state line; thence west and south along the Wyoming state line to the Idaho state line; thence westerly and northerly along the Idaho state line to the Canadian border; thence east to the point of beginning.

Garnet Resource Area

The northwest portion of the area described as Butte District and delineated on the east and south as follows: Beginning at the southwest corner of Township 15 North, Range 9 West; thence southeasterly along the Powell-Lewis and Clark County line to the Jefferson County line; thence southwesterly along the Powell-Jefferson County line; thence along the southerly lines of Powell, Granite, and Ravalli Counties to the Idaho state line.

Dillon Resource Area

The southwest portion of the area described as Butte District and bounded on the north and east as follows: Beginning at the Idaho state line on the Ravalli-Beaverhead County line; thence northeasterly along the Ravalli-Beaverhead County line; thence southeasterly along the Beaverhead-Deer Lodge County line to its intersection with the section line between Sec. 12, T. 1 S., R. 15 W., PMM and Sec. 7, T. 1 S., R. 14 W., PMM; thence south between Secs. 12 and 7 and Secs. 13 and 18 to the Corner of Secs. 13, 18, 19, and 24; thence east between Secs. 18 and 19 and 17 and 20 to the section corner of Secs. 16, 17, 20, and 21 which is on the boundary of Beaverhead National Forest; thence north, east, and southeast along the Forest boundary to the corner of Secs. 13 and 24, T. 1 S., R. 10 W. and Secs. 18 and 19, T. 1 S., R. 9 W., PMM; thence north along the range line to the Big Hole River which is the Beaverhead/Silver Bow County line; thence southeast along the county line to its intersection with the Madison County line; thence easterly and southerly along the Madison County line to the Idaho state line.

Headwaters Resource Area

That portion of central and eastern Butte District including Deer Lodge County, Silver Bow County, Jefferson County, the southern portion of Lewis and Clark County, Broadwater County, Gallatin County, Park County, and that portion of Beaverhead County south of the Big Hole River and north of the Beaverhead National Forest which is described above and not included in the Dillon Resource Area.

Lewistown District

The northcentral portion of Montana from the Canadian border and along the east boundary of Butte District to the southeast corner of Meagher County; thence north along the east line of Meagher County; thence east along the south line of Judith Basin County; thence east along the south line of Fergus County; thence east along the south line of Petroleum County; thence north along the east line of Petroleum County; thence northeast along the south line of Phillips County; thence northeast along the south line of Valley County to the boundary of the Fort Peck Indian Reservation; thence in a northerly direction along the west boundary of the Fort Peck Indian Reservation; thence east along the north boundary of the Fort Peck Indian Reservation; thence north along the east line of Valley County to the Canadian border thence west along the border to the northwest corner of Glacier County.

Great Falls Resource Area

The western portion of the Lewistown District including all of Glacier County, Toole County, Liberty County, Pondera County, Teton County, Cascade County, Meagher County, and the northern part of Lewis and Clark County which lies within the Lewistown District boundaries.

Havre Resource Area

The northern portion of Lewistown District including all of Hill and Blaine County and the northern portion of Choteau County which lies north of the Missouri River.

Phillips Resource Area

The northern portion of Lewistown District which includes all of Phillips County.

Valley Resource Area

The most northeasterly portion of Lewistown District which includes all of Valley County except for the portion lying within the Fort Peck Indian Reservation.

Judith Resource Area

The southcentral portion of Lewistown District which includes all of Petroleum, Fergus, and Judith Basin Counties and the portion of Choteau County which lies south of the Missouri River.

Miles City District

The southeast and eastern portions of Montana bounded on the west by Butte and Lewistown Districts.

Billings Resource Area

The southwest portion of Miles City District which includes all of Wheatland, Golden Valley, Musselshell, Yellowstone, Stillwater, Sweetgrass, and Carbon Counties and all of Big Horn County, except for the easterly portion which lies outside of the Crow Indian Reservation. From the north county line in Township 1 North, Range 38 East follow the section line between sections 4 and 5 South to the boundary of the Crow Indian Reservation. Continue south and along the boundary between the Crow and Northern Cheyenne Indian Reservations, thence follow the boundary of the Crow Indian Reservation to the Wyoming state line.

Big Dry Resource Area

The northern portion of Miles City District which includes the portion of Valley County included in the Fort Peck Indian Reservation; Rosebud County north of the Yellowstone River; Custer County north of the Yellowstone River and the northeasterly portion of Custer County which is described as beginning on the county line between Custer and Prairie Counties at the southwest corner of T. 10 N., R. 51 E., Section 33; then south one mile to the southwest section corner of T. 9 N., R. 51 E., Section 4; then east one mile to the southwest section corner of T. 9 N., R. 51 E., Section 3; then south one mile to the southwest section corner of T. 9 N., R. 51 E., Section 10; then east one mile to the southwest section corner of T. 9 N., R. 51 E., Section 11; then south one mile to the southwest section corner of T. 9 N., R. 51 E., Section 14; then west 5 miles to the northwest section corner of T. 9 N., R. 50 E., Section 24; then south one mile to the southwest section corner of T. 9 N., R. 50 E., Section 24; then west 2 miles to the northwest section corner of T. 9 N., R. 50 E., Section 27; then south one mile to the southwest section corner of T. 9 N., R. 50 E., Section 27; then east 3 miles to the southwest section corner of T. 9 N., R. 51 E., Section 30; then south 2 miles to the southwest section corner of T. 8 N., R. 51 E., Section 4; then east approximately 2½ miles to the Powder River in T. 8 N., R. 51 E., Section 2; then southerly along the Powder River approximately 6 miles to the southern boundary of T. 8 N., R. 51 E., Section 26; then east approximately 1¼ miles to the southwest section corner of T. 8 N., R. 52 E., Section 30; then south one mile to the southwest section corner of T. 8 N., R. 52 E., Section 31; then east one mile to the southwest section corner of T. 8 N., R. 52 E., Section 32; then south 2 miles to the southwest section corner of T. 7 N., R. 52 E., Section 8; then west approximately 3¼ miles to the Powder River in T. 7 N., R. 51 E., Section 15; then southerly along 7 the Powder River approximately 35 miles to the eastern boundary of T. 4 N., R. 53 E., Section 25; then north approximately one mile to the southwest section corner of T. 4 N., R. 54 E., Section 19; then east 2 miles to the southwest section corner of T. 4 N., R. 54 E., Section 21; then north approximately 2¼ miles to the 1/16 corner of T. 4 N., R. 54 E., Sections 8 and 9; then due east approximately 1¼ miles across T. 4 N., R. 54 E., Sections 9 and 10; then due north ¼ mile; east ¼ mile; south ¼ mile; and east ¼ mile to the eastern boundary of T. 4 N., R. 54 E., Section 10; then southeast along the allotment boundary across T. 4 N., R. 54 E., sections 11, 14, and 24 to the eastern boundary of T. 4 N., R. 54 E., section 24 and the intersection of the line between Custer and Carter Counties.

Also included in Big Dry Resource Area is the northwest corner of Carter County which includes Sections 5, 6, 7, 8, 9, 16, 17, 18, 19, 29, and 30 in Township 4 North, Range 55 East; and all of Daniels; Dawson; Fallon; Garfield; McCone; Prairie; Richland; Roosevelt; Sheridan; and Wibaux Counties.

Powder River Resource Area

The southeastern portion of Miles City District which includes the easterly portion of Bighorn County which lies outside of the Crow Indian Reservation (as excluded from the Billings Resource Area), the portion of Rosebud County which lies south of the Yellowstone River, the portions of Custer and Carter Counties not listed above in the Big Dry Resource Area, and all of Treasure and Powder River Counties.

Dated: October 3, 1994.

Francis R. Cherry, Jr.,

Acting State Director.

[FR Doc. 94–25456 Filed 10–13–94; 8:45 am]

BILLING CODE 4310–DN–P

[NM–030–94–4210–04; NMNM 77533]

Issuance of Exchange Conveyance Document; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action informs the public of the conveyance of 726.30 acres of public land out of Federal ownership and the acquisition of 2,089.70 acres of private land.

FOR FURTHER INFORMATION CONTACT: Marvin James, Mimbres Resource Area, Bureau of Land Management, 1800 Marquess Street, Las Cruces, New Mexico 88005, (505) 525–4349.

SUPPLEMENTAL INFORMATION: The United States issued an exchange document to New Mexico State University on May 1, 1991, for the surface and mineral estates in and under the following described land in Dona Ana County, New Mexico, pursuant to Sections 501 and 502 of the Act of October 28, 1988 (102 Stat. 2799):

New Mexico Principal Meridian

T. 23 S., R. 2 E.,
Sec. 14, SW¼;
Sec. 22, lots 5 and 6;
Sec. 23, lots 1, 2, and 5 to 16, inclusive.

In exchange for the surface and mineral interests in the above-described land, the United States acquired the surface estate in the following described land located within Dona Ana County, New Mexico:

New Mexico Principal Meridian

T. 22 S., R. 4 E.,
Sec. 19, lots 5 to 20 inclusive;
Sec. 29, lots 1 to 7, inclusive, SW¼NE¼, S½NW¼, SW¼, and W½SE¼;
Sec. 30, lots 5 to 11, inclusive, S½NE¼, SE¼NW¼, E½SW¼, and SE¼;
Sec. 31, lot 11, NE¼, and NE¼SE¼.

The values of the Federal public land and the non-Federal land in the exchange were appraised at $647,220 and $630,000, respectively. An equalization payment in the amount of $17,220 was paid to the United States.

The purpose of the exchange was to acquire non-Federal land which has high public values for recreation and would contribute significantly to management of the Organ Mountains Recreational Lands.

Dated: September 29, 1994.

Gilbert J. Lucero,

Associate State Director.

[FR Doc. 94–25459 Filed 10–13–94; 8:45 am]

BILLING CODE 4310–FB–P

[CO–920–94–4110–03; COC50131]

Colorado; Proposed Reinstatement of Terminated Oil and Gas Lease

Under the provisions of Public Law 97–451, a petition for reinstatement of oil and gas lease COC50131, Mesa County, Colorado, was timely filed and was accompanied by all required rentals and royalties accruing from August 1, 1994, the date of termination.

No valid lease has been issued affecting the land. The lessee has agreed to new lease terms for rentals and royalties at rates of $10 per acre and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee for the lease and has reimbursed the Bureau of Land Management for the cost of this **Federal Register** notice.

Having met all the requirements for reinstatement of the lease as set out in Section 31 (d) and (e) of the Mineral Leasing Act of 1920, as amended, (30 U.S.C. 188 (d) and (e), the Bureau of Land Management is proposing to reinstate the lease effective August 1, 1994, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Questions concerning this notice may be directed to Milada Krasilinec of the Colorado State Office at (303) 239–3767.

Dated: September 29, 1994.

Milada Krasilinec,

Land Law Examiner, Lease Management Team.

[FR Doc. 94–25458 Filed 10–13–94; 8:45 am]

BILLING CODE 4310–JB–M

[CA–940–01–5410–10–B052; CACA 33545]

Conveyance of Mineral Interests in California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of segregation.

SUMMARY: The private land described in this notice, aggregating 80.00 acres, is segregated and made unavailable for filings under the general mining laws and the mineral leasing laws to determine its suitability for conveyance of the reserved mineral interest pursuant to section 209 of the Federal Land Policy and Management Act of October 21, 1976.

The mineral interests will be conveyed in whole or in part upon favorable mineral examination.

The purpose is to allow consolidation of surface and subsurface of minerals ownership where there are no known mineral values or in those instances where the reservation interferes with or precludes appropriate nonmineral development and such development is a more beneficial use of the land than the mineral development.

FOR FURTHER INFORMATION CONTACT: Marcia Sieckman, California State Office, Federal Office Building, 2800 Cottage Way, Room E–2845, Sacramento, California 95825, (916) 978–4820. Serial No. CACA 33545.

T. 10 S., R. 33 E., Mount Diablo Meridian

Sec. 25, W½W½SW¼, E½W½SW¼.

County—Inyo

Minerals Reservation—All coal and other minerals.

Upon publication of this Notice of Segregation in the **Federal Register** as provided in 43 CFR 2720.1–1(b), the mineral interests owned by the United States in the private lands covered by the application shall be segregated to the extent that they will not be subject to appropriation under the mining and mineral leasing laws. The segregative effect of the application shall terminate by publication of an opening order in the **Federal Register** specifying the date and time of opening; upon issuance of a patent or other document of conveyance to such mineral interest; or two years from the date of publication of this notice, whichever occurs first.

Dated: October 4, 1994.

Nancy J. Alex,

Chief, Lands Section.

[FR Doc. 94–25429 Filed 10–13–94; 8:45 am]

BILLING CODE 4310–40–P

[NM–920–4210–06; NMNM 86230]

Cancellation of Proposed Withdrawal; New Mexico

AGENCY: Bureau of Land Management; Interior.

ACTION: Notice.

SUMMARY: The United States Department of the Interior, Bureau of Land Management has cancelled its application for a proposed withdrawal of 2,845.88 acres of public land in Taos County for the Orilla Verde Recreation Areas. The temporary segregative effect of this proposed withdrawal expires on October 8, 1994. This action will terminate the proposed withdrawal of 2,845.88 acres, which remains closed to surface entry, mining, mineral leasing and geothermal leasing pursuant to Public Law 103–242, the Rio Grande Designation Act of 1994, which comprises the Orilla Verde Areas and thereby affords the required protection of the land. Public Law 103–242 is an amendment to the Wild and Scenic Rivers Act.

EFFECTIVE DATE: October 14, 1994.

FOR FURTHER INFORMATION CONTACT: Jeanette Espinosa, BLM New Mexico State Office, P.O. Box 27115, Santa Fe, New Mexico 87502–0115, 505–438–7597.

SUPPLEMENTARY INFORMATION: A Notice of Proposed Withdrawal was published in the **Federal Register**, 57 FR 46404, October 8, 1992, which segregated the land described therein for up to 2 years from settlement, sale, location, or entry under the general land laws, including the mining laws subject to valid existing rights. The 2-year segregation period expires on October 8, 1994. The Bureau of Land Management has cancelled its application. The land is described as follows:

New Mexico Principal Meridian

T. 24 N., R. 11 E.,
- Sec. 2, SE¼SW¼;
- Sec. 10, lots 1 to 4, inclusive, NE¼NE¼, and NW¼SE¼;
- Sec. 11, lots 1 to 4, inclusive;
- Sec. 14, lots 1 to 3, inclusive, SE¼SW¼, and W½SW¼;
- Sec. 15, lots 1 to 7, inclusive, S½NE¼, E½SW¼, and SE¼.
- Sec. 16, lots 1 and 2, SE¼NE¼, SE¼SW¼, SW¼SE¼, and N½SE¼;
- Sec. 20, E½SE¼;
- Sec. 21, lots 1 to 10, inclusive, NW¼, N½SW¼, and E½SE¼;
- Sec. 22, W½;
- Sec. 28, lots 1 and 2, NE¼, SW¼NW¼, E½NW¼;
- Sec. 29, lots 1 to 4, inclusive, NW¼NE¼, and NE¼NW¼.

The area described contains 2,845.88 acres in Taos County.

Dated: September 28, 1994.

Gilbert J. Lucero,

Associate State Director.

[FR Doc. 94–25460 Filed 10–13–94; 8:45 am]

BILLING CODE 4310–FB–P

Fish and Wildlife Service

Notice of availability of a Draft Revised Recovery Plan for the Todsen's Pennyroyal for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability and public comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the

availability for public review of a draft revised recovery plan for the Todsen's pennyroyal (*Hedeoma todsenii*) which the Service listed as an endangered species on January 19, 1981 (46 FR 5730). This plant is known to occur only in Dona Ana and Otero Counties, New Mexico. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before December 13, 1994 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the U.S. Fish and Wildlife Service, New Mexico Ecological Services State Office, 3530 Pan American Highway NE., Suite D, Albuquerque, New Mexico 87107, (505) 883–7877. Written comments and materials regarding the plan should be addressed to the State Supervisor. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Anne Cully, U.S. Fish and Wildlife Service Botanist, telephone (505) 883-7877 or at the above address.

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened plant or animal to the point where it is again a secure, self-sustaining member of its ecosystem 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 site-specific management actions considered necessary for conservation and survival of the species, establish objective, measurable criteria for the recovery levels for downlisting or delisting species, and estimate time and cost for implementing recovery measures needed.

The Endangered Species Act (Act) of 1973, 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 prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

The Todsen's pennyroyal was listed as endangered on January 19, 1981, based on its restricted range, small population size, and limited reproduction capacity. In addition to natural threats to small populations such as disease, predation, and catastrophic events, the species was considered to be threatened by man-caused incidents such as fire, habitat disturbance, development, and other activities on White Sands Missile Range, in the San Andres Mountains, Dona Ana County, New Mexico. A recovery plan for the species was written and approved in 1985. From 1988 to 1993, 15 additional locations for the species were found on the west slopes of the Sacramento Mountains, Otero County, New Mexico. In 1990, an additional location in the San Andres Mountains was discovered. There are now 18 known locations for this species. The draft revised recovery plan includes new scientific information about Todsen's pennyroyal gathered since 1981 and provides management procedures for protecting the species habitat and expanding its range and abundance to the extent that no natural or human-caused disturbance will result in irrevocable losses.

The Todsen's pennyroyal recovery plan has been reviewed by the appropriate Service staff in Region 2. The plan will be finalized and approved following incorporation of comments and materials received during this comment period.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to the approval of the plan.

Authority

The Authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533 (f).

Dated: October 6, 1994.

John G. Rogers,

Regional Director.

[FR Doc. 94–25440 Filed 10–13–94; 8:45 am]

BILLING CODE 4310–55–P

INTERNATIONAL TRADE COMMISSION

[Investigation 332–344]

The Economic Effects of Antidumping and Countervailing Duty Orders and Suspension Agreements

AGENCY: United States International Trade Commission.

ACTION: Extending deadline for public submissions.

EFFECTIVE DATE: October 1, 1994.

SUMMARY: Following receipt of a letter dated June 9, 1993, from the United States Trade Representative (USTR), the Commission instituted investigation No. 332–344, The Economic Effects of Antidumping and Countervailing Duty Orders and Suspension Agreements, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) on July 1, 1993 (Fed. Reg., Vol. 58, No. 133, July 14, 1993, pp 37966–37967). The Commission was requested to submit its report by June 30, 1995.

FOR FURTHER INFORMATION: General information may be obtained from Ms. Arona Butcher (202–205–2230), Office of Operations or Ms. Peg MacKnight (202–205–3431), Office of Industries, U.S. International Trade Commission, Washington, DC 20436. For information on the legal aspects of this investigation contact Mr. William Gearhart of the Office of the General Counsel (202–205-3091). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202) 205–1810.

BACKGROUND: As requested by USTR, the Commission will investigate the economic effects of such orders and suspension agreements, and the economic effects of the dumping and subsidy practices that such orders and agreements address. The investigation will include a comprehensive empirical analysis of the economic condition of U.S. domestic industries impacted (including upstream and downstream industries) by unfairly traded imports both before and after relief was granted. This analysis will include relevant industry information on employment, wages, production, prices, investment, trade and other factors internal and external to the industry including but not limited to the relevant unfair foreign trade practices affecting the general health and competitiveness of such industries. Also, the USTR has requested that a standard comparative static model be employed to estimate the economic effects of the unfair trade practices and remedies on selected U.S. industries.

The USTR noted that the process of relief from unfair trade practices entails real costs to firms, to individual workers and to taxpayers. The USTR has requested the Commission to complement the empirical analysis above with quantitative and other estimates of the labor and other domestic adjustment costs involved. Also as requested by the USTR, the Commission will seek to provide an assessment of the economy-wide net economic welfare effects of unfair trade practices and the remedies provided.

PUBLIC HEARING: A public hearing was held before the U.S. International Trade Commission on September 29, 1994 and September 30, 1994.

WRITTEN SUBMISSIONS: Interested parties are invited to submit written statements concerning the matters to be addressed by the Commission in its report on this investigation. Commercial or financial information that a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of section § 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be made available in the Office of the Secretary of the Commission for inspection by interested parties.

The deadline for filing any posthearing briefs, statements, responses to the Commission's additional written questions from the public hearing, or other submissions (other than questionnaire responses) is hereby extended to 5:15 p.m., November 4, 1994. All such submissions should include an original and 14 copies and be addressed to the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436.

Issued: October 11, 1994.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–25519 Filed 10–13–94; 8:45 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32588]

CSX Transportation, Inc.—Trackage Rights Exemption—Norfolk Southern Railway Company

The Norfolk Southern Railway Company (NS) has agreed to grant approximately 110.2 miles of overhead trackage rights to CSX Transportation, Inc. (CSXT).[1] The trackage rights extend from NS milepost 132.4A at West Knoxville, TN, to the connection between NS and CSXT at NS milepost 242.6A at Chattanooga, TN. The trackage rights were to become effective on October 3, 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: John W. Humes, Jr., CSX Transportation, Inc., 500 Water Street, Jacksonville, FL 32202.

As a condition to the use of this exemption, any employees adversely affected by the trackage rights will be protected under *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: October 6, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Acting Secretary.

[FR Doc. 94–25470 Filed 10–13–94; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32574]

Finger Lakes Railway Corp.—Acquisition and Operation Exemption—Consolidated Rail Corporation

Finger Lakes Railway Corp. (FLRC), a noncarrier, has filed a notice of exemption to acquire and operate 117.84 miles of rail line, owned by the Consolidated Rail Corporation (Conrail), in the State of New York.[1] The involved Conrail line segments include: (1) Watkins Glen Industrial Track between milepost 46.30 at or near Bellona and milepost 16.55 at or near Watkins Glen, a distance of 29.75 miles; (2) Canandaigua Secondary between milepost 76.00 at or near Canandaigua and milepost 51.30 at or near Geneva, a distance of 24.70 miles; (3) Auburn Secondary between milepost 50.50 at or near Geneva and milepost 3.61 at or near Solvay Yard, a distance of 46.89 miles; (4) Geneva Running Track between milepost 344.40 at or near Geneva and milepost 329.30 at or near Kendaia, a distance of 15.10 miles; (5) Lehigh & New York Industrial Track between milepost 357.00 and milepost 356.10 at or near Auburn, a .90-mile distance; and (6) Auburn & Ithaca Industrial Track between milepost 349.20 and milepost 348.70 at or near Auburn, a .50-mile distance.

FLRC will have access rights to interchange with Conrail at Solvay Yard, east of Fairmount. It will also interchange with Conrail at Geneva, NY.

The transaction also includes the acquisition by FLRC of incidental trackage rights from Conrail between milepost 12.80 at or near Geneva to milepost 34.90 at or near Himrod Jct., a distance of 22.10 miles. The parties expect to consummate the proposed transaction on or after November 15, 1994, and after execution of a definitive Purchase and Sale Agreement by the parties.

Any comments must be filed with the Commission and served on: Eric M. Hocky, 213 W. Miner Street, P.O. Box 796, West Chester, PA 19381–0796; and Jonathan Broder, Consolidated Rail Corporation, Law Department 16A, Two Commerce Square, P.O. Box 41416, Philadelphia, PA 19101–1416.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: October 6, 1994.

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[1] The trackage rights are limited to the movement of one train daily in each direction as part of the through movement of coal traffic by CSXT to the Widow's Creek Steam Power Plant of the Tennessee Valley Authority at Bridgeport, AL.

[1] On September 16, 1994, Samuel J. Nasca, New York State Legislative Director for United Transportation Union, filed a petition requesting that the verified notice filed by FLRC on September 14, 1994, be rejected because FLRC did not state the proposed time schedule for consummation of the proposed transaction, as required by 49 CFR 1150.33(e)(2). In the alternative, Mr. Nasca requests that the exemption be stayed until FLRC amends its notice. On September 20, 1994, FLRC filed an amendment to its verified notice stating that it expects to consummate the transaction on or about November 15, 1994.

FLRC has cured the defect in its notice. Therefore, the petition to reject the notice or to stay the exemption is denied. Under 49 CFR 1150.32(b), the exemption became effective on September 27, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Acting Secretary.

[FR Doc. 94–25469 Filed 10–13–94; 8:45 am]

BILLING CODE 7035–01–P

[Docket No. AB–424 (Sub-No. 1X)]

Grainbelt Corporation—Abandonment Exemption—in Tillman County, OK

Grainbelt Corporation (Grainbelt) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon approximately 7.7 miles of line between a point south of Frederick at Milepost 767.0 and the end of the line at Davidson, milepost 774.7, in Tillman County, OK.

Grainbelt has certified that: (1) no local traffic has moved over the line for at least 2 years; (2) no overhead traffic has moved over the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental report), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on November 13, 1994, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29[3] must be filed by October 24, 1994. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by November 3, 1994, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicant's representative: Eric M. Hocky, Esq., Gollatz, Griffin & Ewing, P.C., 213 W. Miner St., P. O. Box 796, West Chester, PA 19380–0796.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio*.

Grainbelt has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by October 19, 1994. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: October 4, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Acting Secretary.

[FR Doc. 94–25468 Filed 10–13–94; 8:45 am]

BILLING CODE 7035–01–P

[Docket No. AB–401 (Sub-No. 1)]

Oregon Pacific & Eastern Railway Company—Abandonment—Between Cottage Grove and Mosby Creek, OR

Commission has issued a certificate authorizing the Oregon Pacific & Eastern Railway Company (OP&E) to abandon its 3.35-mile line between milepost 0.0 at Cottage Grove and milepost 3.35 at Mosby Creek in Lane County, OR. The abandonment was granted subject to the condition that OP&E retain its interest in and take no steps to alter the historic integrity of the line until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f.

The abandonment certificate will become effective 30 days after this publication unless the Commission finds that: (1) a financially responsible person has offered financial assistance (through subsidy or purchase) to enable rail service to be continued and (2) it is likely that the financial assistance will fully compensate OP&E.

Requests for public use conditions must be filed with the Commission and OP&E within 10 days after publication.

Any offers of financial assistance must be filed with the Commission and OP&E no later that 10 days from the publication date of this Notice. The following notation must be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Office of Proceedings, AB-OFA". Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27. Requests for public use conditions must conform with 49 CFR 1152.28(a)(2).

Decided: October 4, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Acting Secretary.

[FR Doc. 94–25479 Filed 10–13–94; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Order Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act; Berlin and Farro Liquid Incineration, Inc.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent order in *United States* v. *Berlin and Farro Liquid Incineration, Inc.*, Civil Action No. 84–CV–8473–FL, and *United States* v. *Amway Corp.*, Civil Action No. 89–CV–40290–FL, has been lodged with the United States District Court for the Eastern District of Michigan on September 29, 1994.

The Consent Decree resolves claims against Laro Coal and Iron Company by the United States under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9601 *et seq.*, for past and future response costs at the

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[1] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Environmental Analysis in its independent investigation) cannot be made before the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental concerns is encouraged to file its request as soon as possible in order to permit the Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

Berlin & Farro Liquid Incineration Site ("Site"), Swartz Creek, Michigan. The Consent Decree provides for the payment to the United States of $426,234.20. This amount represents all past costs of the United States for the Site that were not recovered by a previous consent decree in these cases between the United States and fifteen major and eighty *de minimis* parties. The settlement also includes a covenant not to sue for response action at the site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent order. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Berlin and Farro Liquid Incineration, Inc.*, D.J. Ref. 90–11–2–77A and *United States* v. *Amway Corp.*, D.J. Ref. 90–11–2–77B.

The proposed consent order may be examined at the office of the United States Attorney for the Eastern District of Michigan, 210 Federal Building, 600 Church Street, Flint, Michigan 48502, at the Office of Regional Counsel, United States Environmental Protection Agency, Region V, 200 West Adams Street, Chicago, Illinois 60604, and at the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed Consent Decree may also be obtained in person or by mail from the Consent Decree Library. In requesting a copy, please enclose a check in the amount of $5.75 (25 cents per page reproduction costs) payable to the Consent Decree Library.

Bruce Gelber,

Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 94–25471 Filed 10–13–94; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act; Dore & Associates Contracting, Inc.

In accordance with Department policy 28 CFR Section 50.7, notice is hereby given that on October 4, 1994, a proposed Consent Decree in *United States* v. *Dore & Associates Contracting, Inc.* (Civ. No. 93–CV–10333–BC) was lodged in the United States District Court for the Eastern District of Michigan (Bay City).

The United States filed the complaint commencing this enforcement action in 1993, under the Clean Air Act ("Act"), 42 U.S.C. Section 7401 *et seq.*, alleging violations of the Act, and, in particular, violations of the National Emission Standard for Hazardous Air Pollutant ("NESHAP") that applies to the pollutant asbestos. *See* 40 CFR Part 61, Subpart M. The alleged violations related to asbestos removal work performed by Defendant in 1988 at a building known as Emerson Center, which was located in Flint, Michigan prior to its demolition, completed in 1989.

Under the proposed Decree, Defendant shall be required to, among other things: comply with all aspects of the current asbestos NESHAP as set out at 40 CFR Part 61 (Subpart M), submit supplemental reports and certifications concerning all asbestos removal work by Defendant, and pay stipulated penalties in the event Defendant violates particular requirements of the NESHAP and/or the Decree. The Decree also requires that Defendant pay a civil penalty of $4,250.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment & Natural Resources Division, U.S. Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Dore & Associates Contracting, Inc.*, DOJ Ref. #90–5–2–1–1582.

The proposed Consent Decree may be examined at the offices of the United States Attorney, Eastern District of Michigan, Federal Building, 1000 Washington Avenue, Bay City, Michigan, and at the offices of the U.S. Environmental Protection Agency, Region 5, Office of Regional Counsel, 200 West Adams (29th Floor), Chicago, Illinois. Copies of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 10005, (202) 624–0892. In requesting a copy, please enclose a check in the amount of $4.50 (25 cents per page reproduction costs), payable to the "Consent Decree Library."

Bruce S. Gelber,

Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 94–25472 Filed 10–13–94; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to Clean Air Act: Request for Public Comment

Notice is hereby given that a Consent Decree in *Louisiana Environmental Action Network* v. *Babbitt*, Civil No. 94–0895 (E.D. La.) was lodged with the United States District Court for the Eastern District of Louisiana on September 29, 1994.

The case involves the Louisiana Environmental Action Network's claim that the Department of the Interior had failed to comply with the statutory deadline for completion of a research study described under section 328(b) of the Clean Air Act, as amended by the Clean Air Amendment of 1990, Pub. L. No. 101–549, 104 Stat. 2399 (codified at 42 U.S.C. 7627(b). The proposed Consent Decree would require completion of the research study by August 1, 1995.

The Department of Justice will receive written comments relating to the proposed Consent Decree for a period of 30 days from the date of publication of this notice. Comments should be addressed to Ms. Kathleen Roberts, U.S. Department of Justice, Environmental Defense Section, P.O. Box 23986, Washington, D.C. 20026–3986 and should refer to *Louisiana Environmental Action Network* v. *Babbitt*, Civil No. 94–0895 (E.D. La.).

The Consent Decree may be examined at the Clerk's Office, United States District Court for the Eastern District of Louisiana, 500 Camp Street, New Orleans, Louisiana 70130.

Alternatively, a copy of the Decree is available on request from Ms. Kathleen Roberts at (202) 514–3924.

Dated: October 7, 1994.

Lois J. Schiffer,

Assistant Attorney General, Environment and Natural Resources Division, Department of Justice.

[FR Doc. 94–25417 Filed 10–13–94; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act; Terry Shaner, et al.

In accordance with Department Policy, 28 CFR 50.7, notice is hereby given that two proposed consent decrees in *United States* v. *Terry Shaner, et al.*, Civil Action No. *85–1372*, were lodged on September 28, 1994 with the United States District Court for the Eastern District of Pennsylvania. An amended complaint was filed simultaneously with the lodging of the two Consent Decrees.

The first of the two proposed consent decrees requires the ten Settling Defendants to pay the United States $547,304.44, which equals 100% of their volumetric share of past response

costs, 100% of their share of estimated future response costs at the Site, and a 100% premium on future response costs. In the second of the two proposed consent decrees, the Settling Defendant cashes out for $7,000.00 based on the U.S. Environmental Protection Agency's financial analyst's review of extensive financial information and determination that the Settling Defendant was unable to pay its full volumetric share of the de minimis settlements described in the decrees.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decrees. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Terry Shaner, et al.*, DOJ Ref. *#90–11–3–76.*

The proposed consent decrees may be examined at the Office of the United States Attorney, Eastern District of Pennsylvania, 615 Chestnut Street, Suite 1250, Philadelphia, Pennsylvania, 19106–4476; the Region III Office of the Environmental Protection Agency, 841 Chestnut Building, Philadelphia, Pennsylvania, 19107; and at the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of either of the proposed consent decrees may be obtained in person or by mail from the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, DC 20005. In requesting a copy of either or both of the proposed decrees, please refer to the referenced case, the specific decree requested, either the de minimis decree signed by ten defendants or the inability to pay decree signed by one defendant and enclose a check in the amount of $7.25 for the *de minimis* decree signed by ten defendants and/or in the amount of $5.50 for the inability to pay decree signed by one defendant (25 cents per page reproduction costs), payable to the Consent Decree Library.

Bruce S. Gelber,

Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 94–25473 Filed 10–13–94; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act; Shell Oil Company, Inc., et al.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on September 15, 1994 a proposed Consent Decree in *United States and State of California* v. *Shell Oil Company, Inc., et al.* Case No. CF 91–0589 RJK(Ex) was lodged with the United States District Court for the Central District of California. This Consent Decree represents a settlement of claims against Shell Oil Company, Union Oil Company of California, Atlantic Richfield Company and Texaco, Inc. ("Settling Defendants") for costs incurred in connection with the McColl Superfund Site in Fullerton, California under Section 107 of CERCLA, 42 U.S.C. 9607.

Under this settlement between the United States and the State of California ("Plaintiffs") and the Settling Defendants, the Settling Defendants will pay the United States Environmental Protection Agency ("EPA") $13,248,000 for past United States response costs. The Consent Decree also requires the Settling Defendants to pay the State of California $4,752,000 for past State response costs. Under the Consent Decree, the Plaintiffs obtain a declaratory judgment against the Settling Defendants for all future response costs incurred in connection with the McColl Site. The Consent Decree imposes a penalty of $5,000 per day for each day payment of past response costs to the Plaintiffs is late.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States and State of California* v. *Shell Oil Company, Inc., et al.*, D.J. Ref. 90–11–2–3A.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Central District of California, Room 7516 Federal Building, 300 North Los Angeles Street, Los Angeles, California 90217 and at Region IX, Office of the Environmental Protection Agency, 75 Hawthorne Street, San Francisco, California 94105, and at the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, DC 20005. In requesting a copy, please enclose a check in the amount of $7.00 (25 cents per page reproduction cost) payable to the Consent Decree Library.

John C. Cruden,

Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 94–25474 Filed 10–13–94; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decrees; Southern Pacific Transportation Corp., et al.

In accordance with the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that two proposed consent decrees in *United States* v. *Southern Pacific Transportation Corporation, et al.*, consolidated with, *People of the State of California* v. *Southern Pacific Transportation Corporation, et al.*, CIV–S–92–1117, were lodged with the United States District Court for the Eastern District of California on March 14, 1994. These consolidated actions were brought pursuant to Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9607, Section 311 of the Clean Water Act, 42 U.S.C. § 1321, and the Rivers and Harbors Act, 33 U.S.C. § 407, as well as under various state statutes and the common law.

Under the first proposed consent decree, AMVAC Chemical Corporation and American Vanguard Corporation agree to pay $2 million to the United States and the State of California in compensation of the claims alleged against those corporations. The second proposed consent decree provides that Southern Pacific Transportation Company and related corporations, GATX Corporation, General American Transportation Corporation, J.M. Huber Corporation, Trinity Chemical Industries, Inc., and Transmatrix, Inc., agree to pay the United States and the State of California $36 million over a period of five years. These funds are being paid to reimburse the United States and the State of California for environmental response costs, health study costs, natural resource damages, penalties, state law claims, and common law damages incurred as a result of the derailment of a Southern Pacific train and subsequent spill of hazardous substances into the Upper Sacramento River. No further response activities are anticipated at this site; however, ongoing natural resource damage restoration projects will be conducted pursuant to a Natural Resource Damage Assessment Plan designed by the plaintiffs and pursuant to a Memorandum of Agreement between the governments.

The Department of Justice will receive comments relating to the proposed consent decrees for a period of 30 days from the date of this publication. Comments should be addressed to the Acting Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530. All comments should refer to *United States* v. *Southern Pacific Transportation Corporation, et al.*, DOJ Number 90–5–1–1–3820.

The proposed consent decrees may be examined at the office of the United States Attorney, Room 3305, Federal Building, U.S. Courthouse, 650 Capitol Mall, Sacramento, CA 95814; the Region IX Office of the Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105; and at the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, D.C. 20005, (202) 624–0892. Copies of the proposed consent decrees may be obtained in person or by mail from the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, D.C. 20005. Any request for a copy of the proposed consent decrees should be accompanied by a check in the amount of $10.25 for the AMVAC decree and $10.50 for the Southern Pacific decree, for copying costs ($0.25 per page), payable to "Consent Decree Library."

Bruce S. Gelber,

Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 94–25476 Filed 10–13–94; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–29,843 Victoria, TX; TA–W–29,843A Houston, TX]

Davis Great Guns Logging Company a/k/a Tucker Wireline Services, Inc.; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on July 25, 1994, applicable to all workers of the subject firm engaged in employment related to exploration and drilling for crude oil and natural gas. The certification notice was published in the **Federal Register** on August 8, 1994 (59 FR 40370).

At the request of the company, the Department reviewed the certification for workers of the subject firm. New findings show that on January 1, 1994 Tucker Wireline Services purchased the assets of Davis Great Guns Logging Company. Tucker Wireline Services is successor-in-interest firm performing the same services as its predecessor and having the same workforce and customers. Tucker Wireline Services is experiencing worker separations in 1994.

Accordingly, the Department is amending the certification to show the correct worker group.

The intent of the Department's certification is to include all workers of Davis Great Guns Logging Company and Tucker Wireline Services who were adversely affected by increased imports of crude oil and natural gas.

The amended notice applicable to TA–W–29,843 is hereby issued as follows:

All workers of Davis Great Guns Logging Company, also known as (a/k/a) Tucker Wireline Services, Inc., in Victoria and Houston, Texas engaged in employment related to exploration and drilling for crude oil and natural gas who became totally or partially separated from employment on or after April 19, 1993 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C., this 5th day of October 1994.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 94–25484 Filed 10–13–94; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–29,743]

IBM Corporation; Poughkeepsie, NY; Notice of Affirmative Determination Regarding Application for Reconsideration

On August 22, 1994, one of the petitioners requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance for workers at the subject firm. The Department's Negative Determination was issued on August 5, 1994 and published in the **Federal Register** on August 25, 1994 (59 FR 34867).

At the request of one of the petitioners who claims that the Supplier Quality Assurance Department is engaged in the production of an article, the Department is expanding its factfinding investigation to the production of mainframe computers at IBM's Poughkeepsie, New York plant.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, D.C., this 3rd day of October 1994.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services Office of Trade Adjustment Assistance.

[FR Doc. 94–25485 Filed 10–13–94; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30,184]

Markwest Siloam Plant, South Shore, KY; Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; Correction

This notice corrects the notice for petition TA–W–30,184 which was published in the **Federal Register** on August 19, 1994 (59 FR 42859) in FR Document 94–20469. A printing error concerning the company's name and city and state locations appears in the 13th line of the first and second columns, respectively, in the appendix table on page 42859. The name should read "Markwest Siloam Plant" in the first column and "South Shore, Kentucky" in the second column instead of "Markwest Hydrocarbon Partners (Co)", "Englewood, Colorado".

Signed in Washington, D.C., this 6th day of October 1994.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 94–25486 Filed 10–13–94; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–29,963]

McCord Winn Textron Cookeville, TN; Notice of Negative Determination Regarding Application for Reconsideration

By an application dated August 26, 1994, the company requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on July 28, 1994, and published in the **Federal Register** on August 15, 1994 (59 FR 41792).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

Investigation findings show that the workers produced windshield washer reservoir pumps and automobile seating comfort systems.

Investigation findings show that as a result of corporate excess capacity because of the closure of the Winchester plant which produced fuel pump armatures, the company made the decision to close the Cookeville plant and consolidate its production at Manchester, New Hampshire and Lavonia, Georgia. A domestic transfer of production, for whatever reason, would not provide a basis for a worker group certification. Further, the findings show increased sales and production at Cookeville right up to the domestic transfer of production in June, 1994.

Certification under the worker adjustment assistance program is based on increased imports of articles that are *like or directly competitive* (emphasis added) with those produced at the workers' firm (windshield washer pumps and automobile seating systems) and which contributed importantly to worker separations and sales or production declines at the plant.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington D.C., this 3rd day of October 1994.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 94–25487 Filed 10–13–94; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–29,556]

McDonnell Douglas Helicopter Systems, Mesa, AZ; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on August 11, 1994, applicable to all workers of the subject firm engaged in employment related to the production of helicopters.

The certification notice was published in the **Federal Register** on August 25, 1994 (59 FR 43867).

At the request of the State Agency, the Department is amending the certification to include leased workers from Rashkin and C.D.I., Tempe, Arizona; I.T.S. and E.T.S., Scottsdale, Arizona; P.D.S. and Ciber, Phoenix, Arizona; and MDTA, Long Beach, California, engaged in the production of helicopters at Mesa, Arizona.

The intent of the Department's certification is to include all workers at McDonnell Douglas Helicopter at Mesa, Arizona who were affected by increased imports of helicopters.

The amended notice applicable to TA–W–29,556 is hereby issued as follows:

All workers of McDonnell Douglas Helicopter Systems (MDHS) Mesa, Arizona and leased workers from Rashkin and C.D.I., Tempe, Arizona; I.T.S. and E.T.S., Scottsdale, Arizona; P.D.S. and Ciber, Phoenix, Arizona; and MDTS, Long Beach, California, engaged in the production of helicopters at Mesa, Arizona who became totally or partially separated from employment on or after February 18, 1993 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C., this 3rd day of October 1994.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 94–25488 Filed 10–13–94; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–29,927]

Walker Manufacturing Company, Hebron, OH; Notice of Negative Determination Regarding Application for Reconsideration

By an application dated September 28, 1994, the United Auto Workers Union (UAW) requested administrative reconsideration of the subject petition for trade adjustment assistance (TAA). The denial notice was signed on August 15, 1994 and published in the **Federal Register** on September 2, 1994 (59 FR 45711).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The investigation findings show that the workers produce auto exhaust systems and that the plant will be closed by the end of 1994.

The union claims that the Department should have used Custom data on U.S. imports to supplement its customer survey. A review of the Department's investigation shows that Custom data on imports was used. U.S. imports of mufflers and exhaust pipes declined absolutely in 1993 compared to 1992 and in the latest 12-month period from June through May 1993–1994 compared to the same period in 1992–1993.

In order for a worker group to be certified eligible to apply for TAA, it must meet all three of the Worker Group Eligibility Requirements of the Trade Act—(1) a significant decrease in employment, (2) an absolute decrease in sales or production and (3) an increase of imports that are like or directly competitive with those produced by the petitioning workers' firm and these increased imports must have "contributed importantly" to worker separations and decreased sales or production at the workers' firm. The worker group cannot be certified eligible to apply for TAA if any one of the worker group criteria are not met in the relevant period.

The "contributed importantly" test is generally demonstrated through a survey of the workers' firm's customers. The Department's survey of Hebron's customers shows that they did not decrease their purchases from Hebron and increase their imports in the relevant period.

The union states that machinery from the Hebron plant is being shipped to a plant in Mexico. New findings on reconsideration show that as a result of the Hebron closure, the company is making its excess machinery available to other corporate North American plants including the one in Mexico. Certification under the Trade Act is

based upon increased imports of like or directly competitive articles with those produced at the workers' firm. Machinery associated with the production of exhaust systems is not like or directly competitive with exhaust systems.

Other findings on reconsideration show that the Mexican plant produces exhaust systems only for the Mexican market. The Hebron plant produces exhaust systems only for a major domestic original equipment manufacturer (OEM).

Other findings on reconsideration show that no production was transferred to Mexico as a result of the closure of the Hebron plant. Only the production of resonator bodies was transferred to Canada; however, this accounted for only a very small portion of Hebron's total production and the workers were not separately identifiable by product. The Hebron closing is the result of capacity issues within Walker Manufacturing in North America.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, D.C., this 5th day of October 1994.

Victor J. Trunzo,

Program Director, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 94–25489 Filed 10–13–94; 8:45 am]

BILLING CODE 4510–30–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, N.W., Room S–3014, Washington, D.C. 20210.

Modification to General Wage Determinations 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 publications in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

New Hampshire
- NH940001 (Feb. 11, 1994)
- NH940005 (Feb. 11, 1994)

Volume II

New York
- NY940003 (Feb. 11, 1994)
- NY940008 (Feb. 11, 1994)
- NY940031 (Feb. 11, 1994)
- NY940046 (Feb. 11, 1994)

Volume III

Kentucky
- KY940001 (Feb. 11, 1994)
- KY940002 (Feb. 11, 1994)
- KY940003 (Feb. 11, 1994)
- KY940004 (Feb. 11, 1994)
- KY940006 (Feb. 11, 1994)
- KY940007 (Feb. 11, 1994)
- KY940027 (Feb. 11, 1994)
- KY940028 (Feb. 11, 1994)
- KY940029 (Feb. 11, 1994)

Tennessee
- TN940053 (Jun. 10, 1994)

Volume IV

Illinois
- IL940007 (Feb. 11, 1994)
- IL940016 (Feb. 11, 1994)
- IL940021 (Apr. 15, 1994)
- IL940022 (Apr. 15, 1994)
- IL940027 (Apr. 15, 1994)
- IL940028 (Apr. 15, 1994)
- IL940029 (Apr. 15, 1994)
- IL940032 (Apr. 15, 1994)
- IL940034 (Apr. 15, 1994)
- IL940043 (Apr. 15, 1994)
- IL940046 (Apr. 15, 1994)
- IL940051 (Apr. 15, 1994)
- IL940063 (Apr. 15, 1994)
- IL940067 (Apr. 15, 1994)
- IL940068 (Apr. 15, 1994)
- IL940069 (Apr. 15, 1994)
- IL940071 (Apr. 15, 1994)
- IL940073 (Apr. 15, 1994)
- IL940082 (Apr. 15, 1994)
- IL940084 (Apr. 15, 1994)
- IL940090 (Apr. 15, 1994)
- IL940092 (Apr. 15, 1994)
- IL940095 (Apr. 15, 1994)
- IL940096 (Apr. 15, 1994)

IL940098 (Feb. 11, 1994)
Indiana
IN940031 (Apr. 08, 1994)
Michigan
MI940001 (Feb. 11, 1994)
MI940002 (Feb. 11, 1994)
MI940003 (Feb. 11, 1994)
MI940004 (Feb. 11, 1994)
MI940005 (Feb. 11, 1994)
MI940007 (Feb. 11, 1994)
MI940012 (Feb. 11, 1994)
MI940031 (Feb. 11, 1994)
MI940049 (Feb. 11, 1994)
Minnesota
MN940005 (Feb. 11, 1994)
MN940007 (Feb. 11, 1994)
MN940008 (Feb. 11, 1994)
MN940015 (Feb. 11, 1994)
MN940027 (Mar. 25, 1994)
MN940031 (Mar. 25, 1994)
MN940035 (Mar. 25, 1994)
MN940039 (Mar. 25, 1994)
Ohio
OH940001 (Feb. 11, 1994)
OH940002 (Feb. 11, 1994)
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OH940026 (Apr. 01, 1994)
OH940027 (Apr. 01, 1994)
OH940029 (Feb. 11, 1994)
Wisconsin
WI940008 (Feb. 11, 1994)
WI940010 (Feb. 11, 1994)
WI940012 (Feb. 11, 1994)
WI940019 (Feb. 11, 1994)

Volume V:

Louisiana
LA940001 (Feb. 11, 1994)
LA940004 (Feb. 11, 1994)
LA940005 (Feb. 11, 1994)
LA940009 (Feb. 11, 1994)
LA940018 (Feb. 11, 1994)
Nebraska
NE940001 (Feb. 11, 1994)
NE940002 (Feb. 11, 1994)
NE940003 (Feb. 11, 1994)
NE940010 (Feb. 11, 1994)
NE940011 (Feb. 11, 1994)
Oklahoma
OK940019 (Feb. 11, 1994)
OK940024 (Mar. 11, 1994)

Volume VI:

Alaska
AK940001 (Feb. 11, 1994)
AK940002 (Feb. 11, 1994)
Colorado
CO940003 (Feb. 11, 1994)
CO940021 (Feb. 11, 1994)
CO940022 (Feb. 11, 1994)
Idaho
ID940001 (Feb. 11, 1994)
Montana
MT40002 (Feb. 11, 1994)
MT40004 (Feb. 11, 1994)
North Dakota
ND940002 (Feb. 11, 1994)
Oregon
OR940001 (Feb. 11, 1994)

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 included 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 7th day of October 1994.

Alan L. Moss,

Director, Division of Wage Determination.

[FR Doc. 94–25374 Filed 10–13–94; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL MEDIATION BOARD

Notice of Appointment of Members to the Performance Review Board

Notice is hereby given in accordance with 5 USC § 4314 of the membership of the National Mediation Board's Performance Review Board. The members are as follows:

Ms. Magdalena G. Jacobsen, National Mediation Board, Washington, D.C.

Ms. Linda A. Lafferty, Executive Director, Federal Service Impasses Panel, Washington, D.C.

Mr. John C. Truesdale, Executive Secretary, National Labor Relations Board, Washington, D.C.

EFFECTIVE DATE: September 20, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. William A. Gill, Jr., Executive Director, 1301 K Street, N.W., Washington, D.C. 20572, (202) 523–5950.

By direction of the National Mediation Board.

William A. Gill, Jr.,

Executive Director.

[FR Doc. 94–25502 Filed 10–13–94; 8:45 am]

BILLING CODE 7550–01–M

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received under the Antarctic Conservation Act of 1978, P.L. 95–541

AGENCY: National Science Foundation.

ACTION: Notice of Permit Applications Received under the Antarctic Conservation Act of 1978, P.L. 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to these permit applications by November 19, 1994. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy at the above address or (703) 306–1031.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Public Law 95–541), has developed regulations that implement the "Agreed Measures for the Conservation of Antarctic Fauna and Flora" for all United States citizens. The Agreed Measures, developed by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas requiring special protection. The regulations establish such a permit system to designate Specially Protected Areas and Sites of Special Scientific Interest.

The applications received are as follows:

1. *Applicant*—John L. Bengtson, National Marine Mammal Laboratory, National Marine Fisheries Service, NOAA, 7600 Sand Point Way, N.E., Seattle, Washington 98115.

Permit Application No. 95–023.

Activity for Which Permit is Requested

Taking; Enter Sites of Special Scientific Interest; and, Import Into and Export From the United States.

Pinniped research to be conducted consists of ship-supported studies in the circumpolar pack ice zone and land-

based studies at selected sites around the continent, particularly in the region of the Antarctic Peninsula. A primary objective is to study the feeding ecology, reproduction, and population dynamics of Antarctic seals and to examine their role in the marine ecosystem.

When logistically possible, time-depth recorders, radio transmitters, and satellite-linked electronics will be deployed on seals of various species to monitor their deeding and diving behavior. Instruments will be fastened to the pelage on the backs of individuals using cyanoacrylic glue and/or quick-setting epoxy, as has been successfully used in previous seasons. Recorders will be retrieved from seals up to 90 days after initial deployment. Those packages not recovered will be shed from the seals' backs at their next molt. Shore-based studies and surveys will investigate the numbers, behavior, and activity patterns of Antarctic fur seals and southern elephant seals. To facilitate the census work, temporary paint or bleach marks may be applied to seals hauled out in the survey area. Selected individuals may be tagged to assist identification and to monitor migrations. Aerial surveys will be flown to assess the abundance and distribution of pinnipeds in various habitats. In general, surveys will be flown over altitudes of 500 feet or greater to minimize potential disturbance. However, to allow greater flexibility in designing and conducting surveys, flights may be made at lower altitudes (but not less than 200 feet) when called for by conditions of survey design or human safety. Handling of seals while restrained will include marking, weighing, measuring, taking tissue samples (e.g., blubber, skin, blood, hair).

Permission is requested to enter Cape Shirreff (SSSI #32) and Byers Peninsula (SSSI #6) on Livingston Island to study pinnipeds and seabirds. A comprehensive census of these populations was conducted during the 1986–87 austral summer, and repeat censuses are being planned for future seasons. In addition, studies of seabirds and pinnipeds, as described above, may be undertaken at Cape Shirreff as part of the CCAMLR Ecosystem Monitoring Program (CEMP). The applicant wishes to conduct directed research and monitoring of fur seals and seabirds at Cape Shirreff in accordance with CEMP recommendations. There is a possibility of recently-established fur seal colonies within the vicinity of the Byers Peninsula, and periodic censuses of the area would be desirable. At both sites, care will be taken to minimize disturbance to terrestrial habitats and lifeforms. All activities conducted would comply with the approved SSSI management plans in force for each area.

To optimize the use of specimen material previously collected from Antarctic pennipeds, permission is requested to allow exchange of specimen material among researchers in various nations. Specifically, the applicant wishes to: (1) import Antarctic pinniped specimen material into the U.S., and (2) export Antarctic pinniped specimen material out of the U.S. to investigators collaborating in other countries. Authorization is requested to import and export previously collected specimen material from all six species of Antarctic pennipeds between the U.S. and other nations who have acceded to the Antarctic Treaty and the Convention for the Conservation of Antarctic Seals. Accession to these treaties will ensure that specimens collected by foreign scientists will have been collected in compliance with the provisions of these two conventions.

Location

Circumpolar pack ice areas and sites ashore, Antarctic Peninsula region, South Shetland Islands vicinity; and Sites of Special Scientific Interest—Cape Shirreff (SSSI #32) and Byers Peninsula (SSSI #6), Livingston Island. Access will be by ship, boat, or helicopter (overflights of rookeries will be avoided).

Dates

January 1, 1995–December 31, 1999.

2. *Applicant*—Thomas A. Day and James B. McGraw, Department of Biology, West Virginia University, P.O. Box 6057, Morgantown, West Virginia 26506–6057.

Permit Application No. 95–024.

Activity for Which Permit Is Requested

Take; Enter Site of Special Scientific Interest; and Import Into the United States.

This research project will attempt to determine whether UV–B, particularly UV–B associated with ozone hole events, affects photosynthesis, growth, and reproductive performance of Antarctic vascular plants. they will assess the relative magnitude of this limitation by using experimental field treatments to compare UV–B to other potential limitations such as UV–A (ultraviolet-A radiation; 320–400nm), water stress, and nutrient stress. The applicant proposes enter Biscoe Point, Anvers Island (SSSI #20) to collect up to 50 green tillers or shoots with root system of Antarctic hair grass (*Deschampsia antarctica*), and up to 20 seeds (filled seeds if found) of Antarctic pearlwort (*Colobanthus quitensis*). These samples will be transported to West Virginia University where they will be propagated and grown in growth cambers and a greenhouse. These plants will be exposed to various UV treatments and underlying physiological mechanisms responsible for their response to UV will be identified. Equipment, techniques, and facilities necessary for these investigations are not available at Palmer Station.

Access to the site will be by zodiac from the ship. Plant material will be collected by hand and/or trowel.

Location

Biscoe Point, Anvers Island—Sites of Special Scientific Interest #20.

Dates

February 10–17, 1995.

3. *Applicant*—Donal T. Manahan, Department of Biological Sciences, University of Southern California, Los Angeles, California 90089.

Permit Application No. 95–025.

Activity for Which Permit Is Requested

Export from the United States and Introduce Non-indigenous Species into Antarctica. The applicant and four faculty members will offer a four-week course at the McMurdo Station Crary Science and Engineering Center for 16 students from major international research institutions. This second year of the course will emphasize four themes: 1) evolution of structure-function in cold-adapted proteins and biology of antifreeze strategies in antarctic fishes, 2) molecular evolution and UV-photobiology of antarctic algae, 3) comparative studies of protein and membrane adaptations to cold in marine invertebrates and fish, and 4) physiology and biochemistry of larval development of antarctic invertebrates. As part of the course, the applicant will need to culture species of unicellular algae in aseptic conditions. For this purpose, it is requested to export from the U.S. approximately 10ml of algae culture per species originally isolated in Antarctica. These cultures will be used for investigations of the effects of UV on the biology of algae (DNA damage, etc.) The algae species now in culture in the U.S., that were originally isolated in Antarctica, and to be exported from the U.S. are:

Acrochaetium sp.
Acrosiphonia sp.
Bangia sp.
Chaeoceros flexuosum
Desmarestia antarctica
Halochorococcum sp.
Halococcus sp.
Nitzchia curta

Phaeocystis sp.
Phyllophora antarctica
Porosira glacialis
Porphyra cf. plocamienstris
Rhodochorton purpureum
Thallassiosira antarctica
Urospora sp.

In addition, the applicant proposes to introduce algal species that are not of Antarctic origin for use as food for antarctic larval forms (sea urchins) that will be reared at McMurdo Station during the period of the course study. The non-indigenous algal species to be introduced into Antarctica are:

Dunaliella teriolecta
Isochrysis galbana
Skeletonema costatum
Thalassiosira pseudonana
Rhodomonas sp.

After use, all algae and seawater containing algae will be autoclaved to kill the algal cells.

Location

McMurdo Station, Antarctica.

Dates

December 18, 1994–February 7, 1995.

4. *Applicant*—Ronald G. Koger, Project Director, Antarctic Support Associates, 61 Inverness Drive East, Suite 300, Englewood, Colorado 80112.

Permit Application No. 95–026.

Activities for Which Permit Is Requested

Taking.

The applicant proposes to conduct operations at Cape Hallett in an effort to cleanup remnants of past operations. The location of the proposed work lies within a penguin rookery with a population of approximately 80,000 Adelie penguins. The proposed work involves delivering drums and overpacks to the site; transferring fuel, oil, solvent and antifreeze to the drums; and returning the materials to McMurdo Station. The cleanup will be accomplished in stages over a period of several years. Each phase has the potential of disturbing the local penguin population. The work is justified by the fact that the cleanup operation is an effort to eliminate a potentially hazardous situation which poses a threat to the health and well being of the penguin population should the old containers leak their contents due to corrosion. Disturbances would come from noise associated with the activity of personnel on site, use of equipment, and transportation to and from the site. Every effort will be taken to schedule activities at times when the penguins are least susceptible to these disturbances, for example, during times when the birds are not mating, breeding, or nesting.

Location

Seabee Hook, Cape Hallet, Victoria Land, Antarctica.

Dates

November 1, 1994–March 1, 1995.

Nadene G. Kennedy,

Permit Office, Office of Polar Programs.

[FR Doc. 94–25521 Filed 10–13–94; 8:45 am]

BILLING CODE 7555–01–M

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy, Permit Office, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

SUPPLEMENTARY INFORMATION: On September 6, 1994, the National Science Foundation published a notice in the Federal Register of permit applications received. Permits were issued on October 5, 1994 for the following applicants:

H. William Detrich, III—Permit #95–002
E. Imre Friedmann—Permit #95–012
Bruce D. Sidell—Permit #95–016
G. Richard Harbison—Permit #95–017
Colin M. Harris—Permit #95–018

Nadene G. Kennedy,

Permit Office.

[FR Doc. 94–25520 Filed 10–13–94; 8:45 am]

BILLING CODE 7555–01–M

Principal Investigators of NSF Collaboratives for Excellence in Teacher Preparation Awards; Notice of Meeting

The National Science Foundation (NSF) will hold a one and one-half day meeting for the Principal Investigators of NSF Collaboratives for Excellence in Teacher Preparation awards on November 8–9, 1994. The workshop will take place at the Washington, DC Renaissance Hotel, 999 9th Street, NW., Washington, DC, (202) 898–9000. Sessions will be held from 2:15 p.m. to 6 p.m. on Tuesday, and 8 a.m. to 4:30 p.m. on Wednesday.

The purpose of the meeting is to bring together Principal Investigators from each of the funded Collaboratives in Teacher Preparation projects to meet with NSF Program Directors to discuss common objectives, share effective strategies for achieving collaboration among faculty representing diverse disciplines and interests, foster communication among the leaders of the projects, and strengthen the cooperative relationship between NSF and the individual projects.

The workshop will not operate as an advisory committee. It will be open to the public. Participants will include approximately 20 Principal Investigators from science, engineering, mathematics, technology, and education fields.

For additional information, contact Dr. Terry Woodin, Division of Undergraduate Education, 4201 Wilson Boulevard, Arlington, VA, (703) 306–1669.

Dated: October 11, 1994.

Robert F. Watson,

Director, Division of Undergraduate Education.

[FR Doc. 94–25529 Filed 10–13–94; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Economics, Decision and Management Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Panel for Economics, Decision and Management Sciences (#1759).

Date and Time: November 4–5, 1994.

Place: Rooms 380 & 390, NSF, 4201 Wilson Boulevard, Arlington VA.

Type of Meeting: Closed.

Contact Person: Dr. Daniel Newlon, Program Director for Economics, Division of Social, Behavioral and Economic Research, National Science Foundation, 4201 Wilson Boulevard, Arlington VA 22230. Telephone: (703) 306–1753.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Economics proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: October 11, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–25522 Filed 10–13–94; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Human Resource Development; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name and Committee Code: Special Emphasis Panel in Human Resource Development (#1199).

Date and Time: November 2, 1994/7:00 pm to 8:30 pm; November 3, 1994/8:30 am to 5:00 pm; November 4, 1994/8:30 am to 2:30 pm.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 330, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Jane Daniels, Senior Program Director, Human Resource Development, Division of Education and Human Resources, Room 815, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1637.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Experimental Projects Women and Girls (EPWG) proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: October 11, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–25523 Filed 10–13–94; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Materials Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463 as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Materials Research (DMR).

Date and Time: November 4, 1994, 8:30 a.m. to 5:00 pm.

Place: National Science Foundation Conference Room 1060, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Robert J. Reynik, Senior Staff Scientist, Division of Materials Research, Room 1065, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone (703) 306–1814.

Purpose of Meeting: To provide advice and recommendations concerning support for DMR 1995 REU Site Awards Competition.

Agenda: Evaluation of proposals.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: October 11, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–25525 Filed 10–13–94; 8:45 am]

BILLING CODE 7555–01–M

Advisory Committee for Mathematical and Physical Sciences; Astronomy Subcommittee; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Mathematical and Physical Sciences.

Date and Time: November 2 and 3, 1994, 8:30 a.m.–5:00 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 380, Arlington, VA 22230.

Type of Meeting: Open.

Contact Person: Hugh M. Van Horn, Director, Division of Astronomical Sciences, National Science Foundation, 4201 Wilson Boulevard, Room 1045, Arlington, VA 22230. Telephone: (703) 306–1820.

Minutes: May be obtained from contact person listed above.

Purpose of Meeting: Provide advice and recommendations and discuss status of NSF-funded astronomy projects with the objective of achieving the highest quality forefront research for the funds allocated.

Agenda: Wednesday and Thursday, November 2 and 3, 1994. Reports from Subcommittee members. Information items from the Division of Astronomical Sciences. Discussions of priorities and balance. Updates on current projects within the Division of Astronomical Sciences.

Dated: October 11, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–25524 Filed 10–13–94; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Neuroscience; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Panel for Neuroscience.

Date and Time: November 1–2, 1994; 8:30 a.m.–5 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 370, Arlington, VA 22230.

Type of Meeting: Part-Open.

Contact Person: Dr. Christopher Comer, Program Director, Behavioral Neuroscience, Division of Integrative Biology and Neuroscience, Suite 685, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230; Telephone: (703) 306–1416.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: Closed session: November 1, 1994; 9 a.m.–5 p.m. To review and evaluate Behavioral & Computational Neuroscience proposals as part of the selection process for awards.

Open session: November 2, 1994; 9:30 a.m.–10:30 a.m.; To discuss research trends and opportunities in Behavioral & Computational Neuroscience.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: October 11, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–25526 Filed 10–13–94; 8:45 am]

BILLING CODE 7555–01–M

Notice of Workshop

The National Science Foundation (NSF) will hold a two-day workshop on November 6–8, 1994. The workshop will take place at the Washington, DC Renaissance Hotel, 999 9th Street, NW, Washington, DC (202) 898–9000. Sessions will be held from 7:00 p.m. to 10:00 p.m. on Sunday, 8:30 a.m. to 5:00 p.m. on Monday, and 8:30 a.m. to 2:00 p.m. on Tuesday.

The purpose of the workshop is to provide NSF information gathered from a wide variety of institutions of higher education and professional organizations about the trends, research results, and current issues in the undergraduate preparation of future K–12 teachers of science, mathematics and technology.

The workshop will not operate as an advisory committee. It will be open to the public. Participants will include approximately 100 leaders in science, engineering, mathematics, technology, and education.

For additional information, contact Dr. Tina Straley, Division of Undergraduate Education, 4201 Wilson Boulevard, Arlington, VA, (703)306–1669.

Dated: September 27, 1994.

Robert F. Watson,

Director, Division of Undergraduate Education.

[FR Doc. 94–25528 Filed 10–13–94; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Systemic Reform; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Systemic Reform (#1198).

Dates: November 3–4, 1994.

Times: 9:00 p.m.–5:30 p.m., November 3, 1994; 8:00 a.m.–12:00 noon, November 4, 1994.

Place: National Science Foundation, Room 430, 4201 Wilson Blvd, Arlington, VA 22230.

Type of Meeting: Closed.

Contact: Dr. Richard J. Anderson, Senior Project Director, Experimental Program to Stimulate Competitive Research, Office of Systemic Reform, National Science Foundation, Suite 875, 4201 Wilson Blvd., Arlington, VA 22230, (703) 306–1683).

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the NSF EPSCoR program for financial support.

Agenda: To review and evaluate proposals from states participating in the Experimental Program to Stimulate Competitive Research. Proposals requesting one-year Experimental Systemic Initiative grants are submitted in response to NSF EPSCoR solicitation 92–67.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: October 11, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–25527 Filed 10–13–94; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–295 and 50–304]

Commonwealth Edison Co; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Commonwealth Edison Company (the licensee) to withdraw its September 1, 1992, and February 22, 1993, applications for amendments to Facility Operating License Nos. DPR–39 and DPR–48 for the Zion Nuclear Power Station, Units 1 and 2, respectively, located in Lake County, Illinois.

The proposed amendment would have revised the facility Technical Specifications (TS) reactor coolant system (RCS) heatup and cooldown limitation curves, the low temperature overpressure protection (LTOP) system enable temperature, and the allowance to maintain a safety injection pump aligned for injection into the RCS and operable when in the LTOP range. In addition, this request proposed to delete the reactor vessel toughness data tables, fast neutron fluence figures, materials irradiation surveillance specimen inspection schedule, and the RCS pressure and temperature limitations from the TS and relocate them to the pressure-temperature limits report.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on March 31, 1993 (58 FR 16856) and April 14, 1993 (58 FR 19474). However, by letter dated September 2, 1994, the licensee withdrew the proposed change.

For further details with respect to this action, see the applications for amendment dated September 1, 1992, and February 22, 1993, and the licensee's letter dated September 2, 1994, which withdrew the applications for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, and at the local Public Document Room, Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

Dated at Rockville, Maryland, this 6th day of October 1994.

For the Nuclear Regulatory Commission.

Clyde Y. Shiraki,

Senior Project Manager, Project Directorate III–2, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 94–25462 Filed 10–13–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–423]

Northeast Nuclear Energy Co.; Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–49, issued to Northeast Nuclear Energy Company (the licensee), for operation of the Millstone Nuclear Power Station, Unit No. 3 located in New London County, Connecticut.

The proposed amendment would revise the Technical Specifications to increase the time to restore an inoperable Residual Heat Removal (RHR) pump to an operable status. The RHR pump allowed time would increase from 72 hours to 120 hours if the proposed amendment is approved by the Commission.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

By November 14, 1994, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Learning Resource Center, Three Rivers Community-Technical College, Thames Valley Campus, 574 New London Turnpike, Norwich, CT 06360. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in

the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Phillip F. McKee, Director, Project Directorate I–4: petitioner's name and telephone number; date petition was mailed, plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Ms. L.M. Cuoco, Senior Counsel, Northeast Utilities Service Company, Post Office Box 270, Hartford, CT 06141–0270, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendments dated August 16, 1994, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555, and at the local public document room located at Learning Resource Center, Three Rivers Community-Technical College, Thames Valley Campus, 574 New London Turnpike, CT 06360.

Dated at Rockville, Maryland, this 6th day of October 1994.

For the Nuclear Regulatory Commission.

Phillip F. McKee,

Director, Project Directorate I–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94–25463 Filed 10–13–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–423]

Northeast Nuclear Energy Co.; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Northeast Nuclear Energy Company, (the licensee) to withdraw its August 19, 1994, application for proposed amendment to Facility Operating License NPF–49 for the Millstone Nuclear Power Station, Unit No. 3, located at the licensee's site in New London County, Connecticut.

The proposed amendment would have revised the Technical Specifications to grant a one-time change to the Action Statement for Limiting Condition for Operation 3.7.5 of the Technical Specifications. The amendment would permit Millstone Unit No. 3 to remain in Modes 1, 2, 3, or 4 while the average water temperature of the ultimate heat sink is greater than 75°F for a 24 hour period for the months of August and September 1994.

The Commission has previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on August 31, 1994 (59 FR 45042). However, by letter dated September 22, 1994, the licensee withdrew the proposed amendment.

For further details with respect to this action, see the application for amendment dated August 19, 1994, and the licensee's letter dated September 22, 1994, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room located at the Learning Resource Center, Three Rivers Community-Technical College, Thames Valley Campus, 574 New London Turnpike, Norwich, CT 06360.

Dated at Rockville, Maryland, this 6th day of October 1994.

For the Nuclear Regulatory Commission.

Vernon L. Rooney,

Senior Project Manager, Project Directorate I–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94–25464 Filed 10–13–94; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Boston Stock Exchange, Incorporated

October 7, 1994.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Aquila Gas Pipeline Corp.
Common Stock, $.01 Par Value (File No. 7–13048)
Coram Healthcare Corp.
Common Stock, $.01 Par Value (File No. 7–13049)
Crown American Realty Trust
Common Stock, $.01 Par Value (File No. 7–13050)
Franchise Finance Corp. of America
Common Stock, $.01 Par Value (File No. 7–13051)
Fidelity National Financial, Inc.
Common Stock, $.0001 Par Value (File No. 7–13052)
HS Resources, Inc.
Common Stock, $.001 Par Value (File No. 7–13053)
Heritage Media Corp.
Class A Common Stock, $.01 Par Value (File No. 7–13054)
Integrated Health Services, Inc.
Common Stock, $.0001 Par Value (File No. 7–13055)
Intermagnetics General Corp.
Common Stock, $.01 Par Value (File No. 7–13056)
Newfield Exploration Co.
Common Stock, $.01 Par Value (File No. 7–13057)
Nuveen Premium Income Muni Fund, II
Common Stock, $.01 Par Value (File No. 7–13058)
Nuveen Premium Income Muni Fund, III
Common Stock, $.01 Par Value (File No. 7–13059)
Shandong Huaneng Power Development Co., Ltd.
American Depositary Receipts, $1.00 Par Value (File No. 7–13060)
TCW/DW Term Trust 2003
Shares of Beneficial Interest, $.01 Par Value (File No. 7–7–13061)

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before October 21, 1994, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–25482 Filed 10–13–94; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Cincinnati Stock Exchange, Inc.

October 7, 1994.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Banco Wiese Limitado
American Depositary Shares (rep. 4 Com. S/1.00 Par Value) (File No. 7–13062)
Czech Republic Fund, Inc.
Common Shares, $.001 Par Value (File No. 7–13063)
Mid Atlantic Medical Services, Inc.
Common Stock, $.01 Par Value (File No. 7–13064)
Nippon Telegraph & Telephone Corp.
American Depositary Shares (rep. 1/200 sh. Com., Yen 50,000 Par Value) (File No. 7–13065)
Reliance Steel & Aluminum Co.
Common Stock, No Par Value (File No. 7–13066)
Sbarro, Inc.
Common Stock, $.01 Par Value (File No. 7–13067)
Sterile Concepts Holdings, Inc.
Common Stock, No Par Value (File No. 7–13068)
Templeton Dragon Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–13069)
Templeton Vietnam Opportunities Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–13070)
Washington National Gas Co.
8.50% Pfd. Ser. III, $25.00 Par Value (File No. 7–13071)
WHX Corp.
Ser. B Cv. Pfd., $.10 Par Value (File No. 7–13072)
Zeigler Coal Holding Co.
Common Stock, $.01 Par Value (File No. 7–13072)

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before October 31, 1994, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W,. Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–25483 Filed 10–13–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34803; File No. SR–NASD–93–03]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to Receipt of Differential Compensation in Connection With Limited Partnership Rollup Transactions Under Article III, Section 34 of the Rules of Fair Practice

October 7, 1994.

On August 26, 1994,[1] The National Association of Securities Dealers, Inc.

[1] The proposal was amended nine times subsequent to its initial filing on February 3, 1993. Amendment No. 1, filed on April 14, 1993, superseded the original rule filing. Amendment No. 2, filed on May 7, 1993, amended the rule language and the NASD's Statement of Purpose in response to comments of the Commission staff. Amendment Nos. 3 and 4, filed on May 13 and 14, 1993, made technical changes to the rule. Notice of the proposed rule change (Securities Exchange Act Release No. 32312, May 17, 1993) was then published in the **Federal Register** (58 FR 29655, May 21, 1993). Amendment No. 5, filed on August 26, 1993, made technical changes to the rule text and responded to the comment letters that the Commission received in response to the publication of the release in the **Federal Register**. Amendment No. 6, filed on October 21, 1993, made changes to the rule text to address issues of state law addressed in comment letters. Amendment No. 7, filed on April 14, 1994, amended the rule language to partially conform the rule to the Limited Partnership Rollup Reform Act of 1993 ("Rollup Reform Act"), enacted on December 17, 1993, and proposed to narrow the scope of transactions in

("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change pursuant to Section 19(b)(1)[2] of the Securities Exchange Act of 1934 ("Act"), and Rule 19b–4 thereunder.[3]

The proposed rule change amends Article III, Section 34(b)(6) to narrow the scope of transactions in which members are forbidden to receive differential compensation ("Differential Compensation Amendment"). The Differential Compensation Amendment amends Subsection (b)(6) to limit the scope of the prohibition upon receipt of differential compensation to transactions constituting "limited partnership rollup transactions" instead of transactions constituting "rollup of direct participation programs" ("DPP Rollups").

Notice of the Differential Compensation Amendment, together with the substance of the proposal, was provided by the issuance of a Commission release (Securities Exchange Act Release No. 34533, Aug. 15, 1994) and by publication in the **Federal Register** (59 FR 43147, Aug. 22, 1994).[4] No comment letters were received in response to the Commission release. This order approves the Differential Compensation Amendment.

Congress began to focus on investor protection, fairness and disclosure issues related to rollup transactions in 1990. One of the early abuses on which Congress focussed was payment of compensation to soliciting broker-dealers only when an investor voted in favor of a rollup transaction. Since 1991, the rules of the NASD have forbidden members from accepting compensation based upon the result of a DPP Rollup solicitation.[5] However, Congressional testimony indicated concern that general partners would skirt the NASD's prohibition by using non-members to solicit proxies or tenders.[6]

The Rollup Reform Act was enacted on December 17, 1993, as part of the Government Securities Act Amendments of 1993. The Rollup Reform Act prohibits, among other things, the compensation of a person soliciting proxies, consents or authorizations in connection with a limited partnership rollup transaction on the basis of whether or not the solicited proxy, consent or authorization either approves or disapproves the proposed transaction, or is contingent on approval, disapproval or completion of the transaction.[7] The Rollup Reform Act's prohibition applies to a smaller universe of transactions than does current Subsection 34(b)(6) because Subsection (b)(6) applies to "direct participation programs" rather than "limited partnerships" and does not include all of the exclusions that are available from the "limited partnership rollup transaction" definition contained in the Rollup Reform Act.

The legislative history of the Rollup Reform Act indicates that Congress intended to ensure that NASD members and non-members soliciting proxies, consents or authorizations in connection with a limited partnership rollup transaction were prohibited from receiving compensation on the basis of whether the solicited proxy, consent or authorization either approves or disapproves the proposed transaction, or is contingent on approval, disapproval or completion of the transaction.[8] The Commission recently proposed Rules 14a–15 (pertaining to proxy solicitations) and 14e–7 (pertaining to tender offers) under the Act to implement the Rollup Reform Act's prohibition of the receipt of differential compensation by any solicitor, regardless of NASD membership.[9]

It is clear that Congress did not intend to legislate a situation in which NASD members were precluded from receiving differential compensation in connection with a particular transaction while non-members were permitted to receive differential compensation in the context of the same transaction. Therefore, the NASD is amended Subsections (b)(6) (A) and (B) by replacing the special rollup definition in those Subsections with the definition of "limited partnership rollup transaction" and by substituting the term "limited partnership rollup transaction" wherever the term "rollup of a direct participation program" currently appears. The NASD notes that the result of this amendment would be to limit the scope of these Subsections as they would no longer be applicable to almost every DPP rollup, but only to those transactions in which non-member solicitors also would be prohibited from receiving differential compensation.

The Commission finds that the Differential Compensation Amendment is consistent with the provisions of Section 15A(b)(6)[10] of the Act, which require, in pertinent part, that the rules of a registered securities association be designed to prevent fraudulent and manipulative acts, promote just and equitable principles of trade, and protect investors and the public interest. In addition, the Commission finds that the Differential Compensation Amendment is consistent with the provisions of Section 15A(b)(12)[11] of the Act, which, effective December 17, 1994, will require the rules of a registered securities association to include rules to prevent members of the association from participating in any limited partnership rollup transaction that does not provide procedures to protect certain specified rights of limited partners. The proposed rule change will ensure that members and non-members face identical prohibitions with respect to the receipt of differential compensation while continuing to prohibit members from receiving differential compensation in those categories of transactions identified by Congress as harming investors, undermining investor confidence and threatening capital formation.[12]

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which members were forbidden to receive differential compensation. Amendment No. 8, filed on July 27, 1994, amended the rule language to conform the rule to the Rollup Reform Act in all relevant parts and reordered the text of the proposed rule change in accordance with Section 34 of the Rules of Fair Practice. Amendment No. 9, filed on August 26, 1994, was a minor technical amendment, the text of which may be examined in the Commission's Public Reference Room. *See* Letter from Suzanne E. Rothwell, Associate General Counsel, NASD, to Mark P. Barracca, Branch Chief, Over-the-Counter Regulation, SEC (August 26, 1994).

[2] 15 U.S.C. 72s(b)(1) (1988).

[3] 17 CFR 19b–4 (1993).

[4] The proposed rule change amended Article III, Section 34 of the Rules of Fair Practice to include rules which prevent NASD members or persons associated with an NASD member from participating in any "limited partnership rollup transaction" (as defined in the proposed rule change) unless the transaction includes certain specified provisions designed to protect the rights of limited partners and Schedule D of the By-Laws ("Schedule D") to prohibit the authorization for quotation on the Nasdaq National Market ("Nasdaq/NM") of any security which results from a covered partnership rollup transaction unless the transaction was conducted in accordance with certain specified procedures designed to protect the rights of dissenting limited partners. The release approved these amendments.

[5] *See* Securities Exchange Act Release No. 29582 (Aug. 19, 1991), 56 FR 42095 (Aug. 26, 1991) (approving SR–NASD–91–24). Section 34(a)(2) defines "direct participation program" as "a program which provides for flow-through tax consequences *regardless of the structure of the legal entity or vehicle for distribution*. . . ." (emphasis added). By contrast, new Subsection (b)(2)(B)(vi) defines "limited partnership" as a DPP *organized as a limited partnership* (emphasis added).

[6] S. Rep. No. 121, 103d Cong., 1st Sess. (1993) at 7–8 ("Senate Report").

[7] 15 U.S.C. 78n(h)(1)(C).

[8] Senate Report, *supra* n. 7., at 12: NASD rules implemented in 1991 prohibit NASD members from accepting compensation based upon the outcome of a transaction. This section closes a potential gap in coverage by applying this prohibition to nonmember proxy solicitors as well.

[9] *See* Securities Act Release No. 7090 (Sept. 1, 1994), 59 FR 46365 (Sept. 8, 1994).

[10] 15 U.S.C. 78*o*-3(b)(6).

[11] 15 U.S.C. 78*o*-3(b)(12).

[12] Senate Report, *supra* n. 7, at 9.

It Is Therefore Ordered, pursuant to Section 19(b)(2)[13] of the Exchange Act, that the proposed rule change, SR–NASD–93–3 be, and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–25478 Filed 10–13–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34799 ; File No. SR–NYSE–94–33]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the New York Stock Exchange, Inc. Relating to a Proposed Extension of the Trading Halt Provisions of Rule 80B

October 6, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on September 22, 1994, the New York Stock Exchange, Inc. ("NYSE" 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. On September 30, 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 Exchange proposes to extend the effectiveness of the "circuit breaker" provisions of Exchange Rule 80B until October 31, 1995.

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

Rule 80B provides, in part, that if the Dow Jones Industrial Average ("DJIA") falls 250 or more points below its previous trading day's closing value, trading in all stocks on the Exchange will halt for one hour. It further provides that if on the same day the DJIA drops 400 or more points from its previous trading day's close, trading on the Exchange will halt for two hours.

Rule 80B was enacted in response to studies of the October 1987 Market Break. Following the Market Break, numerous market analyses and reports were undertaken. One such report was the Interim Report of the Working Group on Financial Markets ("Working Group") issued in May 1988 by the Undersecretary for Finance of the Department of the Treasury, and the Chairmen of the Commission, the Commodity Futures Trading Commission and the Board of Governors of the Federal Reserve System. The Working Group recommended "coordinated trading halts and reopenings for large, rapid market declines that threaten to create panic conditions." The Working Group specifically recommended, and the Exchange endorsed, temporary halts in the trading of all stocks, stock options, and stock index options as well as the trading of stock index futures and options on stock index futures when the DJIA reaches certain trigger values. The Presidential Task Force on Market Mechanisms, ("Brady Commission"), also endorsed the concept of coordinated market trading halts.

Rule 80B was approved by the Commission on a pilot basis on October 19, 1988, and has been extended for another year every October since then. This pilot is due to expire on October 31, 1994. Since the original adoption of the rule in 1988, the provisions of Rule 80B have not been triggered. The Exchange continues to believe that coordinated trading halts and reopenings during large, rapid market declines is a viable concept, and is therefore seeking to extend the effectiveness of Rule 80B for another year, until October 31, 1995.

The Exchange adopted Rule 80B with the understanding that all United States stock exchanges and the National Association of Securities Dealers would adopt rules or procedures substantively identical to Rule 80B with respect to the trading of stocks, stock options and stock index options, and that the Chicago Board of Trade, the Chicago Mercantile Exchange, the Kansas City Board of Trade and the New York Futures Exchange would adopt rules halting the trading of stock index futures and options on such futures contracts under circumstances substantively identical to those contained in Rule 80B. The Exchange is seeking the extension of the effectiveness of Rule 80B with the understanding that the market centers referred to above will similarly extend the effectiveness of their respective rules which are substantively identical to Rule 80B.

The Exchange believes that its proposal is consistent with the requirement of Section 6(b)(5) of the Act that an Exchange have rules that are designed to promote just and equitable principals of trade, remove impediments to, and perfect the mechanism of, a free and open market, and in general protect investors and the public interest. The Exchange believes that extending the effectiveness of Rule 80B for an additional year is consistent with these objectives in that a trading halt requirement during a period of significant stress can be expected to provide market participants with a reasonable opportunity to become aware of and respond to significant price movements, thereby facilitating, in an orderly manner, the maintenance of an equilibrium between buying and selling interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NYSE believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

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[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] In Amendment No. 1, the NYSE requests that the Commission find good cause for accelerating approval of its proposal pursuant to Section 19(b)(2) of the Act to allow approval of its proposal prior to the October 31, 1994 expiration of the Rule 80B temporary approval. In addition, Amendment No. 1 corrects a typographical error appearing in Section I of Exhibit 1 to the filing by replacing 1994 with 1995. *See* letter from Brian M. McNamara, Vice President, Market Surveillance, NYSE, to Sharon Lawson, Assistant Director, Division of Market Regulation, Commission, dated September 29, 1994 ("Amendment No. 1").

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange requests that the Commission find good cause for approving its proposal prior to the thirtieth day after publication in the **Federal Register** to allow for the uninterrupted effectiveness of Exchange Rule 80B which otherwise expires on October 31, 1994.

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, 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 will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File No. SR–NYSE–94–33 and should be submitted by November 4, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[3]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–25480 Filed 10–13–94; 8:45 am]

BILLING CODE 8010–01–M

[3] 17 CFR 200.30–3(a)(12) (1993).

[Release No. 34–34800; File No. SR–Phlx–94–44]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc. Relating to Extending the Circuit Breaker Pilot Program

October 6, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on September 12, 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, II, and III below, which Items have been prepared by the self-regulatory organization. On September 30, 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.

Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to extend the effectiveness of its circuit breaker pilot program, which appears in Phlx Rule 133, until October 31, 1995, Generally, Rule 133 provides for a one hour trading halt if the Dow Jones Industrial Average ("DJIA") declines 250 or more points from its previous day's closing level, and, thereafter, a two hour trading halt if the DJIA declines 400 points from the previous day's closing level.

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 an basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statement 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

The purpose of this proposal is to extend the Exchange's circuit breaker pilot program for a one-year period, in order to afford the Exchange and the Commission additional time to evaluate the effectiveness of the pilot program. The Exchange's circuit breaker rule provides an important safety mechanism, in conjunction with the circuit breakers of other self-regulatory organizations ("SROs"). The Commission approved the Exchange's circuit breaker proposal on a temporary basis in 1988.[3] Thereafter, the Exchange's circuit breaker pilot program was extended five times, most recently until October 31, 1994.[4]

The Exchange believes that its proposed rule change is consistent with Section 6 of the Act in general, and in particular, with Section 6(b)(5), in that it is designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, remove impediments to and perfect the mechanism of a free and open market and national market system, as well as to protect investors and the public interest, by providing a reasonable means to retard a rapid, one-day market decline that can have a destabilizing effect on the nation's financial markets and the participants in these markets.

(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

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange requests that the Commission find good cause for accelerating approval of its proposed

[1] 15 U.S.C. 78s(b)(1).

[2] In Amendment No. 1, the Phlx requests accelerated treatment for its proposal pursuant to Section 19(b)(2) of the Act to allow the circuit breaker pilot program to continue without interruption. *See.* letter from Gerald D. O'Connell, First Vice President, Regulation and Trading Operations, Phlx, to Michael Walinskas, Branch Chief, Division of Market Regulation, Commission, dated September 30, 1994 ("Amendment No. 1").

[3] Securities Exchange Act Release No. 26386 (December 22, 1988), 53 FR 52904.

[4] Securities Exchange Act Release Nos. 27370 (October 23, 1989), 54 FR 43881; 28580 (October 25, 1990), 55 FR 45895; 29868 (October 28, 1991), 56 FR 56535; 26942 (November 6, 1992), 57 FR 53157; and 33120 (October 29, 1993), 58 FR 59503.

rule change pursuant to Section 19(b)(2) of the Act. The Exchange notes that Rule 133 expires on October 31, 1994, which will be prior to the thirtieth day after publication of notice in the Federal Register of the Exchange's proposal.

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission 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 will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File No. SR–Phlx–94–44 and should be submitted by November 4, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–25481 Filed 10–13–94; 8:45 am]

BILLING CODE 8010–01–M

[5] 17 CFR 200.30–3(a)(12) (1993).

[Rel. No. IC–20604; No. 811–4069]

Crown America Series Fund, Inc.

October 6, 1994.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for Deregistration under the Investment Company Act of 1940 ("1940 Act" or "Act").

APPLICANT: Crown America Series Fund, Inc.

RELEVANT 1940 ACT SECTION: Order requested under Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on March 28, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the applicant will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the Secretary of the SEC and serving the Applicant with a copy of the request, personally or by mail. Hearing requests must be received by the SEC by 5:30 p.m. on October 31, 1994, and should be accompanied by proof of service on the Applicant 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 may request notification of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Applicant: 1901 Scarth Street, Regina, Saskatchewan, Canada S4P 3B1.

FOR FURTHER INFORMATION CONTACT: W. Thomas Conner, Attorney, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. The Applicant is a diversified open-end management investment company. On July 18, 1984, Applicant filed with the SEC a notification of registration as an investment company on Form N–8A pursuant to Section 8(a) of the 1940 Act and a registration statement on Form N–1A (File No. 811–4069) pursuant to Section 8(b) of the Act.

2. On July 18, 1984, the Applicant filed with the SEC a registration statement on Form N–1A (File No. 2–92279) pursuant to the Securities Act of 1933 ("1933 Act"). Pursuant to Rule 24f–2 under the 1940 Act, the Applicant registered an indefinite amount of securities under the 1933 Act. The registration statement was declared effective on July 15, 1985. The securities registered under this registration statement have consisted of seven classes of capital stock, par value one cent ($.01) per share, divided into the following classes: Money Market Series, Capital Growth Series, Bond Income Series, Managed Series, Zero Coupon Bond Series 1991 (shares of this class were redeemed and cancelled in 1991), Zero Coupon Bond Series 1996, and Zero Coupon Bond Series 2006.

3. The Applicant was incorporated in the state of Maryland on July 11, 1984, in accordance with applicable Maryland law and regulations. On March 11, 1994, the Applicant filed Articles of Dissolution with the Maryland Department of Assessments and Taxation, which were effective upon receipt by the Department.

4. On June 3, 1993, the Applicant's Board of Directors unanimously approved a certain Agreement and Plan of Reorganization and Liquidation ("Reorganization Plan") dated as of June 30, 1993, whereby substantially all of the assets allocated to each series of the Applicant were to be acquired by SteinRoe Variable Investment Trust ("Trust"), a Massachusetts business trust registered with the SEC as an open-end management investment company of the series types, in exchange for shares of various series of the Trust having an aggregate net asset value equal to the aggregate value of the net assets of the Applicant so acquired. On September 23, 1993, the Reorganization Plan was approved by vote of more than two-thirds of the shares of each class of stock outstanding. Consummation of the Reorganization Plan was conditioned upon the consummation of a certain Stock Purchase Agreement ("Agreement"), dated as of May 21, 1993, providing for the purchase by Keyport Life Insurance Company of all the outstanding shares of Crown America Life Insurance Company (which, on behalf of its seprate accounts noted below, owned all outstanding shares of the Applicant).

5. The Agreement and Reorganization Plan were consummated on October 1, 1993, and the Applicant then distributed the Trust shares so acquired to its shareholders, Keyport America Variable Life Separate Account (formerly Crown America Variable Life Separate Account) and Keyport America Variable Annuity Separate Account

(formerly Crown America Variable Annuity Separate Account) (together, the "Accounts,"), in liquidation and cancellation of shares of Applicant. This distribution occurred as of the close of business on October 1, 1993. Since the distribution of the shares of the Applicant to the Accounts, all of the issued and outstanding shares of the Applicant are retired, cancelled, and no longer outstanding, and the Accounts have ceased to be shareholders with respect to such shares.

6. During the last 18 months, the Applicant has not, for any reason, transferred any of its assets to a separate trust other than as described above. All of the assets of the Applicant were distributed to the Accounts, its only shareholders. At the time of filing this application, the Applicant retained no assets. The Applicant does not have any debts or other liabilities that remain outstanding. The Applicant is not a party to any litigation or administrative proceeding. At the time of filing this application, the Applicant has no securityholders. The Applicant is not now engaged nor does it propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–25424 Filed 10–13–94; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

Office of the Secretary

[Public Notice 2093]

Determination Under Section 538 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1995 (Public Law 103–306)

By virtue of the authority vested in me by section 538 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1995 (Public Law 103–306) and the related Presidential delegation of authority dated September 30, 1994, I hereby determine and certify that assistance to the countries of Europe and the independent states of the former Soviet Union from funds appropriated or otherwise made available under that Act is in the national interest of the United States.

This determination and certification shall be reported to the Congress and published in the **Federal Register.**

Dated: October 3, 1994.

Warren Christopher,

Secretary of State.

[FR Doc. 94–25477 Filed 10–13–94; 8:45 am]

BILLING CODE 4710–10–M

[Public Notice 2099]

International Joint Commission; Notice of Public Hearing

In the matter of a request from the Governments of the United States and Canada that the international joint commission examine into and report upon the regulation of the levels of Rainy and Namakan Lakes

The International Joint Commission, United States and Canada, will hold a public hearing in International Falls, Minnesota on November 10, 1994, with sessions at two p.m. and seven p.m. local time on the regulation of the levels of Rainy and Namakan Lakes to prevent the occurrence of emergency conditions in the Rainy Lake watershed. The public hearing will take place in the theater of the Rainy River Community College, 1501 Highway 71, International Falls, Minnesota.

The 1938 Rainy Lake Convention between the United States and Canada granted the International Joint Commission the power to determine when emergency conditions exist in the Rainy Lake watershed, whether by reason of high or low water, and empowered it to adopt measures of control as may seem proper with respect to existing dams at Kettle Falls and International Falls and any other works or dams in the boundary waters of the Rainy Lake watershed in the event the Commission shall determine that such emergency conditions exist. Pursuant to the Convention, the International Joint Commission issued Orders in 1949, 1957 and 1970 setting forth Rule Curves for the regulation of Rainy and Namakan Lakes so as to avoid emergency high or low levels.

Requests have been made for the International Joint Commission to revise the current Rule Curve, most recently by the Rainy Lake and Namakan Reservoir Water Level International Steering Committee in its Final Report dated November 1993. The Commission is considering what, if any, action it can appropriately take under the Convention.

At the hearing, the Commission would welcome the views of all interested parties on whether the Commission's Orders fulfill the mandate of the Rainy Lake Convention to avoid emergency conditions.

The hearing is an international hearing, and citizens of both the United States and Canada are encouraged to attend and participate. All interested persons will be given opportunity to express their views orally or in writing. The Commission encourages hearing participants to submit written statements as the time available for each speaker may be limited. The record of the hearing will remain open until January 10, 1995 for the receipt of written statements. Please send statements to either address below:

Secretary, United States Section, International Joint Commission, 1250 23rd Street, NW., Washington, DC 20440, Telephone: (202) 736–9000, Fax: (202) 736–9015

Secretary, Canadian Section, International Joint Commission, 100 Metcalfe Street, Ottawa, ON K1P 5M1, Telephone: (613) 995–2984, Fax: (613) 993–5583

Dated: October 6, 1994.

David A. LaRoche,

Secretary, United States Section.

[FR Doc. 94–25496 Filed 10–13–94; 8:45 am]

BILLING CODE 4710–14–M

THRIFT DEPOSITOR PROTECTION OVERSIGHT BOARD

Region 1 Advisory Board Meeting

AGENCY: Thrift Depositor Protection Oversight Board.

ACTION: Notice of meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act, (Pub. L. 92–463), announcement is hereby published for the Region 1 Advisory Board meeting. The meeting is open to the public.

DATES: The Region 1 Advisory Board meeting is scheduled for Wednesday, November 9, 1994, 4 to 6 p.m.

ADDRESSES: The meeting will be held at the Hilton Gateway in Gateway Center, Raymond Boulevard, Newark, New Jersey.

FOR FURTHER INFORMATION CONTACT: Jill Nevius, Committee Management Officer, Thrift Depositor Protection Oversight Board, 808 17th Street NW., Washington, D.C. 20232, 202/416–2626.

SUPPLEMENTARY INFORMATION: Pursuant to section 21A (d) of the Federal Home Loan Bank Act, the Thrift Depositor Protection Oversight Board established a National Advisory Board and six Regional Advisory Boards to advise the Oversight Board and the Resolution Trust Corporation (RTC) on the disposition of real property assets of the Corporation.

Agenda

A detailed agenda will be available at the meeting. The meeting will include a RTC briefing, summation of September 29 briefing in Pittsburgh and formulation of recommendations.

Statements

Interested persons may submit, in writing, data, information or views on the issues pending before the National Advisory Board prior to or at the meeting. Seating is available on a first come first served basis for this open meeting.

Dated: October 11, 1994.

Jill Nevius,

Committee Management Officer.

[FR Doc. 94–25493 Filed 10–13–94; 8:45 am]

BILLING CODE 2221–01–M

Regional Advisory Board Meetings for Regions 1–6

AGENCY: Thrift Depositor Protection Oversight Board.

ACTION: Meetings notice.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is hereby published for the Series 18 Regional Advisory Board meetings for Regions 1 through 6. The meetings are open to the public.

DATES: The 1994 meetings are scheduled as follows. The notice of the first two meetings is being published less than fifteen days prior to the date of the meeting because of scheduling difficulties.

1. October 26, 9 a.m. to 12 noon, Newport Beach, California, Region 6 Advisory Board.

2. October 27, 9 a.m. to 12 noon, Colorado Springs, Colorado, Region 5 Advisory Board.

3. November 2, 9 a.m. to 12 noon, Orlando, Florida, Region 2 Advisory Board.

4. November 10, 9 a.m. to 12 noon, Newark, New Jersey, Region 1 Advisory Board.

5. November 16. 9 a.m. to 12 noon, Cincinnati, Ohio, Region 3 Advisory Board.

6. November 17, 9 a.m. to 12 noon, San Antonio, Texas, Region 4 Advisory Board.

ADDRESSES: The meetings will be held at the following locations:

1. Newport Beach, California—To Be Announced.

2. Colorado Springs, Colorado—Antlers Doubletree Hotel, 4 South Cascade, Palmer Center.

3. Orlando, Florida—Sheraton Orlando North, I–4 and Maitland Boulevard.

4. Newark, New Jersey—Hilton Gateway, Gateway Center, Raymond Boulevard.

5. Cincinnati, Ohio—The Westin Hotel Cincinnati, 21 East Fifth Street.

6. San Antonio, Texas—San Antonio Marriott Rivercenter, 101 Bowie Street.

FOR FURTHER INFORMATION CONTACT: Jill Nevius, Committee Management Officer, Thrift Depositor Protection Oversight Board, 808 17th Street, NW., Washington, DC 20232, 202/416–2626.

SUPPLEMENTARY INFORMATION: Section 501(a) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Public Law No. 101–73, 103 Stat. 183, 382–383, directed the Oversight Board to establish one national advisory board and six regional advisory boards.

Purpose

The Regional Advisory Boards provide the Resolution Trust Corporation (RTC) with recommendations on the policies and programs for the sale of RTC owned real property assets.

Agenda

Topics to be addressed at the six meetings will include reviewing the RTC's most effective policies and programs, documentation of RTC's operations and RTC's data management systems. In addition, the Boards' will review the plans for the RTC affordable housing hotline and how the RTC selects foreclosed property for its affordable housing program. The Boards also will hear from the vice presidents of the RTC's regional offices as well as from witnesses testifying on specific agenda topics.

Statements

Interested persons may submit to an Advisory Board written statements, data, information, or views on the issues pending before the Board prior to or at the meeting. The meetings will include a public forum for oral comments. Oral comments will be limited to approximately five minutes. Interested persons may sign up for the public forum at the meeting. All meetings are open to the public. Seating is available on a first come first served basis.

Dated: October 11, 1994.

Jill Nevius,

Committee Management Officer, Office of Advisory Board Affairs.

[FR Doc. 94–25492 Filed 10–13–94; 8:45 am]

BILLING CODE 2221–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket 49818]

In the Matter of U.S.-Germany; Third/Fourth/Fifth Freedom Frequency Allocations for the 1995 Summer Season

Summary

By this Notice, we invite interested U.S. carriers to apply for allocation of the available frequencies for third/fourth/fifth freedom combination-service operations in the U.S.-Germany market for the upcoming summer season (*i.e.*, April 1, 1995-October 31, 1995).

Background

Under the May 1994 U.S.-Germany Agreement for Transitional Arrangements for Air Transport Services (Agreement), scheduled combination services are subject to seasonal frequency limitations. For the coming summer season, U.S. scheduled combination carriers may operate a total of 262 weekly round-trip frequencies for U.S.-Germany (third/fourth-freedom) services and 134 weekly round-trip frequencies for Germany-third country (fifth-freedom) services.[1] The Agreement further provides that thirty days prior to each traffic season, each Party shall notify the other Party through diplomatic channels of the initial allocation of the frequencies among its airlines.[2]

Applications

To facilitate our allocation of these frequencies, we invite all U.S. carriers interested in using the third/fourth/fifth-freedom frequencies to file their applications with the Department in Docket 49818.

Applications should include the following information (identify separately for third/fourth- and fifth-freedom frequencies): (a) the overall number of frequencies requested; (b) the markets to be served; (c) distribution of the requested frequencies by market; (d) aircraft to be used (per market); and (e) manner of operation (i.e., direct service/own aircraft or code share; if code share, identify with which carrier and over what third-country point, if applicable).

[1] Article 6, Section 1 (A)(1) provides that airlines designated by the United States may operate 120 weekly round-trip fifth freedom frequencies during the coming summer season. Furthermore, under Section 1 (A)(2), an additional 14 weekly round-trip fifth freedom frequencies are available because the United/Lufthansa rights in the London-Germany market noted in Appendix B to the Agreement have been effectuated.

[2] Article 6, Section 5 A.

Applicant carriers that have previously been allocated and operated flights in the third/fourth/fifth-freedom markets for the 1994 summer season should also provide the following information with respect to those operations (identify separately for third/fourth- and fifth-freedom allocations): (a) the number of flights previously allocated; (b) markets served; (c) frequencies operated per market and period of operation for each market; (d) aircraft type per market; and (e) manner of operation (i.e., direct service/own aircraft or code share; if code share, identify with which carrier and over what third-country point, if applicable).[3]

Applicants are also free to submit any additional information that they believe will help us in making our decision.

An original and 12 copies of each application should be filed with the Department's Docket Section, Room 4107, 400 Seventh Street S.W., Washington, D.C. 20590, in Docket 49818, and served on all parties on the attached list.

Procedural Schedule

In light of the numerous coming holidays, in the interests of the carriers and the Department, and to facilitate a timely processing of this case, we will require that applications and responsive pleadings be filed according to the following schedule:

Applications: October 27, 1994
Answers: November 7, 1994
Replies: November 14, 1994

We will serve this notice on all U.S. air carriers holding authority to operate foreign scheduled combination air transportation with large aircraft, and will publish this Notice in the **Federal Register**.

Dated: October 6, 1994.

Patrick V. Murphy,

Acting Assistant Secretary for Aviation and International Affairs.

Attachment

R Tenney Johnson, Counsel for Air Micronesia Inc, Suite 600, 2300 N Street NW, Washington DC 20037
John Gillick, Counsel for America West Airlines, Winthrop Stimson Putnam, Suite 1200, 1133 Connecticut Ave NW, Washington DC 20036
Russell E Pommer, Counsel for Business Express Inc, Verner Liipfert Bernhard, Suite 700, 901 15th Street NW, Washington DC 20005–2301
Lorraine B Halloway, Counsel for Continental Micronesia, Crowell & Moring, 1001 Pennsylvania Ave NW, Washington DC 20004–2595
Richard P Taylor, Counsel for Evergreen Intl Airlines, Steptoe & Johnson, 1330 Connecticut Ave NW, Washington DC 20036
Nathaniel Breed, Counsel for Federal Express, Shaw Pittman Potts &, 2300 N Street NW, Washington DC 20037
Marshall S Sinick, Counsel for Alaska Airlines Inc, Suite 500, 1201 Pennsylvania Ave NW, Washington DC 20004
Carl B Nelson Jr, Assoc General Counsel, American Airlines Inc, 1101 17th Street NW, Washington DC 20036
Robert N Duggan, Counsel for Carnival Air Lines Inc, Mercer Moore & Assoc, Suite 502, 700 S Royal Poinciana Blv, Miami Springs FL 33166
Robert E Cohn, Counsel for Delta Air Lines Inc, Shaw Pittman Potts &, 2300 N Street NW, Washington DC 20037
Carl B Nelson Jr, Counsel for Executive Airlines, D/B/A American Eagle, 1101 17th Street NW, Washington DC 20036
Jonathan B Hill, Counsel for Hawaiian Airlines, Dow Lohnes & Albertson, 1255 23rd St NW, Washington DC 20037
Marshall S Sinick, Counsel for Aloha Airlines Inc, Suite 500, 1201 Pennsylvania Ave NW, Washington DC 20004
William Doherty, Director of Military & International Affairs, American Trans Air, 7337 W Washington St, Indianapolis IN 46231
R Bruce Keiner Jr, Counsel for Continental Airlines, Crowell & Moring, 1001 Pennsylvania Ave NW, Washington DC 20004–2595
R Tenney Johnson, Counsel for DHL Airways, Suite 600, 2300 N Street NW, Washington DC 20037
Jonathan B Hill, Counsel for Express One Intl, Dow Lohnes & Albertson, 1255 23rd St NW, Washington DC 20037
Morris Garfinckle, Counsel for MGM Grand Air Inc, Galland Kharasch Morse, 1054 31st Street NW, Washington DC 20007–4492
Peter B Kenney Jr, Assoc General Counsel, Northwest Airlines Inc, 901 15th Street NW, Washington DC 2005
Carl B Nelson Jr, Counsel for Simmons Airlines Inc, D/B/A American Eagle, 1101 17th Street NW, Washington DC 20036
Stephen L Gelband, General Counsel, Tower Air, Hewes Moreles Gelband, Suite 300, The Flour Mill, 1000 Potomac St NW, Washington DC 20007
Nathaniel Breed, Counsel for USAfrica Airways Inc, 11180 Sunrise Valley Dr, Reston VA 22091
Robert E Cohn/Sheryl Israel, Counsel for Worldwide Airlines Serv, Shaw Pittman Potts &, 2300 N Street NW, Washington DC 20037
Jim Marquez, Counsel for Private Jet Expeditions, McNair & Sanford, Madison Off, Bldg #400, 1155 15th St NW, Washington DC 20005
Mark W Atwood, Counsel for Spirit Airlines Inc, Galland Kharasch, 1054 31st Street NW, Washington DC 20007–4492
Dick Fahy, Trans World Airlines, Suite 520, 808 17th Street NW, Washington DC 20006
Frank Cotter, Asst General Counsel, USAir Inc, Crystal Park Four, 2345 Crystal Drive, Arlington VA 22227
Mark S Kahan, Counsel for Renown Aviation, Galland Kharasch Morse, 1054 31st Street, Washington DC 20007–4492
Dennis N Barnes, Counsel for Sun Country Airlines, Morgan Lewis Bockius, 1800 M Street NW #600N, Washington DC 20036
Joel Stephen Burton, Counsel, United Air Lines, Ginsburg Feldman & Bress, Suite 800, 1250 Connecticut Ave NW, Washington DC 20036
Vance Fort, Senior VP-Govt/Legal, World Airways Inc, 13873 Park Center Rd, Herndon VA 22071

[FR Doc. 94–25498 Filed 10–13–94; 8:45 am]
BILLING CODE 4910–62–P

[3] If there was a cessation of service, no matter how short, in any market for any period during the past summer season, such interruption of service should be noted. If services were changed from one market to another during the past summer season, this also should be indicated.

Federal Highway Administration

Environmental Impact Statement; City of Healdsburg, CA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed bridge replacement project in the City of Healdsburg, Sonoma County, California.

FOR FURTHER INFORMATION CONTACT: John R. Schultz, Chief, District Operations–A, Federal Highway Administration, California Division, U.S. Bank Plaza, 980 Ninth Street, Suite 400, Sacramento, California 95814–2724, Telephone; (916) 551–1314.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the California Department of Transportation and the City of Healdsburg, will prepare a draft environmental impact statement (EIS) on a proposal to replace the Healdsburg Avenue Bridge (Bridge No.

20C–65) crossing the Russian River. The proposed project would replace an existing two-lane bridge with a new bridge that would provide three lanes, including one travel lane in each direction and a center dual turning lane, as well as bikelanes and sidewalks on either side. The existing bridge is a steel truss bridge built in 1921 and has been determined to be eligible for the National Register. The project would also involve the reconstruction of approach roadway sections and an adjoining intersection, involving a total distance of 750 feet along the existing Healdsburg Avenue corridor, an arterial street in the City of Healdsburg.

Replacement of the existing bridge is considered necessary because it is structurally deficient and functionally obsolete. Structural deficiencies require the posting of height and load restrictions for vehicles using the bridge. The bridge is seismically unsound. A current 19.5-foot width is substandard relative to present and projected traffic load. This width cannot accommodate a turning lane needed for improved traffic efficiency at the adjoining intersection on the west bank, nor shoulders needed to safely and efficiently allow joint use by bicycles and motor vehicles. The existing bridge is also poorly aligned resulting in poor sight distance and a safety hazard at the adjoining intersection.

Alternatives under consideration include (1) taking no action; (2) rehabilitating the existing bridge; (3) locating the new bridge on an alignment either north or south of the existing bridge, thereby leaving the existing bridge as a pedestrian and bicycle crossing; (4) replacing the existing bridge with a standard box girder concrete bridge; and (5) replacing the existing bridge with a new bridge using a truss design. Other alternatives may be considered following the scoping meeting.

The project will require acquisition of new right-of-way in an existing urban areas and will affect commercial and residential properties as well as a public park. The project would be funded through the Federal Bridge Replacement Program with local agency contribution.

A scoping meeting is scheduled for November 17, 1994 at the City of Healdsburg City Hall Council Chambers located at 126 Matheson Street in the City of Healdsburg. The purpose of the meeting will be to discuss the need for the project, alternatives to be considered, and the related significant social, economic and environmental issues to be addressed and analyzed in the draft EIS.

To ensure that the full range of issues related to the proposed action are addressed, and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments and questions concerning this proposed action and the EIS should be directed to the FHWA at the address previously provided in this document.

(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.)

G.P. Wong,

Senior Transportation Engineer, Sacramento, California.

[FR Doc. 94–25411 Filed 10–13–94; 8:45 am]

BILLING CODE 4910–22–M

Research and Special Programs Administration (RSPA)

Meetings of Pipeline Safety Advisory Committees

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App. 1) notice is hereby given of the following meetings of the Technical Hazardous Liquid Pipeline Safety Standards Committee (THLPSSC) and the Technical Pipeline Safety Standards Committee (TPSSC). Each Committee meeting as well as a joint session of the two Committees will be held in Rooms 4436–40 of the U.S. Department of Transportation Building, 400 Seventh Street, S.W., Washington, DC.

On November 2, at 9:00 a.m., the THLPSSC will meet. Agenda items include updates on the Oil Pollution Act implementation and activities to identify environmentally sensitive areas, and the Trans-Alaska Pipeline.

At 1:00 p.m., THLPSSC members will be joined by members of the TPSSC for a joint session which will include:

1. Overview by the RSPA Administrator.

2. Status Reports on Various Pipeline Safety Program Issues (environmental action plan, program effectiveness, strategic planning, implementation of the Government Performance and Results Act, joint research agenda, OPS risk assessment prioritization, and national pipeline mapping program.

3. Discussion of Underground Storage Facilities

On November 3, from 8:30 a.m. to 12:00 noon, the joint TPSSC-THLPSSC session will include: (1) One-Call Enhancement, (2) Pipeline Summit, (3) Regulatory Actions, and (4) Pipeline Data Collection and Analysis.

At 1:15 p.m., the TPSSC will meet. Agenda items include updates on the surveys related to Customer-Owned Service Lines and Cast Iron Replacement.

Each meeting will be open to the public, but attendance will be limited to the space available. Please note that attendance will particularly be limited during the joint session of the two committees because of space constraints.

Members of the public may present oral statements on the topics. Due to the limited time available, each person who wants to make an oral statement must notify Bernardyne Williams or Gwen Hill, Room 2335, Department of Transportation Building, 400 Seventh Street, SW, Washington, DC 20590, telephone (202) 366–4046, not later than October 24, 1994, of the topics to be addressed and the time requested to address each topic. The presiding officer may deny any request to present an oral statement and may limit the time of any oral presentation. Members of the public may present written statements to the Committees before or after any meeting.

Issued in Washington, D.C., on October 6, 1994.

George W. Tenley, Jr.

Executive Director, TPSSC and THLPSSC.

[FR Doc. 94–25394 Filed 10–13–94; 8:45 am]

BILLING CODE 4910–60–P

UNITED STATES SENTENCING COMMISSION

Revisions to the Sentencing Guidelines for the United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of (1) promulgation of a temporary, emergency sentencing guideline amendment limiting the applicability of statutory minimum sentences in certain cases; and (2) final action regarding retroactivity of amendments.

SUMMARY: The Sentencing Commission hereby gives notice of the following actions: (1) Pursuant to its authority under section 80001(b) of the Violent Crime Control and Law Enforcement Act of 1994, section 21(a) of the Sentencing Act of 1987, and section 217(a) of the Comprehensive Crime Control Act of 1984 (28 U.S.C. 994 (a) and (p)), the Commission has promulgated a new guideline, § 5C1.2 (Limitation on Application of Statutory Minimum Sentences in Certain Cases), with accompanying commentary, to assist federal courts in applying section 3553(f) of title 18 (a statutory provision

enacted by section 80001 of the Violent Crime Control and Law Enforcement Act of 1994) and has made conforming amendments to the commentary of §§ 2D1.1 and 2D2.1; and (2) pursuant to its authority under section 217(a) of the Comprehensive Crime Control Act of 1984 (28 U.S.C. 994 (a) and (u)), the Commission has reviewed amendments previously submitted to Congress that may result in a lower guideline range and has designated two such amendments for inclusion in policy statement § 1B1.10 (Retroactivity of Amended Guideline Range).

DATES: The Commission has specified an effective date of September 23, 1994, for the amendment creating § 5C1.2 and the conforming commentary amendments to §§ 2D1.1 and 2D2.1. It has specified an effective date of November 1, 1994, for the amendment to § 1B1.10.

FOR FURTHER INFORMATION CONTACT: Michael Courlander, Public Information Specialist, telephone (202)273–4590.

SUPPLEMENTARY INFORMATION: General Guideline Amendment Authority—The United States Sentencing Commission is an independent agency in the judicial branch of the U.S. Government. The Commission is empowered by 28 U.S.C. 994(a) to promulgate sentencing guidelines and policy statements for federal sentencing courts. Sections 994 (o) and (p) of title 28, United States Code, further direct the Commission to review and revise periodically guidelines and policy statements previously promulgated, and require that guideline amendments be submitted to Congress for review. Absent action of the Congress to the contrary, guideline amendments become effective following 180 days of Congressional review on the date specified by the Commission. Pursuant to this general amendment authority, on April 28, 1994, the Commission submitted to Congress for review six amendments to the sentencing guidelines, policy statements, and commentary. Unless Congress legislates to the contrary, these amendments will take effect November 1, 1994. See 59 F.R. 23608.

Retroactivity—Pursuant to its authority under 28 U.S.C. 994(u), the Commission has reviewed the aforementioned amendments to determine which, if any, of the amendments that may result in a lower guideline range for an affected class of defendants should be made retroactive with respect to previously sentenced defendants. The Commission has determined that one such amendment, designated as amendment 506 (pertaining to the definition of "offense statutory maximum" for purposes of determining the offense level under § 4B1.1, the career offender guideline), and one previously promulgated amendment, designated as amendment 371 (creating additional guidelines §§ 2D1.11, 2D1.12, and 2D1.13 with conforming commentary pertaining to violations involving listed chemicals, flasks, and certain machines used in the manufacture of controlled substances), should be made retroactive. This action is accomplished by amending Policy Statement § 1B1.10, effective November 1, 1994, to list these two amendments as eligible for retroactive application by courts when considering a motion to modify an imposed term of imprisonment pursuant to 18 U.S.C. 3582(c)(2).

Emergency Amendment Action—Section 80001(b)(2) of the Violent Crime Control and Law Enforcement Act of 1994 reestablished, for a limited purpose, the Commission's authority under section 21(a) of the Sentencing Act of 1987 to promulgate temporary, emergency guidelines or amend existing guidelines. Unlike amendments issued pursuant to 28 U.S.C. 994(p), temporary amendments promulgated by the Commission are not required to be submitted to Congress for review prior to their taking effect; nor is the Commission required to publish proposed temporary, emergency guideline amendments prior to promulgation, though it may do so if circumstances permit. Emergency amendments are temporary (i.e., unless submitted to Congress as regular amendments in the next regular amendment report, they expire upon the disposition of that report).

Pursuant to this limited-purpose authorization of emergency amendment authority, the Commission has implemented the instruction in section 80001(b)(1) of the Violent Crime Control and Law Enforcement Act of 1994 by promulgating a new guideline designated as § 5C1.2 (Limitation on Applicability of Statutory Minimum Sentences in Certain Cases) with accompanying commentary. Conforming commentary amendments to §§ 2D1.1 and 2D2.1 have also been made.

In carrying out this Congressional directive, the Commission was required to construe and implement the specific language of section 80001(b)(1)(B). That provision instructs the Commission to provide that a defendant with a five-year mandatory minimum sentence who meets the criteria for an exemption from such mandatory minimum sentence will receive a guideline range that has a minimum of at least 24 months of imprisonment. (Note that this instruction to the Commission does not prohibit a court from granting a downward departure from this guideline if the court finds sufficient mitigating circumstances.) In general, under the guidelines currently in effect, the guideline range for the least culpable category of affected defendant will be at least 30–37 months. (A Chapter Two offense level of at least 26, minus 4 levels for a minimal role and 3 levels for acceptance of responsibility, results in a minimum offense level of 19. For Criminal History Category I, the applicable guideline range is 30–37 months.) The Commission is aware that there may be rare exceptions in which such a defendant may receive an offense level that results in a guideline range with a minimum of less than 24 months. For example, if the defendant's offense involves LSD on a carrier medium, the court will apply the Commission's provision that each LSD dose is to be treated as equivalent to 0.4 milligram per dose for guideline calculations. If the court uses the entire weight of the carrier medium for the purposes of determining the applicability of the mandatory minimum sentence and the defendant nevertheless qualifies under 18 U.S.C. 3553(f) and § 5C1.2 of the sentencing guidelines for an exemption from such mandatory minimum, the situation could arise in which the defendant is subject to a guideline range with a minimum of less than 24 months.

The Commission believes that it has the authority to authorize such minor variations from the literal language of the Congressional instruction to ensure consistency with the guidelines as a whole. In the Conference Report accompanying this legislation, the Congress expressly noted that the Commission should interpret Congressional instructions to the Commission in a manner that "shall assure reasonable consistency with other guidelines" and "take into account any mitigating circumstances which might justify exceptions." H.R. Conf. Rep. No. 711, 103d Cong., 2d Sess. 388 (title IX) (1994); see also id., sec. 280003 at 312 (directing Commission to carry out a specific instruction regarding sentencing enhancements for hate crimes in a manner to ensure reasonable consistency with other guidelines). The Commission similarly believes its interpretation of section 80001(b)(1)(B), within the overall context of a clearly ameliorative sentencing provision for qualified defendants, is consistent with past Congressional directives to the Commission and Congress's rationale for employing such directives as a more

flexible means of effecting sentencing policy in particular situations. For example, under 28 U.S.C. 994(h), Congress directed the Commission to create specific provisions within the guidelines for sentencing certain repeat offenders. The Commission implemented this directive through §§ 4B1.1 and 4B1.2. Legislative history accompanying this directive indicates that a principal Congressional consideration in choosing to employ an instruction to the Commission in lieu of a legislated mandatory minimum (the approach taken in an earlier version of the legislation) was to afford the Commission a measure of flexibility to interpret and implement the instruction in a way that best harmonizes career offender sentencing policy with the guidelines as a whole, thereby avoiding anomalous results. See S. Rep. No. 225, 98th Cong. 1st Sess. 175 (1983). So, too, in this case, the Commission has sought to implement the Congressional instruction in section 80001(b)(1)(B) in a manner that best "assure[s] reasonable consistency with other guidelines * * * and take[s] into account * * * mitigating circumstances which might justify exceptions." H.R. Conf. Rep. No. 711, supra.

Continuing Guidelines Review—In connection with its ongoing review of the Guidelines Manual, the Commission continues to welcome comment on any aspect of the sentencing guidelines, policy statements, and official commentary. Comments should be sent to: The United States Sentencing Commission, One Columbus Circle, N.E., Suite 2–500, South Lobby, Washington, D.C. 20002–8002, Attn: Office of Communications.

Authority: Section 217(a) of the Comprehensive Crime Control Act of 1984 (28 U.S.C. 994(a)).

William W. Wilkins, Jr.
Chairman.

Additional Guideline, Amendments to Commentary and Policy Statement

1. Amendment: Chapter Five, Part C, is amended by inserting the following additional guideline with accompanying commentary:

"§ 5C1.2. Limitation on Applicability of Statutory Minimum Sentences in Certain Cases

In the case of an offense under 21 U.S.C. 841, 844, 846, 960, or 963, the court shall impose a sentence in accordance with the applicable guidelines without regard to any statutory minimum sentence, if the court finds that the defendant meets the criteria in 18 U.S.C. 3553(f)(1)–(5) set forth verbatim below:

(1) The defendant does not have more than 1 criminal history point, as determined under the sentencing guidelines;

(2) The defendant did not use violence or credible threats of violence or possess a firearm or other dangerous weapon (or induce another participant to do so) in connection with the offense;

(3) The offense did not result in death or serious bodily injury to any person;

(4) The defendant was not an organizer, leader, manager, or supervisor of others in the offense, as determined under the sentencing guidelines and was not engaged in a continuing criminal enterprise, as defined in 21 U.S.C. 848; and

(5) Not later than the time of the sentencing hearing, the defendant has truthfully provided to the Government all information and evidence the defendant has concerning the offense or offenses that were part of the same course of conduct or of a common scheme or plan, but the fact that the defendant has no relevant or useful other information to provide or that the Government is already aware of the information shall not preclude a determination by the court that the defendant has complied with this requirement.

Commentary

Application Notes

1. 'More than 1 criminal history point, as determined under the sentencing guidelines,' as used in subdivision (1), means more than one criminal history point as determined under § 4A1.1 (Criminal History Category).

2. 'Dangerous weapon' and 'firearm,' as used in subdivision (2), and 'serious bodily injury,' as used in subdivision (3), are defined in the Commentary to § 1B1.1 (Application Instructions).

3. 'Offense,' as used in subdivisions (2–(4), and 'offense or offenses that were part of the same course of conduct or of a common scheme or plan,' as used in subdivision (5), mean the offense of conviction and all relevant conduct.

4. Consistent with § 1B1.3 (Relevant Conduct), the term 'defendant,' as used in subdivision (2), limits the accountability of the defendant to his own conduct and conduct that he aided or abetted, counseled, commanded, induced, procured, or willfully caused.

5. 'Organizer, leader, manager, or supervisor of others in the offense, as determined under the sentencing guidelines,' as used in subdivision (4), means a defendant who receives an adjustment for an aggravating role under § 3B1.1 (Aggravating Role).

6. 'Engaged in a continuing criminal enterprise,' as used in subdivision (4), is defined in 21 U.S.C. 848(c). As a practical matter, it should not be necessary to apply this prong of subdivision (4) because (i) this section does not apply to a conviction under 21 U.S.C. 848, and (ii) any defendant who 'engaged in a continuing criminal enterprise' but is convicted of an offense to which this section applies will be a 'leader, organizer, manager, or supervisor of others in the offense.'

7. Information disclosed by the defendant with respect to subdivision (5) may be considered in determining the applicable guideline range, except where the use of such information is restricted under the provisions of § 1B1.8 (Use of Certain Information). That is, subdivision (5) does not provide an independent basis for restricting the use of information disclosed by the defendant.

8. Under 18 U.S.C. 3553(f), prior to its determination, the court shall afford the government an opportunity to make a recommendation. See also Rule 32(a)(1), Fed. R. Crim. P.

Background

This section sets forth the relevant provisions of 18 U.S.C. 3553(f), as added by section 80001(a) of the Violent Crime Control and Law Enforcement Act of 1994, which limit the applicability of statutory minimum sentences in certain cases. Under the authority of section 80001(b) of that Act, the Commission has promulgated application notes to provide guidance in the application of 18 U.S.C. 3553(f). See also H. Rep. No. 103–460, 103d Cong., 2d Sess. 3 (1994) (expressing intent to foster greater coordination between mandatory minimum sentencing and the sentencing guideline system).".

The Commentary to § 2D1.1 captioned "Application Notes" is amended in Note 7 by inserting the following additional sentences at the end:

In addition, 18 U.S.C. 3553(f) provides an exception to the applicability of mandatory minimum sentences in certain cases. See § 5C1.2 (Limitation of Applicability of Statutory Minimum Penalties in Certain Cases).

The Commentary to § 2D2.1 captioned "Background" is amended in the first paragraph by inserting "(statutory)" immediately following "Mandatory"; and by deleting "§ 5G1.1(b)" and inserting in lieu thereof:

See § 5G1.1(b). Note, however, that 18 U.S.C. 3553(f) provides an exception to the applicability of mandatory minimum sentences in certain cases. See § 5C1.2 (Limitation on Applicability of Statutory Minimum Sentences in Certain Cases).

Reason for Amendment

This amendment is in response to section 80001(b) which authorizes the Commission to issue amended guidelines and policy statements to assist the courts in applying 18 U.S.C. 3553(f). The effective date of this amendment is September 23, 1994.

2. Amendment

Section 1B1.10(c)(formerly subsection (d)) is amended by inserting "371," immediately before "379"; and by deleting "and 499" and inserting in lieu thereof "499, and 506".

Reason for Amendment

This amendment expands the listing in § 1B1.10(c) (formerly subsection (d)) to implement the directive in 28 U.S.C. 994(u) in respect to guideline amendments that may be considered for retroactive application. The amendment numbers listed are those as they appear in Appendix C of the Guidelines Manual.

[FR Doc. 94–25426 Filed 10–13–94; 8:45 am]
BILLING CODE 2210–40–P

DEPARTMENT OF VETERANS AFFAIRS

Veterans' Advisory Committee on Environmental Hazards; Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 that a meeting of the Veterans' Advisory Committee on Environmental Hazards will be held on Wednesday and Thursday, November 9–10, 1994, in room 946 on both days, at 801 I Street, N.W., Washington, D.C. 20001. The meeting will convene at 9:00 a.m. and adjourn at 5:00 p.m.

The purpose of the meeting is to review information relating to health effects of exposure to ionizing radiation.

The meeting is open to the public to the capacity of the room. For those wishing to attend, contact Ms. Sylvia Arrington, Department of Veterans Affairs Central Office, 810 Vermont Avenue, N.W., Washington, D.C. 20420, phone (202) 523–3911, prior to November 1, 1994.

Members of the public may direct questions or submit prepared statements for review by the Committee in advance of the meeting, in writing only, to Mr. Frederic L. Conway, Deputy Assistant General Counsel, (026B), Department of Veterans Affairs Central Office, 810 Vermont Avenue, N.W., Washington, D.C. 20420.

Submitted material must be received at least five days prior to the meeting. Such members of the public may be asked to clarify submitted material prior to consideration by the Committee.

Dated: September 29, 1994.

By Direction of the Secretary:

Heyward Bannister,

Committee Management Officer.

[FR Doc. 94–25408 Filed 10–13–94; 8:45 am]
BILLING CODE 8320–01–M

Advisory Committee on Former Prisoners of War, Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 that a meeting of the Advisory Committee on Former Prisoners of War will be held at the Department of Veterans Affairs Medical Center, 7400 Merton Minter Blvd., San Antonio, TX 78284, from November 2, 1994 through November 4, 1994. The meeting will convene at 9:00 a.m. each day and will be open to the public. Seating is limited and will be available on a first-come, first-served basis.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on the administration of benefits under Title 38, United States Code, for Veterans who are former prisoners of war, and to make recommendations on the need of such veterans for compensation, health care and rehabilitation.

The Committee will receive briefings and hold discussions on various issues affecting health care and benefits delivery, including, but not limited to, the following: Education and training of VA personnel involved with former prisoners of war; the status of privately and publicly funded research affecting former prisoners of war; past and current legislative issues affecting former prisoners of war; the various disabilities and sequelae of long-term captivity; and the procedures involved in processing claims for service-connected disabilities submitted by former prisoners of war.

Members of the public may direct questions or submit prepared statements for review by the Committee in advance of the meeting, in writing only, to Mr. J. Gary Hickman, Director, Compensation and Pension Service (21), room 119, Department of Veterans Affairs, 810 Vermont Avenue, N.W., Washington, DC, 20420. Submitted material must be received at least five business days prior to the meeting. Members of the public may be asked to clarify submitted material prior to consideration by the Committee.

A report of the meeting and a roster of Committee members may be obtained from Mr. Hickman.

Dated: October 4, 1994.

By Direction of the Secretary:

Heyward Bannister,

Committee Management Officer.

[FR Doc. 94–25409 Filed 10–13–94; 8:45 am]
BILLING CODE 8320–01–M

Advisory Committee on Women Veterans; Meeting

The Department of Veterans Affairs gives notice under Public Law 92–463 that a meeting of the Advisory Committee on Women Veterans will be held October 27–29, 1994, in Albuquerque, New Mexico. The purpose of the Advisory Committee on Women Veterans is to advise the Secretary regarding the needs of women veterans with respect to health care, rehabilitation, compensation, outreach and other programs administered by the Department of Veterans Affairs, and the activities of the Department of Veterans Affairs designed to meet such needs. The Committee will make recommendations to the Secretary regarding such activities.

The session will convene on October 27 with a site visit of the VA medical center and surrounding VA facilities in Albuquerque, New Mexico at 9 a.m. to 4:30 p.m. The meeting will convene on October 28 starting from 9 a.m. to 4:30 p.m. at the VA medical center, 2100 Ridgecrest Drive, SE., Building 3, Supply/Finance Conference Room. On October 29 the Committee will meet from 9 a.m. to 12 noon at the Best Western Winrock Inn, 18 Winrock Center, NE., Albuquerque, New Mexico. All sessions will be open to the public up to the seating capacity of the room. Because this capacity is limited, it will be necessary for those wishing to attend to contact Mrs. Barbara Brandau, Department of Veterans Affairs (phone 202/535–7571) prior to October 11, 1994.

Dated: September 29, 1994.

By Direction of the Secretary:

Heyward Bannister,

Committee Management Officer.

[FR Doc. 94–25407 Filed 10–13–94; 8:45 am]
BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 59, No. 198
Friday, October 14, 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).

BLACKSTONE RIVER VALLEY NATIONAL HERITAGE CORRIDOR

Notice of Meeting

Notice is hereby given in accordance with Section 552b of Title 5, United States Code, that a meeting of the Blackstone River Valley National Heritage Corridor Commission will be held on Thursday, November 3, 1994. The Commission was established pursuant to Public Law 99–647. The purpose of the Commission is to assist federal, state and local authorities in the development and implementation of an integrated resource management plan for those lands and waters within the Corridor.

The meeting will convene at 7:00 pm at City Hall, 169 Main Street, Woonsocket Rhode Island, 2nd Floor conference room for the following reasons:

1. Welcoming of New Commissioners
2. Overview of the Corridor
3. Other

It is anticipated that about twenty people will be able to attend the session in addition to the Commission members.

Interested persons may make oral or written presentations to the Commission or file written statements. Such requests should be made prior to the meeting to:

James R. Pepper, Executive Director, Blackstone River Valley National Heritage Corridor Commission, One Depot Square, Woonsocket, RI 02895, Tel.: (401) 762–0250.

Further information concerning this meeting may be obtained from James R. Pepper, Executive Director of the Commission at the aforementioned address.

James R. Pepper,

Executive Director.

[FR Doc. 94–25621 Filed 10–12–94; 1:12 pm]

BILLING CODE 4310–70–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: Approximately 10:15 a.m., Wednesday, October 19, 1994, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: October 12, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94–25596 Filed 10–12–94; 11:19 am]

BILLING CODE 6210–01–P

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, October 19, 1994.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Summary Agenda

Because of their routine nature, no discussion of the following items is anticipated. These matters will be voted on without discussion unless a member of the Board requests that an item be moved to the discussion agenda.

1. Proposed amendments to Regulation K (International Banking Operations) regarding activities of state-licensed branches and agencies. (Proposed earlier for public comment; Docket No. R–0793)
2. (a) Request by Fleet Financial Group, Inc., Providence, Rhode Island, for an exemption from the anti-tying provisions of section 106 of the Bank Holding Company Act; and (b) a related proposed amendment for comment to modify Regulation Y (Bank Holding Companies and Change in Bank Control) to apply the exemption to all banks.
3. Any items carried forward from a previously announced meeting.

Discussion Agenda

Please Note That No Discussion Items Are Scheduled for This Meeting.

Note: If an item is moved from the Summary Agenda to the Discussion Agenda, discussion of the item will be recorded. Cassettes will then be available for listening in the Board's Freedom of Information Office, and copies can be ordered for $5 per cassette by calling (202) 452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: October 12, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94–00000 Filed 00–00–94; 8:45 am]

BILLING CODE 6210–01–P

SECURITIES AND EXCHANGE COMMISSION

Agency Meetings

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 meetings during the week of October 10, 1994.

An open meeting will be held on Thursday, October 13, 1994, at 10:00 a.m., in Room 1C30. A closed meeting will be held on Thursday, October 13, 1994, following the 10:00 a.m. open meeting.

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, and determined that this was the earliest practicable time to provide notice of the open meeting.

The subject matter of the open meeting scheduled for Thursday, October 13, 1994, at 11:00 a.m., will be:

1. The Commission is considering the adoption of amendments to the proxy rules

applicable to registered investment companies under the Investment Company Act of 1940 and the Securities Exchange Act of 1934. The amendments would revise the information required in investment company proxy statements. For further information, please contact Kathleen K. Clarke at (202) 942–0724.

2. The Commission will consider whether to issue a concept release concerning the effectiveness of the current safe harbor for forward-looking information set forth in Securities Act of 1933 Rule 175 and Securities Exchange Act of 1934 Rule 3b–6. The concept release would solicit public comment on the effectiveness of the current safe harbor as well as various proposals to amend the safe harbor. The Commission also will consider whether, given the significance of these matters, pubic hearings should be conducted. For further information, please contact Amy Bowerman, Kevin C. Bruce or Andrew A. Gerber at (202) 942–2900.

The subject matter of the closed meeting scheduled for Thursday, October 13, 1994, following the 10:00 a.m. open meeting will be:

Institution of administrative proceedings of an enforcement nature.

Settlement of administrative proceedings of an enforcement nature.

Institution of injunctive actions.

Opinion.

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: The Office of the Secretary (202) 942–7070.

Dated: October 7, 1994.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–25423 Filed 10–7–94; 3:59 pm]

BILLING CODE 8010–01–M

federal register

Friday
October 14, 1994

Part II

Department of Education

34 CFR Part 396

Training of Interpreters for Individuals Who Are Deaf and Individuals Who Are Deaf-Blind; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 396

RIN 1820–AB25

Training of Interpreters for Individuals Who Are Deaf and Individuals Who Are Deaf-Blind

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The regulations are needed to implement changes made to the program for training of interpreters for individuals who are deaf or individuals who are deaf-blind by the Rehabilitation Act Amendments of 1992. The purpose of this discretionary grant program is to assist in providing a sufficient number of skilled interpreters throughout the country for employment in public and private agencies, schools, and other service-providing institutions to meet the communication needs of individuals who are deaf and individuals who are deaf-blind by (1) training manual, tactile, oral, and cued speech interpreters; (2) ensuring the maintenance of the skills of interpreters engaged in programs serving individuals who are deaf and individuals who are deaf-blind; and (3) providing opportunities for interpreters to raise their level of competence.

EFFECTIVE DATE: These regulations take 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 these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Victor Galloway, U.S. Department of Education, 600 Independence Avenue, S.W., Room 3228, Switzer Building, Washington, D.C. 20202–2736. Telephone: (202) 205–9152. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8352.

SUPPLEMENTARY INFORMATION: The Training of Interpreters for Individuals Who Are Deaf and Individuals Who Are Deaf-Blind program is authorized by section 302(f) of the Rehabilitation Act of 1973, as amended (the Act). These regulations implement the changes to this program made by the Rehabilitation Act Amendments of 1992, Pub. L. 102–569, enacted October 29, 1992.

On February 18, 1994, the Secretary published a notice of proposed rulemaking (NPRM) for this program in the **Federal Register** (59 FR 8350). The principal change made by these regulations is an expansion of the purpose and scope of the program to include a requirement that each funded project train interpreters for "individuals who are deaf-blind" as well as interpreters for "individuals who are deaf." Each project has the discretion, however, to propose to provide training for interpreters for these two disability populations to the extent, and in the specific communication modes, appropriate to the needs of these populations in the geographical area to be served by the project.

The Secretary makes additional changes to the current regulations by adding definitions of the terms "individual who is deaf-blind," "individual who is deaf," "interpreter for individuals who are deaf-blind," and "qualified professional," as used in the definitions of "interpreter for individuals who are deaf" and "interpreter for individuals who are deaf-blind." The regulations also amend existing definitions of the terms "interpreter for individuals who are deaf" and "existing program that has demonstrated its capacity for providing interpreter training services."

The definition of "individual who is deaf-blind" is drawn from the Helen Keller National Center Act. The definition of "individual who is deaf" is derived from the Model State Plan for Rehabilitation of Individuals Who Are Deaf and Hard of Hearing (1990, University of Arkansas). The definition of "interpreter for individuals who are deaf-blind" was developed by the Department in the absence of any existing statutory or other authoritative definition.

The general rehabilitation training regulations in 34 CFR Part 385 that are referenced in these regulations in § 396.3(c) and made applicable to this program were revised in the final regulations implementing technical amendments made by the Rehabilitation Act Amendments of 1992 and 1993 published in the **Federal Register** on February 18, 1994 (59 FR 8330).

This program supports the National Education Goal that, by the year 2000, every adult American will be literate and will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

Major differences between the NPRM and these final regulations are to (1) clarify that each project must train both new and working interpreters and must cooperate with or coordinate its activities with other projects funded under this program, as appropriate; (2) provide in the definitions of "interpreter for individuals who are deaf" and "interpreter for individuals who are deaf-blind" for the use of the appropriate mode of communication for individuals receiving interpreter services; and (3) clarify that grants of regional or national scope may be made to best carry out the program purpose.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, 17 parties submitted comments on the regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM follows.

Substantive issues are discussed under the section of the regulations to which they pertain. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

Section 396.1—What is the Training of Interpreters for Individuals Who Are Deaf and Individuals Who Are Deaf-Blind program?

Comments: Several commenters suggested that the regulations should be flexible enough to permit each funded project to determine the extent of the need respectively for training interpreters for individuals who are deaf and interpreters for individuals who are deaf-blind in the geographic area to be served by the project and the particular training approaches to be employed in preparing interpreters for each population.

Discussion: The statute requires that each funded project train both interpreters for individuals who are deaf-blind and interpreters for individuals who are deaf. The regulations allow for each project to determine the extent to which a project focuses on each population and the particular communication modes it employs in its interpreter training program as long as these decisions are based on the needs of these two populations in the geographic area to be served by the project. Therefore, no change is necessary.

Changes: None.

Comments: Several commenters suggested that the regulations clearly require projects to train new interpreters as well as help maintain or upgrade the skills of existing interpreters. Otherwise, these commenters believed the underlying problem of interpreter shortage would not be addressed.

Discussion: Section 302(f) of the Act states that the purpose of this program is to train a sufficient number of interpreters to meet the communication

needs of individuals who are deaf and individuals who are deaf-blind. Section 396.1 of the regulations (program purpose) provides for this to be accomplished by training new interpreters as well maintaining the skills of existing interpreters and providing opportunities for them to raise their levels of competence. The Secretary believes that additional clarification would be helpful in the regulations on authorized project activities to make it absolutely clear that projects must train both new and working interpreters.

Changes: Section 396.5 has been amended to clarify that all projects must provide training to both persons preparing to serve, and persons already serving, as interpreters.

Comments: One commenter suggested that the regulations authorize training of interpreters for non-verbal individuals.

Discussion: If the phrase "non-verbal" refers to individuals who are not deaf or deaf-blind, program funds cannot be used to train interpreters for these individuals. These individuals might, however, benefit from the services of interpreters trained under this program.

Changes: None.

Section 396.4—What definitions apply?

Comments: One commenter suggested adding language to the definition of "individual who is deaf" to specify that a hearing loss may be present at birth or sustained later in life.

Discussion: The essential element of this definition is to describe an individual who, because of a severe hearing loss, relies primarily upon visual modes to communicate. How or when the individual sustained the hearing loss is irrelevant to the definition.

Changes: None.

Comments: One commenter suggested adding language to both the definition of "interpreter for individuals who are deaf" and the definition of "interpreter for individuals who are deaf-blind" to provide that the interpreter must use the mode of communication that is most appropriate for the individuals receiving interpreter services.

Discussion: The Secretary agrees that this provision should be added to both definitions to underscore the need for interpreter services, like all rehabilitation services, to be tailored to the needs of service recipients.

Changes: The phrase "as appropriate to the needs of individuals. . ." has been added to the two definitions.

Comments: One commenter questioned if the intent of the definition of "qualified professional" is to establish an equivalency between meeting national or State certification exams and having interpreting skills on the basis of prior work experience.

Discussion: The definition contains two measures of "qualified professional." To be qualified, an interpreter must meet one of them. An interpreter must meet either the criterion for any existing national or State certification or evaluation requirements or have comparable interpreting skills as a result of work experience. The regulations do not intend to establish a relationship between the two measures.

Changes: None.

Section 396.5—What activities may the Secretary fund?

Comments: One commenter suggested that current projects should move away from the use of individual workshops as a training approach and instead offer a series of courses on specific topics or provide support to existing degree programs. Another commenter suggested development of a mentorship program as part of the training curriculum.

Discussion: The regulations do not restrict the flexibility of projects to use whatever training methods they consider best to accomplish project objectives. An applicant's proposed training activities are addressed in §§ 396.20(a) and 396.31(g) of the regulations and are assessed during the application review process.

Changes: None.

Comments: One commenter suggested that the regulations address the need for better trained faculty to train interpreters and for curriculum development.

Discussion: The Secretary recognizes the need for better faculty development and training and for curriculum development and has published in the **Federal Register** on September 6, 1994 (59 FR 46118) a proposed funding priority under this program to address these needs.

Changes: None.

Section 396.20—What must be included in an application?

Comments: One commenter suggested including a provision requiring coordination or cooperation between projects funded under this program, as appropriate.

Discussion: The Secretary agrees with this comment.

Changes: Section 396.20 of the regulations on application content has been amended to add a new paragraph (e) that requires an assurance from each applicant that it will cooperate or coordinate its activities with other projects under this program, as appropriate.

Comments: Two commenters expressed concern that the regulations failed to address the recruitment of minorities for careers as interpreters.

Discussion: Section 21 of the Rehabilitation Act, as amended, requires that each applicant for a grant under the Act demonstrate in its application how it will address the needs of individuals with disabilities from minority backgrounds. Section 302(a)(5) of the Act requires each applicant for a training grant under the Act to provide a description of its strategies for recruiting and training increased numbers of individuals with disabilities and minorities to provide rehabilitation services. These requirements are implemented in the general training regulations in 34 CFR 385.45 and are made applicable to this program in § 396.3(c)(4).

Changes: None.

Section 396.31—What selection criteria does the Secretary use?

Comments: One commenter suggested including a requirement for a degree program to have a mechanism for ongoing evaluation of its own program, separate from the evaluation plan required under this program.

Discussion: The Secretary feels that the existing evaluation plan meets the need of this program. An applicant has the discretion to include additional evaluation mechanisms.

Changes: None.

Comments: Several commenters suggested that the selection criteria should favor programs with faculty who have particular expertise in interpreter training, including academic credentials and teaching experience, and that have sufficient and appropriate equipment and supplies, including library and laboratory facilities.

Discussion: The Secretary reviews each application to determine the qualifications of the key personnel proposed for the project and the adequacy of the resources the applicant plans to devote to the project, in accordance with §§ 396.31(c) and 396.31(f) of the regulations. The Secretary does not believe the regulations should be more specific in these areas.

Changes: None.

Section 396.33—What priorities does the Secretary apply in making awards?

Comments: Several commenters suggested that the regulations state a preference for baccalaureate and master degree programs in interpreting and that a priority in funding should be given to

existing programs instead of establishing new programs.

Discussion: The Secretary does not believe that it is desirable to establish in these regulations a preference for a particular kind of interpreter training program, such as baccalaureate or master degree programs. If the Secretary determines that these training needs must be addressed, a funding priority can be established.

Section 302(f)(1) of the Act mandates that priority be given to public or private nonprofit agencies or organizations with existing programs that have demonstrated their capacity for providing interpreter training services, and this priority is implemented in § 396.33 of the regulations.

Changes: None.

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 strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

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 regulations 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.

List of Subjects in 34 CFR Part 386

Education, Grant programs—education, Vocational rehabilitation, Training, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Number 84.160 Training of Interpreters for Individuals Who Are Deaf and Individuals Who Are Deaf-Blind)

Dated: October 7, 1994.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

The Secretary amends Title 34 of the Code of Federal Regulations by revising Part 396 to read as follows:

PART 396—TRAINING OF INTERPRETERS FOR INDIVIDUALS WHO ARE DEAF AND INDIVIDUALS WHO ARE DEAF-BLIND

Subpart A—General

Sec.

396.1 What is the Training of Interpreters for Individuals Who Are Deaf and Individuals Who Are Deaf-Blind Program?
396.2 Who is eligible for an award?
396.3 What regulations apply?
396.4 What definitions apply?
396.5 What activities may the Secretary fund?

Subpart B—[Reserved]

Subpart C—How Does One Apply for an Award?

396.20 What must be included in an application?

Subpart D—How Does the Secretary Make an Award?

396.30 How does the Secretary evaluate an application?
396.31 What selection criteria does the Secretary use?
396.32 What additional factors does the Secretary consider in making awards?
396.33 What priorities does the Secretary apply in making awards?

Authority: 29 U.S.C. 771a(f), unless otherwise noted.

Subpart A—General

§ 396.1 What is the Training of Interpreters for Individuals Who Are Deaf and Individuals Who Are Deaf-Blind program?

The Training of Interpreters for Individuals Who Are Deaf and Individuals Who Are Deaf-Blind program is designed to establish interpreter training programs or to assist ongoing programs to train a sufficient number of skilled interpreters throughout the country in order to meet the communication needs of individuals who are deaf and individuals who are deaf-blind by—

(a) Training manual, tactile, oral, and cued speech interpreters;

(b) Ensuring the maintenance of the skills of interpreters; and

(c) Providing opportunities for interpreters to raise their level of competence.

(Authority: 29 U.S.C. 771a(f))

§ 396.2 Who is eligible for an award?

Public and private nonprofit agencies and organizations, including institutions of higher education, are eligible for assistance under this program.

(Authority: 29 U.S.C. 771a(f))

§ 396.3 What regulations apply?

The following regulations apply to the Training of Interpreters for Individuals Who Are Deaf and Individuals Who Are Deaf-Blind program:

(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 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(6) 34 CFR Part 81 (General Education Provisions Act—Enforcement).

(7) 34 CFR Part 82 (New Restrictions on Lobbying).

(8) 34 CFR Part 85 (Government Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(9) 34 CFR Part 86 (Drug-Free Schools and Campuses).

(b) The regulations in this Part 396.

(c) The following regulations in 34 CFR Part 385:

(1) Section 385.32.

(2) Section 385.40.

(3) Section 385.44.

(4) Section 385.45.

(5) Section 385.46.

(Authority: 29 U.S.C. 771a(f))

§ 396.4 What definitions apply?

(a) *Definitions in EDGAR.* The following terms defined in 34 CFR 77.1 apply to this part:

Applicant
Application
Award
Equipment
Grant
Nonprofit
Private
Project
Public
Secretary
Supplies

(b) *Definitions in the Rehabilitation Training regulations.* The following terms defined in 34 CFR 385.4(b) apply to this part:

Individual With a Disability
Institution of Higher Education

(c) *Other Definitions.* The following definitions also apply to this part:

Existing program that has demonstrated its capacity for providing interpreter training services means an established program with—

(1) A record of training interpreters who are serving the deaf and deaf-blind communities; and

(2) An established curriculum that is suitable for training interpreters.

Individual who is deaf means an individual who has a hearing impairment of such severity that the individual must depend primarily upon visual modes, such as sign language, lip reading, and gestures, or reading and writing to facilitate communication.

Individual who is deaf-blind means an individual—

(1)(i) Who has a central visual acuity of 20/200 or less in the better eye with corrective lenses, or a field defect such that the peripheral diameter of visual field subtends an angular distance no greater than 20 degrees, or a progressive visual loss having a prognosis leading to one or both of these conditions;

(ii) Who has a chronic hearing impairment so severe that most speech cannot be understood with optimum amplification, or a progressive hearing loss having a prognosis leading to this condition; and

(iii) For whom the combination of impairments described in paragraphs (1)(i) and (ii) of this definition causes extreme difficulty in attaining independence in daily life activities, achieving psychosocial adjustment, or obtaining a vocation;

(2) Who, despite the inability to be measured accurately for hearing and vision loss due to cognitive or behavioral constraints, or both, can be determined through functional and performance assessment to have severe hearing and visual disabilities that cause extreme difficulty in attaining independence in daily life activities, achieving psychosocial adjustment, or obtaining vocational objectives; or

(3) Who meets any other requirements that the Secretary may prescribe.

Interpreter for individuals who are deaf means a qualified professional who uses sign language skills, cued speech, or oral interpreting skills, as appropriate to the needs of individuals who are deaf, to facilitate communication between individuals who are deaf and other individuals.

Interpreter for individuals who are deaf-blind means a qualified professional who uses tactile or other manual language or fingerspelling modes, as appropriate to the needs of individuals who are deaf-blind, to facilitate communication between individuals who are deaf-blind and other individuals.

Qualified professional means an individual who has either—

(1) Met existing national or state certification or evaluation requirements; or

(2) Successfully demonstrated equivalent interpreting skills through prior work experience.

(Authority: 29 U.S.C. 711(c) and 771a(f); 29 U.S.C 1905)

§ 396.5 What activities may the Secretary fund?

The Secretary provides assistance for projects that provide training in interpreting skills for persons preparing to serve, and persons who are already serving, as interpreters for individuals who are deaf and as interpreters for individuals who are deaf-blind in public and private agencies, schools, and other service-providing institutions.

(Authority: 29 U.S.C. 771a(f))

Subpart B—[Reserved]

Subpart C—How Does One Apply for an Award?

§ 396.20 What must be included in an application?

Each applicant shall include in the application—

(a) A description of the manner in which the proposed interpreter training program will be developed and operated during the five-year period following the award of the grant;

(b) A description of the geographical area to be served by the project;

(c) A description of the applicant's capacity or potential for providing training for interpreters for individuals who are deaf and interpreters for individuals who are deaf-blind;

(d) An assurance that any interpreter trained or retrained under this program shall meet any minimum standards of competency that the Secretary may establish;

(e) An assurance that the project shall cooperate or coordinate its activities, as appropriate, with the activities of other projects funded under this program; and

(f) The descriptions required in 34 CFR 385.45 with regard to the training of individuals with disabilities, including those from minority groups, for rehabilitation careers.

(Approved by the Office of Management and Budget under control number 1820–0018.)

(Authority: 29 U.S.C. 718b(b)(6), 777a(a)(5), and 771a(f))

Subpart D—How Does the Secretary Make an Award?

§ 396.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 396.31.

(b) The Secretary awards up to 100 points for these criteria.

(c) The maximum possible score for each criterion is indicated in parentheses.

(Authority: 29 U.S.C. 771a(f))

§ 396.31 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Extent of need for the project.* (10 points) The Secretary reviews each application to determine whether there is a shortage of interpreters in the geographical area to be served by the proposed project and the extent to which the project addresses the shortage.

(b) *Plan of operation.* (20 points) The Secretary evaluates each application on the basis of the criterion in § 385.32(a).

(c) *Quality of key personnel.* (20 points) The Secretary evaluates each application on the basis of the criterion in § 385.32(b).

(d) *Budget and cost effectiveness.* (10 points) The Secretary evaluates each application on the basis of the criterion in § 385.32(c).

(e) *Evaluation plan.* (5 points) The Secretary evaluates each application on the basis of the criterion in § 385.32(d).

(f) *Adequacy of resources.* (5 points) The Secretary evaluates each application on the basis of the criterion in § 385.32(e).

(g) *Technical and programmatic soundness.* (10 points) The Secretary reviews each application to determine if—

(1) The training activities described in the application reflect practices of professional soundness and efficacy or new and innovative activities that may reasonably be expected to result in the training of interpreters who will display a high level of skill;

(2) The training includes a practicum, or field experience, with potential employers of interpreters; and

(3) There appear to be no substantial obstacles to carrying out the activities described in the application.

(h) *Specialized capabilities of the applicant.* (10 points) The Secretary reviews each application to determine if the applicant has the capacity for providing training for interpreters for individuals who are deaf and interpreters for individuals who are

deaf-blind. In determining whether an applicant has that capacity, the Secretary considers the adequacy of the experience of the applicant organization, in addition to the experience of the staff described under paragraph (c) of this section, in conducting activities that are similar, or have significant relevance, to those proposed in the application.

(i) *Demonstrated relationships with service providers and consumers.* (10 points) The Secretary reviews each application to determine if—

(1) The proposed interpreter training project was developed in consultation with service providers;

(2) The training is appropriate to the needs of both individuals who are deaf and individuals who are deaf-blind and to the needs of public and private agencies that provide services to either individuals who are deaf or individuals who are deaf-blind in the geographical area to be served by the training project;

(3) There is a working relationship between the interpreter training project and service providers; and

(4) There are opportunities for individuals who are deaf and individuals who are deaf-blind to be involved in the training project.

(Approved by the Office of Management and Budget under control number 1820–0018.)

(Authority: 29 U.S.C. 771a(f))

§ 396.32 What additional factors does the Secretary consider in making awards?

In addition to the selection criteria listed in § 396.31, the Secretary, in making awards under this part, considers the geographical distribution of projects throughout the country, as appropriate, in order to best carry out the purposes of this program. To accomplish this, the Secretary may in any fiscal year make awards of regional or national scope.

(Authority: 29 U.S.C. 771a(f))

§ 396.33 What priorities does the Secretary apply in making awards?

The Secretary, in making awards under this part, gives priority to public or private nonprofit agencies or organizations with existing programs that have demonstrated their capacity for providing interpreter training services.

(Authority: 29 U.S.C. 771a(f))

[FR Doc. 94–25362 Filed 10–13–94; 8:45 am]

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federal register

Friday
October 14, 1994

Part III

Office of Management and Budget

Grants and Cooperative Agreements With State and Local Governments; Notice

OFFICE OF MANAGEMENT AND BUDGET

Grants and Cooperative Agreements With State and Local Governments

AGENCY: Office of Management and Budget.

ACTION: Final revisions to OMB Circular A–102.

SUMMARY: The Office of Management and Budget is revising Circular A–102 to include references to the requirements in three executive orders and four statutory provisions issued or enacted since the last issuance of the Circular in March 1988. The revisions relate to: use of the metric system of measurement, cash management, infrastructure investment, purchase of recycled products, and disclosure of the Federal contribution in procurement of goods and services.

DATES: The revisions to the Circular are effective October 14, 1994.

FOR FURTHER INFORMATION CONTACT: Thomas Cocozza, Financial Standards and Reporting Branch, Office of Federal Financial Management, Office of Management and Budget, (202) 395–3993.

SUPPLEMENTARY INFORMATION:

A. Background

On August 5, 1992, the Office of Management and Budget (OMB) published a notice in the **Federal Register** (57 FR 34599) requesting comments on proposed revisions to OMB Circular A–102, "Grants and Cooperative Agreements with State and Local Governments." The proposed revisions referenced three statutory provisions and an executive order. These relate to: (a) A requirement that encourages recipients of federally-funded grants and cooperative agreements to use the metric system of measurement in their assistance programs; (b) a reference to the Department of the Treasury's regulations to implement the Cash Management Improvement Act of 1990; (c) a requirement that State and local governments comply with section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended; and (d) a requirement that Federal agencies comply with Executive Order 12803, "Infrastructure Privatization."

Interested parties were invited to submit comments on the revisions by October 5, 1992. Federal agencies submitted two comments.

B. Comments and Responses

Comment: One commenter said, in accordance with Section 6002(a) of RCRA, procurement items under $10,000 are not covered. The commenter recommended that the $10,000 ceiling be noted in the Circular. The same commenter said that RCRA provides that "each procuring agency shall procure items * * * consistent with maintaining a satisfactory level of competition."

Response: The substance of these provisions in Section 6002 are included in the Environmental Protection Agency's (EPA's) guidelines found at 40 CFR 247–253. Since EPA's guidelines are referenced in paragraph 2.h. of the Circular, it is not necessary to make a specific reference in the Circular to the particular provisions within Section 6002.

Comment: One commenter recommended that OMB add language to the Circular which states that the Metric Conversion Act requires each Federal agency to establish a date(s) when the metric system of measurement will be used in that agency's procurement, grants and other business-related activities.

Response: OMB has added language which cites to the requirement for each agency to establish dates showing when the metric system of measurement will be used. This paragraph was also expanded to explain procedures for obtaining exceptions from metric usage.

C. Additional Changes

In addition to revising the Circular to add references to the statutory provisions and executive orders described in the August 1992 Notice, OMB is also revising the Circular to add references to another statutory provision and to two other executive orders. OMB is not requesting additional comment on these changes before finalization because they merely reference new requirements without elaboration.

In Section 623 of the Treasury, Postal Service, and General Government Appropriations Act for fiscal year 1993, Congress provided that grantees must specify, in any announcement of the awarding of contracts with an aggregate value of $500,000 or more, the amount of Federal funds that will be used to finance the acquisitions. In the following year, Congress reenacted this provision (see Section 621 of the fiscal year 1994 Appropriations Act). Congress is likely to reenact this provision for fiscal year 1995 and for subsequent fiscal years. Accordingly, a paragraph has been added to this Circular that references this requirement.

In January 1994, the President issued Executive Order No. 12893 ("Principles for Federal Infrastructure Investment"). A reference to this Executive Order, and to OMB's guidance for implementing it, has been included in the paragraph that references Executive Order No. 12803 ("Infrastructure Privatization").

Finally, in the proposed paragraph that would reference the Metric Conversion Act of 1975, a reference should have also been made to Executive Order No. 12770 ("Metric Usage in Federal Government Programs"). A reference to the Executive Order has been included in this paragraph.

Locations of the added (or amended) paragraphs and the citations for the four statutory provisions and three executive orders are as follows:

(1) Paragraph 1.j.—Metric Conversion Act of 1975, as amended (codified as amended at 15 U.S.C. 205a–205k), and Executive Order No. 12770 ("Metric Usage in Federal Government Programs"), 56 FR 35,801 (1991).

(2) Paragraph 2.a.—Cash Management Improvement Act of 1990, as amended (codified as amended in scattered sections of Title 31 U.S. Code).

(3) Paragraph 2.g.—Executive Order No. 12803 ("Infrastructure Privatization"), 57 FR 19,036 (1992), and Executive Order No. 12893 ("Principles for Federal Infrastructure Investment"), 59 FR 4233 (1994).

(4) Paragraph 2.h.—Resource Conservation and Recovery Act of 1976, section 6002, as amended (codified as amended at 42 U.S.C. 6962).

(5) Paragraph 2.i.—Treasury, Postal Service, and General Government Appropriations Act, 1994, Public Law 103–123, section 621, 107 Stat. 1226, 1265 (1993).

No other changes have been made to the Circular, which is being reissued in its entirety, as revised.

Darrell A. Johnson,

Deputy Assistant Director for Administration.

To the Heads of Executive Departments and Establishments

SUBJECT: Grants and Cooperative Agreements with State and Local Governments

1. *Purpose.* This Circular establishes consistency and uniformity among Federal agencies in the management of grants and cooperative agreements with State, local, and federally recognized Indian tribal governments. This revision supersedes Office of Management and Budget (OMB) Circular No. A–102, dated March 3, 1988.

2. *Authority.* This Circular is issued under the authority of the Budget and Accounting Act of 1921, as amended; the Budget and Accounting Procedures Act of 1950, as amended; Reorganization Plan No. 2 of 1970; Executive Order 11541 and the Chief Financial Officers Act, 31 U.S.C. 503. Also

included in the Circular are standards to ensure consistent implementation of sections 202, 203, and 204 of the Intergovernmental Cooperation Act of 1968, the Office of Federal Procurement Policy Act Amendments of 1983, and sections 6301–08, title 31, United States Code.

3. *Background.* On March 12, 1987, the President directed all affected agencies to issue a grants management common rule to adopt government-wide terms and conditions for grants to State and local governments, and they did so. In 1988, OMB revised the Circular to provide guidance to Federal agencies on other matters not covered in the common rule.

4. *Required Action.* Consistent with their legal obligations, all Federal agencies administering programs that involve grants and cooperative agreements with State, local and Indian tribal governments (grantees) shall follow the policies in this Circular. If the enabling legislation for a specific grant program prescribes policies or requirements that differ from those in this Circular, the provisions of the enabling legislation shall govern.

5. *OMB Responsibilities.* OMB may grant deviations from the requirements of this Circular when permissible under existing law. However, in the interest of uniformity and consistency, deviations will be permitted only in exceptional circumstances.

6. *Information Contact.* Further information concerning this Circular may be obtained from: Office of Federal Financial Management, Office of Management and Budget, Room 6025, New Executive Office Building, Washington, DC 20503, (202) 395–3993.

7. *Termination Review Date.* The Circular will have a policy review three years from the date of issuance.

8. *Effective Date.* The Circular is effective on publication.

Alice M. Rivlin,

Acting Director.

Attachment:

Grants and Cooperative Agreements With State and Local Governments

1. Pre-Award Policies

a. *Use of grants and cooperative agreements.* Sections 6301–08, title 31, United States Code govern the use of grants, contracts and cooperative agreements. A grant or cooperative agreement shall be used only when the principal purpose of a transaction is to accomplish a public purpose of support or stimulation authorized by Federal statute. Contracts shall be used when the principal purpose is acquisition of property or services for the direct benefit or use of the Federal Government. The statutory criterion for choosing between grants and cooperative agreements is that for the latter, "substantial involvement is expected between the executive agency and the State, local government, or other recipient when carrying out the activity contemplated in the agreement."

b. *Advance Public Notice and Priority Setting.*—(1) Federal agencies shall provide the public with an advance notice in the Federal Register, or by other appropriate means, of intended funding priorities for discretionary assistance programs, unless funding priorities are established by Federal statute. These priorities shall be approved by a policy level official.

(2) Whenever time permits, agencies shall provide the public an opportunity to comment on intended funding priorities.

(3) All discretionary grant awards in excess of $25,000 shall be reviewed for consistency with agency priorities by a policy level official.

c. *Standard Forms for Applying for Grants and Cooperative Agreements.*—(1) Agencies shall use the following standard application forms unless they obtain Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1980 (44 U.S.C. 35) and the 5 CFR Part 1320, "Controlling Paperwork Burdens on the Public":

- SF–424 Facesheet
- SF–424a Budget Information (Non-Construction)
- SF–424b Standard Assurances (Non-Construction)
- SF–424c Budget Information (Construction)
- SF–424d Standard Assurances (Construction)

When different or additional information is needed to comply with legislative requirements or to meet specific program needs, agencies shall also obtain prior OMB approval.

(2) A preapplication shall be used for all construction, land acquisition and land development projects or programs when the need for Federal funding exceeds $100,000, unless the Federal agency determines that a preapplication is not needed. A preapplication is used to:

(a) Establish communication between the agency and the applicant,

(b) Determine the applicant's eligibility,

(c) Determine how well the project can compete with similar projects from others, and

(d) Discourage any proposals that have little or no chance for Federal funding before applicants incur significant costs in preparing detailed applications.

(3) Agencies shall use the Budget Information (Construction) and Standard Assurances (Construction) when the major purpose of the project or program is construction, land acquisition or land development.

(4) Agencies may specify how and whether budgets shall be shown by functions or activities within the program or project.

(5) Agencies should generally include a request for a program narrative statement which is based on the following instructions:

(a) Objectives and need for assistance. Pinpoint any relevant physical, economic, social, financial, institutional, or other problems requiring a solution. Demonstrate the need for the assistance and state the principal and subordinate objectives of the project. Supporting documentation or other testimonies from concerned interests other than the applicant may be used. Any relevant data based on planning studies should be included or footnoted.

(b) Results or Benefits Expected. Identify costs and benefits to be derived. For example, show how the facility will be used. For land acquisition or development projects, explain how the project will benefit the public.

(c) Approach. Outline a plan of action pertaining to the scope and detail how the proposed work will be accomplished for each assistance program. Cite factors which might accelerate or decelerate the work and reasons for taking this approach as opposed to others. Describe any unusual features of the project, such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvements. Provide for each assistance program quantitative projections of the accomplishments to be achieved, if possible. When accomplishments cannot be quantified, list the activities in chronological order to show the schedule of accomplishments and target expected completion dates. Identify the kinds of data to be collected and maintained, and discuss the criteria to be used to evaluate the results and success of the project. Explain the methodology that will be used to determine if the needs identified and discussed are being met and if the results and benefits identified are being achieved. List each organization, cooperator, consultant, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.

(d) Geographic location. Give a precise location of the project and area to be served by the proposed project. Maps or other graphic aids may be attached.

(e) If applicable, provide the following information: for research and demonstration assistance requests, present a biographical sketch of the program director with the following information: name, address, telephone number, background, and other qualifying experience for the project. Also, list the name, training and background for other key personnel engaged in the project. Describe the relationship between this project and other work planned, anticipated, or underway under Federal assistance. Explain the reason for all requests for supplemental assistance and justify the need for additional funding. Discuss accomplishments to date and list in chronological order a schedule of accomplishments, progress or milestones anticipated with the new funding request. If there have been significant changes in the project objectives, location, approach or time delays, explain and justify. For other requests for changes, or amendments, explain the reason for the change(s). If the scope or objectives have changed or an extension of time is necessary, explain the circumstances and justify. If the total budget has been exceeded or if the individual budget items have changes more than the prescribed limits, explain and justify the change and its effect on the project.

(6) Additional assurances shall not be added to those contained on the standard forms, unless specifically required by statute.

d. *Debarment and Suspension.* Federal agencies shall not award assistance to applicants that are debarred or suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549. Agencies shall establish procedures for the effective use of

the List of Parties Excluded from Federal Procurement or Nonprocurement programs to assure that they do not award assistance to listed parties in violation of the Executive Order. Agencies shall also establish procedures to provide for effective use and/or dissemination of the list to assure that their grantees and subgrantees (including contractors) at any tier do not make awards in violation of the nonprocurement debarment and suspension common rule.

e. *Awards and Adjustments.*—(1) Ordinarily awards shall be made at least ten days prior to the beginning of the grant period.

(2) Agencies shall notify grantees immediately of any anticipated adjustments in the amount of an award. This notice shall be provided as early as possible in the funding period. Reductions in funding shall apply only to periods after notice is provided. Whenever an agency adjusts the amount of an award, it shall also make an appropriate adjustment to the amount of any required matching or cost sharing.

f. *Carryover Balances.* Agencies shall be prepared to identify to OMB the amounts of carryover balances (e.g., the amounts of estimated grantee unobligated balances available for carryover into subsequent grant periods). This presentation shall detail the fiscal and programmatic (level of effort) impact in the following period.

g. *Special Conditions or Restrictions.* Agencies may impose special conditions or restrictions on awards to "high risk" applicants/grantees in accordance with section ____.12 of the grants management common rule. Agencies shall document use of the "Exception" provisions of section ____.6 and "High-risk" provisions of section ____.12 of the grants management common rule.

h. *Waiver of Single State Agency Requirements.*—(1) Requests to agencies from the Governors, or other duly constituted State authorities, for waiver of "single" State agency requirements in accordance with section 31 U.S.C. 6504, "Use of existing State or multi-member agency to administer grant programs," shall be given expeditious handling and, whenever possible, an affirmative response.

(2) When it is necessary to refuse a request for waiver of "single" State agency requirements under section 204 of the Intergovernmental Corporation Act, the Federal grantor agency shall advise OMB prior to informing the State that the request cannot be granted. The agency shall indicate to OMB the reasons for the denial of the request.

(3) Legislative proposals embracing grant-in-aid programs shall avoid inclusion of proposals for "single" State agencies in the absence of compelling reasons to do otherwise. In addition, existing requirements in present grant-in-aid programs shall be reviewed and legislative proposals developed for the removal of these restrictive provisions.

i. *Patent Rights.* Agencies shall use the standard patent rights clause specified in "Rights to Inventions made by Non-profit Organizations and Small Business Firms" (37 CFR Part 401), when providing support for research and development.

j. *Metric System of Measurement.* The Metric Conversion Act of 1975, as amended, declares that the metric system is the preferred measurement system for U.S. trade and commerce. The Act requires each Federal agency to establish a date(s), in consultation with the Secretary of Commerce, when the metric system of measurement will be used in the agency's procurement, grants, and other business-related activities. Metric implementation may take longer where the use of the system is initially impractical or likely to cause significant inefficiencies in the accomplishment of federally-funded activities. Heads of departments and agencies shall establish a process for a policy level and program level review of proposed exceptions to metric usage in grants programs. Executive Order 12770 ("Metric Usage in Federal Government Programs") elaborates on implementation of the Act.

2. Post-Award Policies

a. *Cash Management.* Agency methods and procedures for transferring funds shall minimize the time elapsing between the transfer to recipients of grants and cooperative agreements and the recipient's need for the funds.

(1) Such transfers shall be made consistent with program purposes, applicable law and Treasury regulations contained in 31 CFR Part 205, Federal Funds Transfer Procedures.

(2) Where letters-of-credit are used to provide funds, they shall be in the same amount as the award.

b. *Grantee Financial Management Systems.* In assessing the adequacy of an applicant's financial management system, the awarding agency shall rely on readily available sources of information, such as audit reports, to the maximum extent possible. If additional information is necessary to assure prudent management of agency funds, it shall be obtained from the applicant or from an on-site review.

c. *Financial Status Reports.*—(1) Federal agencies shall require grantees to use the SF–269, Financial Status Report-Long Form, or SF–269a, Financial Status Report-Short Form, to report the status of funds for all non-construction projects or programs. Federal agencies need not require the Financial Status Report when the SF–270, Request for Advance or Reimbursement, or SF–272, Report of Federal Cash Transactions, is determined to provide adequate information.

(2) Federal agencies shall not require grantees to report on the status of funds by object class category of expenditure (e.g., personnel, travel, equipment).

(3) If reporting on the status of funds by programs, functions or activities within the project or program is required by statute or regulation, Federal agencies shall instruct grantees to use block 12, Remarks, on the SF–269, or a supplementary form approved by the OMB under the Paperwork Reduction Act of 1980.

(4) Federal agencies shall prescribe whether the reporting shall be on a cash or an accrual basis. If the Federal agency requires accrual information and the grantees's accounting records are not normally kept on an accrual basis, the grantee shall not be required to convert its accounting system but shall develop such accrual information through an analysis of the documentation on hand.

d. *Contracting With Small and Minority Firms, Women's Business Enterprises and Labor Surplus Area Firms.* It is national policy to award a fair share of contracts to small and minority business firms. Grantees shall take similar appropriate affirmative action to support of women's enterprises and are encouraged to procure goods and services from labor surplus areas.

e. *Program Income.*—(1) Agencies shall encourage grantees to generate program income to help defray program costs. However, Federal agencies shall not permit grantees to use grant-acquired assets to compete unfairly with the private sector.

(2) Federal agencies shall instruct grantees to deduct program income from total program costs as specified in the grants management common rule at paragraph ——.25 (g)(1), unless agency regulations or the terms of the grant award state otherwise. Authorization for recipients to follow the other alternatives in paragraph ____.25 (g) (2) and (3) shall be granted sparingly.

f. *Site Visits and Technical Assistance.* Agencies shall conduct site visits only as warranted by program or project needs. Technical assistance site visits shall be provided only (1) In response to requests from grantees, (2) based on demonstrated program need, or (3) when recipients are designated "high risk" under section ____.12 of the grants management common rule.

g. *Infrastructure Investment.* Agencies shall encourage grantees to consider the provisions of the common rule at Section ____. 31 and Executive Order 12803 ("Infrastructure Privatization"). This includes reviewing and modifying procedures affecting the management and disposition of federally-financed infrastructure owned by State and local governments, with their requests to sell or lease infrastructure assets, consistent with the criteria in Section 4 of the Order. Related guidance contained in Executive Order 12893 ("Principles for Federal Infrastructure Investments") requiring economic analysis and the development of investment options, including public-private partnership, shall also be applied. On March 7, 1994, OMB issued guidance on Executive Order 12893 in OMB Bulletin No. 94–16.

h. *Resource Conservation and Recovery Act.* Agencies shall implement the Resource Conservation and Recovery Act of 1976 (RCRA) (42 U.S.C. 6962). Any State agency or agency of a political subdivision of a State which is using appropriated Federal funds must comply with Section 6002 of RCRA. Section 6002 requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by the Environmental Protection Agency (EPA). Current guidelines are contained in 40 CFR Parts 247–253. State and local recipients of grants, loans, cooperative agreements or other instruments funded by appropriated Federal funds shall give preference in procurement programs to the purchase of recycled products pursuant to the EPA guidelines.

i. *Procurement of Goods and Services.* Agencies should be aware of and comply with the requirement enacted in Section 623 of the Treasury, Postal Service and General Government Appropriations Act, 1993, and reenacted in Section 621 of the fiscal year 1994 Appropriations Act. This Section requires grantees to specify in any announcement of the awarding of contracts with an aggregate value of $500,000 or more, the amount of Federal funds that will be used to finance the acquisitions.

3. After-the-grant Policies

a. *Closeout.* Federal agencies shall notify grantees in writing before the end of the grant period of final reports that shall be due, the dates by which they must be received, and where they must be submitted. Copies of any required forms and instructions for their completion shall be included with this notification. The Federal actions that must precede closeout are:

(1) Receipt of all required reports,

(2) Disposition or recovery of federally-owned assets (as distinct from property acquired under the grant), and

(3) Adjustment of the award amount and the amount of Federal cash paid the recipient.

b. *Annual Reconciliation of Continuing Assistance Awards.* Federal agencies shall reconcile continuing awards at least annually and evaluate program performance and financial reports.

Items to be reviewed include:

(1) A comparison of the recipient's work plan to its progress reports and project outputs,

(2) the Financial Status Report (SF–269),

(3) Request(s) for payment,

(4) Compliance with any matching, level of effort or maintenance of effort requirement, and

(5) A review of federally-owned property (as distinct from property acquired under the grant).

[FR Doc. 94–25509 Filed 10–13–94; 8:45 am]

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Federal Register

Friday
October 14, 1994

Part IV

The President

Proclamation 6739—National Breast Cancer Awareness Month

Federal Register
Vol. 59, No. 198
Friday, October 14, 1994

Presidential Documents

Title 3—

The President

Proclamation 6739 of October 12, 1994

National Breast Cancer Awareness Month, 1994

By the President of the United States of America

A Proclamation

Just weeks ago, scientists announced that they had identified a gene whose mutation causes hereditary breast cancer. Although the effects of this exciting discovery may not be realized for some time, as we mark National Breast Cancer Awareness Month, 1994, families and friends across the country have much to celebrate. American women have greater access to breast cancer screening than ever before. In addition to the latest advances in medical research, we have made significant strides in early detection and treatment, immeasurably improving women's chances for survival. Our knowledge of what causes this disease is expanding, and, bolstered by a firm national commitment to basic research, scientists continue to develop new and more effective methods of treatment. With each small step forward, we are saving women's lives.

Still, an estimated 182,000 American women will be diagnosed with breast cancer this year. Almost 43,000 will die. It remains the second leading cause of cancer death among American women. The health care community has worked tirelessly to educate Americans about the importance of early detection, but many women postpone recommended check-ups and do not yet practice regular self-examination. We must work to make sure that all women are informed about the dangers of breast cancer, are aware of the life-saving potential of early detection, and have access to the high-quality care for which our Nation is known around the world. Every one of us can and must take an active role in the fight against breast cancer.

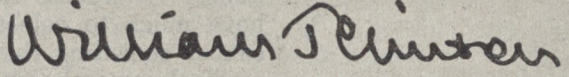
As we strive to ensure that our health care system meets the needs of all of our citizens, we must be certain that women receive proper screening for breast cancer. In concert with self-examination and clinical check-ups, mammography can be invaluable. Many cancers can be detected on a mammogram as early as 2 years before they would be noticed by a woman or her physician. Third-party reimbursement for mammography is increasing, Medicare now covers much of the cost of screening for women ages 65 or older, and many States now have laws requiring private insurers to offer coverage for this procedure. And a major effort is under way to inform employers about how businesses can provide screening mammography. I urge every State government, insurance company, medical facility, and business to follow these examples and to develop policies that incorporate this essential test.

Americans have always relied on partnerships to confront the many trials of daily life: partnerships between mothers and fathers to care for their children, partnerships between teachers and students to prepare for the challenges of the future. So, too, we must depend on one another if we are to succeed in the battle against breast cancer. Mothers and daughters, patients and physicians, public and private sector alike—every one of us must bear responsibility for our health and the health of our loved ones. By sharing the lessons of proper nutrition in preventing cancer, by emphasizing the importance of regular breast examination, and by maintaining an unswerving national commitment to basic research, all of us can be life

The Congress, by Senate Joint Resolution 185, has designated the month of October 1994, as "National Breast Cancer Awareness Month."

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim the month of October 1994, as National Breast Cancer Awareness Month. I invite the Governors of the 50 States and the Commonwealth of Puerto Rico, the Mayor of the District of Columbia, and the appropriate officials of all other areas under the American flag to issue similar proclamations. I also ask health care professionals, members of private industry, community groups, insurance companies, and all other interested organizations and individuals to unite in reaffirming our Nation's continuing commitment to controlling breast cancer.

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



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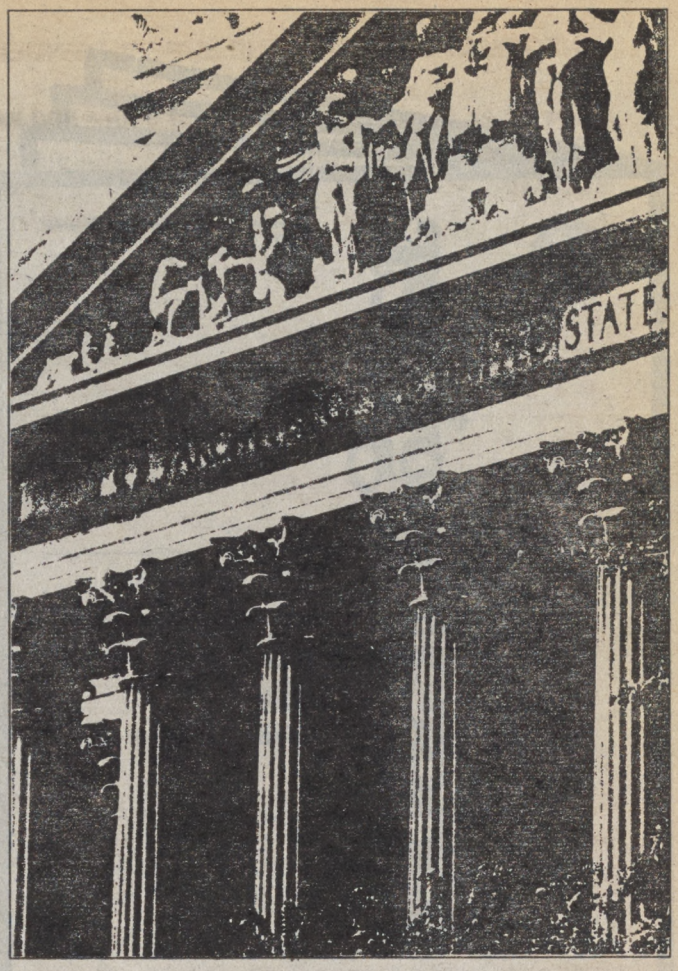
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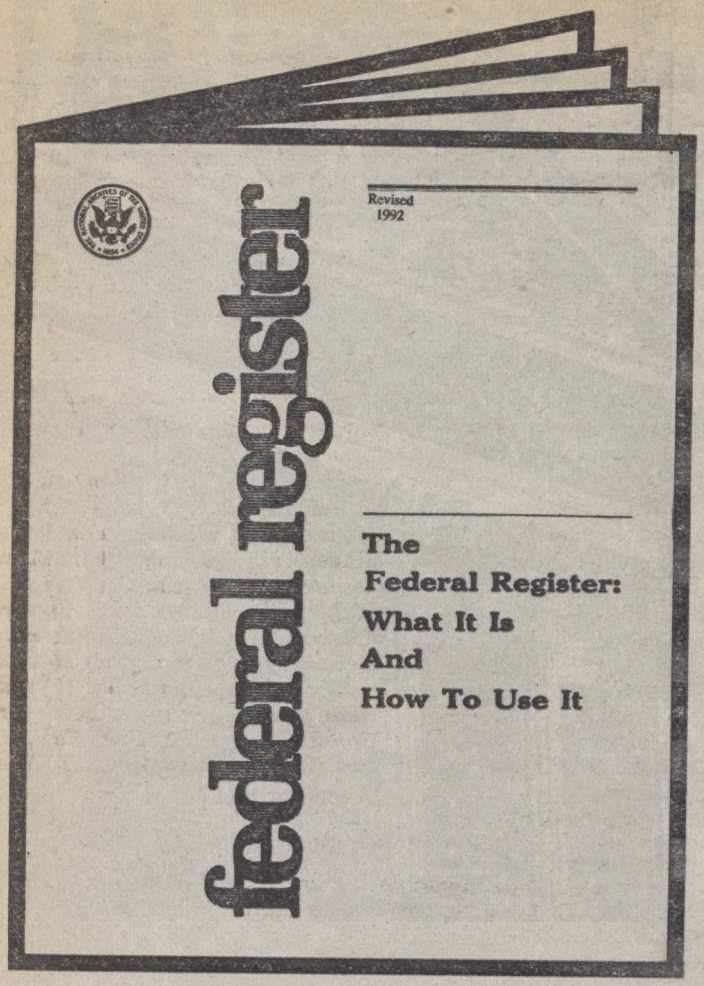
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